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1 P R O C E E D I N G S

2 (11:06 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear  
4 argument next in Kennedy v. Plan Administrator for  
5 DuPont Savings and Investment Plan. Mr. Furlow.

6 I'm sorry. We won't.

7 (Laughter.)

8 CHIEF JUSTICE ROBERTS: It's still early in  
9 the term.

10 Case 07-542, Arizona v. Gant. Mr. Maziarz.

11 JUSTICE KENNEDY: Do you have any views on  
12 the other case?

13 (Laughter.)

14 MR. MAZIARZ: None whatsoever, Your Honor.

15 ORAL ARGUMENT OF JOSEPH T. MAZIARZ

16 ON BEHALF OF THE PETITIONER

17 MR. MAZIARZ: Mr. Chief Justice, and may it  
18 please the Court:

19 More than 27 years ago in Belton this Court  
20 applied its prior decisions in Chimel and Robinson to  
21 the arrest of a recent occupant of an automobile. The  
22 Court sought to forge a workable straightforward rule  
23 that could be easily applied and predictably enforced by  
24 law enforcement officers in the field in this dangerous  
25 and dynamic situation.

1           After careful consideration, this Court held  
2   that the passenger compartment of the vehicle was deemed  
3   to be under the immediate control of the arrestee. The  
4   Court also made clear that the search need only be a  
5   contemporaneous incident of the arrest.

6           There are three reasons, all  
7   well-established by this Court's case law, why officers,  
8   law enforcement officers, need not demonstrate a threat  
9   to their safety or need to preserve evidence prior to  
10   searching an automobile incident to arrest, even if all  
11   of the recent occupants of the vehicle have been  
12   arrested and secured.

13           First, neither justification need exist in a  
14   particular case. This Court has made clear in Robinson  
15   that a search incident to arrest requires no additional  
16   justification. It's the fact of arrest that justifies  
17   the search.

18           Second, the search need only be a  
19   contemporaneous incident of the arrest or substantially  
20   contemporaneous with the arrest. Obviously a search can  
21   be contemporaneous even if the arrestee has been  
22   secured.

23           JUSTICE GINSBURG: But not if it occurred in  
24   the station house, right, if the -- if the arrestee had  
25   been taken into the station house?

1                   MR. MAZIARZ: Correct. That would be remote  
2 in time and location, Your Honor.

3                   JUSTICE KENNEDY: Or location.

4                   MR. MAZIARZ: Time and location, Your Honor.

5                   JUSTICE GINSBURG: Well, why isn't this  
6 situation more like the station house than it is like --  
7 the Belton situation is the police apprehend the -- a  
8 driver. They are concerned about weapons, about being  
9 assaulted. But here we have someone who is locked up  
10 inside a police car, handcuffed, can't go anywhere.  
11 That sounds to me more like the station house than it  
12 does the urgent situation where the police have a  
13 legitimate concern for their own safety.

14                  MR. MAZIARZ: The arrestee is still at the  
15 same location at the scene of the arrest. It's not  
16 remote in place or time because it -- it -- the arrest  
17 and the search occur in a short period of time at the  
18 scene of the -- of the arrest. And while he -- the  
19 arrestee is secured to one degree or another, in Belton  
20 this Court wanted a workable, straightforward rule that  
21 officers could apply across the board and not have to  
22 look at particular facts and circumstances. So --

23                  JUSTICE KENNEDY: And this is important, but  
24 you had three -- three points. One was the fact of the  
25 arrest; and, two, it must be contemporaneous. And the

1 third?

2 MR. MAZIARZ: The third is requiring a  
3 justification is anathema to a bright-line rule. And  
4 that is precisely what this Court wanted in Belton, was  
5 a rule that law-enforcement officers would know how to  
6 apply from one case to another, that wouldn't vary based  
7 upon the particular facts of the arrest.

8 JUSTICE SOUTER: Well, we do have a -- we do  
9 obviously require a justification for the bright-line  
10 rule itself. And -- and the problem that this case  
11 raises, I think, if anything more acutely than any of  
12 the others that we've had recently, is that it seems if  
13 -- if your position is -- is going to be accepted, to  
14 divorce the search totally from the justification for  
15 the Chimel rule.

16 And -- and at some point we've either got to  
17 say, all right, it's no longer a Chimel rule, there's  
18 some other justification for the bright-line rule; or  
19 we've got to say, to purport to apply the Chimel rule in  
20 a case like this, handcuffed in the back of the police  
21 car and so on, is -- is to turn the law into nonsense.

22 And -- and I -- I think we've got that  
23 choice in front of us. Do we have a new and different  
24 rule, or do we apply Chimel and say, you just can't go  
25 this far. This is like the station house.

1                   MR. MAZIARZ: I think in Belton this Court  
2 did apply Chimel and simply said, in this recurring  
3 situation we need a bright-line rule that can be easily  
4 determined and enforced by officers --

5                   JUSTICE KENNEDY: But the bright line  
6 swallows up the rationale in this hypothetical where  
7 already he's handcuffed; he is in the car. Is there a  
8 justification apart from Chimel for our keeping this  
9 bright-line rule?

10                  MR. MAZIARZ: The fact that officers have  
11 for 27 years applied it; it's a workable rule.

12                  JUSTICE SCALIA: That's not a long time.  
13 What -- what was the situation when the Fourth Amendment  
14 was adopted? Do you know? If you stopped Thomas  
15 Jefferson's carriage to arrest Thomas Jefferson and you  
16 pulled him off to the side of the road, could you --  
17 could you then go and search his carriage?

18                  I'm struck by the fact that there is no  
19 effort in your brief whatever to take this thing back  
20 any more than 27 years. Now, you know, it could -- it  
21 could well be that it has always been considered  
22 reasonable to search the person and to search the  
23 conveyance from which the person has been taken.

24                  If that's the case, I could say, gee, it's  
25 always been considered reasonable, end of case. But --

1 but you -- you give me nothing to hang my hat on.

2 MR. MAZIARZ: Your Honor, there is not much  
3 on searches incident prior to 1914, the Weeks case.  
4 There really is not any --

5 JUSTICE STEVENS: Something was happening  
6 back there. The automobile exception is much older than  
7 that.

8 MR. MAZIARZ: Excuse me, Your Honor?

9 JUSTICE STEVENS: The automobile exception  
10 is much older than that.

11 MR. MAZIARZ: Right, but the -- the search  
12 incident language and application --

13 JUSTICE STEVENS: But, you know, the  
14 automobile exception could provide a rationale that  
15 would cover all of these cases. Do you remember my  
16 opinion in Belton?

17 MR. MAZIARZ: Yes, I do, very well, Your  
18 Honor. But here we -- we have no probable cause. So it  
19 would not affect the situation here. This is purely a  
20 -- a Belton search for officer safety and preservation  
21 of evidence.

22 JUSTICE STEVENS: It's for officer safety  
23 when the defendant is no longer in the car and is under  
24 -- under the control of the officer?

