VEHICLE SEARCHES

Honorable Ilona M. Holmes

OBJECTIVES:

After this session, you will be able to:

1. Determine the applicability of the Fourth Amendment to automobile searches; and
2. Recognize the exceptions to the warrant requirement as applied to cars.

REQUIRED READING:

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<td>1. Ilona M. Holmes, <em>Automobile Searches</em> (May 2012) [NJC PowerPoint] ........................................1</td>
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Automobile Searches
Judge Ilona Holmes
Broward County Circuit Court

Learning Objectives
As a result of this presentation, you will be able to:
1. Determine the applicability of the Fourth Amendment to automobile searches
2. Recognize the exceptions to the warrant requirement as applied to cars

“The law of search and seizure with respect to automobiles is intolerably confusing.”
Justice Powell
Robbins v. California
As a general rule, a warrant is required to conduct a valid search... but not always when conducting warrantless searches of vehicles.

How Can the Police Get Into this Car?

Justification for Vehicle Searches Without a Warrant

- Probable Cause
- Protective Sweeps
- Inventory Searches
- Search Incident to Arrest
Probable Cause

*Carroll v. United States*, (1925)


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**Carroll v. United States**

267 U.S. 132 (1925)

![Carroll v. United States car](image)

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- The automobile exception to the warrant requirement, better known as the “Carroll Doctrine”
- Allows for the search of a vehicle without a warrant as long as there is probable cause to believe that the vehicle contains contraband or evidence of a crime.
- Why?

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Cars are mobile

Can be moved while officer trying to get warrant, or

Evidence can be destroyed during the wait

*United States v. Ross*


Extended the warrantless search exception to the trunk of the car and the items contained in the trunk based upon probable cause and exigent circumstances. Extends to bags, suitcases and footlockers in the trunk of the car

“We interpret *Carroll* as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.”
Doctrine Was Extended to Mobile Homes in *California v. Carney* (1985)

Protective Sweeps

*Michigan v. Long*  
463 U.S. 103 (1983)  
Holds that in the context of a traffic stop, an officer may search “the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, ...
“If the police officer possesses a reasonable belief based on ‘specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant’ the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.”

The test is “‘whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.’” While automobile searches cannot routinely be made whenever there is an investigative stop, they can be made “during investigative detentions ... when they have the level of suspicion identified in Terry.”

Inventory Searches

Permits the police to thoroughly search vehicles that have been lawfully impounded for any reason.

**Rationale:** To protect the owner from misappropriation, to protect the police from false claims of theft, and to prevent dangerous items from being stored on police property. HOWEVER,

Police must follow standardized procedures, and
Not act in bad faith

*Reasonable police regulations relating to inventory searches administered in good faith satisfy 4th Amendment*

**Searches Incident to Arrest**

*Belton and Beyond*
- Permits an officer to automatically search an automobile's passenger compartment without a warrant after arresting an occupant of the vehicle.
- Rationale: A criminal may hide contraband or weapons in the vehicle before arrest.

**Thornton v. United States**
When a police officer makes a lawful custodial arrest of an automobile's occupant, the Fourth Amendment allows the officer to search the vehicle's passenger compartment as contemporaneous or incident to arrest.

**Say Goodbye**
- Belton?
- Thornton?
Arizona v. Gant
556 U.S. 332 (2009)

Decided April 21, 2009

A decision whose time has come?

Issue:
“Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety and a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle’s recent occupants have been arrested and secured?”

Gant Facts
- Gant arrested for driving on a suspended license.
- Five officers surrounded Gant.
- Gant was handcuffed and locked in a patrol car.
- Officers searched the car and found cocaine in a jacket pocket.
How They Sided:

Majority:  
Stevens, Scalia, Souter, Thomas, Ginsburg

Minority  
Alito, Breyer, Roberts, Kennedy

Gant's Two New Holdings:

1. *Belton* does not authorize vehicle search incident to recent occupant's arrest after arrestee secured and cannot access interior of vehicle.

