No. 07-542

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

On Petition for Writ of Certiorari to the Arizona Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *New York v. Belton*, 453 U.S. 454 (1981), this Court held that the risks to officer safety and to the preservation of evidence inherent in the arrest of a vehicle's recent occupant justify a contemporaneous warrantless search of the automobile's passenger compartment incident to the arrest. The question presented is:

Did the Arizona Supreme Court effectively "overrule" this Court's bright-line rule in *Belton* by requiring in each case that the State prove after-the-fact that those inherent dangers actually existed at the time of the search?

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PETITION FOR WRIT OF CERTIORARI

The State of Arizona respectfully petitions for a writ of certiorari to review the Arizona Supreme Court's July 25, 2007, opinion holding that whether police may search the passenger compartment of an automobile incident to the arrest of the automobile's recent occupant depends on a case-by-case assessment of the circumstances of the arrest.

OPINIONS BELOW

The Arizona Supreme Court's opinion is reported as *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007). Petitioner's Appendix ("Pet. App.") A. The Arizona Court of Appeals' opinion is reported as *State v. Gant*, 213 Ariz. 446, 143 P.3d 379 (App. 2006), *vacated*, 216 Ariz. 1, 162 P.3d 640 (2007). Pet. App. B. The order of the Superior Court of Arizona in and for the County of Pima dated December 4, 2007, denying the motion to suppress is unpublished. Pet. App. C.

STATEMENT OF JURISDICTION

The Arizona Supreme Court entered the judgment from which relief is sought on July 25, 2007. Pet. App. A. Petitioner timely filed this petition for writ of certiorari within ninety days of the order denying review. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides as follows:

> 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 Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

In this case the Arizona Supreme Court misconstrued *New York v. Belton*, 453 U.S. 454 (1981), and *Thornton v. United States*, 541 U.S. 615 (2004), by imposing a retrospective, case-by-case assessment of actual risks to officer safety and evidence preservation at the time of an automobile search incident to arrest, rather than applying *Belton*'s bright-line rule that a recent occupant's arrest, without more, justifies a contemporaneous warrantless search of the automobile's passenger compartment incident to the arrest. The *Gant* decision directly contradicts this Court's precedents, conflicts with the decisions of nearly all federal circuit courts and state courts, and imposes an unworkable case-by-case test that will hinder the police in conducting arrests and searches safely and consistently. This Court should grant certiorari, reverse the Arizona Supreme Court's decision, and reaffirm *Belton*'s bright-line rule.

A. Material Facts.

On August 25, 1999, two Tucson, Arizona, police officers went to a house suspected of being used for narcotics activity. Pet. App. A at 2, ¶ 2. One officer knocked on the door, and Respondent Rodney Gant answered. *Id.* The officers asked to speak with the homeowner, but Gant told them that the owner was not at home and would not return until later that day. *Id.* Gant gave the officers information

about his identity. Pet. App. C at 2. The officers left and ran a records check on Gant and discovered that his license was suspended and that he had an outstanding warrant for driving with a suspended license. Pet. App. A at 2, ¶ 2.

The officers returned to the house that evening. *Id.* at 2, ¶ 3. They found two individuals outside the house and, after investigation, arrested them. *Id.*; Pet. App. C at 2. While the officers were handcuffing the individuals and placing them in patrol cars, Gant drove up in his car and parked in the driveway. Pet. App. A at 2-3, ¶ 3. One officer summoned Gant as he got out of his car, and Gant walked approximately eight to twelve feet toward the officer. *Id.* The officer told Gant that he was under arrest for driving with a suspended license and handcuffed him. *Id.*; Pet. App. C at 3. The officer placed Gant in a patrol car. Pet. App. A at 3, ¶ 3.

