No. 07-542

In The
SUPREME COURT OF THE UNITED STATES

STATE OF ARIZONA
Petitioner,

v.

RODNEY JOSEPH GANT
Respondent.

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER, THE STATE OF ARIZONA BY THE LOS ANGELES COUNTY DISTRICT ATTORNEY ON BEHALF OF LOS ANGELES COUNTY

Amicus curiae, Steve Cooley, District Attorney for the County of Los Angeles, State of California, submits this brief for filing in support of the petitioner, the State of Arizona, as the authorized law officer of the county of Los Angeles, pursuant to Supreme Court Rule 37.2(a) and 37.4.[1]

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1. Los Angeles County Charter section 25 (1995) states:

> Each County officer, Board or Commission shall have the powers and perform the duties now or hereafter prescribed by general law, and by this charter as to such officer, Board of Commission.

(continued…)

INTEREST OF AMICUS CURIAE

Amicus curiae, as the executive officer charged with the prosecution of crime in the most populous county in California, has a strong interest in the effective enforcement of the laws of the state. Prior to this Court's bright-line ruling in *New York v. Belton*, 453 U.S. 454 (1981), the scope of a search of a vehicle incident to a lawful arrest was in a constant state of confusion.[2] The Arizona Supreme Court's

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(…continued)

(Footnote omitted.) It is provided in the California general law that:

> The district attorney is the general prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for the public offenses.

Cal. Gov't Code § 26500 (West 1998).

2 . *See People v. Fick,* 107 Cal.App.3d 892, 895 (1980) ["Certain closed containers, such as luggage and briefcases, clearly fall within the Fourth Amendment's proscription against warrantless searches because they are "common [repositories] for one's personal effects [and are] inevitably associated with the expectation of privacy." *Arkansas v. Sanders,* 442 U.S. 753, 762 (1979) (quoting *United States v. Chadwick,* 433 U.S. 1, 13 (1977)). Other items, however, are not reasonably associated with an expectation of privacy, and containers whose primary use is something other than as repositories for personal effects do not normally raise reasonable expectations of privacy. (*Guidi v. Superior Court* (1973) 10 Cal.3d 1, 10-14…paper shopping bag; *People v. Diaz* (1980) 101 Cal.App.3d 440, 446-448…paper cup with lid; *People v. Scott* (1979) 95 Cal.App.3d Supp. 8, 11…cigarette box."].

holding in *State v. Gant*, 162 P.3d 640 (Ariz. 2007), abandons this Court's bright-line ruling in *Belton*, reverting to a case-by-case analysis of whether a scene was secure and therefore a search incident to a lawful arrest was not justified.

Retreat from this Court's straightforward holding in *Belton* will return the state of the law to a time when neither the citizenry nor law enforcement know the scope of an officer's authority, hampering an officer in the effective performance of his duties to enforce the laws of the state and uncover and deter criminal activity. It is therefore in the interest of amicus to urge that the ruling of the Arizona Supreme Court calling for a case-by-case analysis of the arrest scene be reversed and that this Court's bright-line ruling in *Belton* be reaffirmed.

SUMMARY OF ARGUMENT

A search of a person incident to a lawful arrest is well-settled. *United States v. Robinson,* 414 U.S. 218, 227 (1973). Balancing the more limited privacy expectation that an arrestee has in a vehicle in which he was a recent occupant, being driven on a public highway, and who has been taken into physical custody based upon probable cause, versus the legitimate needs of law enforcement to be able to search a highly mobile vehicle; to remove from the reach of a suspect or accomplice, any weapons or instruments of escape; to seize and preserve evidence relevant to the arrest and prevent the destruction of evidence; and the need for a clear, bright-line rule that informs both the public and law enforcement of the scope of an officer's authority, a search of the passenger compartment of a vehicle and its containers incident to a lawful arrest is reasonable under the Fourth Amendment.