25 MR. MAZIARZ: There is still a risk.



1 JUSTICE STEVENS: Which are not the facts of  
2 Belton.

3 MR. MAZIARZ: Belton, no. The arrestees  
4 were not physically restrained in a vehicle.

5 JUSTICE STEVENS: You are asking for the  
6 expanded Belton rule, not the rule of Belton itself.

7 MR. MAZIARZ: No, Your Honor. We're asking  
8 that Belton be applied as it has been applied by  
9 virtually every court in the country and -- and, in  
10 fact, in this Court in Thornton. That as -- as long as  
11 the arrestee remains at the scene and the search is  
12 contemporaneous with the arrest, the officer is entitled  
13 to -- to conduct a search of the vehicle.

14 JUSTICE SCALIA: That's a reasonable rule.  
15 What isn't a reasonable rule is to say at the same  
16 premises as long as the officer is there and the officer  
17 is at risk. I mean that is just -- it's just silly.  
18 It's -- it's simply not the case. And -- and if you  
19 bring that forward as the justification for this rule,  
20 I'm going to say, you know, get rid of it.

21 MR. MAZIARZ: Well, Your Honor --

22 JUSTICE SCALIA: Realistically, he is not at  
23 risk. The guy is handcuffed in the police cruiser, and  
24 so I want to go and search his car. What -- what risk  
25 to the officer is being avoided?

1                   MR. MAZIARZ: In -- in our reply brief we  
2 pointed out in 2007 there were 93 reported cases where  
3 arrestees cuffed in the back of a patrol car escaped.  
4 So it -- it's very possible this could happen. Now, you  
5 have to know --

6                   JUSTICE SOUTER: Do you know of any one of  
7 those cases in which the officer got hurt? Do you know  
8 of any one of those cases in which the person who got  
9 out of the police cruiser made a beeline for -- for his  
10 own car?

11                   In fact, so far as I know, we are -- we are  
12 not even sure that those people came out of automobiles  
13 before they were put in a police cruiser. But do you  
14 know of any case in which they went to their own car and  
15 tried to get a gun to hurt the cop?

16                   MR. MAZIARZ: In one of the cases the  
17 arrestee went to his vehicle but simply took off and led  
18 the police on a high-speed chase, but none in -- where  
19 they went to the vehicle and grabbed a weapon.

20                   JUSTICE SOUTER: Did he -- did he have --  
21 have his hands handcuffed behind his back?

22                   MR. MAZIARZ: Yes. Yes, he had --

23                   JUSTICE SOUTER: And he was able to drive  
24 the car?

25                   MR. MAZIARZ: Yes. Well, Your Honor, it's

1 my understanding -- I'm not an expert on this, but it's  
2 my understanding from reading some of these cases --

3 JUSTICE SOUTER: I'd really like to meet  
4 him.

5 (Laughter.)

6 JUSTICE SCALIA: I wouldn't. I'll bet you  
7 that in most of those cases the -- the felon got out the  
8 other -- other door of the car while the policeman was  
9 searching the vehicle.

10 (Laughter.)

11 MR. MAZIARZ: And, Your Honor, in -- in ten  
12 of those cases the officers were searching the vehicle  
13 when they escaped.

14 CHIEF JUSTICE ROBERTS: Counsel, if you  
15 don't have -- I thought the whole point of a bright-line  
16 rule is that you don't have to justify in every  
17 particular case applying the -- the rule. So you are  
18 certainly going to -- if you -- the point is if you have  
19 a fact case-by-case inquiry, you're giving up the  
20 bright-line rule.

21 MR. MAZIARZ: And that was the point I was  
22 trying to make is -- is there is going to be -- security  
23 is a matter of degree. Is the arrestee sufficiently  
24 secured if he is arrested and standing next to the  
25 vehicle? Is he sufficiently secured if he is cuffed and

1 -- and removed 10 feet away? Is he sufficiently secured  
2 if he is in the patrol car?

3 We -- in Belton this Court wanted to do away  
4 with those nuances and have just a straightforward --

5 JUSTICE KENNEDY: Are there other -- are  
6 there other reasons that it's hazardous or dangerous or  
7 at least risky to leave an unattended car where other  
8 people can go in and maybe find weapons and contraband  
9 if the police aren't guarding it? I mean, are there  
10 other reasons other than Chimel for this bright-line  
11 rule?

12 MR. MAZIARZ: Certainly, in -- in the case  
13 of an automobile, which is different from the Chimel  
14 home situation, if a vehicle is being left there. In  
15 this case the gun was on the front passenger seat of the  
16 vehicle. Someone could readily access it. That's  
17 always true with an automobile.

18 Officers obviously could take some steps to  
19 try and secure the vehicle, lock it up or what-not. But  
20 that's not going to guarantee the fact that -- that the  
21 weapon or destructible evidence won't be tampered with  
22 by either other co-occupants who the officers have no  
23 justification to arrest and secure or other people in  
24 the area. So --

25 JUSTICE GINSBURG: What happens to this car?

1 Now, we had no passengers, just the driver. He is put  
2 away in this squad car, so he is not going to drive that  
3 car home. What happens to the car? Let's say there was  
4 no search. The car is there. It has no driver. What  
5 do the police do with it?

6 MR. MAZIARZ: In this case the police  
7 impounded the car, but that was only because after they  
8 did the Belton search, they found drugs.

9 JUSTICE GINSBURG: But suppose they didn't?  
10 Suppose they said, well, he is secure; he is no danger  
11 to us, so we are not going to search the car without a  
12 warrant. What -- what happens to the car? It just  
13 doesn't stay there stranded on the road, does it?

14 MR. MAZIARZ: It depends on the department.  
15 Some departments would simply lock it up and leave it  
16 there. Other departments would impound it and do an  
17 inventory search of the contents which obviously they  
18 would find anything that happened to be in there during  
19 the course of the inventory search. Now, in this  
20 particular case it was unusual because the vehicle was  
21 actually pulled in the driveway of a house, so the  
22 officers at the evidentiary hearing testified that had  
23 they not found the drugs in the vehicle they would not  
24 have impounded it, because again it was on private  
25 property and they would have had no real reason to do

1 it.

2 Quite simply there is no special  
3 justification for this Court to overrule Belton.  
4 Nothing has changed in the past 27 years to call Belton  
5 into question. The same complaints we hear voiced by  
6 defendants, legal commentators and some judges are the  
7 same complaints voiced by Justice Brennan in his dissent  
8 in Belton as well as by the New York Court of Appeals in  
9 its decision in People v Belton. The Court considered  
10 everything, made a policy decision based on  
11 reasonableness that -- that -- that officer safety --

12 JUSTICE STEVENS: But it isn't true that we  
13 didn't have the recent occupant problem at the time of  
14 Belton?

15 MR. MAZIARZ: Right. That -- that came into  
16 fruition in -- in Thornton and -- and of course in this  
17 case Gant is a -- as recent as a recent occupant can be.  
18 He literally was stepping out of the car when the  
19 officer summoned him and he knew the officers were there  
20 because they flashed a flashlight in his face as he  
21 drove by three -- three feet from them.