Officers then searched the passenger compartment of Gant's car and found a handgun and a plastic baggie containing cocaine. *Id.* at 3, ¶ 4. Gant was subsequently charged with one count of possession of a narcotic drug for sale and one count of possession of drug paraphernalia. *Id.*

B. Proceedings Below.

On a stipulated record before trial, Gant unsuccessfully moved to suppress the fruits of the search. Pet. App. A at 3, ¶ 5; *State v. Gant*, 43 P.3d 188, 191, ¶ 4 (Ariz. App. 2002), *vacated, Arizona v. Gant*, 540 U.S. 963 (2003). On appeal from his ensuing convictions, the Arizona Court of Appeals held that the evidence should have been suppressed because the police had not initiated contact with Gant before he stepped out of his car. *Gant*, 43 P.3d at 194, ¶¶ 15, 18. The Arizona Supreme Court denied

review, and the State petitioned this Court for a writ of certiorari, contending that under *Belton* an arrestee's recent occupancy of the automobile, not the arrestee's "initial contact" with the police, is the sole constitutional prerequisite to a warrantless search of the arrestee's automobile incident to arrest. This Court granted certiorari, vacated the court of appeals' opinion, and remanded the case to that court to reconsider its decision in light of the Arizona Supreme Court's opinion in *State v. Dean*, 76 P.3d 429 (Ariz. 2003). *Gant*, 540 U.S. at 963. In *Dean*, issued during the pendency of the certiorari proceedings, the Arizona Supreme Court expressly rejected the initial-contact rule and appeared to have adopted, without qualification, the recent-occupancy test. 76 P.3d at 437, ¶¶ 32–34. The court held, consistent with *Belton*, that Dean was not a recent occupant of his automobile at the time of arrest because he was not arrested until more than two hours after he had run from the automobile and had hidden in a house. *Id.*

In the instant case, on remand from this Court, the Arizona Court of Appeals ordered an evidentiary hearing to further develop the factual record. Pet. App. A at 4, ¶ 6. Based on uncontroverted testimony at the hearing, the trial court held that the search of Gant's car was a valid warrantless search incident to arrest because Gant was a recent occupant of the automobile at the time of arrest and the search was contemporaneous with the arrest. Pet. App. C at 5. The trial court found that the officers had contacted Gant immediately after he had gotten out of his car and had arrested him "seconds later." *Id.* The officers had searched Gant's car "immediately" after he was handcuffed and placed in a patrol car. *Id.*

Gant appealed, and the court of appeals again reversed, finding that the search was not incident to Gant's arrest because it was not contemporaneous with the arrest and did not satisfy the rationales set forth in *Chimel v. California*, 395 U.S. 752 (1969) (stating that a search incident to arrest includes the area within the arrestee's immediate control to ensure officer safety and to preserve evidence). Pet. App. A at 4, ¶ 6; Pet. App. B at 15, ¶ 18.

The Arizona Supreme Court granted the State's petition for review of that decision and vacated the court of appeals' opinion by a 3-2 vote, but held that the search of the passenger compartment of Gant's car violated the Fourth Amendment.[1] Pet. App. A at 4, ¶ 7; *id.* at 15, ¶ 25. The majority began its analysis with *Chimel*, recognizing that the need to protect officer safety and to preserve evidence provided the justifications for the search-incident-to-arrest exception to the warrant requirement. *Id.* at 5, ¶ 9. Because of these justifications, the majority believed that this Court in *Chimel* had limited the permissible scope of a search incident to arrest to the "arrestee's person and the area within his immediate control—that is, the area from which he might gain possession of a weapon or destructible evidence." *Id.* at 5, ¶ 9 (quoting *Chimel*, 395 U.S. at 763) (internal quotation marks omitted). The majority then explained that in *Belton*, this Court had applied *Chimel* to instances in which the arrestee was a recent occupant of a car and had established a "bright-line rule" that the area under the arrestee's immediate control

[1] Gant made no claim under the Arizona Constitution, and the supreme court declined to consider its application to Gant's case. Pet. App. A at 4, ¶ 8 n.1.

included the car's passenger compartment and any containers therein. Pet. App. A at 6, ¶ 11.

