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P R O C E E D I N G S

(11:06 a.m.)

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

I'm sorry. We won't.

(Laughter.)

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

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

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

(Laughter.)

MR. MAZIARZ: None whatsoever, Your Honor.

ORAL ARGUMENT OF JOSEPH T. MAZIARZ

ON BEHALF OF THE PETITIONER

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

More than 27 years ago in Belton, this Court applied its prior decisions in Chimel and Robinson to the arrest of a recent occupant of an automobile. The Court sought to forge a workable straightforward rule that could be easily applied and predictably enforced by law enforcement officers in the field in this dangerous 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
21 can 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 or -- time and location, Your Honor.

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

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

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

25 MR. MAZIARZ: The third is requiring a

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

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

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

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

24 MR. MAZIARZ: I think in *Belton* this Court
25 did apply *Chimel* and simply said, in this recurring

1 situation we need a bright-line rule that can be easily
2 determined and enforced by officers --

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

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

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

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

22 If that's the case, I could say, gee, it's
23 always been considered reasonable, end of case. But --
24 but you -- you give me nothing to hang my hat on.

25 MR. MAZIARZ: Your Honor, there is not much

1 on searches incident prior to 1914, the Weeks case.

2 There really is not any --

3 JUSTICE SCALIA: Something was happening
4 back there.

5 JUSTICE STEVENS: The automobile exception
6 is much older than that.

7 MR. MAZIARZ: Excuse me, Your Honor?

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

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

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

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

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

24 MR. MAZIARZ: There is still a risk.

25 JUSTICE STEVENS: Which are not the facts of

1 Belton.

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

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

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

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

20 MR. MAZIARZ: Well, Your Honor --

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

25 MR. MAZIARZ: In -- in our reply brief we

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

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

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

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

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

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

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

24 (Laughter.)

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 be 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,
3 who authored both Chimel and Belton, recognized that
4 over a decade of experience of Chimel had shown that
5 the courts were in disarray, that courts had confronted
6 similar fact circumstances and come to differing results,
7 that 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 And that makes total sense. Unlike Chimel,
12 which occurred in a home and arises in a situation where
13 the 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 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 a 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 the 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 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 between 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 on the Chimel theory.

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

7 JUSTICE SOUTER: Why isn't it equally
8 workable to say that when the defendant is handcuffed
9 and put 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 has 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 rule?

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
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 the 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 searches 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: Well, no --

11 JUSTICE STEVENS: That would be the
12 automobile exception.

13 MR. YANG: When a suspect is put
14 under custodial arrest, the -- there is increased
15 incentive both to escape, to get weapons, and also to
16 destroy any incriminating evidence that might be --

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

21 MR. YANG: To preserve --

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

1 Evidence of what?

2 MR. YANG: Well, we would take issue with
3 respect to the officer safety, but --

4 JUSTICE SCALIA: I understand that.

5 MR. YANG: But in terms -- in terms of the
6 evidence, the Court recognized in Maryland v. --

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

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

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

20 MR. YANG: No. What I'm -- what I'm talking
21 about is the -- the danger of the custodial arrest
22 situation, Your Honor.

23 JUSTICE KENNEDY: Well, you keep coming back
24 to danger. And let's -- let's assume that some of us
25 think that when he has been handcuffed and in the back

1 of a car and he is about ready to leave the scene, there
2 is no more danger. I want to know if there are any
3 other reasons, other than preserving evidence, for
4 searching the car.

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

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

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

23 MR. YANG: But the point is, on a continuum,
24 Belton provides an administrable rule where officers in
25 the field can guide their conduct. There's going to be

1 instances in which the risk is going to be higher, and
2 there's going to be instances where the risk is lower.
3 And, admittedly, we are on the end of the continuum, but
4 it -- Belton wanted to provide a rule whereby you
5 wouldn't have to guess in these circumstances.

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

11 JUSTICE STEVENS: Normally, to overcome the
12 privacy interest, you need probable cause. And you did
13 need probable cause for the automobile exception too.

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

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

1 MR. YANG: It was in a private house owned
2 by someone else. The officers testified that they
3 normally would not tow it at that point, but certainly
4 they would have had the constitutional authority. It
5 would have been reasonable for officers to impound the
6 car that was not at the residence of the arrestee.

7 JUSTICE GINSBURG: So they could have
8 impounded, and then could they have done an inventory
9 search?

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

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

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

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

24 (Laughter.)