22 Police officers have been trained under  
23 Belton for the past 27 years. They have applied it in  
24 the field. It would ban an undue burden to have to  
25 retrain those officers and -- and for them to determine

1 under totality of the circumstances analysis when they  
2 can and when they can't conduct searches of automobiles  
3 incident to arrest. They wouldn't know their authority;  
4 citizens wouldn't know the scope of their Fourth  
5 Amendment protection. Additionally as we pointed out,  
6 an overwhelming majority of states, 41, have followed  
7 Belton and a few of those have even done so under their  
8 own State constitutional search and seizure provisions  
9 and of course they all had the opportunity to opt out  
10 but they obviously believed Belton is a workable rule  
11 that promotes officer safety and only has a minimal  
12 impact on the privacy interests of the recent occupant  
13 of an automobile.

14 Unless the Court has any further questions  
15 I'll retain whatever I have for rebuttal.

16 CHIEF JUSTICE ROBERTS: Thank you, Mr. Yang  
17 -- Mr. Maziarz.

18 Now Mr. Yang, we'll hear from you.

19 ORAL ARGUMENT OF ANTHONY YANG,

20 FOR THE UNITED STATES,

21 AS AMICUS CURIAE, SUPPORTING THE PETITIONER

22 MR. YANG: Mr. Chief Justice, and may it  
23 please the Court.

24 Belton relied on a factor that was not in  
25 Chimel, the need for an easily administratable rule in

1 the commonly recurring incident of vehicle arrest and  
2 the search incident to that arrest. Justice Stewart who  
3 authored both Chimel and Belton recognized that over a  
4 decade of experience of Chimel had shown that the courts  
5 were in disarray, that courts had confronted similar  
6 fact circumstances and come to differing results, that  
7 officers in the field, confronted with the highly  
8 volatile and dangerous events surrounding a custodial  
9 arrest needed clear guidance to be able to govern their  
10 actions in these instances.

11 That makes total sense. Unlike Chimel which  
12 occurred in a home and arises in a situation where the  
13 privacy interests are at their apex, in the Belton  
14 context, the search is of the passenger compartment of a  
15 vehicle, and this Court has repeatedly acknowledged that  
16 with respect to automobiles there is a considerably  
17 diminished or greatly are reduced expectation of  
18 privacy. Given the very real threats that officers face  
19 in discharging their duties on a day-to-day basis in  
20 this commonly recurring scene -- circumstances, Belton  
21 established a bright-line rule to be able to govern  
22 their conduct.

23 JUSTICE SCALIA: Once you -- once you  
24 eliminate the -- the need to show that the officer's  
25 safety was threatened why -- why would you limit the



1 search just to the passenger compartment of the vehicle?  
2 Why don't you let him search the trunk, too?

3 MR. YANG: Well, I think Belton -- when  
4 Belton was decided there was some question in terms of  
5 the trunk in terms of this Court's decision in Sanders.  
6 Sanders is mentioned in Belton. There hadn't been a  
7 problem with a bright-line rule with respect to trunks  
8 and the Court simply didn't -- didn't address it. And  
9 we're not in this case seeking an expansion of Belton,  
10 Your Honor.

11 JUSTICE SCALIA: I know -- I know you're not  
12 but it just doesn't make sense to me to -- to abandon  
13 the requirement that the -- that the officer's safety be  
14 threatened and yet to say oh, but he can only search  
15 the -- the passenger compartment. If indeed there is  
16 reduced expectation of privacy for the automobile, you  
17 arrest somebody you can search the automobile; what's  
18 wrong with that?

19 MR. YANG: Certainly in another case, you  
20 know, the Court can revisit the scope of Belton but I  
21 think Belton as established certainly makes sense with  
22 respect to the ambit of the passenger compartment. Even  
23 --

24 JUSTICE GINSBURG: In Belton, wasn't the  
25 notion what was within grabbing distance? And the trunk

1 wasn't within grabbing distance. That was -- and here  
2 nothing is within grabbing distance.

3 MR. YANG: Well, I'm not sure that that's --  
4 that's correct, Justice Ginsburg. In Belton the New  
5 York Court of Appeals in a portion quoted the Court by  
6 Belton had determined that there was no longer any  
7 danger that the arrestees could get to the vehicle, and  
8 in fact Justice Brennan emphasized in dissent there was  
9 no possibility that they could reach passenger  
10 compartment.

11 JUSTICE KENNEDY: What is the basis for your  
12 wanting us to adopt what we might call a bright-line  
13 rule for automobile exception? What are the reasons  
14 other than officer safety which we think may not be a  
15 very persuasive reason.

16 MR. YANG: Well, the -- related to officer  
17 safety is the question of the administrability of the  
18 rule in these highly fluid contexts. The officers must  
19 make rapid judgments about what is and what is not  
20 permissible and in Belton the Court recognized that a  
21 rule -- that rules based on the totality of the  
22 circumstances, which require all kinds of ifs ands or  
23 buts, simply are not workable; and that had been borne  
24 out with 10 years of experience with Chimel being  
25 applied in the vehicle context and Belton.

1 JUSTICE SOUTER: I take it you agree it's  
2 perfectly workable to say that if the defendant has been  
3 taken to the police station, they can't then search the  
4 car --

5 MR. YANG: Yes. We believe the  
6 bright-line --

7 JUSTICE SOUTER: Why isn't it equally  
8 workable to say when the defendant is handcuffed and put  
9 in the back of a cruiser, they can't do it?

10 MR. YANG: Well, Justice Souter we think  
11 that -- in some ways that does have the benefit of a  
12 bright-line rule, but we don't believe that the --  
13 that's a question of where you're going to draw that  
14 line.

15 JUSTICE SOUTER: Right. And -- and we are  
16 talking now about administerability. The police station  
17 rule is administrable; it makes for a good bright-line  
18 rule; why doesn't handcuffs in the back of the cruiser  
19 make for an equally bright line?

20 MR. YANG: We actually would draw the line a  
21 little closer than the police station. It would be when  
22 the -- the search has begun after the suspect has been  
23 removed from the scene. But in terms of  
24 administrability I guess that would provide for a  
25 sufficiently bright-line rule but the problem is drawing

1 the line at that point.

2 JUSTICE STEVENS: Why wouldn't the rule of  
3 requiring just the automobile exception, where you would  
4 require probable cause to search a vehicle, why wouldn't  
5 that be a bright line rule that would fit into  
6 everything else.

7 MR. YANG: It is, but the difference between  
8 the probable cause exception and a search incident to  
9 arrest is a search incident to arrest doctrine --

10 JUSTICE STEVENS: Are you more concerned  
11 about the ability to search the vehicle or the  
12 protection of the officer?

13 MR. YANG: Well, certainly the protection of  
14 the officer is what motivates the doctrine.

15 JUSTICE STEVENS: But doesn't -- don't these  
16 rules apply to ordinary traffic arrests where there  
17 really is very little risk to the officer?