2. Circumstances unique to automobile context justify a search incident to arrest when reasonable to believe that evidence of offense of arrest might be in vehicle.
Supreme Distinctions

- **Chimel**: search incident to arrest to the area from within which there is a reasonable possibility that an arrestee might gain possession of a weapon or destructible evidence.
- **Belton**: search incident to arrest inside a vehicle’s passenger compartment within the area into which an arrestee might reach.
- **Thornton**: search incident to arrest when there is reason to believe evidence relevant to the crime of arrest might be found in the vehicle.
- Belton and Thornton were both arrested for drug offenses, but

- Gant was arrested for driving with a suspended license – an offense for which the police could not reasonably expect to find evidence in Gant’s car.
- The search in this case was therefore unreasonable.
Why?

- To protect privacy interests
- To limit unbridled police searches for minor offenses

Belton searches authorized police officers to search not just the passenger compartment but every purse, briefcase or other container within that space.

A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle creates a serious and recurring threat to the privacy of countless individuals.
Final Ruling

“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 arrest”

Gant Made Simple

- Gant is offense driven.
- Look to the reason for the stop.
- Seat belt violation: search not permitted.
- Speeding: search not permitted.
- Driving on suspended license: search not permitted.
How Does Gant Compare?  
*Stare Decisis?*

- “Further, a narrow reading of *Belton*, *Thornton*, *Ross* and *Long* permit an officer to search a vehicle when safety or evidentiary concerns demand”.
- *Gant* does not overturn *Belton*…it distinguishes it.

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**GPS TECHNOLOGY**

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United States v. Maynard

- 615 F. 3d 544 (D.C.Cir. 2010)  
  cert. granted June 27, 2011  
  **Issue:**  
  Do police violate 4th Amendment by installing a GPS device without a warrant or the consent of the owner?
United States v. Jones

➢ 132 S.Ct. 945 (2012)

➢ Installation of a GPS device by the Government on a car and the monitoring of the vehicle’s movement constitutes a search

United States v. Jones

➢ Supreme Court considered two areas to determine that the installation was a search that violated the Fourth Amendment:
  ➢ 1. Common law trespassory test
  ➢ 2. Reasonable expectation of privacy (Katz standard)
THE EVOLUTION OF CAR SEARCHES
Judge Ilona M. Holmes
For the National Center for Justice and the Rule of Law
May 2012

Amendment IV to the U.S. Constitution
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing."

“The law of search and seizure with respect to automobiles is intolerably confusing.”

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Generally search warrants must be obtained. See, Katz v. United States, 389 U.S. 347 (1967). However, one of the most widely recognized exceptions to the warrant requirement is search incident to arrest. Since 1925, the Supreme Court has made attempt after attempt to explain the relationship between the Fourth Amendment to the Constitution and the automobile. For the last seventy-four (75) years, the confusion got worse.

The Fourth Amendment guarantees citizens freedom from unreasonable searches and seizures. This rule was reiterated in Katz v. United States, 389 U.S. 347, which held that a warrant issued by a “neutral and detached magistrate” must be obtained before a government authority may breach the individual privacy secured by the Fourth Amendment. Katz held that searches “conducted outside the judicial process” without prior approval by judge or magistrate are per se unreasonable under the Fourth Amendment, unless there is some recognized exception to the rule. The automobile fits squarely within this exception. This automobile exception has expanded today to include the car, the driver, any containers and lastly, the passenger(s).

There are four ways for a police officer to get inside of a car for a “search” without the consent of the occupants: probable cause, search incident to a lawful arrest, inventory/impoundment and protective sweep. This paper will briefly discuss the evolution of each of these methods.

PROBABLE CAUSE

In Carroll v. United States, 267 U.S. 132 (1925), the Supreme Court held that a warrant is not required to search a vehicle so long as there is probable cause to believe that the vehicle
contains contraband or evidence of a crime. The rationale for this holding was that an automobile could be quickly and easily moved from one jurisdiction to another. The police must be able to search it without engaging in the time consuming process of obtaining a warrant. Any lost time could result in the complete loss of the ability to search the vehicle and to seize any illegal goods it may contain.