ARGUMENT

I. THE REASONABLENESS OF A SEARCH INCIDENT TO LAWFUL ARREST IS NOT DEPENDENT ON A CASE-BY-CASE ASSESSMENT OF THE RISK TO OFFICER SAFETY OR THE RISK OF DESTRUCTION OF EVIDENCE

Whether a search of an arrestee's vehicle incident to a lawful arrest is reasonable under the Fourth Amendment is not dependent upon an assessment of actual risk to the safety of officers or the likelihood that evidence will be destroyed. It is well-established that there is a lesser expectation of privacy in a vehicle.

> [C]ontemporaneously with the adoption of the Fourth Amendment we find in the first Congress, and in the following Second and Fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a moveable vessel where they readily could be put out of reach of a search warrant. [Citation.]

(*Carroll v. United States* 267 U.S. 132, 151 (1925.)

In *Chambers v. Maroney* 399 U.S. 42 (1970), this Court held that if there is probable cause to believe that contraband or evidence of a crime will be found in a vehicle, that vehicle may be searched without obtaining a search warrant. (*Id.* at p. 52.)

> *Carroll*, *supra,* holds a search warrant unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may never be found again, if a warrant must be obtained. Hence an immediate search is constitutionally permissible.

(*Id.* at p. 51.) Because of the mobility of the vehicle, it is impractical to seize every vehicle from the street and obtain a search warrant. The intrusion into the privacy interest of the suspect, can be greater in the seizure of the vehicle while obtaining a warrant, than in the immediate, on-the-spot search of the vehicle.

> [T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

(*Carroll v. United States,* 267 U.S. at p. 153.)

In *United States v. Ross* 456 U.S. 798 (1982), this Court held that where probable cause exists to

search a vehicle, the search that may be conducted is as broad and intrusive as that which a magistrate would authorize in a warrant given the nature of the probable cause.

> The scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

(*Id.* at p. 823, n. omitted.) Thus, a driver or passenger of a vehicle is constitutionally protected from having his vehicle searched unless there is probable cause to believe that evidence of a crime or contraband is in the vehicle.

The rubric premised by this Court in the issue presented essentially limits a search incident to lawful arrest to those instances where there is not only a lawful arrest based upon probable cause, but also evidence that an officer's safety was at risk or that evidence was in danger of being destroyed.[3]

With regard to officer safety, reasonableness under the Fourth Amendment does not require the additional showing of actual or threat of danger. The search of an arrestee's vehicle is not equivalent to a pat-down search of a detainee for whom there is but reasonable suspicion allowing only a brief

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3. In the words of Justice Scalia, *Belton* searches would be limited "to cases where is it reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (*Thornton v. United States, 541 U.S.* 615, 632 (2004), concurring opinion, J. Scalia.)

investigatory detention. (*Terry v.* Ohio 392 U.S. 1, 27-31 (1968).) To require a showing of actual or threatened danger of an arrestee for whom there is already probable cause to arrest for a crime, elevates the privacy expectation of the arrestee above that of the mere detainee.

A rubric that limits a *Belton* search only to instances in which there is reasonable cause to believe that evidence relevant to the crime for which the defendant is being arrested might be found in the vehicle, gives an arrestee a similar privacy interest in his vehicle as the detainee whose vehicle can only be searched upon a determination of probable cause that evidence or contraband is likely to be found within the detainee's vehicle.

This Court has previously recognized a sliding scale of privacy interests, from the nearly non-existent privacy interest of the convicted prisoner serving his sentence in a custodial facility to the increasing privacy expectations of the parolee and probationer. (*United States v. Knights* 534 U.S. 112, 119 (2001).) Likewise, the citizen in his vehicle has a lesser expectation of privacy than the the citizen in his home. (*Carroll v. United States,* 267 U.S. at p. 151.) Similarly, the privacy interest of the arrestee must be lower on the continuum of privacy interests than that of the detainee, for whom probable cause to arrest has not yet been determined. The search of a vehicle of an individual arrested from that vehicle based upon probable cause, does not require an additional finding (in terms of officer safety or destruction of evidence) to be reasonable under the Fourth Amendment.