18 MR. YANG: Actually, Your Honor, very  
19 common-day traffic arrests have high risk to the officer  
20 due to the unknowns. The Court recognized that in  
21 Robinson, Robinson which established the bright-line  
22 rule for search of the person was in fact an arrest  
23 based on failure -- driving on a suspended license. The  
24 Court has in Chadwick emphasized that all custodial  
25 arrests --

1 JUSTICE STEVENS: The need to search the  
2 vehicle is primarily justified by the interest in  
3 officer safety?

4 MR. YANG: Primarily, but also the interest  
5 in preserving evidence. When a suspect is --

6 JUSTICE STEVENS: But the interest in  
7 preserving evidence really should only be present when  
8 there is probable cause to believe there is some  
9 evidence.

10 MR. YANG: Oh, no; when a suspect is put  
11 under custodial arrest, the -- there is increased  
12 incentive both to escape, to get weapons, and also to  
13 destroy any incriminating evidence that might be --

14 JUSTICE SCALIA: You've arrested this guy  
15 for -- for reckless driving. He was going 25 miles over  
16 the speed limit, okay? And you're going to search his  
17 car for evidence? Of what?

18 MR. YANG: To preserve --

19 JUSTICE SCALIA: You're going to allow the  
20 search nonetheless. Let's assume he is handcuffed in  
21 the back, so officer safety is not at issue; but you say  
22 we want to be able to search a car for evidence.  
23 Evidence of what?

24 MR. YANG: Well, we would take issue with  
25 respect to the officer safety.

1 JUSTICE SCALIA: I understand that.

2 MR. YANG: But in terms -- in terms of the  
3 evidence the Court recognized in Maryland v --

4 JUSTICE SCALIA: You have to link -- if  
5 you're going to use that rationale you have to link the  
6 reason for the arrest with the likelihood that there  
7 would be any evidence found in the car that would  
8 support the arrest.

9 MR. YANG: The Court recognized in Maryland  
10 v Wilson that when you pull someone over for a traffic  
11 stop, there is a risk of escalation of the encounter  
12 because evidence of a more serious crime might be  
13 revealed in that stop.

14 JUSTICE SCALIA: Oh, so -- so you, you  
15 avowedly say that once you arrest somebody you can  
16 rummage around for evidence of a different crime, right?

17 MR. YANG: No. What I'm -- what I'm talking  
18 about is the -- the danger of the custodial arrest  
19 situation, Your Honor.

20 JUSTICE KENNEDY: Well, you keep coming back  
21 to danger. And let's -- let's assume that some of us  
22 think that when he has been handcuffed and in the back  
23 of a car and he is about ready to leave the scene, there  
24 is no more danger. I want to know if there are any  
25 other reasons other than preserving evidence for

1     searching the car.

2                   It seems to me there are good reasons for  
3     searching that car.  It's -- it's movable.  That's the  
4     old vehicle exception.  It can have contraband in it.  
5     It can be stolen.  It can be taken for joy rides.  But  
6     you don't seem to make any of those arguments.  You just  
7     want to keep coming back to officer safety and on that  
8     point I think your case is very weak.

9                   MR. YANG:  Well, on the point of officer  
10    safety, Your Honor, I can understand the Court's  
11    reluctance to think that a person handcuffed in a car is  
12    likely to escape.  And we admit that the occurrence is  
13    relatively small.  It's clear that a person handcuffed  
14    in the back of a patrol care escapes the car dozens of  
15    times a year.  We just did a simple search on the  
16    Internet --

17                  JUSTICE KENNEDY:  Fine, if you want to go  
18    back to that, fine.  I have problems with the argument  
19    but if that's your argument I'll take it from there.

20                  MR. YANG:  But the point is, on a continuum,  
21    Belton provides an administrable rule where officers in  
22    the field can guide their conduct.  There's going to be  
23    instances in which the risk is going to be higher, and  
24    there's going to be instances where the risk is lower.  
25    And, admittedly, we are on the end of the continuum, but

1 it -- Belton wanted to provide a rule whereby you  
2 wouldn't have to guess in these circumstances.

3 Certainly, with respect to the privacy  
4 interest in vehicles as well, Justice Kennedy, the  
5 privacy interest in the vehicle, particularly when  
6 you've been arrested and could be -- for a traffic  
7 violation --

8 JUSTICE STEVENS: Normally, to overcome the  
9 privacy interest, you need probable cause. And you did  
10 need probable cause for the automobile exception too.

11 MR. YANG: In terms of the balancing that's  
12 conducted, it can be a risk to officer safety, the need  
13 for administrable rule balanced against the privacy  
14 interest. Here the privacy interest has been quite  
15 diminished. Once you've been arrested on the street,  
16 the police often have -- certainly have a constitutional  
17 ability to impound the car and conduct an inventory  
18 search.

19 JUSTICE GINSBURG: Could they have impounded  
20 this car? I thought they didn't have grounds to impound  
21 it because it was -- we were just told it was parked in  
22 an alley of a private house.

23 MR. YANG: It was in a private house owned  
24 by someone else. The officers testified that they  
25 normally would not tow it at that point, but certainly



1 they would have had the constitutional authority. It  
2 would have been reasonable for officers to impound the  
3 car that was not at the residence of the arrestee.

4 JUSTICE GINSBURG: So they could have  
5 impounded, and then could they have done an inventory  
6 search?

7 MR. YANG: Correct, which underscores the  
8 diminished privacy interest that an arrestee would have  
9 in the contents of a vehicle. And --

10 JUSTICE SCALIA: Why -- why can they impound  
11 it? Suppose they stop and he pulls over to the side of  
12 the street where there is parking, all-night parking.  
13 What authority would they have to drag that car away?

14 MR. YANG: Well, once someone has been  
15 arrested and if it's all-night parking, if the person is  
16 going into a custodial arrest, going to jail for  
17 purposes of protecting --

18 JUSTICE SCALIA: He says, "Let me lock my  
19 car." You know, "I park it on the street all the time.  
20 It's a lousy car any way. Nobody wants to steal it."

21 (Laughter.)

22 MR. YANG: Well, for purposes of the impound  
23 and inventory search, so long as there's a reasonable  
24 basis, and the reasonable basis would be to secure the  
25 vehicle to get it off the street when the occupant has

1    been arrested and wouldn't be able to retrieve it, I  
2    think --

3                   JUSTICE SCALIA:  I can see some situations  
4    where -- where, for public safety or other reasons, you  
5    have to remove the car from where it is, and I guess the  
6    best thing to do is to drag it off to the police  
7    impoundment yard.  But in other situations, I -- you  
8    speak so blithely of impoundment as though -- as though  
9    that's an automatic remedy.  I just don't know that it  
10   is.

11                  MR. YANG:  It's not automatic, but it does  
12   go against the expectation of privacy that one has in  
13   the personal effects in the vehicle, and is greatly  
14   diminished because, you know, the State -- I believe it  
15   was your decision in Wyoming versus Houghton -- the  
16   State regulates cars on a daily basis.  They inspect,  
17   examine the vehicle.  So when we are talking about the  
18   constitutional balance --

19                  JUSTICE KENNEDY:  Diminished expectations of  
20   privacy are not a reason to search.

21                  MR. YANG:  Correct, but what it's balanced  
22   --

23                  JUSTICE KENNEDY:  The only reason to search  
24   that I can find from you so far is officer safety.

