4th Amendment Satisfaction:

Search Incident to Arrest,
Inventory,
PC-based auto searches

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II. Other S/S Satisfaction Issues:  
*SIA, Inventory, & P.C.-based Auto searches*

1. Discuss doctrines of SIA, Inventory, & PC-based auto searches as exceptions to warrant requirement.

2. Apply these doctrines to searches involving digital devices.
Search Incident to Arrest

**Traditional doctrine**  - *Chimel*

Police may search entire body & immediate grabbing space of the person arrested without PC.

- Officer safety
- Preservation of evidence

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Chimel involved a warrantless search of defendant’s home, incident to his arrest there, for the fruits of a burglary. Officers searched entire three bedroom home, including the attic, garage and workshop.
The Court stated that the person of an arrestee, as well as the area into which an arrestee might reach, may be searched so as to deprive him of weapons by which he could resist arrest or escape and also to prevent the destruction or concealment of evidence.

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What about closed containers on arrestee’s person?

**Bright line rule:** - *Robinson*

Incident to a lawful arrest, officer can search arrestee’s person and open any containers located thereon.

This is an exception to warrant requirement and a reasonable search.

In *United States v. Robinson*, the Court addressed the question of whether police could open closed containers located on an arrestee’s person. Police arrested Robinson for operating a motor vehicle with a revoked license. While performing a search incident to arrest, the officer felt an object in Robinson’s pocket. He removed the object, which turned out to be a crumpled cigarette package, from the pocket. The officer then opened the cigarette package and found heroin capsules. This case established the bright line rule that an officer can search an arrestee’s person and open any containers thereon automatically, incident to a lawful arrest.

Only needed a showing that search was pursuant to a legal custodial arrest

"It is the fact of the lawful arrest which establishes 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 . . .”

In *Belton*, officer pulled over a speeding vehicle, and after asking to see the driver’s license and registration discovered that neither the driver nor the other three passengers owned the vehicle or were related to the owner. Officer smelled burnt marijuana and saw envelope on floor marked “Supergold.” Officer ordered the four men out of the car and placed them under arrest. The officer patted down each of the men and split them up so they would not be able to physically touch each other. Officer picked up Supergold envelope and found it contained marijuana. He then searched each of the four former occupants of the automobile as well as the passenger compartment of the car where, on the back seat, he found a jacket belonging to Belton. He unzipped one of the pockets of the jacket and discovered cocaine.


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Scope of Vehicle Search under *Belton*:

Pursuant to lawful arrest of auto’s occupants, officer may, as a *contemporaneous* incident of that arrest:

- Search entire passenger compartment\(^1\) of car
- Search any container\(^2\) (open or closed) w/in passenger compartment

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1. This does not include the trunk of the automobile.
2. Container is defined as any object capable of holding another object.
   “It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like.”

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Permissible Scope of SIA

1. **Person**: “unqualified authority"
   
   *(Robinson)*

2. **Reach and Grasp area**: area within "immediate control"
   
   *(Chimel)*

3. **Vehicles**: entire passenger compartment including any open or closed container therein
   
   *(Belton)*

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New Approach for Automobiles:  
*Arizona v. Gant*

- Tip that drugs being sold out of house
- Cops knocked on door, Gant answered – “owner not home”
- Cops left, discovered outstanding warrant for Gant’s arrest - driving w/ suspended license
- Cops returned, arrested & handcuffed Gant - locked him in back of squad car


*Notes:*
**Gant Argued:**

1. *Belton* did not authorize search of his auto once he was arrested and handcuffed in back of squad car; posed no threat to officer safety

2. Arrested for traffic offense, for which no evidence could be found in vehicle.

When asked at suppression hearing why search was conducted, officer responded, “Because the law says we can do it.”

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In *Gant*, neither the possibility of arrestee’s access nor the likelihood of discovering offense-related evidence authorized the search.

- There were five officers and three arrestees, all of whom had been handcuffed and secured in separate patrol cars before the search of Gant’s car; Gant was clearly not within reaching distance of his vehicle.
- No evidentiary basis for the search; Gant was arrested for driving with a suspended license – an offense for which police could not expect to find evidence in the passenger compartment of his car.

**Holding 1:**

Fn4: "... it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee’s vehicle remains“

**Holding 2:**

standard: reasonable basis

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**Gant’s** holding limited the common and broad reading of *Belton*, which held that incident to a lawful arrest of car’s recent occupant, officer may search entire passenger compartment of car (and any containers inside) w/out a warrant.

