Exceptions to the Warrant Requirement: Search Incident to a Lawful Arrest

Key Concepts

- Officer Safety and Preservation of Evidence
- “Wingspan” Rule
- Special Rules for Arrests of Car Occupants

A. Introduction and Policy. Recall that the exceptions to the warrant requirement can be remembered with the mnemonic S-P-A-C-E-S. The first exception—the “S” in “SPACES”—represents an exception known as a search incident to a lawful arrest.

This exception has long been recognized in both English and American law. Such a search encompasses the person of the arrestee, any containers that she is carrying, and her immediate surroundings. However, a search conducted pursuant to this exception must be “incident to” the arrest—that is, it must be, contemporaneous with the arrest and conducted in a location that is not too far removed from the location of the arrest.

Why do we make an exception to the warrant requirement in this context? The courts have offered a number of different rationales. First, an officer making a lawful arrest already has probable cause to believe that the suspect has committed a crime, and so there is a good chance that evidence of that crime may be found on or near the person at the time of the arrest. Of course, in theory the arresting officer could immediately detain the arrestee at the place of arrest and send another officer to obtain a warrant. But in reality that would be a very impractical (and potentially dangerous) procedure. Second, the arrestee may have a weapon or some other item which he could use to injure the officer and/or facilitate his escape from custody. And finally, an individual who has just been arrested has a
lessened privacy interest. Thus, the intrusion is considered not as great as if the warrantless search were being conducted on an average citizen.

This search incident to a lawful arrest doctrine (sometimes referred to as the “SILA” doctrine) has a lengthy and well-established pedigree. As early as 1914 in Weeks v. United States, the Supreme Court unhesitatingly acknowledged “the right on the part of the government always recognized under English and American law to search the person of the accused when legally arrested, to discover and seize the fruits or evidences of crime.”1 The exception thus permits a full and thorough in-the-field search of the arrestee’s person, including any containers found on the arrestee.2

Given the rationale behind the rule, it makes sense for the rule to encompass not just the items that are carried by the arrestee, but also any items that she may be able to access. Thus, eleven years after Weeks, the Court in Carroll v. United States broadened the doctrine’s reach to include not just the arrestee and containers found on her, but also any items within the arrestee’s control.3

B. The Law. A search incident to a lawful arrest is an exception to the Warrant Requirement. As you have read, this means that though warrantless searches are generally disfavored by the Constitution, they are allowed if the circumstances of the warrantless search indicate that it was associated with a legitimate arrest:

When a law enforcement officer performs a lawful arrest of an individual, the officer may conduct a contemporaneous search of:

1. The arrestee’s person;
2. Containers found on the arrestee;
3. Items within the arrestee’s control; and
4. The physical space around the arrestee.

The “arrestee’s person” includes anything the arrestee is holding as well as a full search of the arrestee’s clothing. The “arrestee’s person” also includes, of course, the arrestee’s body. However, this does not mean the police are granted unfettered access. The degree of intrusion must be “reasonable” in light of the government need for the search—so, for example, the police are allowed to conduct a breathalyzer

---

in order to test blood alcohol following an arrest for drunk driving, but they are not allowed (without a warrant) to extract blood from the suspect’s body for the same purpose.\(^4\) It is similarly unlikely the Supreme Court would allow the police to conduct a strip search or a body cavity search immediately after an arrest, though these sorts of intrusive searches are allowed before a suspect is placed into a jail cell with other prisoners.\(^5\) As noted, police can also search “containers” found on the arrestee’s person, although we will see in Section C.6, below that this permission does not include the right to search the contents of an arrestee’s cell phone. Finally, the Court has given considerable thought to just how big the searchable area around the arrestee should be. Under current law, the police are allowed to search the area within the arrestee’s reach or “wingspan.”

In addition to what may be searched, the search incident to a lawful arrest exception has two other critical elements. The first requires, as the name suggests, that the search must be an “incident of” or “incidental to” an arrest. This means that the search must flow from and be reasonably associated with the arrest itself. This element first imposes a temporal constraint. For example, the warrantless search of an arrestee that doesn’t occur until seven days after arrest would not be “incident to” the arrest. Consequently, though some other exception may justify a warrantless search delayed by a week, such a search would not be permissible under the search incident to a lawful arrest exception. In addition to a temporal limit, the “incident to” requirement also places a spatial constraint on the search. As the Court has said, “[o]nce an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest.”\(^6\) We will explore in the next section just how far removed the search may be.

The second element suggested by the exception’s label—search incident to a lawful arrest—is that the exception only applies if there is a “lawful arrest.”\(^7\) Thus, if a person is briefly detained for reasonable suspicion (see Chapters 9 and 19), but not arrested, a full warrantless search of that person cannot be justified as a search incident to a lawful arrest. Similarly, if the arrest is invalid (for example, because the police did not have probable cause) the subsequent search of the arrestee cannot be excused as a search incident to a lawful arrest.

---

\(^7\) Knowles v. Iowa, 525 U.S. 113 (1998); but see Cupp v. Murphy, 412 U.S. 291 (1973) (finding that the search incident to a lawful arrest rationale allowed the police to conduct a “limited” search consisting of scraping under the suspect’s fingernails where the suspect was temporarily detained at the stationhouse upon probable cause to believe he had committed a murder).
A related proposition is also true. Not only is a lawful arrest necessary for application of the exception, in large measure it is also sufficient. The authority to search pursuant to the exception flows directly and completely from the fact of the arrest itself. Consequently, though you read above about the original justifications for the exception—officer safety, hindrance of escape, and preservation of evidence—it has long been recognized that the prosecution is not required to prove the existence of any one of these justifications before the exception will be applied in any particular case. Instead, the prosecution need only demonstrate that the arrest was supported by probable cause. “Since it is the fact of custodial arrest which gives rise to the authority to search, it is of no moment that [an officer] did not indicate any subjective fear of the [arrestee] or that he did not himself suspect [the arrestee] was armed.” In fact, the Court has found that even if an arrest was not authorized under state law, a search incident to that arrest will be legal as long as the arrest was supported by probable cause.