The period after Carroll, the federal courts seemed to have adopted a search incident to arrest mode in justifying warrantless vehicle searches. Accord, Harris v. Stephens, 361 F.2d 888 (8th Cir. 1966), cert. denied 386 U.S. 964 (1967). In Harris, the police searched a car parked in a driveway while the suspect was arrested at the front door of his house. A year later, the Court imposed limitations on the areas to be searched in Chimel v. California, 395 U.S. 752 (1969), holding that the police are permitted to search a vehicle incident to the arrest of the driver. The Court held that the person of the arrestee and the area within his immediate control could reasonably be searched.

In Coolidge v. New Hampshire, 403 U.S. 443 (1971), the Court held that a search conducted pursuant to an invalid warrant could not be upheld. Coolidge firmly established that the police must show both probable cause and exigent circumstances in order for a warrantless search to be valid.

The case of Cardwell v. Lewis, 417 U.S. 583 (1974) posed an interesting scenario for the Court. The police made impressions and scraped paint samples from the suspect’s car while it was parked. The Court, in upholding the search, found that the police had probable cause for the search. Further, the search was conducted in a reasonable manner. With this case, the phrase “lower expectation of privacy in a car” was birthed.

Even though the Court reasoned that there was a lower expectation of privacy in a car, they were not willing, at this point, to afford the same rationale to containers. In United States v. Chadwick, 433 U.S. 1 (1977). The defendants were arrested immediately after placing a footlocker in the trunk of a car. Federal agents had probable cause to believe that the footlocker contained marijuana. The car was impounded and the footlocker opened. In reversing the convictions, the Court held that while there was probable cause to search the footlocker, there was no probable cause to impound the car. Since the car was impounded, no exigent circumstances existed. The case of Maryland v. Dyson, 527 U.S. 465 (1999) did away with the exigency requirement.

Two years later in Arkansas v. Sanders, 442 U.S. 753 (1979), the police had probable cause to believe that a suitcase picked up by defendant at an airport contained contraband. They had received information from a reliable informant. They watched as defendant placed the suitcase in the trunk of a cab and left the airport in the cab. The cab was stopped. Police opened the trunk and searched the suitcase which contained the contraband they expected to find. The Court held that a warrant should have been obtained. It found that once the cab was stopped there was no exigency. Second, the Court held that there is a greater expectation of privacy in the suitcase, which is a “repository for personal items.” The Court found that the search in this case violated the Fourth Amendment because the expectation of privacy in a suitcase is greater than that in a car. In Robbins v. California, 453 U.S. 420 (1981), the Court held that the police
should have obtained a warrant to search opaque packages containing marijuana found in the
glove compartment of a station wagon stopped for a traffic violation. This consistency of
holdings regarding containers was about to change.

The case of United States v. Ross, 456 U.S. 798 (1982) presented the opportunity for that
change. Police stopped a car, based upon information from a confidential informant that
defendant, also known as “Bandit” was selling drugs from his car. The police stopped the car
because they had probable cause to believe it contained contraband. Without obtaining a
warrant, the police opened the trunk and found a closed paper bag inside. They opened the bag
and found heroin. The Supreme Court, in upholding the warrantless search, held that the police
had probable cause to search the vehicle and thus had justification to search the bag.