25                  MR. YANG:  Officer safety and the need for

1 an administrable rule, which is --

2 JUSTICE BREYER: Where -- where is it? I  
3 mean, if you want to -- if you want to search, you can  
4 impound the car. If you want to search, you can ask for  
5 consent, which you probably won't get. If you want to  
6 search, you can look in the window. There's no problem  
7 there. It's just under the seat and in the glove  
8 compartment we're talking about. If you have probable  
9 cause to think that there's evidence of a crime even in  
10 the glove compartment or underneath the seat, you can  
11 look at it without a warrant. Why do you need this as  
12 well?

13 You say we need this as well because the guy  
14 who's locked up in back of the squad car might take off  
15 the handcuffs, open the door, run out, and grab a gun  
16 from under the glove compartment. That's a little thin.  
17 And then you say, well, the rule is it needs to be  
18 administrable. And then I say, okay, the rule is  
19 administrable if you've got him locked up in the squad  
20 car and all you want to do is have a good snoop around,  
21 take it in and impound it. That's administrable.

22 MR. YANG: The likelihood of that event  
23 occurring is relatively small. The potential risks to  
24 officers are great. Given that this does occur, that  
25 individuals do escape from vehicles, and -- here the

1 vehicle, the police vehicle, was parked immediately  
2 behind the --

3 JUSTICE BREYER: I got that point. Are  
4 there many people, by the way, they arrest but they  
5 leave them standing outside the squad car?

6 MR. YANG: It will depend on the  
7 circumstances, Your Honor. Sometimes --

8 JUSTICE BREYER: I mean are we going to have  
9 one of these spectrum things?

10 MR. YANG: Well, that's exactly the point.  
11 In items of the administrable rule, there's all kinds of  
12 stages in an arrest, which, we'd have to stop and say,  
13 you know, is it going to be -- is he arrested -- is  
14 there one officer, or are the three suspects -- are they  
15 handcuffed in front or are they handcuffed in back? Is  
16 it a metal handcuff? Is it a plastic handcuff? Is it  
17 night? What's the surrounding circumstances in terms of  
18 the traffic that might be distracting to the officer?  
19 Is it a neighborhood which is a high-crime neighborhood?  
20 There's all kinds of things that, in the "totality of  
21 circumstances" approach the Arizona Supreme Court  
22 adopted, would be inadministrable in the field. And the  
23 Court recognized that in Belton, and in fact reaffirmed  
24 that in Thornton. Just recently the Court explained  
25 that experiences show the need for a bright-line rule in

1     this context.

2                   JUSTICE SCALIA:   So -- a fine-line rule.  I  
3     mean -- and you can instruct all the police officers in  
4     your department, when you arrest somebody, have them  
5     stand right near the car while you search it.  Okay?  
6     Make sure that he's near enough that, you know, he's a  
7     threat to your safety.

8                   (Laughter.)

9                   MR. YANG:    I --

10                  JUSTICE SCALIA:  That's certainly a  
11     bright-line rule.

12                  MR. YANG:    I doubt that -- the hypothetical  
13     that someone --

14                  JUSTICE BREYER:  Well, that's actually a  
15     serious point, maybe in your favor because it -- what  
16     was worrying me about this is, if you lose the case,  
17     there would be policemen who would then let dangerous  
18     people stay in the car so they could search it.  But you  
19     haven't made that argument, and, you know, that would be  
20     the --

21                  MR. YANG:    We think that that would be the  
22     exception.  It's possible.  We don't think that would  
23     happen on a routine basis, and certainly police  
24     departments and the Federal Government would not  
25     encourage our officers to take that risk.

1 JUSTICE BREYER: No, nobody would.

2 MR. YANG: Custodial arrests are dangerous  
3 in themselves, and this is one step, a reasonable step,  
4 that officers can take to secure their safety, among  
5 others, in the instance of a custodial arrest on the  
6 street.

7 JUSTICE STEVENS: But really what's at stake  
8 here is the right to search the vehicle for things that  
9 are not right out in front at the time he does the  
10 custodial arrest.

11 MR. YANG: For instance, like a gun right  
12 underneath the seat, which would --

13 JUSTICE STEVENS: If it was right there,  
14 obviously he had a right to search the whole vehicle  
15 under the automobile exception, but in the normal case,  
16 I don't see why officer safety is an adequate  
17 justification for going beyond the authority that it  
18 would have under the automobile exception. That's the  
19 problem I have, because you do have broad authority if  
20 you have probable cause.

21 MR. YANG: May I?

22 CHIEF JUSTICE ROBERTS: Sure.

23 MR. YANG: Officer safety underlies the  
24 Chimel exception, to begin with.

25 JUSTICE STEVENS: I understand Chimel, but

1     --

2                 MR. YANG:   And Chimel --

3                 JUSTICE STEVENS:   -- underlie Ross.

4                 MR. YANG:   That's correct, but it's a  
5     different doctrine.   I'm mean, that's about --

6                 JUSTICE STEVENS:   My basic question is:   Why  
7     doesn't that different doctrine apply the bright-line  
8     rule, simply administered, that you need?

9                 MR. YANG:   When we're talking about  
10    custodial arrest, there are unknown risks.   If there are  
11    unknown risks, officers obviously can't have probable  
12    cause to believe there would be a weapon in the car.  
13    And that's what the "search incident to arrest" doctrine  
14    seeks to address.

15                CHIEF JUSTICE ROBERTS:   Thank you Mr. Yang.

16                MR. YANG:   Thank you, Mr. Chief Justice.

17                CHIEF JUSTICE ROBERTS:   Mr. Jacobs.

18                         ORAL ARGUMENT OF THOMAS F. JACOBS

19                                 ON BEHALF OF THE RESPONDENT

20                MR. JACOBS:   Mr. Chief Justice, and may it  
21    please the Court:

22                         I'd first like to address the issue of the  
23    historical basis for the Fourth Amendment that was  
24    raised earlier.   I would note that in the Respondent's  
25    brief, on page 13 footnote 5 and on pages 15 through 16,

1 the LaFave treatise is cited. That treatise addressed,  
2 primarily in the context of automobile searches, a  
3 history of the -- the nature of Fourth Amendment  
4 restrictions on that type of search.

5 We also draw from Chimel itself, which  
6 contained an evaluation of the history of Fourth  
7 Amendment searches in general in order to come to the  
8 conclusion that the Fourth Amendment requires that  
9 searches which are exceptions to the warrant requirement  
10 must be tied to the twin exigencies on which they are  
11 based.

12 JUSTICE SCALIA: Why -- why is that so for  
13 searches of the vehicle? When it isn't -- it isn't so  
14 for search of the person? I mean, if the police arrest  
15 Mother Teresa, they are still entitled to frisk her,  
16 right, even though there's little likelihood that she  
17 has a Gatt?