A search incident to a lawful arrest may also include the passenger compartment of a car if the arrestee is a recent occupant of the vehicle. Known as the Belton doctrine, this rule was originally understood to provide officers with virtually limitless authority to search cars whenever they arrested a recent occupant. However, the Court has created a significant limitation to the Belton doctrine: If the arrestee has been secured (i.e., handcuffed or otherwise brought under police control), officers do not have automatic authority to search the interior of the car. Instead, the police officers must be able to demonstrate either an actual and continuing threat to their safety, or a reasonable belief that evidence related to the crime of arrest is present in the vehicle.

This recent modification of the search incident to a lawful arrest exception has raised interesting questions regarding the prosecutor’s burden to establish justification for such searches. These questions are explored in greater detail in Section D, below.

C. Applying the Law. The search incident to a lawful arrest exception has received repeated scrutiny from the Supreme Court. Notwithstanding the Court’s continued examination, current doctrine is largely consistent with its beginnings. For example, the exception remains applicable only to contemporaneous searches that are not too distant in time or location from the arrest. Similarly, the spatial

---

limits on the search, though somewhat tumultuous in their development and currently broader than originally articulated by the Court, have now found an equilibrium that is logically related to the exception’s origins.

Like many other aspects of the Fourth Amendment, the search incident to a lawful arrest exception certainly faced the pressure to answer the needs of law enforcement. This pressure caused some significant expansion of the doctrine in the 1980s and 1990s, a period in which the doctrine was interpreted expansively when applied to searches incident to the arrest of a recent occupant of a vehicle. However, early in the 21st century the Court curtailed this expansion, imposing limits that largely advance the exception’s original justifications. As you will read in Part C.6., below, we are at the beginning of another period of reevaluation as the Court considers the reach of the exception in the face of portable technology.

1. Right to Search Incident to Lawful Arrest Is Automatic. Although the SILA doctrine’s original justifications were to protect officers, prevent escape, and prevent destruction of evidence, the Supreme Court has broadened the power over the years to the point where the right to search incident to an arrest is automatic, even if in a particular case it does not actually fulfill any of the doctrine’s original purposes:

**Example:** *United States v. Robinson,* 414 U.S. 218 (1973): Officer Richard Jenks saw Willie Robinson driving late one evening near 8th and C Streets in northeast Washington, D.C. Based on prior contacts with Robinson, the officer had probable cause to believe that Robinson was driving on a revoked driver’s license, which was an arrestable offense. Accordingly, Jenks pulled Robinson over and placed him under arrest. Following the arrest, Officer Jenks searched Robinson. During a pat-down of the front of Robinson’s body, Jenks felt something in the left breast pocket of Robinson’s coat. Jenks reached into the pocket and retrieved a crumpled cigarette pack. He manipulated the pack and felt objects inside. He did not know what they were, so he opened the pack and found fourteen gel capsules of heroin. Robinson was ultimately convicted of possessing the heroin and he appealed his case to the Supreme Court.

**Analysis:** The Supreme Court approved the warrantless search of Robinson as a search incident to a lawful arrest. Robinson had argued that the search could not be justified as a search incident to an arrest because (1) the officer had no reason to believe that the crumpled cigarette pack contained a weapon or an item to help Robinson escape; and (2) Robinson had been arrested for driving with a suspended license, and there was no reason for the officer to
believe that he would find further evidence of that crime inside the cigarette pack. The Supreme Court held that “the fact of the lawful arrest [alone] establishes the authority to search,” and that no further showing is necessary to justify the search.

This “automatic” right to conduct a search incident to any lawful arrest has been weakened ever so slightly in the context of searches of automobiles incident to the arrest of an occupant (see Section C.3, below), and in the context of searching cell phones (see Section C.6, below), but otherwise it is still good law.

2. Limits on Geographic Range of Search—Generally. As you read, the Court in *Weeks* and *Carroll* expanded the scope of the search incident exception beyond the arrestee’s person to include items within the arrestee’s “control.” A few years later, in *United States v. Agnello*, the Court stated in dictum that the search incident exception also allowed the police to search the “place” of arrest. In the years after *Agnello*, the Court struggled to identify the appropriate boundaries of *Agnello’s* “place” expansion. At first the Court suggested that the exception authorized search of an area that included the entire house or office space in which the arrest occurred. However, through a whip-sawing development of the doctrine, this wide-ranging interpretation was ultimately rejected. The search incident to a lawful arrest doctrine as currently interpreted permits a search of the area immediately surrounding the arrestee “from within which he might gain possession of a weapon or destructible evidence.” Put somewhat differently, this area might be understood to include any area the arrestee can readily access.

As a matter of common sense, this rule of “ready access” when applied to someone arrested on the street would not permit the warrantless search of a suitcase in the playground three doors down or a duffel bag stashed under a mailbox on the corner across the street (though there may be other justifications for such searches). When a person is arrested inside of a home, however, the lines of demarcation become a bit fuzzier. Does the area from which the arrestee might gain possession of a gun include the entire home? Does it include only the room in which the arrestee is standing? Should different rules apply depending upon whether the arrest occurs

in a one-bedroom apartment or a twenty-room mansion? The Court answered these questions in its review of the search of Ted Chimel’s three-bedroom house:

Example: Chimel v. United States, 395 U.S. 752 (1968): Police officers in Santa Ana, California, obtained an arrest warrant for Ted Chimel in connection with the burglary of a local coin shop. When the officers arrived at Chimel’s house, his wife let them in. Chimel returned home from work approximately fifteen minutes later. The officers immediately placed him under arrest. They then asked Chimel if they could search the residence. He told them they could not.

The officers ignored Chimel’s refusal, advising him that a search of the home was permitted incident to his arrest. Thereafter, the officers had Mrs. Chimel walk them around the three-bedroom home. For approximately the next forty-five minutes, the officers searched the entire house including the attic, a small workshop, and the garage. In the master bedroom and the sewing room, the officers ordered Mrs. Chimel to open drawers and move things around. During the search, the officers found a number of items that were later introduced as evidence in the burglary prosecution.