This holding was used three years later to justify the warrantless search of a mobile home
public lot. The Court held that the warrantless search was valid since the mobile home was
being used for transportation and was therefore was as readily moveable as an automobile. The
mobile home was parked in a public parking lot rather than a mobile home park, and was not
anchored in any way. It resembled a vehicle more than a residence. Therefore, the automobile
exception applied. The Court later held that “it is unnecessary for us to decide here whether the
same expectations of privacy are warranted in a car as would be justified in a dwelling place in
analogous circumstances. We have on numerous occasions pointed out that cars are not to be
treated identically with houses or apartments for Fourth Amendment purposes.” Rakas v.Illinois,

SEARCH INCIDENT TO ARREST

TIME AND PLACE

A search can be incident to an arrest only if it is substantially contemporaneous
search, as incident to arrest, containers, pagers and cell phones belonging to the individual
arrested. See, U.S. v. Murphy, 552 F.3d 405 (4th Cir.2009), cert. den. 2009 WL 666697 (U.S.
2009). The police must have probable cause to arrest, before the search, to make it a search
The search cannot precede the arrest and serve as part of its justification. Sibron v. New York,
392 U.S. 40 (1968). Once the accused is under arrest and in custody, then a search made at
another place, without a warrant, then it is not a search incident to arrest. Preston v. U.S., 376
Search incident to arrest exception to the warrant requirement is based in the common law which recognized that the Government had the right to search a person who was arrested upon probable cause. As long as there was probable cause, there was very little limitation upon the search. This lack of limitation or scope of the search was reviewed but left untouched in the cases of Weeks v. United States, 232 U.S. 383 (1914) and Carroll v. United States, 267 U.S. 132 (1925).

The state of the law after Weeks and Carroll was in constant fluctuation. There were two significant cases that became the guiding precedent for searches incident to arrest. In Harris v. United States, 331 U.S. 145 (1947), armed with arrest warrants charging violations of the mail fraud statute and the National Stolen Property Act, five federal agents arrested an Harris in the living room of an apartment which was in his exclusive possession. Without a search warrant, they searched the apartment (living room, bedroom, kitchen and bath) intensively for five hours, for two canceled checks and any other means by which the crimes charged might have been committed. Beneath some clothes in a bedroom bureau drawer, they discovered a sealed envelope marked "personal papers" of the accused. This was torn open and found to contain several draft cards which were property of the United States and the possession of which was a federal offense. The Supreme Court held that the evidence was not obtained in violation of the provision of the Fourth Amendment against unreasonable searches and seizures, nor did its use violate the privilege of the accused against self-incrimination under the Fifth Amendment.

The second significant case was United States v. Rabinowitz, 339 U.S. 56 (1950). Knowing that Rabinowitz had sold four forged postage stamps to a government agent and probably possessed many more in his one-room place of business which was open to the public, officers obtained a warrant for his arrest; but they did not obtain a search warrant. They arrested him in his place of business, searched the desk, safe, and file cabinets, and seized 573 forged stamps. He was indicted for possessing and concealing the stamps and for the sale of the four that had been purchased. The seized stamps were admitted in evidence over his objection, and he was convicted on both counts. The Supreme Court held that the search and seizure was incident to a lawful arrest, was not unreasonable, and did not violate the Fourth Amendment. The Court found that the search and seizure were reasonable because: (1) they were incident to a valid arrest; (2) the place of the search was a business room to which the public, including the officers, was invited; (3) the room was small, and under the immediate and complete control of respondent; (4) the search did not extend beyond the room used for unlawful purposes; and (5) the possession of the forged stamps was a crime. 339 U.S. 63-64.

These cases formed what became known as the Harris-Rabinowitz rule which had these characteristics: (1) the scope of a permissible search was not limited to the person or areas the arrestee might reach to destroy evidence or obtain a weapon and thus appeared to cover the entire premises where the arrest was made; (2) it was never made clear whether such a warrantless search was permissible only if there was probable cause evidence of the crime would be found...
on the premises; and (3) the search was limited in its intensity and length by the items being sought.

**“Wingspan” Overruling Overreaching Harris-Rabinowitz**

In 1969, the Supreme Court reviewed this exception and the scope of the search in more depth. In *Chimel v. California*, 395 U.S. 752 (1969)(6-2; Stewart for the majority; White and Black dissented). *Chimel* involved a warrantless search of the defendant's home, incident to his arrest there, for the fruits of a burglary. Officers searched the entire three bedroom home, including the attic, the garage, and a small workshop.