The majority stated that although this Court established a "bright-line rule" in *Belton*, it never addressed whether the police may still search the passenger compartment "at all once the scene is secure." *Id.* at 6, ¶ 12. The majority examined the factual circumstances of Gant's arrest and ruled that the need to protect the arresting officers' safety and the need to preserve any evidence in Gant's car from destruction did not justify the search of the passenger compartment incident to arrest because the police had handcuffed Gant and placed him a patrol car, had handcuffed and had placed in patrol cars other persons at Gant's house, and had had four other officers present at the scene. *Id.* at 7, ¶ 13. The majority concluded that "[a]bsent either of these *Chimel* rationales, the search cannot be upheld as a lawful search incident to arrest." *Id.* (footnote omitted).

The majority admitted that "[i]t is possible to read *Belton*, as the State and the Dissent do, as holding that because the interior of a car is generally within the reach of a recent occupant, the *Belton* bright-line rule eliminates the requirement that the police assess the exigencies of the situation." *Id.* at 8, ¶ 15. The majority also rejected the State's argument that this Court had reaffirmed this interpretation of *Belton* in *Thornton*, which was factually indistinguishable from Gant's case. *Id.* at 9, ¶ 18. The majority conceded that "the facts in *Thornton* resemble those in the case before us," but it nevertheless dismissed *Thornton*. *Id.* at 10, ¶ 19. The majority stated that the issue before this Court in *Thornton* was not whether the circumstances of Thornton's arrest justified a search

incident to arrest, but whether Thornton was a recent occupant of his car even though he had just exited the car before the police arrested him. *Id.* The majority admitted, however, that "[w]e are aware that most other courts presented with similar factual situations have found *Belton* and *Thornton* dispositive of the question whether a search like the one at issue was incident to arrest." *Id.* at 11, ¶ 21.

The dissenting justices criticized the majority for "effectively rewrit[ing] *Belton*," *id.* at 18, ¶ 34, "the sole prerogative of the [United States] Supreme Court," *id.* at 15-16, ¶ 27, and opined that the majority's "approach is at odds with the core premise of *Belton*": the need for a clear rule "that does not depend on case-by-case adjudication," *id.* at 20, ¶ 39. Noting also the inconsistency between the majority's focus on the level of risk at the time of the search and *Belton*'s reasoning that the arrest itself justifies the search, the dissent explained that

> the validity of the search does not depend on particularized concerns for officer safety or preservation of evidence at the time of the search. . . .
>
> . . . *Belton* implies that warrantless searches may be conducted even when the arrestee has been handcuffed and locked in a patrol car.

Id. at 19, ¶¶ 36–37. The dissent noted that in *Belton* the Court did not consider whether the exigencies inherent in Belton's arrest continued to exist at the time of the search, *id.* at 18, ¶ 35, and stated that "the post-arrest search in *Belton* was justified because it was incidental to the arrest, not because other exigencies were present," *id.* at 20, ¶ 38.

Because the dissent believed that *Belton* permitted the search of an automobile's passenger compartment as part of a search incident to the arrest of the driver regardless of the existence of any exigencies, it found that the search of Gant's automobile comported with the Fourth Amendment. *Id.* at 23, ¶ 43.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari because the Arizona Supreme Court's decision in *State v. Gant* contradicts and effectively "overrules" this Court's holdings in *New York v. Belton* and *Thornton v. United States* and also conflicts with the holdings of nearly every state and federal court that has applied *Belton* and *Thornton* to factual situations like Gant's. The *Gant* court's fact-bound analysis of the degree of actual danger to police officers and actual potential for destruction of evidence in Gant's particular case is inconsistent with the bright-line rule established in *Belton*—and followed in *Thornton*—that a recent occupant's custodial arrest, without more, justifies a contemporaneous warrantless search of the automobile's passenger compartment incident to arrest.