At trial, Chimel objected to the admission of the evidence. He argued that the search of his home infringed the Fourth Amendment’s ban on unreasonable searches. However, the California courts reviewing the case found that the search of the home fell squarely within the search incident to a lawful arrest exception to the warrant requirement. Four years after Chimel’s conviction, the Supreme Court took up the dispute.

Analysis: The search of Chimel’s home was not justified as an incident of his arrest. The search incident to a lawful arrest exception to the warrant requirement is validated by just three aims—preventing harm to the arresting officer; preventing escape; and preventing the destruction of evidence. These justifications make it entirely reasonable to permit the search of areas from which the arrestee might actually gain possession of a weapon or evidence. However, these rationales do not justify roving searches that include “any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself.”

---

These identified contours of the search incident exception are unaffected by the size of the dwelling in which the arrest occurs. Whether the arrest occurs in a one-room hovel or a palatial manor, the permissible zone of police exploration is confined to the area within the arrestee’s reach. The search of Chimel’s house extended far beyond this permissible zone and was thereby unconstitutional.

Following Chimel, the searchable zone incident to an arrest was understood to include the area surrounding the arrestee and any containers in the area that the arrestee might access at the time of the arrest. The Chimel doctrine is sometimes referred to as the “wingspan” doctrine because it authorizes a search of the area within the arrestee’s grasp or “wingspan.” Consistent with its defined contours, the area does not extend outside the home when the arrest occurs inside;17 and does not extend inside the home when the arrest occurs outside.18

3. Limits on Geographic Range of Search—Cars. In addition to homes and other buildings, the Court has also considered the spatial limits of a search incident to a lawful arrest when the arrestee is the recent occupant of a car. Theoretically, such a search could be limited any number of ways. For example, consistent with Chimel, the searchable area might be thought to “float” around the arrestee, and thus, to turn on whether the arrestee is still inside the car at the time of the search. Also consistent with Chimel, one could envision the search as being confined to just that area of the car from which the arrestee was seized. Alternatively, consistent with Agnello, the permissible area of search might be thought to include the car’s entire interior. Ultimately, the Court settled on a rule that falls somewhere between these alternatives.

Recognizing that a clear rule had already been established by Robinson in connection with the search of a person incident to a lawful arrest, the Court in Belton set out to create similar clarity for the search of cars pursuant to the exception:

Example: New York v. Belton, 453 U.S. 454 (1981): A state trooper was driving an unmarked car on the New York Thruway when a car sped past him. The officer chased the car down and pulled it over. There were four men in the car. After asking for the driver’s license and registration, the officer noticed an odor of burnt marijuana coming from the car. He also saw an envelope on the floor of the car marked “Supergold,” a packaging he associated with marijuana. The officer ordered all four men out of the

---

car and placed them under arrest. None of the men were handcuffed, but he separated them along the side of the roadway. He then searched the backseat of the car.

On the backseat of the car, the officer found Belton’s black leather jacket. The officer unzipped a pocket on the jacket and retrieved cocaine. Belton was charged and convicted of drug offenses. He challenged the search of his jacket, arguing that it did not fall within the scope of a search incident to his lawful arrest because he had no access to it.

Analysis: The search of Belton’s jacket was entirely lawful.
The Court’s decision in *Chimel* recognized the space that is searchable incident to a lawful arrest includes any areas within the immediate control of the arrestee. The passenger compartment of a car is a fairly confined area. Even if it is not a foregone conclusion the area will be accessed by an arrestee, it is possible. Consequently, it is appropriate to assume “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 item.’ ”19 Under the authority of *Chimel*, the entire passenger compartment of the car may therefore be searched incident to the arrest of one of the car’s occupants.

Furthermore, the permissible search area includes all containers. Consequently, the search may include the glove compartment and consoles, and any luggage, boxes, bags, or clothing. The permissible search area does not, however, include the trunk.

Though the majority in *Belton* described its rule as squarely within the *Chimel* doctrine, the dissenters complained that the holding in fact constituted a vast broadening of *Chimel*’s authority. In the dissenters’ view, *Belton* approved a new “area search” incident to lawful arrest even though, on the facts before it (and presumably on the facts of many cases yet to come) there was no chance the arrestee could have accessed the area: “In its attempt to formulate a ‘single, familiar standard’ to guide police officers . . . the Court today disregards [*Chimel*’s] principles, and instead adopts a fiction—that the interior of a car is *always* within the immediate control of an arrestee who has recently been in the car.”20 The dissenters warned that the *Belton* rule was a “dangerous precedent” that was

20 Id. at 466 (Brennan, J., dissenting) (emphasis in original).
unconstrained by the justifications underlying creation of the search incident to a lawful arrest exception.\textsuperscript{21}

In the years following the \textit{Belton} decision, the dissenters’ concerns were realized. \textit{Belton} could have been interpreted narrowly, allowing a car search incident to an arrest when (and only when) a recent occupant has been arrested and was still within reaching distance of the car. The rule, however, came to be understood much more comprehensively: It effectively created a prerogative, unrelated to conditions at the time of the search, which allowed police to search a car whenever someone who had been in the car was arrested. Searches of arrestees’ vehicles were approved in cases involving only the most strained concern for officer safety or evidence destruction. For example, the \textit{Belton} doctrine was cited to support a car search even though the police did not make contact with the arrestee until he was walking away from the vehicle.\textsuperscript{22} It was also cited to support the search of a car parked outside of an auto repair shop even though the driver of the car was arrested inside the establishment.\textsuperscript{23} The case was cited to support a car search after the arrestee was transported from the scene.\textsuperscript{24} And, in Justice Scalia’s words, the number of cases involving car searches after the arrestee was handcuffed and sitting in the back of a police car “are legion.”\textsuperscript{25}

Describing the post-\textit{Belton} state of affairs, Justice O’Connor wrote, “lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales of \textit{Chimel}.”\textsuperscript{26} In 2009, responding to calls from “courts, scholars, and Members of this Court who have questioned [\textit{Belton’s}] clarity and its fidelity to Fourth Amendment principles,” the Court set out to restore balance to the SILA exception as it applied to cars\textsuperscript{27}:

\textbf{Example: Arizona v. Gant, 556 U.S. 332 (2009):} Police received an anonymous tip that drugs were being sold out of a residence in Tucson, Arizona. Officers visited the residence and asked to speak with the owner. Rodney Gant, who answered the door, told the officers the owner would be back shortly. The officers left. They also conducted a records check and

\textsuperscript{21} Id. at 468.
\textsuperscript{22} Thornton v. United States, 541 U.S. 615 (2004).
\textsuperscript{23} Black v. State, 810 N.E.2d 713, 716 (Ind. 2004).
\textsuperscript{24} United States v. McLaughlin, 170 F.3d 889 (9th Cir. 1999).
\textsuperscript{25} Thornton, 541 U.S. at 628 (Scalia, J., concurring in judgment).
\textsuperscript{26} Id. at 614 (O’Connor, J., concurring in part).
\textsuperscript{27} Arizona v. Gant, 556 U.S. 332, 338 (2009).
determined that Rodney Gant had a suspended license and an outstanding arrest warrant for driving on a suspended license.

The officers returned to the house later in the evening. They arrested a man in the back of the house (for providing a false name), and a woman parked in front of the house (for possession of drug paraphernalia). Gant then pulled into the driveway. Gant got out of his car, shut the door and had walked ten to twelve feet away from the vehicle when he was arrested. The police handcuffed Gant and locked him in the back of a patrol car. After Gant was secured, the officers searched his car and recovered a gun and a bag of cocaine. When asked why they had searched Gant’s car, one of the officers testified, “Because the law says we can do it.”

Following conviction, and a somewhat meandering course through the state courts, Gant’s case arrived in the Supreme Court. The state argued that *Belton* clearly authorized the search. Gant argued that the evidence was unlawfully obtained.

**Analysis:** The search of Gant’s car was unconstitutional. The search incident to a lawful arrest exception is defined by *Chimel* when applied to searches of places. In *Chimel*, the Court explained that the permissible area of a search incident to a lawful arrest is defined by the arrestee’s “reaching distance.” This boundary appropriately recognizes the concerns for officer safety and evidence destruction. *Belton* simply applied *Chimel* to the context of car searches. Consequently, the decision in *Belton* is circumscribed by *Chimel*‘s twin rationales: “If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search incident to arrest exception are absent and the rule does not apply.”\(^\text{28}\)

As a practical matter, this limitation means that searches of vehicles incident to an occupant’s arrest are authorized under *Chimel* and *Belton* only if the arrestee is “unsecured and within reaching distance of the passenger compartment at the time of the search.” Understanding *Belton* any more broadly “would serve no purpose except to provide a police entitlement, and it is anathema to the Fourth Amendment to permit a warrantless search on that basis.”\(^\text{29}\)

\(^{28}\) Id. at 339.

\(^{29}\) Id. at 347.
The justifications for the search incident exception that were recognized in *Chimel* were not, however, the only justifications for the doctrine. The twin rationales of officer safety and evidence preservation justify the search incident exception in all arrest contexts. But, a third rationale for the exception exists in the specific context of vehicles: “[W]hen it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle,” a third justification for a search incident to the arrest of a recent occupant exists.

In Gant’s case, he was secured in the back of a police car at the time his own car was searched. The twin rationales of *Chimel*, therefore, could not justify the search. Furthermore, he was arrested for a traffic violation: “Gant was arrested for driving with a suspended license—an offense for which police could not expect to find evidence in the passenger compartment of Gant’s car.” The alternative rationale for a search incident in the vehicle context—the likelihood of discovering offense-related evidence—therefore also provided no justification for the search.

As commentators have recognized, the modified framework advanced in *Gant* provided both substantial limitation, and significant expansion of the search incident doctrine. The limitation, as noted, reigned in the broad reach of *Belton* by restoring the twin justifications of *Chimel*—evidence preservation and officer safety—in the context of searches of cars incident to arrest. A search of an arrestee who has already been subdued by police is not supported by either of these rationales. However, the *Gant* Court did not stop there. It also found that a search incident to arrest (at least in the context of a car search) could also be justified by a desire to locate evidence of the crime of arrest. Previously, such a warrantless evidentiary exploration had been recognized only under the automobile exception to the warrant requirement, which required probable cause. The *Gant* Court’s “reasonable belief” language did not appear to require probable cause—indeed, the Court noted that the warrantless search it was recognizing was something other than the search already authorized by the automobile exception. In this regard then, *Gant* broadened the search incident exception by applying it in an entirely new context.

Application of the search incident to a lawful arrest exception in the vehicle context can cause great confusion for students. This is because the warrantless search of cars is authorized not only by the search incident exception, but also by its own discrete exception to the warrant requirement. This second exception—the “A” in

---

30 Id. at 343.
31 Id. at 344.
is the automobile exception. As you will read in Chapter 15, the automobile exception allows the police to search a car whenever officers have probable cause to believe the vehicle contains evidence of criminal activity. Students must be careful to note the significant differences between the automobile exception, on the one hand, and the search incident to a lawful arrest exception, on the other.

First, when a car is searched pursuant to the search incident to a lawful arrest exception, the suspicion justifying the search attaches primarily to the person, not to the car. Under this exception, the car is permissibly searched because the person arrested was a recent occupant. Absent probable cause to arrest (and the actual arrest of) a recent occupant, the search of the car is not permitted pursuant to the search incident exception.

In contrast, for the automobile exception the suspicion justifying the search attaches to the car. The car is permissibly searched under the automobile exception because the police have probable cause to believe the car contains evidence of criminal activity. In applying the automobile exception, it consequently matters little whether the police actually arrest any of the car’s occupants.

As the Court explained in Gant, a second difference is that whenever a car search is justified by the “reasonable belief” justification for a search incident, the reasonable belief must be as to the existence of evidence of the crime of arrest. As the Court noted, “[i]n many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence.”32 (Note that the search of a person incident to their lawful arrest need not be tied to the crime of their arrest, as noted in the Robinson case; only an evidentiary search of their car incident to their lawful arrest must be tied to the crime of arrest).