The Court, in overruling *Harris* and *Rabinowitz*, first stated that the person of an arrestee may be searched so as to deprive him of weapons by which he could resist arrest or escape and also to prevent his concealment or destruction of evidence. The Court then continued: “And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area ‘within his immediate control’—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence” 399 U.S. 763. However, there was “no constitutional justification for extending a search beyond the spaces from which an arrestee might secure a weapon or evidence. 395 U.S. 768. This is sometimes referred to as the “wingspan” rule. Simply put, *Chimel* established the right to search for officer safety and preservation of evidence, but only in the places to which the person could reach.

**Chimel and the Automobile**

In 1973, the Court addressed the question of whether the police could open closed containers located on an arrestee’s person. In *United States v. Robinson*, 414 U.S. 218 (1973), the police arrested Robinson for operating a motor vehicle with a revoked license. While conducting a search incident to arrest, the officer felt an object in Robinson’s coat pocket but could not tell what it was. The officer reached into the pocket, and pulled out a “crumpled cigarette package.” The officer opened the package and found heroin capsules. This case established a “bright-line” rule that an officer can search an arrestee’s person and open any containers thereon automatically, incident to a lawful arrest.

On the same day that *Robinson* was decided, the Court decided *Gustafson v. Florida*, 414 U.S. 260 (1973). Gustafson had been arrested for not having his driver's license in his possession. During a pat down of Gustafson, the arresting officer seized marijuana cigarettes. The Supreme Court held that the full search of the person of the suspect made incident to a lawful custodial arrest did not violate the Fourth and Fourteenth Amendments and it is of no constitutional significance that, contrary to the situation in Robinson, police regulations did not
require that petitioner be taken into custody or establish the conditions under which a full-scale body search should be conducted, nor, as in Robinson, was it relevant that the arresting officer had no subjective fear of petitioner or suspicion that he was armed, since it is the fact of custodial arrest that gives rise to the authority to search. 414 U.S. 263-266.

In Belton v. New York, 453 U.S. 454 (1981) the Court again addressed the scope of the search of a car and containers where the person was not in the car and securely away from the car. In Belton, the police conducted a search of the passenger compartment of the arrestee's vehicle after the occupants had exited the vehicle. Belton argued that the passenger compartment was no longer in his immediate vicinity — defined by courts as the "grab space" — when the search took place. The court reasoned that the need for a "bright line" rule was paramount, so arresting officers would not be in the position of making split-second decisions on the intricacies of the Fourth Amendment when they were potentially in danger. They ruled that, incident to an arrest, the passenger compartment of a vehicle could be searched without a warrant if the search was "contemporaneous" with the arrest, regardless of where the arrestee was physically in or near the vehicle at the time. In 2004, the Supreme Court extended Belton to all recent occupants of a vehicle, rather than just the arrestee.

In 2004, Justice Scalia questioned the rationale of searching a car for non evidentiary offenses. In the case of Thornton v. United States, 541 U.S.615 (2004). Marcus Thornton was stopped after getting out of his vehicle by a police officer who had noticed that the license plate on Thornton's Lincoln Town Car belonged to a Chevy two-door car. During his conversation with Thornton, the officer asked if he could search him. During the search he found two bags of drugs. The officer arrested Thornton, then searched his vehicle (which Thornton had already exited by the time the police officer spoke with him, though the officer had seen him exit it). In the vehicle the officer found a gun.