18 (Laughter.)

19 JUSTICE SCALIA: What -- if -- if we don't  
20 apply the officer safety rationale to searches of the  
21 person, no matter how elderly, how eminent, how virtuous  
22 the person is, you can frisk. We're obviously not  
23 applying the officer safety rule across the board.  
24 We're adopting a bright-line rule that obviously applies  
25 to many situations in which the officer is not at risk.



1     Why can't you do the same for automobiles?

2                   MR. JACOBS:   If the Court, Mr. Justice  
3     Scalia, if you're suggesting that a bright-line rule  
4     might be adopted that is essentially exactly like the  
5     search of person incident to arrest, the problem is that  
6     in an arrest situation the police have exclusive  
7     dominion and control over the person.  They have that  
8     person in their custody, that person realistically, at  
9     the point when they have taken that person into their  
10    custody, historically had been recognized as a subject  
11    of search, and that has been consistent throughout our  
12    jurisprudence in the Fourth Amendment.  We have always  
13    recognized that right.  The problem is when you take an  
14    item like a car that is divorced from the person who is  
15    in the custody of the police and now extend that right  
16    to search to the individual or to the car, which is not  
17    necessarily something over which the police have a right  
18    to dominion and control.  They have no problem with the  
19    car.

20                  JUSTICE SCALIA:  What's -- what's the  
21    history there?  Do you know the history there.

22                  MR. JACOBS:  In -- in terms of extension of  
23    the car rights?

24                  JUSTICE SCALIA:  Yes, Thomas Jefferson's  
25    conveyance --

1           MR. JACOBS: I -- I can refer the case to  
2 the LaFave treatise in terms of a complete history upon  
3 that, but the Court has always --

4           JUSTICE SCALIA: There is not much there.

5           MR. JACOBS: I'm sorry, Your Honor?

6           JUSTICE SCALIA: There is not much there.

7           MR. JACOBS: The -- the Court has raised a  
8 good point, but what we -- what is consistent, whether  
9 it's cars or not cars, is the requirement that searches  
10 under the Fourth Amendment be supported by warrants or  
11 an exception.

12          JUSTICE KENNEDY: But the absence of  
13 dominion or control works the other way. That makes it  
14 all the more dangerous. That could be -- there could be  
15 guns that other people could get out, evidence other  
16 people could get out; and, rather than go through a  
17 case-by-case analysis of whether this was true in every  
18 case, we just have a bright-line rule as Justice Scalia  
19 said at the outset.

20          MR. JACOBS: The --

21          JUSTICE KENNEDY: It seems to me that the  
22 absence of the dominion and control is -- is just a  
23 conclusory statement to explain what happens in the case  
24 the person is arrested, but it -- it doesn't seem to me  
25 to provide a rationale.

1                   MR. JACOBS: Well, Justice Kennedy, it  
2 explains the difference between a person and something  
3 that is not the person, something that is divorced  
4 physically from the person, in the same sense that  
5 Mr. Chimel's house was separate from his person.

6                   JUSTICE KENNEDY: It actually works the  
7 other way, because it means there is more reason to  
8 search. It's not in our dominion and control. We are  
9 leaving it on the street. We want to know what's in  
10 there.

11                  MR. JACOBS: Well, keeping in mind the  
12 police have no right to search the car except under  
13 delineated exceptions. And what the Government is  
14 asking here --

15                  JUSTICE KENNEDY: That is what they are  
16 asking about in this case.

17                  MR. JACOBS: Well, what the Petitioner is  
18 asking, Justice Kennedy, is that the Belton rule be  
19 interpreted so expansively that it's no longer simply a  
20 bright-line rule of what you can search, but it's  
21 actually a bright-line rule that removes judicial review  
22 from when you can conduct that search. And the problem  
23 with that is --

24                  JUSTICE ALITO: But don't you have to show  
25 that there are special circumstances here justifying the

1     overruling of Belton?

2                   MR. JACOBS:   No.

3                   JUSTICE ALITO:   No?

4                   MR. JACOBS:   No, Mr. Justice Alito.   We do  
5     not have to show that there are any special  
6     circumstances, and we do not necessarily have to  
7     overrule Belton here.

8                   JUSTICE ALITO:   Now, is this a fair summary  
9     of the holding of Belton:   When a police officer has  
10    made a lawful custodial arrest of the occupant of an  
11    automobile, he may as a contemporaneous incident of that  
12    arrest search the passenger compartment of that  
13    automobile?

14                  MR. JACOBS:   That is an accurate statement  
15    of the holding of Belton, Justice Alito.

16                  JUSTICE ALITO:   And if that rule is applied  
17    in this case, you would lose; would you not?

18                  MR. JACOBS:   Well, we do not lose, Justice  
19    Alito.   The reason is because of the focus that the  
20    Petitioner places on the aspect of that holding.   They  
21    take it in a vacuum.   They don't look at the word  
22    "contemporaneous" in terms of defining "incident to  
23    arrest."

24                  The problem with the search in this case and  
25    so many others is that the search that is conducted is

1 after the police have taken custody and secured the  
2 individual.

3 JUSTICE BREYER: I -- I mean I don't know if  
4 it can go off on that. The -- it seems to me I -- I  
5 thought when I looked through this, which was quickly,  
6 it seemed to me everyone was assuming that it's  
7 contemporaneous. Of course, if it isn't  
8 contemporaneous, that's a new world, and maybe you would  
9 win on that. I don't know. But don't we have to for  
10 present purposes take it as a contemporaneous search,  
11 which I think is what the lower courts found?

12 MR. JACOBS: There are two views of that.

13 JUSTICE BREYER: Well, I'm sure there are,  
14 but what is your opinion? I mean, is there some reason  
15 what I have been doing -- you can tell me -- I am  
16 finding this case very, very difficult. And I am not at  
17 all certain in my own mind, and I am being quite frank  
18 with you. And the reason is that although I don't think  
19 Belton is very logical, it has been the law for 27  
20 years; and I take they seriously, as we all do, the  
21 principle of stare decisis.

22 That is why your response to Justice Alito  
23 really sort of shook me. Because I was thinking, one, I  
24 have to take this as contemporaneous; and I have to run  
25 squarely into the problem that for some period of years

1 Belton has been the law and maybe even before Belton. I  
2 don't know about Thomas Jefferson's automobile. But,  
3 nonetheless, no disaster has occurred, and so why would  
4 we overrule an earlier case?

5 Now that's -- that's exactly my problem.  
6 And so if you were interested in that, you have to give  
7 me an answer.

8 MR. JACOBS: Justice Breyer, we are here to  
9 focus on exactly the issue of what is contemporaneous  
10 and I believe that it's important to focus on exactly  
11 what Belton arose out of. Belton arose out of as this  
12 court is well aware four individuals who were taken out  
13 of a car all four placed under arrest one set of  
14 handcuffs all around the car and arguably all arguably  
15 had access to or control over the passenger compartment  
16 of the vehicle. That's one of the requirements of  
17 Belton's holding is that they have to arguably have  
18 access to the passenger compartment.