The *Gant* majority's case-specific assessment of actual risks to officers and evidence not only contradicts this Court's precedents and conflicts with the decisions of nearly every court that has applied this Court's precedents to facts similar to Gant's, it is also unworkable for the very reasons that this Court has repeatedly cited in support of a bright-line rule. Fourth Amendment rules "'ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged'" and should not turn upon

"'[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions.'" *Belton*, 453 U.S. at 458 (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The* Robinson *Dilemma*, 1974 S. Ct. Rev. 127, 142); *see also Thornton*, 541 U.S. at 623 (rejecting "subjective and highly fact-specific" assessments "that would require precisely the sort of ad hoc determinations on the part of officers in the field and reviewing courts that *Belton* sought to avoid").

This Court sought to articulate in *Belton* a "straightforward rule, easily applied, and predictably enforced." 453 U.S. at 459. The *Gant* decision thwarts those objectives and stands in direct conflict with this Court's interpretations of the Fourth Amendment. This case presents a single question that demands an answer: whether the *Belton* rule means what it says:

> [W]hen 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.

453 U.S. at 460.

The *Gant* decision has no precedential support, declares an unworkable and dangerous test, and directly contradicts this Court's interpretations of the Fourth Amendment. This Court should grant certiorari, reverse the Arizona Supreme Court's decision, and reaffirm the bright-line *Belton/Thornton* rule.

I. The Arizona Supreme Court's Decision Directly Conflicts with—Indeed, Effectively "Overrules"—*New York v. Belton*.

The *Gant* majority opinion—holding that the constitutionality of a search incident to arrest under *Belton* depends on a factual assessment in every case whether the justifications underlying the search incident to arrest actually exist—directly contradicts this Court's precedents. In *Belton*, this Court held 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." 453 U.S. at 460. Thus, the arrest itself is the triggering mechanism of an automobile search incident to arrest, not any particular level of risk that may actually exist in an individual case. *See United States v. Robinson*, 414 U.S. 218, 235 (1973) ("It is the fact of the lawful arrest which establishes the authority to search."). *Belton* established an objective bright-line rule that should be applied in a simple and straightforward fashion, regardless of the particular level of danger that an appellate court might in hindsight ascribe to a particular set of facts. *See Belton*, 453 U.S. 458–59 (seeking to articulate a "straightforward rule, easily applied, and predictably enforced"); *see also Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983) (stating that "the 'bright line' that we drew in *Belton* clearly authorizes [a search of an automobile] *whenever* officers effect a custodial arrest") (emphasis added).

Contrary to this bright-line rule, the *Gant* majority applied a fact-bound analysis whether, in the majority's after-the-fact opinion, the arrest scene was sufficiently

secure that the justifications underlying the search-incident exception did not actually exist. The *Gant* majority relied on multiple factors in making its determination that the justifications for a search incident to arrest did not exist: (1) Gant was handcuffed, (2) Gant was placed in a patrol car, (3) a police officer "supervised" Gant's presence in the patrol car, (4) the only two other individuals at the scene had been handcuffed and placed in separate patrol cars, (5) four police officers were at the scene, and (6) one officer believed that the scene was "secure." Pet. App. A at 7, ¶ 13. The *Gant* majority found *Belton* no impediment to its analysis because in its view, *Belton* did nothing more than hold that a passenger compartment was within an arrestee's immediate area of control subject to search *if* the arrestee posed a danger to the arresting officer or to the preservation of evidence. *Id.* at 5, ¶ 11.

The *Gant* majority's peculiar view of *Belton* directly contradicts *Belton*'s language and spirit. In *Belton*, this Court cited with approval its earlier express rejection of "the suggestion that 'there must be litigated in each case the issue of whether or not there was present one of the reasons supporting the authority for a search . . . incident to arrest.'" 453 U.S. at 459 (quoting *Robinson*, 414 U.S. at 235). This Court stated in *Robinson* that the Fourth Amendment did not require such a case-by-case assessment:

> 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] search incident to the arrest requires no additional justification....
>
> ... Since it is the fact of custodial arrest which gives rise to the authority to search, it is of no moment that [the officer] did not indicate any subjective fear of the [defendant] or that he did not himself suspect that [the defendant] was armed.