Thornton was convicted of drug and firearms offenses. On appeal, he moved to have the gun charge dismissed as evidence because, he claimed, it had been found as the result of an unconstitutional search. He argued that the officer had contacted him after he had left the vehicle and that the search therefore did not fall within the "search incident to arrest" exception to the Fourth Amendment warrant requirement (the exception allows police to search the person being arrested and the area "within his immediate control"). The issue before the Supreme Court was under the "search incident to arrest" exception to the Fourth Amendment, may police search the vehicle of a person they have arrested if they did not make contact with him until after he left the vehicle? In a 7-to-2 decision, the Court ruled that forcing officers to decide whether a suspect had noticed them before exiting the car (with the understanding that only if he had could the car be searched) would be too subjective and leave officers uncertain of whether they could perform searches. Further, it found that weapons or contraband inside a vehicle could still be easily accessed by someone who had just exited it, providing the same reason for searching the vehicle.
that was present in cases where suspects were arrested while still inside it (that is, the possibility that illegal material would be destroyed or officers attacked with concealed weapons). Chief Justice Rehnquist, in the majority opinion, wrote, "Once an officer determines there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment."

The atmosphere was ripe for Arizona v. Gant, 556 U.S. 332 (2009). On August 25, 1999, acting on an anonymous tip that the residence at 2524 North Walnut Avenue was being used to sell drugs, Tucson police officers Griffith and Reed knocked on the front door and asked to speak to the owner. Gant answered the door and, after identifying himself, stated that he expected the owner to return later. The officers left the residence and conducted a records check, which revealed that Gant’s driver’s license had been suspended and there was an outstanding warrant for his arrest for driving with a suspended license.

When the officers returned to the house that evening, they found a man near the back of the house and a woman in a car parked in front of it. After a third officer arrived, they arrested the man for providing a false name and the woman for possessing drug paraphernalia. Both arrestees were handcuffed and secured in separate patrol cars when Gant arrived. The officers recognized his car as it entered the driveway, and Officer Griffith confirmed that Gant was the driver by shining a flashlight into the car as it drove by him. Gant parked at the end of the driveway, got out of his car, and shut the door. Griffith, who was about 30 feet away, called to Gant, and they approached each other, meeting 10-to-12 feet from Gant’s car. Griffith immediately arrested Gant and handcuffed him. Because the other arrestees were secured in the only patrol cars at the scene, Griffith called for backup. When two more officers arrived, they locked Gant in the backseat of their vehicle. After Gant had been handcuffed and placed in the back of a patrol car, two officers searched his car. One of them found a gun, and the other discovered a bag of cocaine in the pocket of a jacket on the backseat.

Gant was charged with two offenses—possession of a narcotic drug for sale and possession of drug paraphernalia (i.e., the plastic bag in which the cocaine was found). He moved to suppress the evidence seized from his car on the ground that the warrantless search violated the Fourth Amendment. Among other things, Gant argued that Belton did not authorize the search of his vehicle because he posed no threat to the officers after he was handcuffed in the patrol car and because he was arrested for a traffic offense for which no evidence could be found in his vehicle. When asked at the suppression hearing why the search was conducted, Officer Griffith responded: “Because the law says we can do it.”

The Supreme Court’s Response

In response, the Supreme Court noted that since Belton, Courts of Appeals have given different answers to the question whether a vehicle must be within an arrestee’s reach to justify a vehicle search incident to arrest. As Justice O'Connor observed, “lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police
entitlement rather than as an exception justified by the twin rationales of *Chimel.*” 541 U. S. at 624.

Justice Scalia noted that although it is improbable that an arrestee could gain access to weapons stored in his vehicle after he has been handcuffed and secured in the backseat of a patrol car, cases allowing a search in “this precise factual scenario … are legion.” *Id.* at 628. Indeed, some courts have upheld searches under *Belton* “even when … the handcuffed arrestee has already left the scene.” 541 U. S. at 628.

Under the broad reading of *Belton,* a vehicle search would be authorized incident to every arrest of a recent occupant notwithstanding that in most cases the vehicle’s passenger compartment will not be within the arrestee’s reach at the time of the search. The Supreme Court rejected this reading of *Belton* and held that *Chimel* authorizes police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. The Court concluded that circumstances unique to the vehicle context might justify a search incident to a lawful arrest when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. See, *e.g., Atwater v. Lago Vista,* 532 U.S. 318, 324 (2001) and *Knowles v. Iowa,* 525 U.S. 113, 118 (1998). But in others, including *Belton* and *Thornton,* the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein.

