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No. 07-542

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2007

STATE OF ARIZONA,
Petitioner,

v.

RODNEY JOSEPH GANT,
Respondent,

**On Petition For Writ Of Certiorari
To The Arizona Supreme Court**

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

STEVE COOLEY
District Attorney of Los Angeles County
LAEL R. RUBIN
Head Deputy, Appellate Division
PHYLLIS C. ASAYAMA
Deputy District Attorney *Counsel of Record*
Appellate Division
320 West Temple Street, Suite 540
Los Angeles, California 90012
Telephone: (213) 974-5916
Attorneys for Amicus Curiae

TABLE OF CONTENTS

	<u>Pages</u>
AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER, THE STATE OF ARIZONA BY THE LOS ANGELES COUNTY DISTRICT ATTORNEY ON BEHALF OF LOS ANGELES COUNTY	1
INTEREST OF AMICUS CURIAE	2
SUMMARY OF ARGUMENT	3
ARGUMENT	3
I. CONSISTENT WITH THIS COURT'S HOLDING IN <i>NEW YORK v. BELTON</i> AND BALANCING THE LIMITED EXPECTATIONS OF PRIVACY IN A VEHICLE AGAINST THE LEGITIMATE NEEDS OF LAW ENFORCEMENT, A SEARCH OF THE PASSENGER COMPARTMENT OF A VEHICLE INCIDENT TO A LAWFUL ARREST IS REASONABLE UNDER THE FOURTH AMENDMENT	3
A. AN ARRESTEE'S EXPECTATION OF PRIVACY MUST YIELD TO LEGITIMATE NEEDS OF LAW ENFORCEMENT	4
B. GIVEN THE LESSER EXPECTATION OF PRIVACY IN A VEHICLE, THE SCOPE OF A SEARCH INCIDENT TO A LAWFUL ARREST THAT INCLUDES THE PASSENGER COMPARTMENT OF THE VEHICLE IS REASONABLE UNDER THE FOURTH AMENDMENT	6

1. THE ARRESTEE HAS A REDUCED PRIVACY EXPECTATION IN A VEHICLE AND FROM WHICH HE HAS BEEN ARRESTED BASED UPON PROBABLE CAUSE	7
2. LEGITIMATE GOVERNMENT INTERESTS EXIST FOR THE INTRUSION UPON THE PRIVACY EXPECTATIONS OF AN ARRESTEE	9
II. AS AN ARRESTEE TAKEN INTO PHYSICAL CUSTODY BASED UPON PROBABLE CAUSE, GANT'S PROXIMITY TO HIS VEHICLE OR HIS HANDCUFFED STATUS ARE IRRELEVANT TO THE ISSUE OF REASONABLENESS UNDER THE FOURTH AMENDMENT	11
CONCLUSION	14

TABLE OF AUTHORITIES

	<u>Pages</u>
<u>CASES</u>	
Arizona v. Roberson 486 U.S. 675 (1988)	10
Arkansas v. Sanders 442 U.S. 753 (1979)	2
California v. Acevedo 500 U.S. 565 (1991)	8, 10
California v. Carney 471 U.S. 386 (1985)	8, 9, 11
Carroll v. United States 267 U.S. 132 (1925)	8, 9, 11
Chimel v. California 395 U.S. 752 (1969)	6
Edwards v. Arizona 451 U.S. 477 (1981)	10
Illinois v. McArthur 531 U.S. 326 (2001)	5
Miranda v. Arizona 384 U.S. 436 (1966)	10
New York v. Belton 453 U.S. 454 (1981)	2-4, 7, 9-13
People v. Fick 107 Cal.App.3d 892 (1980)	2
Samson v. California 547 U.S. 843, 126 S.Ct. 2193 (2006)	4
State v. Gant 162 P.3d 640 (Ariz. 2007)	2
Terry v. Ohio 392 U.S. 1 (1968)	5

Thornton v. United States 541 U.S. 615 (2004)	6, 10
United States v. Chadwick 433 U.S. 1, (1977)	2
United States v. Knights 534 U.S. 112 (2001)	3, 4
United States v. Robinson 414 U.S. 218 (1973)	3, 5, 8, 10, 12, 13
United States v. Ross 456 U.S. 798 (1982)	8
Wyoming v. Houghton 526 U.S. 295 (1999)	4, 8
<u>OTHER AUTHORITIES</u>	
Los Angeles County Charter section 25	1
<u>CALIFORNIA GOVERNMENT CODE</u>	
Section 26500	2

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ON BEHALF OF LOS ANGELES COUNTY

Amicus curiae, Steve Cooley, District Attorney for the County of Los Angeles, State of California, submits this brief for filing in support of the petition for a writ of certiorari to review the judgment of the Arizona Supreme Court as the authorized law officer of the county, pursuant to Supreme Court Rule 37.2(a) and 37.4.¹

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1. Los Angeles County Charter section 25 (1995) states:
Each County officer, Board or Commission shall have the powers and perform the duties now or hereafter prescribed by general law, and by this charter as to such officer, Board of Commission.