19 JUSTICE ALITO: What does contemporaneous  
20 have to do with officer safety? It has to do with  
21 timing doesn't it?

22 MR. JACOBS: Well if we consider Justice  
23 Alito that officer safety is a function of when you make  
24 that assessment. Is officer safety most at risk when  
25 the person is initially seized? Yes. However, once

1 they are in the back of a police car as Justice Scalia  
2 pointed out they pose a threat to no up with and the  
3 record is clear on that.

4 JUSTICE ALITO: Let's say when an arrest is  
5 made, a team of officers are there. The person arrested  
6 is a person of slight stature. They immediately descend  
7 on this person and manacle the person in every possible  
8 way, but it's all done in 10 seconds. Is that not  
9 contemporaneous?

10 MR. JACOBS: If one were to assume a search  
11 was conducted at that moment.

12 JUSTICE ALITO: And immediately they search.

13 MR. JACOBS: I'm sorry if they immediately  
14 search after restraining the person and there is a  
15 defined between it being a second or minute or 32  
16 minutes that's not contemporaneous because the reasons  
17 supported by that search are not supported by the fact  
18 in the exigency. Belton was a situation where there was  
19 an immediate and tipping risk to the officer.

20 CHIEF JUSTICE ROBERTS: You're looking at  
21 the specific facts of Belton. Belton adopted a  
22 bright-line rule. The whole point of a bright-line rule  
23 is that you don't look at the specific facts and it  
24 presents a problem here you say the guy is handcuffed  
25 and in the back of the car? Well what if he is in the

1 back of the car but not handcuffed? What if there are  
2 five people around who might break open the police car  
3 and free him? What if there are three people around?  
4 You have exactly the same case by case inquiry that  
5 Belton said we are not going to do.

6 MR. JACOBS: Mr. Chief Justice we look at  
7 Buie, in Mincey the court noted that I search conducted  
8 immediate risk was that all preBelton.

9 MR. JACOBS: Those are not all preBelton  
10 Your Honor.

11 CHIEF JUSTICE ROBERTS: Which one is not.

12 MR. JACOBS: Mincey was after Belton, Your  
13 Honor.

14 CHIEF JUSTICE ROBERTS: Are those all  
15 preThornton.

16 MR. JACOBS: Those are all preThornton Your  
17 Honor.

18 CHIEF JUSTICE ROBERTS: Well in Thornton of  
19 course the guy was handcuffed in the back of the police  
20 car.

21 MR. JACOBS: In Belton Your Honor, the  
22 Petitioner in this case waived this analysis that we are  
23 dealing with in this case but it is true that the  
24 arrestee was secured. The issue was whether he was a  
25 recent occupant of the vehicle when he was apprehended



1 and whether we should even consider application of  
2 Belton.

3 CHIEF JUSTICE ROBERTS: I guess my question  
4 is what is left of the Belton bright-line rule when you  
5 are done.

6 MR. JACOBS: Exactly.

7 CHIEF JUSTICE ROBERTS: We have to have a to  
8 determine a threat to officer safety.

9 MR. JACOBS: If we assume that that  
10 assessment is something new, Mr. Chief Justice then we  
11 are accepting without a basis Petitioner's  
12 interpretation of Belton's bright-line rule as etch  
13 tending beyond simply what is the permissible scope of  
14 the search. Remembering that Belton only applied Chimel  
15 to the automobile situation Petitioner advocates a much  
16 much too broad interpretation of this bright line rule  
17 that arose out of Belton and --

18 JUSTICE ALITO: The bright-line rule is set  
19 out in one sentence which is the sentence that I read to  
20 you but if you just assume for the sake of argument that  
21 in order to prevail, in order for you to prevail Belton  
22 has to be overruled. What is your, what's the  
23 justification for overruling Belton? Is it, has there  
24 been no reliance on it, is the Belton rule less workable  
25 than the rule that, the case by case rule that you're

1 proposing, is it undermined by subsequent developments  
2 and precedent or does stare decisis simply not count in  
3 these cases.

4 MR. JACOBS: Well Justice Alito stare  
5 decisis always counts except where you're wrong.

6 CHIEF JUSTICE ROBERTS: Assuming the  
7 decision is wrong.

8 MR. JACOBS: That's right. Stare decisis is  
9 wrong, but you have to consider my point, Mr. Chief  
10 Justice.

11 JUSTICE ALITO: That's enough if we think  
12 Belton was wrong that's enough for overruling it.

13 MR. JACOBS: Yes and if the court is  
14 considering it Mr. Justice Alito if we would like me to  
15 answer the question assuming we should overrule Belton  
16 why we should do it the answer is Chimel provides us  
17 with sufficient tools for officers to protect their  
18 safety in the field because you will recall there are  
19 other ex-issues to automobile searches with I have based  
20 on actual grounds.

21 JUSTICE BREYER: Well are you saying do you  
22 have any in my own mind perhaps differently from you I  
23 think that the stare decisis is really brought into play  
24 when you think the earlier decision was wrong.

25 MR. JACOBS: Yes.

1 JUSTICE BREYER: And at that point I'd still  
2 need a reason why you should depart from that earlier  
3 decision at the moment what the other side says is we  
4 tell our police a simple thing. We tell them when you  
5 arrest somebody who is in a car you can search the  
6 passenger compartment of the car okay. Simple. And  
7 we've trained a hundred thousand police officers to do  
8 that and they do it. Now, is there some indication that  
9 that's turned out to be abusive? Is there indication  
10 that there are other problems with the rule as it turned  
11 out to be complicated? What kinds of things you could  
12 say that will overcome what I'm putting forth as a kind  
13 of reluctance.

14 MR. JACOBS: I understand, Justice Breyer,  
15 and the answer is that -- two things: One, and first  
16 and foremost, Belton's general assumption, which is  
17 essentially required for the application of the  
18 bright-line rule, is empirically not true. With police  
19 procedures as we understand them today, routinely  
20 arrestees are secured, they are handcuffed, they are  
21 routinely placed in the back of patrol cruisers.

22 And even the amici for the Petitioner in  
23 this case acknowledged that officers are not going to  
24 deviate from those procedures just to make a search in  
25 the future if the rule is changed, but primarily that,

1     that the assumption that underlies Belton is not shown  
2     to be empirically true.  It's empirically false.

3                 CHIEF JUSTICE ROBERTS:  Just not to get  
4     back -- Mincey was 1978.  Belton was 1981.

5                 MR. JACOBS:  Yeah, I misspoke then.  Mincey  
6     would have been before Belton and would have been a  
7     basis, Mr. Chief Justice, for the Court to apply --

8                 CHIEF JUSTICE ROBERTS:  Yes, but I'm trying  
9     to see -- you cited three cases.  And my question was  
10    whether those survived Belton.  Now, were all three of  
11    those before Belton?

12                MR. JACOBS:  If Mincey was, then I would  
13    hazard a guess that the other three were as well, Your  
14    Honor, except for Buie.  And I don't have a cite on that  
15    as to the year for Buie.