II. CONSISTENT WITH THIS COURT'S HOLDING IN *NEW YORK v. BELTON* [4] AND BALANCING THE LIMITED EXPECTATIONS OF PRIVACY IN A VEHICLE AGAINST THE LEGITIMATE NEEDS OF LAW ENFORCEMENT, A SEARCH OF THE PASSENGER COMPARTMENT OF A VEHICLE INCIDENT TO A LAWFUL ARREST IS REASONABLE UNDER THE FOURTH AMENDMENT

"The touchstone of the Fourth Amendment is reasonableness." *United States v. Knights,* 534 U.S. at 118. Whether a search is reasonable under the Fourth Amendment is determined by looking at the totality of the circumstances and assessing the privacy interests intruded upon versus the legitimate needs of the government.

> "[U]nder our general Fourth Amendment approach" we "examin[e] the totality of the circumstances" to determine whether a search is reasonable within the meaning of the Fourth Amendment. [*Knights*] at 118, 122 S.Ct. 587, 151 L.Ed.2d 497 (internal quotation marks omitted.) Whether a search is reasonable "is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental

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4. *Belton,* 453 U.S. 454.

> interests." *Id.* at 118-119, 122 S.Ct. 587, 151 L.Ed.2d 497 (internal quotation marks omitted.)

Samson v. California, 547 U.S. 843, 126 S.Ct. 2193, 2197 (2006); see also *Wyoming v. Houghton,* 526 U.S. 295 (1999).

Balancing the reduced privacy expectations of an arrestee in a vehicle and the physical custody of the arrestee based upon probable cause, versus the legitimate needs of law enforcement, this Court's bright-line holding in *Belton* is reasonable under the Fourth Amendment. The legitimate needs of law enforcement include *inter alia,* the need to remove from a suspect's reach any weapons or to prevent the destruction of evidence, and the need for a clear rule informing both the public and law enforcement of the scope of an officer's authority. The authority to search a vehicle from which the arrestee was a recent occupant derives from the lawful arrest itself based upon probable cause. *Belton,* 453 U.S. at p. 461; cf. *Robinson*, 414 U.S. at p. 235. Given that arrest versus the needs of law enforcement, a search of the interior the vehicle and its containers without an individualized case-by-case analysis of the circumstances, is reasonable under the Fourth Amendment.

A. AN ARRESTEE'S EXPECTATION OF PRIVACY MUST YIELD TO LEGITIMATE NEEDS OF LAW ENFORCEMENT

In *Knights,* 534 U.S. 112, this Court phrased the privacy intrusion in terms of one's reasonable expectation of privacy. This Court balanced the "significantly diminished" privacy expectations of a

probationer with search conditions against the legitimate needs of the government to monitor probationers while protecting the public. *Id.* at 119-121. Balancing these circumstances, including the probationer's reduced expectation of privacy, this Court found that no more than reasonable suspicion was needed to search the probationer's residence. *Id.* at 121. This Court further held that these same circumstances

> render[ed] a warrant requirement unnecessary. See *Illinois v. McArthur*, 531 U.S. 326, 330, 148 L.Ed.2d 838, 121 S.Ct. 946 (2001) (noting that general or individual circumstances, including "diminished expectations of privacy," may justify an exception to the warrant requirement.).

Id. at 121-122. Thus, in determining the reasonableness of a search and the necessity of a warrant, one's reasonable expectation of privacy is a salient factor. This salient factor has played no less a role in determining the reasonable scope of a search incident to a lawful arrest.

The highest level of expectation of privacy that one can have is in one's person. *Terry v. Ohio,* 392 at 9. It is nevertheless well established that a search incident to a lawful arrest of the person is reasonable under the Fourth Amendment.

> The validity of the search of the person incident to a lawful arrest has been regarded as settled from its first enunciation, and has remained virtually unchallenged until the present case.