The Supreme Court’s decision in *Gant*, significantly limits a police officer’s ability to conduct a search incident to arrest when the person arrested was in a vehicle. *Gant* does not affect an officer’s ability to search the *person* being arrested, rather, it sets forth the permissible scope of the search of the area surrounding the arrestee in situations where the arrestee was a recent occupant of a vehicle.

Restated, *Gant* holds that police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of the arrest.

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Cell on back seat…search under *Gant*?

- Reynolds arrested while in possession of 5,200 grams of marijuana.
- Drugs were shipped via Fed Ex to hotel for pickup
- Officers searched vehicle / found cell phones.
- Gant: Reasonable to believe evidence relevant to crime of arrest might be found in vehicle.

Rbable for officers to believe cell phones might contain evidence of drug trafficking – phones properly seized incident to arrest.

(slip copy)

**United States v. Reynolds**, 2009 WL 1588413 (E.D. Tenn.)
While a motorist’s privacy interest in his automobile is less substantial than in his home; it is nevertheless important and deserving of constitutional protection. Belton searches authorize police to search not only the passenger compartment, but also every purse, briefcase or container located in the passenger compartment, even if there is no basis for believing that evidence of the offense might be found in the vehicle. Belton, in effect, gives police “unbridled discretion to rummage at will among a person’s private effects” the concern at the very core of the Fourth Amendment.


Notes:
2. *Belton*’s bright-line rule not as bright as purported.

Cases not uniformly decided as to when a search is “contemporaneous with arrest.”

- How close in time must arrest and search be?
- How close must arrestee be to vehicle when first approached by officer

Courts are at odds as to what is required in order for a search incident to arrest to comport with *Belton*, for example, how close in time must the arrest and the search must be?


**Contemporaneous with arrest:**

- Search commencing five minutes after arrestee was removed from the scene upheld.  
  
  *United States v. McLaughlin*, 170 F.3d 889, 890-91 (9th Cir. 1999)
  *United States v. Snook*, 88 F.3d 605, 608 (8th Cir. 1996)

- Search that continued after arrestee removed from the scene upheld.  
  
  *United States v. Doward*, 41 F.3d 789, 793 (1st Cir. 1994)

- Search that commenced after arrestee was removed from scene held to be invalid.  
  
  *United States v. Lugo*, 978 F.2d 631, 634 (10th Cir. 1992)

- Search that continued after arrestee removed from the scene held to be invalid.  
  

**Issues of spatial proximity:**

- Belton not applicable when arrestee was approached by police after he had exited vehicle and reached his residence.  
  
  *United States v. Caseres*, 533 F.3d 1064, 1072 (9th Cir. 2008)

- Belton applicable when arrestee was apprehended 50 feet from vehicle.  
  
  *Rainey V. Commonwealth*, 197 S.W. 3d 89, 94-95 (Ky. 2006)

- Belton applicable when arrestee was apprehended inside an auto repair shop, and his car was parked outside.  
  
3. Broad reading of Belton not necessary for officers’ safety / evidentiary concerns.

Other established exceptions to warrant requirement authorize vehicle searches when safety or evidentiary issues demand.

*Michigan v. Long* permits an officer to search a vehicle’s passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons.


*United States v. Ross* authorizes a search of any area of the vehicle in which evidence might be found in cases where there is probable cause to believe a vehicle contains evidence of a criminal activity.


These exceptions together ensure that officers may search an automobile when genuine safety or evidentiary concerns encountered during the arrest of a vehicle's recent occupant justify a search. Construing *Belton* broadly to allow vehicle searches incident to any arrest would provide no purpose except to provide a police entitlement, and it is anathema to the Fourth Amendment to permit a warrantless search on that basis.

Edwards was lawfully arrested for attempting to break into post office. He was taken to the local jail and placed in a cell. The next morning, Edwards was given a change of clothes and the clothing he had been wearing since the time of arrest was taken from him and held as evidence.

“It is . . . plain that searches and seizures that could be made on the spot at the time of the arrest may legally be conducted later when the accused arrives at the place of detention.”


Once accused is lawfully arrested and in custody, effects in his possession that were subject to search at time of arrest may be lawfully seized and searched w/out warrant even though substantial period of time has elapsed between the arrest, administrative procedures, etc. and the time that the property was taken for use as evidence.