414 U.S. at 235–36. The *Gant* majority ignores this Court's rejection of a case-by-case assessment.

The *Gant* majority's case-by-case analysis is the same analysis that this Court rejected in *Belton*. The majority of the New York Court of Appeals had declared in Belton's case that "'[a] warrantless search of the zippered pockets of an unaccessible jacket may not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article.'" *Belton*, 453 U.S. at 456 (quoting *People v. Belton*, 407 N.E.2d 420, 421 (N.Y. 1980)). Although the New York court's majority reasoned that the evidence in Belton's jacket was no longer vulnerable to destruction once the police officer had gained "exclusive control" of it, the underlying notion was the same: when police have secured the scene, the dangers presumed inherent in automobile searches incident to arrest no longer exist. *Belton*, 453 U.S. at 461 n.5.

Justice Brennan's dissent in *Belton* makes clear that the entire Court understood that the new "bright-line rule" foreclosed case-by-case analysis, thereby enabling police to secure the arrestee before searching the automobile:

"[T]he Court for the first time grants police officers authority to conduct a warrantless 'area' search under circumstances where there is no chance that the arrestee 'might gain possession of a weapon or destructible evidence.'" 453 U.S. at 468–69 (Brennan, J., dissenting) (quoting *Chimel*, 395 U.S. at 763).

This Court reiterated its understanding of *Belton* in *Thornton*. In that case, which was nearly identical to Gant's case, a police officer discovered that the license tag on Thornton's automobile did not match the automobile. 541 U.S. at 618. Before the officer could stop Thornton's automobile, Thornton parked it and walked away. *Id.* The officer approached Thornton, questioned him about the license tag, and found cocaine on him after a pat-down search. *Id.* After the officer arrested Thornton, handcuffed him, and placed him in the patrol car, the officer searched the passenger compartment of Thornton's automobile under *Belton* and found a handgun. *Id.*

Thornton claimed that the search violated *Belton* because he was not an "occupant" of his automobile when arrested and could not gain access to the handgun in the passenger compartment. *Id.* at 617, 622 & n.2. This Court held that the police may search the passenger compartment of an arrestee's automobile as long as the arrestee was a "recent occupant." *Id.* at 623–24. In response to Thornton's argument that *Belton* should not apply to persons arrested outside an automobile because they cannot reach the passenger compartment to grab a weapon or to destroy evidence, this Court noted that "the firearm and the passenger compartment in general were no more inaccessible than were the contraband and the passenger compartment in *Belton*." *Id.* at 622. This Court

reaffirmed that the *Belton* rule applies regardless whether the arrestee could gain access to the passenger compartment:

> The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort of generalization which *Belton* enunciated. Once an officer determines that 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.

Id. at 622–23.

Despite the unanimous understanding of *Belton*'s meaning—and its reaffirmation in *Thornton* under facts nearly identical to those in Gant's case—the *Gant* majority has refused to follow this Court's precedents. This Court's decision in *Belton* has indeed come under criticism. *See Thornton*, 541 U.S. at 624 (O'Connor, J., concurring) (referring to "*Belton*'s shaky foundation"); *id.* at 625–32 (Scalia, J., concurring in the judgment) (urging a reevaluation of *Belton*'s doctrinal underpinnings). But overruling binding precedent is "*this* Court's prerogative *alone*." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (emphasis added). This is true even where "'changes in judicial doctrine' ha[ve] significantly undermined" precedent. *United States v. Hatter*, 532 U.S. 557, 567 (2001) (quoting *Hatter v. United States*, 64 F.3d 647, 650 (Fed. Cir. 1995). "If a precedent of this Court has direct application in a case, yet appears to rest on reasons

rejected in some other line of decisions," a lower court "should follow the case which directly controls." *Rodriguez de Quijas v. Shearson/Am. Express*, 490 S. Ct. 477, 484 (1989). The *Gant* majority has flouted this precept.

II. The Arizona Supreme Court's Decision Directly Conflicts with Numerous Decisions of the Federal Courts of Appeals and State Supreme Courts.