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

(continued...)

INTEREST OF AMICUS CURIAE

Amicus curiae, as the executive officer charged with the prosecution of crime in the most populous county in California, has a strong interest in the effective enforcement of the laws of the state. Prior to this Court's bright-line ruling in *New York v. Belton*, 453 U.S. 454 (1981), the scope of a search of a vehicle incident to a lawful arrest was in a constant state of confusion.² The Arizona Supreme Court's holding in *State v. Gant*, 162 P.3d 640 (Ariz. 2007), abandons this Court's bright-line ruling in *Belton*, reverting to a case-by-case analysis of whether a scene was secure and therefore a search incident to a lawful arrest was not justified.

Retreat from this Court's straightforward holding in *Belton* will return the state of the law to a time when neither the citizenry nor law enforcement know the scope of an

(...continued)

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

Cal. Gov't Code § 26500 (West 1998).

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

officer's authority, hampering an officer in the effective performance of his duties to enforce the laws of the state and uncover and deter criminal activity. It is therefore in the interest of amicus to urge that certiorari be granted.

SUMMARY OF ARGUMENT

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

ARGUMENT

I. CONSISTENT WITH THIS COURT'S HOLDING IN *NEW YORK v. BELTON*³ AND BALANCING THE LIMITED EXPECTATIONS OF PRIVACY IN A VEHICLE AGAINST THE LEGITIMATE NEEDS OF LAW ENFORCEMENT, A SEARCH OF THE PASSENGER COMPARTMENT OF A VEHICLE INCIDENT TO A LAWFUL ARREST IS REASONABLE UNDER THE FOURTH AMENDMENT

"The touchstone of the Fourth Amendment is reasonableness." *United States v. Knights*, 534 U.S. 112, 118

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

(2001). Whether a search is reasonable under the Fourth Amendment is determined by looking at the totality of the circumstances and assessing the privacy interests intruded upon versus the legitimate needs of the government.

“[U]nder our general Fourth Amendment approach” we “examin[e] the totality of the circumstances” to determine whether a search is reasonable within the meaning of the Fourth Amendment. [*Knights*] at 118, 122 S.Ct. 587, 151 L.Ed.2d 497 (internal quotation marks omitted.) Whether a search is reasonable “is determined by assessing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” *Id.* at 118-119, 122 S.Ct. 587, 151 L.Ed.2d 497 (internal quotation marks omitted.)

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

Balancing the reduced privacy expectations of an arrestee in a vehicle and the physical custody of the arrestee based upon probable cause, versus the legitimate needs of law enforcement including *inter alia*, the need to remove from a suspect’s reach any weapons or prevent the destruction of evidence, this Court’s holding in *Belton*, 453 U.S. 454 and the search of respondent Gant’s vehicle in this matter, are reasonable under the Fourth Amendment.

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

In *Knights*, 534 U.S. 112, this Court phrased the privacy intrusion in terms of one’s reasonable expectation of privacy. This Court balanced the “significantly diminished” privacy expectations of a probationer with search conditions

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

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

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

The highest level of expectation of privacy that one can have is in one's person. *Terry v. Ohio*, 392 U.S. 1, 9 (1968). It is nevertheless well established that a search incident to a lawful arrest of the person is reasonable under the Fourth Amendment.

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

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

A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires

no additional justification. It is the fact of the lawful arrest which established the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a “reasonable” search under that Amendment.

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

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

While the authority to search the person of an arrestee incident to a lawful arrest is a straightforward, bright-line rule, the *scope* of the search beyond the arrestee’s person has been less than clear. In *Chimel v. California*, 395 U.S. 752 (1969), this Court limited the scope of a search incident to a lawful arrest to a search of the person and the area within his immediate control. *Id.* at 762-763. As observed by this Court in *Thornton v. United States*, 541 U.S. 615 (2004), “[a]lthough easily stated, the *Chimel* principle had proved difficult to apply in specific cases”, particularly in the context of vehicle searches.