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**SIA as to Objects:**

**U.S. v. Chadwick**

- Respondents arrived at train station, loaded locked footlocker in trunk
- Respondents arrested by fed agents.
- Respondents, auto + footlocker transported to Fed bldg
- Footlocker searched by agents 1.5 hours after arrest – contained marijuana


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Court: Rationale behind SIA:

- “Potential dangers lurking in all custodial arrests.”

- Officer may make warrantless search of items w/in immediate control area.

- Officer need not calculate probability that weapons / destructible evidence will be found.
As to items not immediately associated w/ arrestee...?

Search of luggage / other property not immediately associated w/ arrestee’s person is not incident to arrest if:

• officers have exclusive control of said property, and

• there is no danger that arrestee might gain access to property and seize weapon or destroy evidence


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Warrantless searches of luggage or other property seized at time of arrest cannot be justified as incident to that arrest if search is remote in time or place from the arrest.


Notes:
U.S. v. Chadwick

Court seems to distinguish between:

- Items immediately associated w/ arrestee’s person, and
- Objects w/in arrestee’s immediate control

FN distinguishing Edwards:
“Unlike searches of the person, searches of possessions within an arrestee’s immediate control cannot be justified by any reduced expectations of privacy caused by the arrest. Respondent’s privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest.”

United States v. Chadwick, 433 U.S. 1, 16, n. 10.

Notes:
A Dubious Jurisprudence of Containers...

Subsequent lower court case law:

- Immediately associated
  - Wallets
  - Purses
  - Backpacks
- Not closely associated
  - Luggage

How do we categorize cell phones?


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SIA and Digital Evidence Containers:

Does 4/A allow warrantless search of cell phone contents when it is seized incident to a valid arrest?

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United States v. Murphy, 552 F.3d 405 (4th Cir. 2009).

United States v. Finley, 477 F.3d 250 (5th Cir. 2007).
As part of a drug investigation, police arrested Finley and seized the cell phone from his pocket. Agents took Finley to another location where they were conducting a search warrant. While interviewing Finley, one of the agents searched through the phone’s call records and text messages, which referred to drug use and trafficking.
The Fifth Circuit Court of Appeals held that Chadwick was inapplicable to the Finley search; the cell phone was on his person at the time of the arrest, whereas Chadwick concerned the search of "property not immediately associated with [his] person."]
The court in Finley also noted that, despite the fact that police had moved Finley, the search of the cell phone was still substantially contemporaneous with the arrest and therefore was permissible.
United States v. Finley, 477 F.3d 250, 260 n.7. (5th Cir. 2007).

See also, United States v. Santillan, 571 F. Supp. 2d 1093, 1102-03 (D. Ariz. 2008); United States v. Deans, 549 F. Supp 2d 1085, 1093-94 (D. Minn. 2008); United States v. Mercado-Nava, 486 F. Supp. 2d 1271, 1278-79 (D. Kan. 2007). In these cases, the defendants were arrested for drug-related activity when their electronic devices were searched. The courts noted that the devices may have been used to communicate with others involved in the illegal activity, therefore, there was a reasonable probability that evidence of the arrestee’s crime would be stored on the device.

United States v. Ortiz, 84 F.3d 977 (7th Cir. 1996).

Notes:
People v. Diaz, 81 Cal. Rptr. 3d 215 (Ct. App. 2008).
Diaz was arrested after participating in a controlled buy of narcotics. At the time of arrest, Diaz had “on his person” a small amount of marijuana and a cell phone. The phone was not seized at the time of arrest, but an hour or so later after he was taken to the police station. During Diaz’s interrogation, which occurs approximately thirty minutes after arriving at the station, the officer accesses the phone’s text message folder and retrieves an incriminating message (“6 4 80”). When confronted with this information Diaz confessed.

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Relying on Chadwick, Diaz argued that the warrantless search of his cell phone 90 minutes after his arrest violated the Fourth Amendment’s requirement that a warrant must be obtained for delayed searches of possessions within an arrestees immediate control. A cell phone, Diaz contended, should not be classified as an item closely associated with the person of an arrestee, because they are “no more likely to be inside a person’s pocket than inside a briefcase, backpack, or purse, or on a car seat or table, or plugged into a power source, or stashed inside any manner of separate bags or carrying containers.”


Notes:
But...

Court in *U.S. v. LaSalle* held that search of D’s cell phone was not incident to his arrest when time between arrest and search was between 2 hrs to 3 hr 45 minutes.