The *Gant* majority, by its own admission, stands alone among federal and state appellate courts in holding that this Court did not establish a bright-line rule in *Belton* that police may search the passenger compartment of an arrestee's automobile regardless whether the police have secured the arrestee: "We are aware that most other courts presented with similar factual situations [to Gant's] have found *Belton* and *Thornton* dispositive." Pet. App. A at 11, ¶ 21.

In this statement, the *Gant* majority is correct. Federal Courts of Appeals that have considered whether handcuffing and securing an arrestee in a patrol car affects the validity of a search of the passenger compartment of the arrestee's automobile incident to his arrest have held that a search is valid under *Belton* regardless whether the arrestee is handcuffed or secured in a patrol car. *E.g.*, *United States v. Barnes*, 374 F.3d 601, 604 (8th Cir. 2004) ("The lawfulness of the search does not depend on whether the occupant was *actually capable* of reaching the area during the course of the police encounter. *Belton*'s bright-line rule did away with that fact-specific inquiry into reachability."); *Northrop v. Trippett*, 265 F.3d 372, 379 (6th Cir. 2001) ("So long as the defendant had the item within

his immediate control near the time of the arrest, the item remains subject to a search incident to an arrest."); *United States v. White*, 871 F.2d 41, 44 (6th Cir. 1989) ("[E]ven after the arrestee has been separated from his vehicle and is no longer within reach of the vehicle or its contents, the *Belton* rule . . . applies, and such a search is valid."); *United States v. Karlin*, 852 F.2d 968, 972 (7th Cir. 1988) (search incident to arrest upheld where defendant was arrested, handcuffed, patted down, and placed in squad car); *United States v. McCrady*, 774 F.2d 868, 872 (8th Cir. 1985) (search of locked glove compartment after defendant arrested and placed in patrol car upheld as search incident to arrest); *United States v. Cotton*, 751 F.2d 1146, 1148 (10th Cir. 1985) (*Belton* does not require arresting officer to undergo a detailed analysis at the time of arrest whether the handcuffed arrestee could reach into the car to seize an item within it.).[2]

The same is true of state supreme courts. *See State v. Wheaton*, 825 P.2d 501, 503 (Idaho 1992) (search of car incident to arrest upheld where defendant had been arrested, handcuffed, and placed in patrol car); *Rainey v. Commonwealth*, 197 S.W.3d 89, 95 (Ky. 2006) (affirming *Belton* search when the defendant "was so far from his

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[2] Federal Courts of Appeals have also upheld searches under *Belton* in situations in which the arrestee has been handcuffed and placed in a patrol car without specifically addressing the issue. *See United States v. Mapp*, 476 F.3d 1012, 1014 (D.C. Cir. 2007) (upholding search of arrestee's car conducted after he had been handcuffed and placed in patrol car); *United States v. Hrasky*, 453 F.3d 1099, 1100, 1103 (8th Cir. 2006) (same); *United States v. Weaver*, 433 F.3d 1104, 1107 (9th Cir. 2006) (same); *United States v. Osife*, 398 F.3d 1143, 1144, 1146 (9th Cir. 2005) (same); *United States v. Herndon*, 393 F.3d 665, 668 (6th Cir.) (same), *vacated on other grounds*, 544 U.S. 1029 (2005).

vehicle that it was unlikely that he could have accessed it"); *State v. Hensel*, 417 N.W.2d 849, 852–53 (N.D. 1988) (search of automobile conducted after defendant was arrested, handcuffed, and placed in police car was valid search incident to arrest); *State v. Fladebo*, 779 P.2d 707, 712 (Wash. 1989) (during arrest process, even after suspect is arrested, handcuffed, and placed in patrol car, officers may search passenger compartment of automobile for destructible evidence or weapons); *Vasquez v. State*, 990 P.2d 476, 482 (Wyo. 1999) (*Belton* search proper "although Vasquez had been removed from the vehicle, handcuffed, and placed in a patrol car").