No similar constraint binds the automobile exception. Assuming the existence of probable cause, that exception permits a search of the car for evidence relevant to any offense.

A third difference between the two types of searches regards the permissible area of exploration. As we have seen, the search incident to lawful arrest exception only allows the search of the passenger compartment of the car. Under the automobile exception, the entire car is the approved target (including the trunk).

32 Gant, 556 U.S. at 343.
4. Limits on Timing of Search. In addition to enjoying only a limited geography, searches incident to a lawful arrest are also cabined by temporal constraints:

**Example:** *United States v. Chadwick*, 433 U.S. 1 (1977): Gregory Machado and Bridget Leary boarded a train from San Diego to Boston. The two brought with them a large footlocker. Train personnel in San Diego noted that the trunk appeared heavy for its size. They also noted that the trunk was leaking talcum powder, a substance often used to mask the scent of marijuana. Train officials notified law enforcement in San Diego, who in turn notified their counterparts in Boston.

When the train arrived in Boston, drug enforcement agents were waiting with a drug detection dog. They did not, however, have a warrant. After Machado and Leary unloaded the trunk they placed it on the floor of the station and sat down on it. The agents released the dog. Unnoticed by Machado and Leary, the dog signaled for the presence of marijuana.

When Chadwick arrived, the three loaded the footlocker into the trunk of Chadwick's waiting car. While the trunk was still open, and before the car was started, the agents arrested all three and seized the footlocker. The suspects and the evidence were transported to the Federal Building in Boston. Approximately an hour and a half after the arrests, the agents finally opened the footlocker. Marijuana was found inside.

At trial, Chadwick and the others objected to the admission of the evidence. They objected to the search, which was removed both in time and in distance from the scene of the original arrests. The State argued that the search of the footlocker was constitutional because the footlocker was seized at the time of the arrests, and was searched as soon after the arrests as was practicable.

**Analysis:** The search of the footlocker could not be justified as a proper search incident to a lawful arrest. Searches incident to a lawful arrest are motivated by the desire to protect evidence and advance officer safety. In keeping with these justifications, the arrestee and any area within the arrestee's immediate reach may be searched incident to the arrest. However, the search of luggage that can no longer be accessed by the arrestee is not permissibly included within the scope of such a search:

“Once law enforcement officers have reduced luggage and other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might
gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.”

Because the search of the footlocker was conducted more than an hour after it had been reduced to the exclusive control of the agents, the Court found the warrantless search of Chadwick’s footlocker was unconstitutional.

The precise amount of time the police are allowed to delay a search after an arrest depends on the circumstances. Usually, though, the search must be contemporaneous. In Chadwick, there was no reason for the one-hour delay after the agents gained control of the footlocker. However, if there is a legitimate reason to delay the search, the court may allow a one hour delay or even longer. In a case which probably represents the outer limits of this rule, the Supreme Court held that a delay of ten hours did not invalidate a search incident to an arrest. The police were investigating a break-in at the local post office, and the perpetrator’s forced entry left paint chips on the window sill and on the window’s mesh cover. Ten hours after the police arrested a suspect, they seized his clothing and found paint chips matching the evidence at the scene. The Court held that this seizure was lawful because the delay was occasioned in part by the fact that substitute clothing for the suspect was not available until the next morning. Under these circumstances, the Court agreed that “[w]hile the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape and evidence.”

5. Must Be a “Lawful Arrest.” As the name of the exception implies, the police cannot conduct a search incident to an arrest unless they actually make an arrest. This is true even if they had the legal right to make an arrest but chose not to do so:

Example: Knowles v. Iowa, 525 U.S. 113 (1998): Patrick Knowles was stopped for driving 43 miles-per-hour in a 25 miles-per-hour zone. Under Iowa law, the officer who stopped Knowles could either arrest Knowles or issue a citation. The officer chose the latter. Nonetheless, the officer also conducted a full search of Knowles’ car under an Iowa statute that permitted such in-the-field searches whenever the authority to arrest existed. The officer found marijuana and a pipe. Knowles was convicted of the drug offense, and he challenged the search.

Analysis: The Supreme Court found the search of Knowles’ car could not be justified under the search incident doctrine because Knowles was only issued a citation: “[W]hile the concern for officer safety in this context may justify the ‘minimal’ additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search.”35

Students should note that the Court has provided somewhat conflicting guidance with regard to the formal arrest requirement. In at least one case, the Court found that the formal detention of a person at the stationhouse upon probable cause (even though not resulting in an actual arrest) was sufficient to justify a limited warrantless search under the search incident to a lawful arrest exception. However, the specifics of that case were unique, and the Court has yet to apply the holding beyond its particular facts:

Example: Cupp v. Murphy, 412 U.S. 291 (1973): In Murphy, the Court allowed the limited search of a suspect even though he had not been formally arrested. Daniel Murphy was suspected of his estranged wife’s murder. When notified of the killing by police, Murphy agreed to come to the station to give a statement. An officer at the police station noticed Murphy had a dark stain under his thumbnail that the officer suspected was blood. When the stain was drawn to Murphy’s attention, he first placed his hands behind his back, and then placed his hand in his pocket, where officers heard the sound of his keys rattling. Police forcibly took fingernail scrapings from Murphy in an effort to obtain evidence of the crime. The scrapings revealed trace amounts of Mrs. Murphy’s skin and blood, as well as fabric from her nightgown. Murphy challenged the warrantless search, arguing that it was not justified by an exception to the warrant requirement.

Analysis: The Supreme Court found that the warrantless seizure of the fingernail scrapings was justified by the search incident to a lawful arrest exception, even though Murphy had not been officially arrested. The police had probable cause to arrest Murphy when he arrived at the station. There was also no question that Murphy was detained against his will at the station for the period necessary to collect the scrapings. The Court found that under these circumstances, the search incident exception applied: “On the fact of this case, considering the existence of probable cause, the very limited

Beyond the unique circumstances found in *Murphy*, however, students should apply the general rule that a formal arrest is a necessary prerequisite to proper application of the search incident exception.