16                JUSTICE STEVENS:  Of course, one of the  
17    really contentious issues at the time Belton decided is  
18    whether you can search containers in the back in the  
19    passenger part of the car.  And under the automobile  
20    exception, you could search those containers if you had  
21    probable cause to believe anything in the car was  
22    contraband.  And that's what Belton really opened the  
23    door to, was container searches.  It was not just  
24    searches of things in plain view.

25                And, of course, the justification for

1 suggesting that that's too broad a rule is the very  
2 strong privacy interest in containers in cars driven by  
3 ordinary motorists. That's really what's at issue under  
4 Belton.

5 MR. JACOBS: I would agree with that  
6 statement, Justice Stevens. That's a correct statement.

7 And Buie is 1990, Your Honor. My able staff  
8 has provided the answers.

9 But we have to recall, Justices, that we are  
10 at all times looking to the Fourth Amendment, its twin  
11 exigencies, and the requirement that this Court has  
12 consistently held, that in order to avoid a warrant,  
13 there must be a clearly defined and limited exception to  
14 the warrant requirement.

15 Now, if there are no more questions, I will  
16 yield the floor.

17 JUSTICE GINSBURG: You are not asking to  
18 overrule Belton; you are asking to take it in the  
19 context in which it was presented, where there was  
20 genuine concern for officer safety. Is that --

21 MR. JACOBS: Justice Ginsburg, that is  
22 exactly correct. In those situations Belton would  
23 apply.

24 CHIEF JUSTICE ROBERTS: Just to explore  
25 that, that does seem to me to be overruling Belton to

1 the extent Belton adopted a bright-line rule. What  
2 you're saying is, well, in these circumstances Belton  
3 applies, and in these circumstances, it doesn't. But  
4 you're overruling Belton when you say there's no longer  
5 a bright-line rule.

6 MR. JACOBS: Mr. Chief Justice, and I'm not  
7 being articulate enough, I think, because I keep coming  
8 back to the same thing. The bright-line rule in Belton  
9 was the extent of the permissible search, not the  
10 trigger for the permissible search. Although Belton  
11 indicated that the arrest -- an arrest of a person, if  
12 he is deemed a recent occupant and if the search is  
13 conducted contemporaneously with that arrest, allows the  
14 search. It is the scope of the search that was  
15 permitted, because we couldn't figure out, as a  
16 consistent matter, what was reaching distance when we  
17 dealt with that particular and problematic situation.  
18 And that's from Belton. And footnote 3 again comes back  
19 to that.

20 CHIEF JUSTICE ROBERTS: So you think after  
21 Belton -- you think after Belton, we still have to look  
22 and see what's reaching distance on a case-by-case  
23 basis?

24 MR. JACOBS: Belton only requires that if  
25 the passenger compartment of the vehicle is arguably

1 within the reach of an arrestee who was a recent  
2 occupant, that the police may contemporaneously search  
3 the passenger compartment without regard for how far.

4 CHIEF JUSTICE ROBERTS: I don't understand  
5 that part: "Arguably within the reach." I don't  
6 understand that to be part of Belton. I thought that's  
7 what Belton did away with, and thought Belton was  
8 saying, look, we are going to have a bright-line rule,  
9 because we don't want to say he's five feet away, he is  
10 not within the reach; two feet away, he is.

11 MR. JACOBS: Belton --

12 CHIEF JUSTICE ROBERTS: Do you think Belton  
13 kept the requirement that the person be arguably within  
14 the reach of the compartment?

15 MR. JACOBS: Yes, Mr. Chief Justice. Not  
16 any specific portion of the compartment. That's what  
17 Belton said. You don't have to prove he could reach the  
18 jacket in the back seat. You don't have to prove that  
19 he could reach the briefcase under the passenger seat.  
20 You just have to prove that he could reach the passenger  
21 compartment. And we will generalize that if you can  
22 reach the passenger compartment, you can reach anything  
23 in it. And that was the generalization.

24 And even though we know from police  
25 procedures that empirically that's not really true, we

1 know that we can't -- the Petitioner can't cite a single  
2 instance where somebody has gone back to his car,  
3 grabbed a weapon, and attacked an officer. It just  
4 hasn't happened. Empirically it's false. And that, as  
5 Justice Breyer pointed out perhaps by his question, is  
6 one of the flaws of Belton that courts may continue to  
7 struggle with, but the bright-line doesn't change.

8 JUSTICE ALITO: What about the situation  
9 where there are multiple occupants but there's probable  
10 cause to arrest only one of the occupants?

11 MR. JACOBS: The consistent holdings of this  
12 Court, in analyzing this type of situation under the  
13 Fourth Amendment, have held that the arrestee is the  
14 focus of the inquiry into determining whether there is  
15 an exempt to the Fourth Amendment requirement. And this  
16 dovetails, essentially, into the argument we have  
17 against the Petitioner's thought that third parties  
18 should be the focus. But they weren't in Chimel, they  
19 weren't in Mincey, they weren't in Buie.

20 JUSTICE ALITO: Isn't that going to be --  
21 aren't cases like that going to be difficult calls as to  
22 whether there's officer safety concerns?

23 MR. JACOBS: No. They are not going to be  
24 difficult calls. The focus being on the arrestee, the  
25 officer --



1 JUSTICE ALITO: One person is arrested,  
2 three people who were occupants are not arrested. They  
3 are all out by the side of the car. One of them is in  
4 handcuffs. Three of them are not arrested, not in  
5 handcuffs. There's no danger of officer safety there --  
6 three people?

7 MR. JACOBS: Officers have -- well, first of  
8 all, again, the focus for the analysis is on the danger  
9 from the arrestee, and we know that from Buie and the  
10 many cases that go with it. But, importantly, officers  
11 have other tools that they can use, other than searching  
12 somebody's car when they don't have probable cause.

13 They can temporarily detain people for  
14 investigative purposes. They can separate them from the  
15 area of vehicle and the arrest, and move them away.  
16 They call for backup typically. In this case, for  
17 example, they had -- they had four or five officers on  
18 scene, and the scene, objectively, according to the  
19 officers, was secure. They said they had control of the  
20 scene.

21 And that's an example of the use of police  
22 procedures that are available other than searching that  
23 establish officer safety and serve to protect our  
24 officers in the field without offending the Fourth  
25 Amendment.

1           If there are no further questions, I will  
2   yield the floor. Thank you.

3           CHIEF JUSTICE ROBERTS: Thank you, counsel.

4           Mr. Maziarz, you have two minutes remaining.

5           REBUTTAL ARGUMENT OF JOSEPH T. MAZIARZ.

6           ON BEHALF OF THE PETITIONER

7           MR. MAZIARZ: Thank you Mr. Chief Justice.

8   Unless there are any questions, I'll waive rebuttal.

9           CHIEF JUSTICE ROBERTS: Thank you.

10          The case is submitted.

11          (Whereupon, at 11:56 a.m., the case in the  
12   above-entitled matter was submitted.)

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