In the face of this overwhelming authority, the *Gant* majority takes solace that decisions of two other courts have invalidated searches under circumstances similar to Gant's. Pet. App. A at 12, ¶ 21 n.4. But those decisions do not even address *Belton*. The first decision makes no mention of *Belton* at all, even though *Belton* had been on the books for fourteen years. *Ferrell v. State*, 649 So. 2d 831 (Miss. 1995). Instead, the court relied on an inapposite pre-*Belton* decision. *Id.* at 833 (citing *Cupp v. Murphy*, 412 U.S. 291 (1973)). The second decision does not mention *Belton* either. *State v. Greenwald*, 858 P.2d 36 (Nev. 1993). Only the dissenting justice discussed *Belton* and concluded that the search of the arrestee's car was valid. *Id.* at 41 (Steffen, J., dissenting).

The *Gant* majority's reliance on decisions that do not cite this Court's controlling authority suggests studied avoidance of the applicable law. The *Gant* majority decision defies the applicable law—this Court's decisions in *Belton* and *Thornton*—that nearly all federal and state appellate courts have recognized.

III. The Arizona Supreme Court's Decision Requires a Case–By–Case Analysis that Is Antithetical to the Goals that This Court Achieved by Establishing *Belton*'s Bright-Line Rule.

The *Gant* majority requires police to engage in a case-by-case analysis of the circumstances of every arrest of a recent occupant of an automobile to determine whether the circumstances justify searching the passenger compartment of the automobile as part of the search incident to arrest. Such a case-by-case assessment of the facts creates uncertainty and inconsistency in applying the search-incident-to-arrest exception to the warrant requirement and inhibits police from conducting arrests and searches safely in these cases. These are the very evils that this Court alleviated by establishing a workable bright-line rule in *Belton*.

This Court's holding in *Chimel*—that police may search incident to arrest the area within the arrestee's immediate control—left lower courts in disarray when applying it to cases in which the arrestee was a recent occupant of an automobile. *Belton*, 453 U.S. at 459. Lower courts had found no workable definition of the area within the arrestee's immediate control "when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.* at 460. Many courts had struggled with the recurring question "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile after the arrestees are no longer in it." *Id.* at 459.

This Court resolved these questions sensibly in *Belton*. This Court noted that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* at 460 (quoting *Chimel*, 395 U.S. at 763). Applying *Chimel* "in light of that generalization," this Court held 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." *Id.*

This bright-line rule makes sense. It is clear and simple. This Court established the rule to articulate "'[a] single, familiar standard'" "'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.'" *Id.* at 458 (quoting *Dunaway v. New York*, 442 U.S. 200, 213–14 (1979)). Fourth Amendment rules "'ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged'" and should not turn upon "'[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions.'" *Belton*, 453 U.S. at 458 (quoting LaFave, 1974 S. Ct. Rev. at 142). The Fourth Amendment "has to be applied on the spur (and in the heat) of the moment," *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001), and requires standards that are "sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made," *id.* Police have an "essential interest"

in "readily administrable rules." *Id.* *Belton*'s bright-line rule clearly informs police officers what is reasonable under the Fourth Amendment when they arrest a recent occupant of an automobile: they may search the automobile's passenger compartment incident to the arrest.

The *Belton* rule is not only clear and simple to apply, but also respectful of the need to protect officer safety in the field and to preserve any evidence from destruction. Arrests, especially arrests of recent occupants of automobiles, are dangerous to police officers. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (arresting automobile occupants presents "inordinate risks" for officers); *Robinson*, 414 U.S. at 234 n.5 ("The danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty."). The *Belton* rule allows police officers first to arrest and secure the occupant, and then to search the passenger compartment of the automobile. The decision to arrest and to search incident to that arrest is "necessarily a quick ad hoc judgment." *Robinson*, 414 U.S. at 235. Every arrest situation is unique, presenting a myriad of variable and often unpredictable circumstances, and officers cannot engage in a detailed *Chimel* analysis at the time of arrest to determine whether the arrestee could reach a weapon or evidence in the automobile. Custodial arrests are dangerous, and "police must act decisively and cannot be expected to make punctilious judgments regarding what is within and what is just beyond the arrestee's grasp." *United States v. Lyons*, 706 F.2d 321, 330 (D.C. Cir. 1983). Although in a given case a weapon or evidence may not be accessible to the arrestee, this Court recognized in *Thornton* that "[t]he need for a clear rule . . . justifies the

sort of generalization which *Belton* enunciated." 541 U.S. at 622–23.