6. Searching Cell Phones and Other Digital Evidence. As we have seen, the search incident to a lawful arrest exception was originally motivated by dual concerns for officer safety and evidence preservation. Early on the Court found that these dual concerns justified the expansion of SILA searches to encompass physical containers on the arrestee’s person, such as the cigarette package at issue in *Robinson*. In more recent years, lower courts relied on *Robinson* to allow searches of address books, wallets, purses, and many other types of “containers,” provided those searches were incident to a lawful arrest.

New questions arose, however, with the growing popularity of cell phones in the early 21st century. Individuals began carrying around digital “containers” that held vastly more information than would have been physically possible before. When a suspect carrying a cell phone was arrested, the arresting officer would frequently conduct an on-the-spot, warrantless search through the suspect’s phone, examining her call log, contact list, address book, date book, browsing history, texts, photos, videos, and anything else that the officer thought might provide useful information about criminal activity. The lower courts were split on the constitutionality of such searches. Some courts treated cellphones and other such devices like the cigarette package in *Robinson* and allowed the searches. Other courts, however, found that cellphones and other digital devices constituted a *sui generis* category that justified an altogether different legal rule. Two of these cases ultimately reached the United States Supreme Court:

**Example: Riley v. California, 573 U.S. 373 (2014):** Police officers pulled over David Riley for driving with expired registration tags. After finding guns hidden in Riley’s car, the police arrested him for possession of a concealed firearm. During the search incident to the arrest, an officer found a cell phone in Riley’s pocket. The officer looked through the text

---

37 United States v. Carrion, 809 F.2d 1120 (5th Cir. 1987).
38 United States v. Watson, 669 F.2d 1374 (11th Cir. 1982).
messages and contact lists and saw incriminating information linking Riley to the Bloods street gang. Later at the precinct, another officer searched through the entire phone and found videos connecting Riley to the Bloods gang as well as photos that connected him to a shooting. Riley was ultimately charged with the shooting, and the prosecutor offered some of the evidence from his cell phone against him at trial. Riley moved to suppress the evidence, but the court ruled that the evidence was properly obtained as part of a search incident to an arrest. Riley was convicted, and he appealed the issue all the way to the Supreme Court.

In the companion case, a police officer saw Brima Wurie engage in what the officer believed to be a drug sale. The officer arrested Wurie and transported him to the station. At the station, officers seized Wurie’s cellphone. As Wurie was being processed, the officers noticed that his phone kept receiving incoming calls from a caller identified as “my house.” Searching through the phone’s internal directory, the officers identified the phone number associated with the “my house” label. They then tracked the number to a physical address. They ultimately searched the property and found drugs, drug paraphernalia and weapons. Wurie moved to suppress this evidence as the fruit of the illegal search of his telephone. The district court denied the motion, and Wurie was convicted. Wurie appealed the issue, and it arrived in the Supreme Court along with Riley’s case.

**Analysis:** The Supreme Court unanimously ruled that the searches of Riley and Wurie’s phones were unconstitutional. The Court conceded that Robinson gave police the automatic right during an arrest to search inside any container for evidence or weapons, even if there was no reason to believe there was evidence or a weapon inside. However, the Court held that cell phones—and digital evidence more broadly—are fundamentally different from physical evidence that a suspect may be carrying on his person.

First, the Court noted that the reasons underlying the search incident to lawful arrest doctrine did not apply with the same force to digital evidence. There is no real way the information inside a cell phone could present a danger to the officer. Accordingly, there can be no justification for a search of such devices based on officer safety. The government had argued that the danger of destruction of evidence was greater with cell phones than with physical evidence, since an accomplice could erase the data on the phone using a technique known as “remote wiping.” The Court, however, dismissed this concern as merely theoretical since the government had provided only
“a couple of anecdotal examples of remote wiping triggered by an arrest.”40

The Court also noted that the police could prevent destruction of evidence by turning the phone off, removing its battery, or placing the phone inside a specialized aluminum foil bag that blocks remote signals.

On the other side of the balancing test, the Court noted that the intrusion of privacy was far greater with respect to the digital evidence on cell phones than it would be for any type of physical search. Cell phones can carry an immense amount of data, and the data they carry cuts broadly across all aspects of a person’s life. Thus, “[m]odern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse.”41

The government had proposed a compromise solution: that police officers be allowed to search a cell phone if they had “reason to believe” evidence of the crime could be found inside. This compromise position was grounded in the Court’s earlier language in Gant, which authorized searches of cars incident to a recent occupant’s arrest if the police had reason to believe evidence of the offense of arrest might be found inside the vehicle. However, the Court rejected the proposed compromise as well, stating that cell phones have so much potential information, “[i]t would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to suppose evidence of just about any crime could be found on a cell phone.”42

Interestingly, the rule the Court adopted in Riley did not draw a distinction between the smartphone at issue in Riley, and the less sophisticated cell phone that was subject to search in Wurie. Even though the phone in Wurie did not contain the massive amounts of information present on Riley’s phone, and even though the police search in Wurie was far more limited than the search in Riley, the Supreme Court held that the same analysis applied in both cases.

The Court was also careful to note that while it had not been suggested that any other exception justified the search in either Riley or Wurie, in a future case another exception to the warrant requirement might justify the search of a cell-phone. For example, if the police needed to check the cell phone immediately to locate a bomb that was about to detonate or find a child who had been abducted,

41 Id. at 17.
42 Id. at 23.
the police would likely be permitted to search the cell phone under the exigent circumstances exception. This exception to the warrant requirement is discussed in Chapter 17.

Finally, it is important to note that the Riley decision echoed many of the arguments raised in the concurring opinions in the Jones case (which involved GPS tracking) that had been decided one year earlier. Four of the justices in Jones argued that continuous tracking of a car’s movements for 28 days provided such a significant quantity of data about a person’s life that it was qualitatively different from tracking the car for just one trip. Likewise, the Riley court observed that the vast breadth of data available on cell phones exposed too much information to law enforcement. Among other things, the Court noted that “[t]he average smartphone user has installed 33 apps, which together can form a revealing montage of the user’s life.” Thus, the search of digital files in Riley was seen as qualitatively different from the search of physical items because of the sheer quantity and breadth of information that was revealed.