Ct held *Edwards* only applies to LaSalle’s person or his clothing - not to his cell phone.

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*United States v. LaSalle*, 2007 WL 1390820 (D. Hawai’i).

On the other hand, courts have upheld delayed warrantless searches of wallets ( ), purses ( ), address books ( ), and pagers.
Rejection of SIA to Cell Phones:

*U.S. v. Wall IV* (S.D. Fla 2008)

- Cell phones used during U/C drug sting
  (search occurred at police station)

- Rejects *Finley*
  - *S/ not contemporaneous w/ arrest*
  - *Search of info stored on cell phone*
    analogous to search of sealed letter -
    which requires warrant

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*Notes:*

*United States v. Wall IV, 2008 WL 5381412 (S.D. Fla 2008).*


• Officer removed cell phone from D’s person at time of arrest & conducted a search.


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Ct. looked to rationale for SIA stated in *Chimel*:

...ample justification for search of arrestees’s person & area w/in his immediate control - area from which he could:

- access weapon, or
- destroy evidence


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**Held:**

*No justification for search of D’s cell phone as incident to arrest:*

Not rsble for officer to believe search of cell phone at time of arrest (1/2009) would produce evidence of crime committed in 3/2008. *(Gant language)*

- Cell phone did not pose harm to officers
- No suggestion that phone contained destructible evidence

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**United States v. McGhee,** 2009 WL 2424104 (D. Neb.).
The court held that the officers were not justified in conducting a warrantless search of the defendant’s cell phone incident to his arrest.
The court noted that McGhee did have the cell phone within his immediate control (the officer took it from his person) – an area which can be searched incident to arrest under *Chimel.* However, if *Chimel’s* twin justifications for the SIA exception are absent, the rule doesn’t apply. **United States v. McGhee,** 2009 WL 2424104, at *3 (D. Neb.) citing **United States v. Gant,** 129 S.Ct. 1710, 1716 (2009).

In analyzing *Chimel’s* rationale underlying the search incident to arrest exception, the *McGhee* court found (1) the cell phone did not present a risk of harm to the officers, and (2) no evidence suggested the cell phone contained destructible evidence. As a result, officers were not justified in conducting a warrantless search of defendant’s cell phone as incident to his arrest. **United States v. McGhee,** 2009 WL 2424104, at *4(D. Neb.).

**Notes:**

Defendant was pulled over for speeding. Upon approaching the automobile, the officer noticed a strong odor of raw marijuana emanating from the vehicle. Defendant was arrested when a subsequent check revealed he was driving with a suspended license. At the time of arrest, the officer seized a cell phone from defendant’s pocket and conducted a search of its contents.

The court noted that where a defendant is arrested for drug related activity, police may be justified in searching the cell phone for evidence of this crime, even if “the presence of such evidence is improbable.” The court found that the search of the defendant’s cell phone had nothing to do with the preservation of evidence related to the crime of arrest (driving with a suspended license) or with officer safety, and as such, the search was not justified under the twin rationales of Chimel.

Officer was, according to the court, searching the cell phone for information relating to the smell of marijuana, not seeking to preserve evidence that Defendant was driving with a suspended license.

The court found that, unlike in Finley where the search was substantially contemporaneous with the arrest, the search of Park’s phone was not.

The court placed great significance on its classification of cell phones, holding that for purposes of Fourth Amendment analysis, these devices should be considered possessions within an arrestee’s immediate control and not part of the person.

Notes:
Is “Timing Really Everything?”

**U.S. v. LaSalle** *(not reported)* Hawai‘i

(1:15 – 1:45)
- D. arrested & cell phone taken from him.

(4:00 – 5:00)
- D processed, booked, and fingerprinted.
- Agent searched cell phone.

*Court: Search of cell phone not incident to arrest because not contemporaneous in time or place.*

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**United States v. LaSalle**, 2007 WL 1390820 (D. Hawai‘i).

The Government argued that the search of the cell phones was a valid warrantless search as an incident to the Defendant’s arrest. Citing *Edwards*, the government contended that a search is incident to arrest as long as it occurs *before* the administrative processes relating to arrest and custody have been completing. The court, however, rejected this argument.

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Smith arrested on drug related charges after responding to a call to his cell phone by police informant attempting to set up a buy. During arrest, police found cell on defendant’s person. Police seized phone, put defendant in police car, then searched phone for evidence.