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

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

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

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

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

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

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

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

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

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

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

Robinson, 414 U.S. at 235. The intrusion upon the suspect's privacy interest in a vehicle upon a public highway from which he has just been arrested is minimal compared to the privacy intrusion of custodial arrest.

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

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

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

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

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

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

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

A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick *ad hoc* judgment which the Fourth Amendment does

not require to be broken down in each instance into an analysis of each step in the search.

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

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

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

Belton, 453 U.S. at 459-460; see also *California v. Acevedo*, 500 U.S. at 577 ["We have noted the virtue of providing ' 'clear and unequivocal' guidelines to the law enforcement profession." ' [Citations.]"]; *Arizona v. Roberson*, 486 U.S. 675 (1988) ["We have repeatedly emphasized the virtues of a bright-line rule in cases following *Edwards [v. Arizona]*, 451 U.S. 477 (1981)] as well as *Miranda [v. Arizona]*, 384 U.S. 436 (1966)."].

Balancing the reduced privacy expectations that an arrestee has in a vehicle in a public location and who has been taken into physical custody based upon probable cause, versus the legitimate needs of law enforcement to be able to search a very mobile vehicle; to remove from a suspect any weapons or instruments of escape; to prevent the destruction of evidence; and the need for a clear, bright-line rule that informs both the public and law enforcement of the scope of an officer's authority, a search of the passenger compartment of a vehicle and its containers, incident to a lawful arrest is reasonable under the Fourth Amendment. Whether the suspect is handcuffed and placed in a patrol car or is standing

next to the vehicle at the time of the search has no bearing on the determination of reasonableness.

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

Neither the arrestee's physical proximity to his car nor the presence or absence of handcuffs affects his already diminished expectation of privacy in a vehicle on a public highway. Nor do these factors affect the legitimate needs of law enforcement. The fact that a vehicle *could* be towed and stored does not change the mobility of the vehicle. Any actions other than a contemporaneous search of the vehicle, requires officers to guard the vehicle to prevent an arrestee's friends, family, cohorts or even strangers from tampering with or removing weapons and/or evidence from the vehicle. See *California v. Carney*, 471 U.S. at 393 ["Like the automobile in *Carroll*, respondent's motor home was readily mobile. Absent the prompt search and seizure, it could readily have been moved beyond the reach of the police."].

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

It seems to have been the theory of the Court of Appeals that the search and seizure in the present case could not have been incident to the respondent's arrest, because Trooper Nicot, by the very act of searching the

respondent's jacket and seizing the contents of its pocket, had gained "exclusive control" of them. 50 N.Y.2d 447, 451, 407 N.E.2d 420, 422. But under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his "exclusive control."

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

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

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

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

Id. at p. 461.

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

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

Belton, 453 U.S. at 458.

Under the facts of this case, Gant had a suspended driver's license and an outstanding warrant for driving on a suspended license. Pet. App. A at A-1 to A-2. Because Gant was arrested, handcuffed and placed in the back of a patrol car, *Id.* at A-2, the Arizona Supreme Court held that the scene was secure and that this Court's holding in *Belton*, 453 U.S. 454, did not apply – that is, neither concern for officer safety nor the preservation of evidence justified the search. *Id.* at A-6. This ruling is contrary to this Court's holding in *Robinson*, that a search incident to a lawful arrest does not require a "case-by-case adjudication" and that "[i]t is the fact of the lawful arrest which establishes the authority to search." 414 U.S. at 235.

The Arizona Supreme Court ruling further fails to determine whether under the totality of the circumstances, the search was reasonable under the Fourth Amendment, given Gant's limited privacy expectations in his vehicle, the determination of probable cause to take Gant into physical custody and conduct a full search of his person, and the

legitimate needs of law enforcement. Given law enforcement's clear authority to conduct a full search of Gant's person and Gant's limited expectation of privacy in his vehicle, particularly in light of the fact that he had been driving on a public highway on a suspended driver's license, the search of the passenger compartment of his vehicle was reasonable under the Fourth Amendment.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari to review the Arizona Supreme Court's ruling in this matter.

Respectfully submitted,

STEVE COOLEY
District Attorney of
Los Angeles County

By

LAEL R. RUBIN
Head Deputy District Attorney
Appellate Division

PHYLLIS C. ASAYAMA
Deputy District Attorney

Attorneys for Amicus Curiae in Support
of Petitioner for Writ of Certiorari