Taken together, Riley and Jones can be seen as the Court’s first steps toward recognizing the potential for new technologies to fundamentally change the way the Fourth Amendment restricts law enforcement surveillance. And, these tentative first steps were advanced further in the Court’s Carpenter decision, which you reviewed in Chapter 8. Carpenter was not a search incident to lawful arrest case. But, the logic of Carpenter applies easily outside of the cell site location context. It is still too soon to know whether the Court will take additional steps to recognize the impact of new technologies on the Fourth Amendment. But, it does seem clear, at least for now, that the Court is willing to be aggressive in adapting its Fourth Amendment jurisprudence to the modern age.

D. Policy Debate. As we have seen, the SILA doctrine has evolved in a number of ways since the Supreme Court officially adopted it a hundred years ago in Weeks. The recent cases of Gant and Riley may be the beginning of another stage in this evolution. Recall that in Robinson, the Supreme Court held that the power to conduct a search incident to an arrest was automatic, even if there was no danger of weapons and no chance of recovering evidence of the crime of the arrest. Justice Thurgood Marshall dissented in Robinson, arguing that the touchstone of the Fourth Amendment is reasonableness, and therefore the Court
was wrong to create an automatic right to search the arrestee and his possessions without demonstrating that such a search was reasonable under the circumstances:

There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances. . . . And the intensive, at times painstaking, case-by-case analysis characteristic of our Fourth Amendment decisions bespeaks our jealous regard for maintaining the integrity of individual rights.44

Justice Marshall also pondered whether the Court might have been more willing to protect the arrestee’s privacy rights if the container being searched had been something less humble than a cigarette pack:

One wonders if the result in this case would have been the same were respondent a businessman who was lawfully taken into custody for driving without a license and whose wallet was taken from him by the police. Would it be reasonable for the police officer, because of the possibility that a razor blade was hidden somewhere in the wallet, to open it, remove all the contents, and examine each item carefully? Or suppose a lawyer lawfully arrested for a traffic offense is found to have a sealed envelope on his person. Would it be permissible for the arresting officer to tear open the envelope in order to make sure that it did not contain a clandestine weapon—perhaps a pin or a razor blade?45

Finally, Justice Marshall brought up the danger of pretextual arrests, noting that “there is always the possibility that a police officer, lacking probable cause to obtain a search warrant, will use a traffic arrest as a pretext to conduct a search . . . case-by-case adjudication will always be necessary to determine whether a full arrest was effected for purely legitimate reasons, or, rather, as a pretext for searching the arrestee.”46

The majority in Robinson rejected Justice Marshall’s concerns in favor of a simpler rule that would not require (or allow) the courts to second-guess the judgment made by the officer on the scene. In adopting this simpler rule, the majority emphasized that the arrestee had already suffered a loss of liberty from the very fact of the arrest:

45 Id. at 257 (Marshall, J., dissenting).
46 Id. at 248 (Marshall, J., dissenting).
A police officer’s determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick *ad hoc* judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.47

Of course, in *Robinson*, the simpler, bright-line rule won the day. But *Gant* has since called the “automatic right to search” into question. *Gant* only allows a search of the area around the arrestee (the passenger compartment of the car) if the police have reason to believe there is a weapon or evidence of the arrest. As Justice Alito wrote in dissent in *Gant*, the *Gant* rule conflicts with *Robinson*’s automatic right to search:

> The . . . new rule . . . raises doctrinal and practical problems that the Court makes no effort to address. Why, for example, is the standard for this type of evidence-gathering search “reason to believe” rather than probable cause? And why is this type of search restricted to evidence of the offense of arrest? It is true that an arrestee’s vehicle is probably more likely to contain evidence of the crime of arrest than of some other crime, but if reason-to-believe is the governing standard for an evidence-gathering search incident to arrest, it is not easy to see why an officer should not be able to search when the officer has reason to believe that the vehicle in question possesses evidence of a crime other than the crime of arrest.48

The Court’s recent decision in *Riley* adds even more doubt to *Robinson*’s automatic right to search rule. The Court’s justification for its decision in *Riley* focused on the two *Chimel* factors—danger to the police officers and the risk of the suspect destroying evidence. Since those two factors were absent (or at least diminished) in the context of cell phone data, the Court refused to extend the *Robinson* doctrine into the digital universe. Granted, the amount and breadth of data stored in cell phones was also an important element of the *Riley*

---

47 Id. at 235.
decision, but the Court also pointedly noted that “Robinson is the only decision from this Court applying Chimel to a search of the contents of an item found on an arrestee’s person.”

Robinson is still good law—neither Gant nor Riley overrule it, and the Riley Court went out of its way to state that “Robinson’s categorical rule strikes the appropriate balance in the context of physical objects.” Accordingly, there is currently one rule for searching physical containers and one rule for searching digital “containers.” However, given the growing prevalence of cell phones and other digital methods of storing data, it is possible—perhaps even likely—that the Robinson doctrine will simply fade into insignificance as we increasingly carry more information—documents, datebooks, contact lists, and so on—inside of digital containers.

Gant also potentially creates an even more significant conflict with Chimel itself. Recall that Chimel allowed police to conduct a search incident to lawful arrest for any area within the “wingspan” of the arrestee in order to prevent the arrestee from grabbing a nearby weapon or destroying evidence. This rationale seems to assume that the search is taking place while the arrestee is still present in the location and free to grab any item within his wingspan. Gant pointed out how unrealistic this assumption is in the automobile context, holding that there is no justification for a warrantless search of the car if the arrestee is safely secured and has been removed from the location. Dissenting in Gant, Justice Alito pointed out that Gant’s holding calls the Chimel wingspan rule into question in spaces beyond cars:

[I]n the great majority of cases, an officer making an arrest is able to handcuff the arrestee and remove him to a secure place before conducting a search incident to the arrest. [And] because it is safer for an arresting officer to secure an arrestee before searching, it is likely that this is what arresting officers do in the great majority of cases. . . . Thus, if the area within an arrestee’s reach were assessed, not at the time of arrest, but at the time of the search, the Chimel rule would rarely come into play.