25 MR. YANG: Well, for purposes of the impound

1 and inventory search, so long as there's a reasonable
2 basis, and the reasonable basis would be to secure the
3 vehicle to get it off the street when the occupant has
4 been arrested and wouldn't be able to retrieve it, I
5 think --

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

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

22 JUSTICE KENNEDY: Diminished expectations of
23 privacy are not a reason to search.

24 MR. YANG: Correct, but when it's balanced
25 --

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

3 MR. YANG: Officer safety and the need for
4 an administrable rule, which is --

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

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

25 MR. YANG: The likelihood of that event

1 occurring is relatively small. The potential risks to
2 officers are great. Given that this does occur, that
3 individuals do escape from vehicles, and -- here the
4 vehicle, the police vehicle, was parked immediately
5 behind the --

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

9 MR. YANG: It will depend on the
10 circumstances, Your Honor. Sometimes --

11 JUSTICE BREYER: I mean, are we going to have
12 one of these spectrum things where --

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

1 Court recognized that in Belton, and in fact reaffirmed
2 that in Thornton. Just recently, the Court explained
3 that experience has shown the need for a bright-line rule
4 in this context.

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

11 (Laughter.)

12 MR. YANG: I --

13 JUSTICE SCALIA: That's certainly a
14 bright-line rule.

15 MR. YANG: I doubt that -- the hypothetical
16 that someone --

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

24 MR. YANG: We think that that would be the
25 exception. It's possible. We don't think that would

1 happen on a routine basis, and certainly police
2 departments and the Federal Government would not
3 encourage our officers to take that risk.

4 JUSTICE BREYER: No, nobody would.

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

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

14 MR. YANG: For instance, like a gun right
15 underneath the seat, which was exactly what was --

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

24 MR. YANG: May I?

25 CHIEF JUSTICE ROBERTS: Sure.

1 MR. YANG: Officer safety underlies the
2 Chimel exception, to begin with.

3 JUSTICE STEVENS: I understand Chimel, but
4 --

5 MR. YANG: And Chimel --

6 JUSTICE STEVENS: -- it didn't underlie
7 Ross.

8 MR. YANG: That's correct, but it's a
9 different doctrine. I'm mean, the fact about --

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

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

19 CHIEF JUSTICE ROBERTS: Thank you, Mr. Yang.

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

21 CHIEF JUSTICE ROBERTS: Mr. Jacobs.

22 ORAL ARGUMENT OF THOMAS F. JACOBS

23 ON BEHALF OF THE RESPONDENT

24 MR. JACOBS: Mr. Chief Justice, and may it
25 please the Court:

1 I'd first like to address the issue of the
2 historical basis for the Fourth Amendment that was
3 raised earlier. I would note that in the Respondent's
4 brief, on page 13 footnote 5 and on pages 15 through 16,
5 the LaFave treatise is cited. That treatise addressed,
6 primarily in the context of automobile searches, a
7 history of the -- the nature of Fourth Amendment
8 restrictions on that type of search.

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

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

22 (Laughter.)

23 JUSTICE SCALIA: What -- if -- if we don't
24 apply the officer safety rationale to searches of the
25 person, no matter how elderly, how eminent, how virtuous

1 the person is, you can frisk. We're obviously not
2 applying the officer safety rule across the board.
3 We're adopting a bright-line rule that obviously applies
4 to many situations in which the officer is not at risk.
5 Why can't you do the same for automobiles?

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

24 JUSTICE SCALIA: What's -- what's the
25 history there? Do you know the history there?

1 MR. JACOBS: In -- in terms of extension of
2 the car rights?

3 JUSTICE SCALIA: Yes, what if it's
4 Thomas Jefferson's phaeton --

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

8 JUSTICE SCALIA: There is not much there.

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

10 JUSTICE SCALIA: There is not much there.

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

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

24 MR. JACOBS: The --

25 JUSTICE KENNEDY: It seems to me that the

1 absence of -- dominion and control is -- is just a
2 conclusory statement to explain what happens in the case
3 the person is arrested, but it -- it doesn't seem to me
4 to provide a rationale.

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

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

15 MR. JACOBS: Well, keeping in mind the
16 police have no right to search the car except under
17 delineated exceptions. And what the Government is
18 asking here --

19 JUSTICE KENNEDY: That is what they are
20 asking about in this case.

21 MR. JACOBS: Well, what the Petitioner is
22 asking, Justice Kennedy, is that the Belton rule be
23 interpreted so expansively that it's no longer simply a
24 bright-line rule of what you can search, but it's
25 actually a bright-line rule that removes judicial review

1 from when you can conduct that search. And the problem
2 with that is --

3 JUSTICE ALITO: But don't you have to show
4 that there are special circumstances here justifying the
5 overruling of Belton?