The Court pointed out that neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case. Unlike in *Belton,* which involved a single officer confronted with four unsecured arrestees, the five officers in this case outnumbered the three arrestees, all of whom had been handcuffed and secured in separate patrol cars before the officers searched Gant’s car.

Under those circumstances, Gant clearly was not within reaching distance of his car at the time of the search. An evidentiary basis for the search was also lacking in this case. Whereas Belton and Thornton were arrested for drug offenses, 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 Gant’s car. Cf. *Knowles,* 525 U. S. at 118. Because police could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein, the search in this case was unreasonable.

**INVENTORY SEARCHES**

In the case of *Chambers v. Maroney,* 399 U.S. 42 (1970), the Court upheld the warrantless search of an impounded car. Consistent with this holding, in *South Dakota v. Opperman,* 428 U.S. 364 (1976), the Court clearly established that no warrant is required for inventory searches. Opperman’s car was illegally parked and ticketed. It was subsequently
towed away to an impound lot where the police inventoried its contents. The Supreme Court, in upholding the warrantless search held that once legally impounded, the contents can be inventoried. The justifications given by the Court were: 1) protection of the owner’s property while it is in police custody; 2) protection of the police against claims and 3) protection of the police against danger. This holding was extended to marijuana found in a closed backpack in Colorado v. Bertine, 497 U.S. 367 (1987). The Court reasoned that the police were following standardized procedures (emphasis added) and did not act in bad faith for the sole purpose of investigation. The Court held that reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment. Unwritten standardized inventory policies have been upheld. U.S. v. Hawkins, 279 F.3d 83 (1st Cir. 2002).

"An inventory search is a well-defined exception to the warrant requirement of the Fourth Amendment designed to effect three purposes: protection of the owner's property, protection of the police against claims of lost or stolen property, and protection of the police from potential danger. However, inventory searches are reasonable only if conducted according to standardized procedures. An inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence, but rather an administrative procedure designed to produce an inventory." U.S. v. Haro-Salcedo, 107 F.3d 769, 772-773 (10th Cir. 1997).

In Florida v. Wells, 495 U.S. 1 (1990), the Court emphasized that standardized criteria must be established and observed by the police when subjecting the car to the inventory process to guarantee that the search is not a "ruse for general rummaging" for evidence of criminal wrongdoing. Recognizing that no police handbook "can reasonably be expected to spell out" all the scenarios that might be encountered, the Wells Court affirmed that individual departments may adopt policies, regulations, or practices to govern the predicate and manner for such searches. "A range of governmental interests support an inventory process. A standardized procedure for making a list or inventory as soon as reasonable after reaching the stationhouse not only deters false claims but also inhibits theft or careless handling of articles taken from the arrested person. Arrested persons have also been known to injure themselves--or others--with belts, knives, drugs or other items on their person while being detained. Dangerous instrumentalities--such as razor blades, bombs, or weapons--can be concealed in innocent-looking articles taken from the arrestee's possession. Examining all the items removed from the arrestee's person or possession and listing or inventorying them is an entirely reasonable administrative procedure. It is immaterial whether the police actually fear any particular package or container; the need to protect against such risks arises independent of a particular officer's subjective concerns. Finally, inspection of an arrestee's personal property may assist the police in ascertaining or verifying his identity." Illinois v. Lafayette, 462 U.S. 640 (1983).

The presence of an investigative motive does not invalidate an otherwise valid inventory search. ... In this case, the police possessed valid reasons to impound the vehicle, which under the St. Paul impound policy, required an inventory search prior to impoundment. These reasons
included: the vehicle was in a no parking zone on a busy street, it was worth more than $15,000, it was in a high-crime area, and the City of St. Paul was responsible for its protection. The fact that the officers also suspected appellant was involved in drug trafficking and might have evidence of such activity in the vehicle does not invalidate the officers' decision or demonstrate they acted in bad faith." U.S. v. Garner, 181 F.3d 988, 991-92 (8th Cir. 1999).