Robinson, 414 U.S. at 224. This Court went on to hold in *Robinson*:

> A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which established the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

Id. at 235. Thus, notwithstanding the high degree of expectation of privacy in one's person, given the legitimate government interest in searching for, and seizing, evidence of a crime; the need to search for weapons and other instruments by which a suspect could injure or kill an officer or make an escape; and the existence of probable cause to believe the suspect has committed an offense culminating in the suspect being deprived of his freedom and taken into physical custody, the search of the arrestee's person after arrest is reasonable.

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B. GIVEN THE LESSER EXPECTATION OF PRIVACY IN A VEHICLE, THE SCOPE OF A SEARCH INCIDENT TO A LAWFUL ARREST THAT INCLUDES THE PASSENGER COMPARTMENT OF THE VEHICLE IS REASONABLE UNDER THE FOURTH AMENDMENT

While the authority to search the person of an arrestee incident to a lawful arrest was a well-established, straightforward, bright-line rule, prior to this Court's ruling in *Belton,* the *scope* of the search beyond the arrestee's person had been in flux. *Belton*, 453 U.S. at p. 459. In *Chimel v. California,* 395 U.S. 752 (1969), this Court limited the scope of a search incident to a lawful arrest to a search of the person and the area within his immediate control. *Id.* at 762-763. As observed by this Court in *Thornton v. United States,* 541 U.S. at 620, "[a]lthough easily stated, the *Chimel* principle had proved difficult to apply in specific cases", particularly in the context of vehicle searches.

> [N]o straightforward rule has emerged from the litigated cases respecting the question involved here – the question of the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants.

Belton, 453 U.S. at 459. Thus, in *Belton,* this Court sought to establish a clear, bright-line rule that would inform law enforcement and citizens alike what the scope of a vehicle search incident to a lawful arrest encompassed. *Id.* at 459-460. This Court stated:

> [W]e hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

Belton, 453 U.S. at 460-461 (footnotes omitted).

Within the framework of a general Fourth Amendment analysis of reasonableness under the totality of the circumstances, balancing the privacy intrusion against the legitimate needs of the government, this Court's holding in *Belton* establishing the scope of the search of a vehicle incident to a lawful arrest as the passenger compartment and any container therein, is reasonable under the Fourth Amendment. Concomitantly, the Arizona Supreme Court erred in this matter in finding the search of respondent Gant's vehicle to be unreasonable. [5]

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5. Arizona's interpretation that *Belton* established only a bright-line rule for the scope of a search and not for the search in the first instance, Joint Appendix, 156-157, is fallacious. The search of a person incident to lawful arrest is well-established. The search of a residence or vehicle incident to that arrest is not a new search, but is indeed a question of the scope of the search incident to the same arrest. This Court sought to create a bright-line rule to guide officers on the proper scope of that search. The bright line established by this Court is meaningless and is of no guidance to law enforcement if the rule does not apply to the initiation of the search in the first place. The issue before this Court is whether the bright-line rule established in *Belton* authorizing a limited search of a vehicle incident to a recent occupant's lawful arrest should be re-affirmed.

1. THE ARRESTEE HAS A REDUCED PRIVACY EXPECTATION IN A VEHICLE AND FROM WHICH HE HAS BEEN ARRESTED BASED UPON PROBABLE CAUSE

It is well established that one has a lesser expectation of privacy in a vehicle than in one's residence and of one's person.

> Passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property that they transport in cars, which "travel public thoroughfares," *Cardwell v. Lewis,* 417 U.S. 583, 590, 41 L.Ed.2d 325, 94 S.Ct. 2464 (1974), "seldom serve as … the repository of personal effects," *ibid.* are subjected to police stop and examination to enforce "pervasive" governmental controls "as an everyday occurrence," *South Dakota v. Opperman,* 428 U.S. 364, 368, 49 L.Ed.2d 1000, 96 S.Ct. 3092 (1976), and, finally, are exposed to traffic accidents that may render all their contents open to public scrutiny.

Wyoming v. Houghton, 526 U.S. at 303; see also *California v. Acevedo,* 500 U.S. 565 (1991) at 578 ["From *Carroll* [*v. United States,* 267 U.S. 132 (1925)] through [*United States v.*] *Ross,* [456 U.S. 798 (1982)], this Court has explained that automobile searches differ from other searches."]; *California v. Carney,* 471 U.S. 386 (1985) at 391, ["'the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office' [Citation.]".]