6 MR. JACOBS: No.

7 JUSTICE ALITO: No?

8 MR. JACOBS: No, Mr. Justice Alito. We do
9 not have to show that there are any special
10 circumstances, and we do not necessarily have to
11 overrule Belton here.

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

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

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

22 MR. JACOBS: We do not lose, Justice
23 Alito. The reason is because of the focus that the
24 Petitioner places on the aspect of that holding. They
25 take it in a vacuum. They don't look at the word

1 "contemporaneous" in terms of defining "incident to
2 arrest."

3 The problem with the search in this case and
4 so many others is that the search that is conducted is
5 after the police have taken custody and secured the
6 individual.

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

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

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

1 That is why your response to Justice Alito
2 really sort of shook me. Because I was thinking, one, I
3 have to take this as contemporaneous; and I have to run
4 squarely into the problem that for some period of years
5 Belton has been the law and maybe even before Belton. I
6 don't know about Thomas Jefferson's automobile. But,
7 nonetheless, no disaster has occurred, and so why would
8 we overrule an earlier case?

9 Now, that's -- that's exactly my problem.
10 And so if you were interested in that, you have to give
11 me an answer.

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

23 JUSTICE ALITO: What does contemporaneous
24 have to do with officer safety? It has to do with
25 timing doesn't it?

1 MR. JACOBS: Well, if we consider, Justice
2 Alito, that officer safety is a function of when you make
3 that assessment. Is officer safety most at risk when
4 the person is initially seized? Yes. However, once
5 they are in the back of a police car as Justice Scalia
6 pointed out they pose a threat to no one, and the
7 record is clear on that.

8 JUSTICE ALITO: Let's say when an arrest is
9 made, 25 SWAT team officers are there. The person
10 arrested is a person of slight stature. They immediately
11 descend on this person and manacle the person in every
12 possible way, but it's all done within 10 seconds. Is
13 that not contemporaneous?

14 MR. JACOBS: If one were to assume a search
15 was conducted at that moment, then that would be --

16 JUSTICE ALITO: And immediately they search.

17 MR. JACOBS: I'm sorry?

18 JUSTICE ALITO: Immediately they search.

19 MR. JACOBS: If they immediately search
20 after they had finished restraining the person and
21 there is a defined period between it, be it 30 seconds or
22 a minute or two minutes, that's not contemporaneous because
23 the reasons supporting that search have not -- are not
24 supported by the facts and the exigency. That's the
25 problem here, is that Belton was a situation where there

1 was an immediate and continuing risk to the officer.

2 CHIEF JUSTICE ROBERTS: But that's the whole
3 point. You're looking at the specific facts of Belton.
4 Belton adopted a bright-line rule. The whole point of
5 a bright-line rule is you don't look at the specific
6 facts. And it presents a problem here. You say the guy
7 is handcuffed and in the back of a car. Well, what
8 if he's just handcuffed but not in the back of the car?
9 What if he's in the back of the car but not handcuffed?
10 What if there are five people around who might break
11 open the police car and free him? What if there are
12 three people around? You get in exactly the same case-by-
13 case inquiry that Belton said we are not going to do.

14 MR. JACOBS: Mr. Chief Justice, we look at
15 Buie, we look at Mincey, we look at Chimel, and in each
16 of those cases, this Court affirmed that the focus is on
17 the risk posed by the arrestee. In Mincey, the Court
18 noted that a search conducted to address the immediate
19 risks posed --

20 CHIEF JUSTICE ROBERTS: Were those all
21 pre-Belton?

22 MR. JACOBS: Those are not all pre-Belton,
23 Your Honor.

24 CHIEF JUSTICE ROBERTS: Which one is not?

25 MR. JACOBS: Mincey was after Belton, Your

1 Honor.

2 CHIEF JUSTICE ROBERTS: Are those all
3 pre-Thornton?

4 MR. JACOBS: Those are all pre-Thornton,
5 Your Honor.

6 CHIEF JUSTICE ROBERTS: Well, the point is
7 that in Thornton, of course, the guy was handcuffed in
8 the back of the police car.

9 MR. JACOBS: And that's correct.

10 CHIEF JUSTICE ROBERTS: We nonetheless
11 applied Belton.

12 MR. JACOBS: In Thornton, Your Honor, the
13 Petitioner in that case waived this analysis that we are
14 dealing with in this case, but it is true that the
15 arrestee was secured. The issue was whether he was a
16 recent occupant of the vehicle when he was apprehended
17 and whether we should even consider application of
18 Belton.

19 CHIEF JUSTICE ROBERTS: I guess my question
20 is, what is left of the Belton bright-line rule if you
21 are prevail?

22 MR. JACOBS: Exactly what was left when
23 it began, Mr. Chief Justice, which is --

24 CHIEF JUSTICE ROBERTS: No, we've got to
25 look -- we've to have a case-by-case inquiry to determine

1 whether there's actually in that case a threat to officer
2 safety.