The automobile exception to the warrant requirement also applies to vehicles seized for civil forfeiture. In Florida v. White, 526 U.S. 559 (1999), the Court held that officers who have probable cause to believe a car is subject to forfeiture due to its use in a series of narcotics transactions in the past need not obtain a warrant before seizing the vehicle from a public place and conducting an inventory search of its contents. "The need to seize readily movable contraband before it is spirited away ... underlies the early federal laws relied upon in Carroll," Justice Clarence Thomas wrote, recognizing that here, as in Carroll, the statute at issue authorized the warrantless seizure of both the contraband and the vehicle in which it is carried. Also, the Court recognized, because the agents seized the vehicle while parked in a public place, the defendant had no expectation of privacy in the car.

**PROTECTIVE SWEEPS**

Protective sweeps or “Terry” frisks of cars were sanctioned by the United States Supreme Court in the case of Michigan v. Long, 463 U.S. 1032 (1983). In Long, two deputies observed a car traveling erratically and at an excessive speed before it swerved off into a ditch. The deputies approached the car, and asked the driver, David Long, to produce his driver's license, but Long did not respond until Howell repeated his request. The deputy made two requests for Long's registration to which Long did not respond but instead Long turned from the deputies and walked toward the open door of his car.

The deputies followed Long and observed a large hunting knife on the floorboard of the driver's side of the car. They then proceeded to conduct a fruitless Terry frisk of Long, followed by a search of the passenger compartment of the car, which uncovered marijuana. Long moved to suppress the marijuana, with the Supreme Court of Michigan ultimately agreeing with him because “‘Terry authorized only a limited pat-down search of a person suspected of criminal activity’ rather than a search of an area.”

The Supreme Court disagreed, noting that investigative detentions involving suspects in vehicles are especially fraught with danger to police officers.” The Court then held “that protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect.” The Court in Long explained that the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on “specific and articulable facts which, taken together with the rational inferences from those facts, reasonably
warrant” the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons. Michigan v. Long, 463 U.S. at 1051-1052.

**MISCELLANEOUS THOUGHTS:**

**Passengers and their Containers**

Please note the following developments regarding passengers and their containers within the gar. As discussed above, Chimel established that the arrestee (driver) and his/her immediate area could be searched. The Supreme Court expanded this concept to the passenger’s container(s) in the case of Wyoming v. Houghton, 526 U.S. 295 (1999). Justice Scalia, writing for the majority, held that “passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property they transport in cars.” Further, “allowing searches of some containers but not others would confuse police and local judges. A “passenger’s property” rule would dramatically reduce the ability to find and seize contraband and evidence of crime. As it stands, no container within the car is sacred or unsearchable.

**GPS Tracking and Other Technology in Cars**

In 1983, the Supreme Court's held, in the case of United States v. Knotts, 460 U.S. 276 (1983), that the warrantless monitoring of a beeper in a car does not violate the Fourth Amendment. See also, United States v. Karo, 468 U.S. 705 (1984) (both cases involved beepers in containers). In the case of United States v. Maynard, 615 F.3d 544 (D.C.Cir. 2010) this holding was challenged and a conviction was overturned because the court found that prolonged tracking by the police using a GPS device, does violate the Fourth Amendment. Certiorari review was granted in the case of United States v. Jones, 132 S. Ct 945 (2012). In affirming the DC Circuit in overturning the conviction, the United States Supreme Court held that attaching a global positioning system (GPS) to an individual’s car and then using that device to monitor the vehicle’s movements on a public street was a search within the meaning of the Fourth Amendment.

The Court reasoned that Jones’ personal effects had been trespassed, i.e., secretly installing a GPS tracking device on a car and that Jones’ reasonable expectation of privacy was “impinged”, i.e., government’s continuous monitoring and tracking of Jones’ movements for a material period of time (30 days).