Further, a search incident to a lawful arrest, presupposes sufficient probable cause to make a custodial arrest.

> A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.

Robinson, 414 U.S. at 235. The intrusion upon the suspect's privacy interest in a vehicle upon a public highway from which he has just been arrested is minimal compared to the privacy intrusion of custodial arrest. A full search of the person is authorized pursuant to lawful custodial arrest and is reasonable under the Fourth Amendment. *Robinson*, 414 U.S. at 235. A search of the vehicle that person recently occupied, in which he could have readily deposited weapons or evidence of the crime for which he is being arrested, is no less reasonable.[6]

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6. Contrary to the lower Court of Appeal opinion in *Robinson*, 414 U.S. 218, that there could be no further evidence of the crime of driving on a revoked license, amicus contends that additional evidence of the crime for which Gant was being arrested, driving on a suspended license, could indeed be found in the vehicle. Traffic tickets for the same offense or letters of notice from the department of motor vehicles, demonstrating Gant's knowledge of the suspended status of his license, often a requirement before conviction, might logically be found in the vehicle.

Regardless of the likelihood of discovering evidence of the current offense however, because of the reduced expectation of privacy of the arrestee in a vehicle versus legitimate governmental interests including the need for a clear, bright-line rule that informs the public as well as law enforcement of

(continued…)

2. LEGITIMATE GOVERNMENT INTERESTS EXIST FOR THE INTRUSION UPON THE PRIVACY EXPECTATIONS OF AN ARRESTEE

It is well-established that the mobility of a vehicle is an exigent circumstance justifying the search of an automobile without a warrant.

> There are, of course, exceptions to the general rule that a warrant must be secured before a search is undertaken; one is the so-called "automobile exception" at issue in this case. This exception to the warrant requirement was first set forth by the Court 60 years ago in *Carroll v. United States,* 267 U.S. 132 (1925). There, the Court recognized that the privacy interests in an automobile are constitutionally protected; however, it held that the ready mobility of an automobile justifies a lesser degree of protection of those interests.

California v. Carney, 471 U.S. at 390. Thus, the mobility of the vehicle and the need for an on-the-spot search and seizure weighs heavily in favor of the needs of the government.

Searches incident to a lawful arrest, in general, are based on the need of law enforcement

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(…continued)

the scope of its authority, a search of the vehicle's interior without individual assessment of the nature of the crime and the likelihood of discovering evidence is reasonable.

> "to remove any weapons that [the arrestee] might seek to use in order to resist arrest or effect his escape" and the need to prevent the concealment or destruction of evidence. [Citation.]

Belton, 453 U.S. at 457. It is necessarily a determination that is made quickly and under stressful conditions.

> A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick *ad hoc* judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search.

Robinson, 414 U.S. at 235; see also *Thornton,* 541 U.S. at 621 ["A custodial arrest is fluid and '[t]he danger to the police officer flows from *the fact of the arrest*, and its attendant proximity, stress and uncertainty,' *Robinson, supra,* 414 U.S. at, 234-235…(emphasis added)."]

Lastly, law enforcement as well as the public, has a need for clear, straightforward rules that can be easily understood.

> When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority.

Belton, 453 U.S. at 459-460; see also *California v. Acevedo,* 500 U.S. at 577 ["We have noted the virtue

of providing ' " 'clear and unequivocal' guidelines to the law enforcement profession." ' [Citations.]"]; *Arizona v. Roberson,* 486 U.S. 675 (1988) ["We have repeatedly emphasized the virtues of a bright-line rule in cases following *Edwards* [*v. Arizona,* 451 U.S. 477 (1981)] as well as *Miranda* [*v. Arizona,* 384 U.S. 436 (1966)]."].