The *Belton* rule strikes the right balance between the need to protect police officers and to preserve evidence in inherently dangerous situations, and the need to respect the individual's right to be free from unreasonable searches. It is "too plain for argument" that the State's interest in officer safety is "both legitimate and weighty." *Mimms*, 434 U.S. at 110. And an individual has a lesser expectation of privacy in the contents of his automobile. *See Wyoming v. Houghton*, 526 U.S. 295, 303 (1999) (car searches intrude much less upon personal privacy and dignity than searches of persons, in light of the everyday exposure of automobiles and their contents to public view, police regulation, and potential involvement in traffic accidents); *California v. Carney*, 471 U.S. 386, 390–92 (1985) ("ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles); *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (car searches are "far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building"). The reduced expectation of privacy in an automobile is "diminished further when the occupants are placed under custodial arrest." *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring) (citations omitted), *overruled on other grounds by United States v. Ross*, 456 U.S. 798 (1982).

In contrast to the *Belton* rule, the *Gant* majority's case-by-case approach gives police no guidance and prevents them from safely conducting an arrest of a recent occupant of an automobile. Because every arrest situation is different and the validity of a search of an automobile's

passenger compartment incident to the occupant's arrest depends on its peculiar facts, police have no guidance to determine when a search is permissible and when it is not:

> [T]he protection of the Fourth and Fourteenth Amendments "can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement."

Belton, 453 U.S. at 458 (quoting LaFave, 1974 S. Ct. Rev. at 142). If police officers must engage in a *Chimel* analysis in every arrest before deciding whether to search the automobile's passenger compartment, this Court's "preference for a straightforward rule for guidance of police officers and avoidance of hindsight determinations in litigation would be frustrated." *Karlin*, 852 F.2d at 971.

The *Gant* majority's case-by-case approach also inhibits police from taking appropriate measures to protect themselves and to preserve any evidence of crime. The *Gant* majority presumes that the police are safe once they have handcuffed the arrestee and placed him in a patrol car. But no procedure eliminates the danger inherent in an arrest. Even arrestees secured in a patrol car, as Thornton and Gant were, can escape and threaten officers or destroy evidence. *See, e.g.*, *Plakas v. Drinski*, 19 F.3d 1143, 1144–45 (7th Cir. 1994) (suspect handcuffed in back seat of squad car escaped from squad car and later confronted police); *United States v. Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir. 1993) (citing incidents in which handcuffed

arrestees killed police officers).[3] Although the *Gant* majority found that the officers arresting Gant were safe once Gant was handcuffed and inside a patrol car, "[p]ersons under stress may attempt actions unlikely to succeed." *United States v. McConney*, 728 F.2d 1195, 1207 (9th Cir. 1984) (holding that presence of several agents with guns drawn on arrestee "was no guarantee that armed violence could not break out when a loaded gun was only two feet away").

The *Gant* majority's case-by-case approach is detrimental to the goals that this Court sought to achieve by establishing a bright-line rule in *Belton* and directly contradicts *Belton* and *Thornton*. This Court should reverse the *Gant* opinion and reaffirm *Belton*'s bright-line rule.

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[3] Indeed, three weeks after the *Gant* majority discounted these risks, an arrestee in Tucson, Arizona, locked in the back of a patrol car, "slipped his handcuffed hands in front of him, broke open [the] patrol car's window and ran away." Dale Quinn, "*Police Recapture Arrestee Who Escaped From Squad Car*," ARIZ. DAILY STAR, Aug. 17, 2007, at B1.

CONCLUSION

For these reasons, the State of Arizona respectfully requests that this Court grant certiorari, reverse the *Gant* opinion, and hold that the search of Gant's car incident to his arrest was constitutional under *Belton* and *Thornton*.

Respectfully submitted,

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