3 MR. JACOBS: If we assume that that
4 assessment is something new, Mr. Chief Justice, then we
5 are accepting without a basis Petitioner's
6 interpretation of Belton's bright-line rule as extending
7 beyond simply what is the permissible scope of
8 the search, remembering that Belton only applied Chimel
9 to the automobile situation. Petitioner advocates a much,
10 much too broad interpretation of this bright-line rule
11 that arose out of Belton, and therein lies the problem.

12 JUSTICE ALITO: The bright-line rule is set
13 out in one sentence, which is the sentence that I read to
14 you, but if you just assume for the sake of argument that
15 in order to prevail -- in order for you to prevail, Belton
16 has to be overruled. What is your -- what's the
17 justification for overruling Belton? Is it -- has there
18 been no reliance on it? Is the Belton rule less workable
19 than the rule that -- the case-by-case rule that you're
20 proposing? Is it undermined by subsequent developments
21 and precedent or does stare decisis simply not count in
22 these constitutional cases?

23 MR. JACOBS: Well, Justice Alito, stare
24 decisis, of course, always counts except where we're
25 wrong. Now, in the case that you're proposing --

1 CHIEF JUSTICE ROBERTS: Except where you
2 are wrong? Stare decisis comes into play only assuming
3 the decision is wrong.

4 MR. JACOBS: Correct. Stare decisis is
5 important, but if you're wrong, you have to consider
6 overruling, is my point, Mr. Chief Justice. The --

7 JUSTICE ALITO: That's enough. If it was
8 wrong, if we think Belton was wrong, that's enough
9 for overruling it.

10 MR. JACOBS: Yes, and if the Court is
11 considering it, Mr. Justice Alito, if you would like me
12 to answer the question of, assuming we should overrule
13 Belton, why we should do it, the answer is Chimel provides
14 us with sufficient tools for officers to protect their
15 safety in the field because we recall there are
16 other exceptions to automobile searches which are based
17 on actual grounds.

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

23 MR. JACOBS: Yes.

24 JUSTICE BREYER: And at that point I'd still
25 need a reason why you should depart from that earlier

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

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

20 And even the amici for the Petitioner in
21 this case acknowledged that officers are not going to
22 deviate from those procedures just to make a search in
23 the future if the rule is changed, but primarily that,
24 that the assumption that underlies Belton is not shown
25 to be empirically true. It's empirically false.

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

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

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

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

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

23 And, of course, the justification for
24 suggesting that that's too broad a rule is the very
25 strong privacy interest in containers in cars driven by

1 ordinary motorists. That's really what's at issue under
2 Belton.

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

5 And Buie is 1990, Your Honor. My able staff
6 has provided the answers.

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

13 If there are no more questions, I will
14 yield the floor.

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

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

22 CHIEF JUSTICE ROBERTS: Just to explore
23 that, that does seem to me to be overruling Belton to
24 the extent Belton adopted a bright-line rule. What
25 you're saying is, well, in these circumstances Belton

1 applies, and in these circumstances, it doesn't. But
2 you're overruling Belton when you say there's no longer
3 a bright-line rule.

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

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

22 MR. JACOBS: Belton only requires that if
23 the passenger compartment of the vehicle is arguably
24 within the reach of an arrestee who was a recent
25 occupant, that the police may contemporaneously search

1 the passenger compartment without regard for how far.

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

9 MR. JACOBS: Belton --

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

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

22 And even though we know from police
23 procedures that empirically that's not really true, we
24 know that we can't -- the Petitioner can't cite a single
25 instance where somebody has gone back to his car,

1 grabbed a weapon, and attacked an officer. It just
2 hasn't happened. Empirically it's false. And that, as
3 Justice Breyer pointed out perhaps by his question, is
4 one of the flaws of Belton that courts may continue to
5 struggle with, but the bright-line doesn't change.

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

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

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

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

24 JUSTICE ALITO: One person is arrested,
25 three people who were occupants are not arrested. They

1 are all out by the side of the car. One of them is in
2 handcuffs. Three of them are not arrested, not in
3 handcuffs. There's no danger of officer safety there --

4 MR. JACOBS: Officers --

5 JUSTICE ALITO: -- as to the other three
6 people?

7 MR. JACOBS: Well, first of all, again,
8 the focus for the analysis is on the danger from the
9 arrestee, and we know that from Buie and the many cases
10 that go with it. But, importantly, officers have other
11 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 the 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,
23 that 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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