Balancing the reduced privacy expectations that an arrestee has in a vehicle in a public location and who has been taken into physical custody based upon probable cause, versus the legitimate needs of law enforcement to be able to search a very mobile vehicle; to remove from a suspect any weapons or instruments of escape; to prevent the destruction of evidence; and the need for a clear, bright-line rule that informs both the public and law enforcement of the scope of an officer's authority, a search of the passenger compartment of a vehicle and its containers, incident to a lawful arrest is reasonable under the Fourth Amendment. Whether the suspect is handcuffed and placed in a patrol car or is standing next to the vehicle at the time of the search has no bearing on the determination of reasonableness.

III. AS AN ARRESTEE TAKEN INTO PHYSICAL CUSTODY BASED UPON PROBABLE CAUSE, AN ARRESTEE'S PROXIMITY TO HIS VEHICLE OR HIS HANDCUFFED STATUS ARE IRRELEVANT TO THE ISSUE OF REASONABLENESS UNDER THE FOURTH AMENDMENT

Neither the arrestee's physical proximity to his car nor the presence or absence of handcuffs

affects his already diminished expectation of privacy in a vehicle on a public highway. Nor do these factors affect the legitimate needs of law enforcement. The fact that a vehicle *could* be towed and stored does not change the mobility of the vehicle. Any actions other than a contemporaneous search of the vehicle, requires officers to guard the vehicle to prevent an arrestee's friends, family, cohorts or even strangers from tampering with or removing weapons and/or evidence from the vehicle. See *California v. Carney,* 471 U.S. at 393 ["Like the automobile in *Carroll*, respondent's motor home was readily mobile. Absent the prompt search and seizure, it could readily have been moved beyond the reach of the police."].

The proximity of an arrestee to his vehicle, handcuffed or not, does not alter the necessity of law enforcement to look for or retrieve possible weapons or items of evidence that otherwise could be retrieved by passengers, family members, friends or unidentified cohorts, absent a contemporaneous search and seizure. As this Court observed in *Belton*:

> It seems to have been the theory of the Court of Appeals that the search and seizure in the present case could not have been incident to the respondent's arrest, because Trooper Nicot, by the very act of searching the respondent's jacket and seizing the contents of its pocket, had gained "exclusive control" of them. 50 N.Y.2d 447, 451, 407 N.E.2d 420, 422. But under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be

> valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his "exclusive control."

453 U.S. at 462, fn. 5. Further, as this Court observed in *Robinson*:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.

414 U.S. at 235. A full search of the person is authorized without further justification for believing that weapons or evidence will be found upon that person. *Id.* The search of a vehicle from which the arrestee has just been arrested, and for which the arrestee has a lesser expectation of privacy than he does in his person, requires no additional justification and is reasonable under the Fourth Amendment. As this Court stated in *Belton,* once a lawful arrest has been made of an individual from a vehicle, an officer may search, incident to that arrest, the passenger compartment of that vehicle and any containers found within. 453 U.S at 460. The search is reasonable

> since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have.

Id. at p. 461.

Lastly, an arrestee's proximity to his vehicle and the presence or absence of handcuffs does not affect the need for law enforcement to have clear and straightforward rules to effectively enforce the law and uncover criminal activity.

> In short, "[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." [Citation].

Belton, 453 U.S. at 458.

Under the facts of this case, Gant had a suspended driver's license and an outstanding warrant for driving on a suspended license. Joint Appendix, p. 152. Because Gant was arrested, handcuffed and placed in the back of a patrol car *Ibid.,* the Arizona Supreme Court held that the scene was secure and that this Court's holding in *Belton,* 453 U.S. 454, did not apply – that is, neither concern for officer safety nor the preservation of evidence justified the search. *Id.* at 156-157. This ruling is contrary to this Court's holding in *Robinson,* that a search incident to a lawful arrest does not require a "case-by-case adjudication" and that "[i]t is the fact of the lawful arrest which establishes the authority to search." 414 U.S. at 235.

CONCLUSION

For the foregoing reasons, this Court's bright-line rule established in *Belton* should be reaffirmed and the search of Gant's vehicle held to be lawful and reasonable under the Fourth Amendment.

Respectfully submitted,

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