The Court discussed Finley noting that the defendant in that case, unlike the defendant in the case at bar, conceded that a cell phone was analogous to a closed container for the purpose of Fourth Amendment analysis. For this reason, the Supreme Court found that the Finley analysis was not entirely applicable.

State v. Smith, 920 N.E.2d 929 (Ohio 2009).

Notes:
After holding that cell phones are not closed containers for the purpose of 4/A analysis, the court discussed how cell phones should be classified under the 4th Amendment, noting that due to their nature cell phones defy easy categorization. The court focused on one’s expectation of privacy, stating that an address book one might carry on one’s person would carry a lower expectation of privacy during a search incident to arrest, while laptop computers are entitled to higher expectations of privacy. The court found that although cell phones cannot be equated with laptop computers, their ability to store large amounts of private data gives their users a reasonable and justifiable expectation of a higher level of privacy in the information they contain. Because of this, police must obtain a warrant before intruding into the phones contents. State v. Smith, 920 N.E.2d 929 (Ohio 2009).

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Cell Phones and E/P:

B/c cell phones can store large amounts of private data, their users have a reasonable and justifiable heightened E/P in the information they contain.

Because of this, police must obtain a warrant before intruding into the phones contents.

State v. Smith
Inventory Searches

- Permits police to thoroughly search vehicles that have been lawfully impounded for any reason.
- Must be pursuant to routine administrative policy.
- Cannot be solely to look for evidence of criminal conduct


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Purposes of Inventory Search:

• Protect owner’s property

• Protect police against false claims for stolen / lost property

• Protect police & others from potential danger

Notes:
Permissibility of Inventory Searches—Two Inquiries:

1) Was original seizure of item rsble?

2) Was inventory properly conducted pursuant to routine administrative policy?

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Inventory Searches

• Arguably can not search cell phones, computers, other digital devices that are lawfully seized and subject to inventory

• No reason to retrieve data to protect it

What if police policy permits examination of data?

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**Rejection of Inventory Application to Cell Phones:**

*U.S. v. Flores* (S.D. N.Y. 2000)

*Don't need to know contents to safeguard*

*U.S. v. Wall IV* (S.D. Fla 2008) *(unreported)*

- Cell phones used during U/C drug sting
- Search occurred at police station

Threat of theft concerns cell phone itself, *not* electronic information it stores - no need to document the phone numbers, photos, text messages, or other data stored in the memory of a cell phone pursuant to inventory procedures.

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Probable Cause Based Vehicle Searches:

- If PC to believe vehicle contains evidence of a crime, any part of vehicle and its contents “that may be capable of concealing the object of the search” may be searched without a warrant.

PC-Based Vehicle Searches:

• *What can be searched?*
  
  Entire vehicle and any contents located within it.

• *When applicable?*
  
  • Whether or not occupant of vehicle is arrested
  
  • When there is PC to believe vehicle contains evidence of a crime
PC-Based Vehicle Searches: 
U.S. v. Johns

• **Scope of PC Based Auto Search**
  Defined by object of the search and places in where there is PC to believe it may be found.

• **Timing of search**
  Can search on the scene or later on at the station.

How may officer search this cell phone after Gant?
**Ajans v. U.S.** (E.D. Tenn. 2009)

- D. arrested for drunk driving
- Search of his person incident to arrest turned up 3 baggies of pills.
- *Belton* search of “passenger compartment of vehicle and any containers therein” yielded cell phone.
- Even if *Gant* prohibits SIA of phone, OK as PC-based auto search.

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*Ajans v. United States*, 2009 WL 1421183 (E.D. Tenn.) (slip copy)

Even if the vehicle search were not permitted incident to Ajan’s arrest, the discovery of pills on his person provided probable cause to search the car for contraband. Whether or not the occupant of a car is arrested, warrantless searches of vehicles are permitted if there is probable cause to believe the vehicle contains evidence of a crime.


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So, inquiry as to digital evidence is:

1. Do police have PC to believe vehicle contains evidence of a crime?
2. If so, any part of vehicle and its contents “that may be capable of concealing object of the search” may be searched w/o warrant

*i.e., can officer est. probable cause that:*

- DEF used cell phone in car to make drug deal
- Used GPS device to find location
- Event recorders in car....
Recap:

☑ Discussed doctrines of SIA, Inventory, & PC-based auto searches as exceptions to warrant requirement.

☑ Applied doctrines to searches involving digital devices.
Thank You!

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