Moreover, if the applicability of the Chimel rule turned on whether an arresting officer chooses to secure an arrestee prior to conducting a search, rather than searching first and securing the arrestee later, the rule would “create a perverse incentive for an arresting officer to prolong the period during which the arrestee is kept in an area where he could pose a danger to the officer.”

50 Id. at 9.
51 Gant, 556 U.S. at 362 (Alito, J., dissenting) (internal quotations and citations omitted).
The result, according to Justice Alito “leaves the law relating to searches incident to arrest in a confused and unstable state.”52 *Gant* allows a search of the arrestee’s wingspan only if the arrestee is still present at the site and unsecured. This limitation “applies, at least for now, only to vehicle occupants and recent occupants, but there is no logical reason why the same rule should not apply to all arrestees.”53

Future cases will determine whether the rationale of *Gant* will further weaken *Robinson* or *Chimel*.

---

**Quick Summary**

When police officers make a lawful arrest of an individual, they have an automatic right to search the individual and the accessible area immediately surrounding him, known as his “wingspan.” Originally these searches were justified by the need to preserve evidence that the arrestee may be able to destroy, and the need to locate weapons which the arrestee could use to threaten the officer’s safety, but the doctrine evolved to allow officers to search even if there was no chance of finding evidence of the crime and the defendant posed no threat to officers.

The Supreme Court has altered this test in the context of searching an automobile pursuant to the arrest of an occupant. A “wingspan” search of the car for weapons or evidence may occur only if the police have not yet secured the arrestee. Once the arrestee is secured, police may only search the automobile as part of a search incident to a lawful arrest if they have “reason to believe” the automobile contains evidence of the crime of arrest. The Court also altered this test in the context of searching cell phones (and perhaps, by extension, similar digital devices)—because of the vast amount of information stored on these devices, and the intimate nature of some of this information, the search incident to lawful arrest doctrine does not apply to those devices.

---

52 Id. at 362 (Alito, J., dissenting).
53 Id. at 363–64 (Alito, J., dissenting) (internal quotations and citations omitted).
Review Questions

1. Purse Full of Contraband. After noticing that a car’s license plate was obstructed by snow, police officers pulled the car over and ran the name of the driver through the database. The driver had an active warrant. The police officers ordered the driver out of the car and placed him under arrest. The officers also ordered the passenger, Emma Coffee, out of the car in order to search the car. Coffee tried to take her purse with her, but officers instructed her to leave it in the car. The officers found nothing in the car, but they found pills, syringes, marijuana, two scales, and various plastic baggies in Coffee’s purse.

Officers then searched Coffee’s person and found crystal meth. Coffee was arrested for possession of drugs and drug paraphernalia. She is challenging the search of her purse and her person. Was this a legal search under the search incident to a lawful arrest doctrine?

2. The Killer Hitchhiker. John Orner was a taxi cab driver in Columbia, South Carolina. After his shift was over, he would frequently stay in his cab for a few extra hours and give free rides to soldiers to and from Fort Jackson, a nearby military base. One night, Orner did not return home at his normal time, and his family reported him missing. His cab was found one hour later. John was slumped dead in the front seat. He had been stabbed to death.

The police began fanning out through the area and found a man dressed in soldier fatigues named Tom Freiburg hitchhiking a couple of miles away from the taxicab. Hitchhiking is against the law in South Carolina, punishable by a $100 fine. The police officers pulled up alongside Freiburg and exited their car with their weapons drawn, ordering him to put his hands on his head. Freiburg complied. While one officer kept his gun out, the other one searched Freiburg and his bag. Inside his bag was a wallet, and inside the wallet the police found credit cards and identification belonging to Orner. Freiburg was arrested and charged with Orner’s murder.

Did the police officers violate Freiburg’s Fourth Amendment rights?

3. Stock Fraud and Cocaine. The Securities and Exchange Commission suspected that James Strasser, a stockbroker at a major New York investment bank, was committing securities fraud by anonymously spreading false information about stocks that he held and then selling his shares just before the information was revealed to be false. After a short investigation, the SEC developed probable cause to arrest Strasser for the crime. Shortly after 9:00 a.m., three SEC agents entered Strasser’s
office and arrested him as he sat at his desk. They handcuffed him and took him to stand near the open door.

One agent guarded Strasser while the other two went back inside his office and searched through his desk, where they found dozens of papers relating to his fraudulent transactions. Strasser also had a gym bag underneath his desk, and the officers opened up the gym bag and looked through its contents. Inside a pocket of the gym bag, they found a plastic bag containing cocaine. One of the officers also sat at Strasser’s computer and browsed through his e-mail and document files. Strasser had logged into his computer using his password just before his arrest, and so his e-mail account and all of his files were accessible to the agent. The agent found a number of e-mails and files that incriminated Strasser. She printed them out on Strasser’s computer in order to use them as evidence.

The officers did not have an arrest warrant or a search warrant.

Did the agents violate Strasser’s rights when they searched:

A. his desk?
B. his gym bag?
C. his computer?
ARIZONA v. GANT
United States Supreme Court,
556 U.S. 332 (2009)

[Justice Stevens delivered the opinion of the Court.]

[Justices Scalia filed a concurring opinion.]

[Justice Breyer filed a dissenting opinion.]

[Justice Alito filed a dissenting opinion, which was joined by Chief Justice Roberts and Justice Kennedy and by Justice Breyer in part.]

I

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

When the officers returned to the house that evening, they found a man near the back of the house and a woman in a car parked in front of it. After a third officer arrived, they arrested the man for providing a false name and the woman for possessing drug paraphernalia. Both arrestees were handcuffed and secured in separate patrol cars when Gant arrived. The officers recognized his car as it entered the driveway, and Officer Griffith confirmed that Gant was the driver by shining a flashlight into the car as it drove by him. Gant parked at the end of the driveway, got out of his car, and shut the door. Griffith, who was about 30 feet away, called to Gant, and they approached each other, meeting 10-to-12 feet from Gant’s car. Griffith immediately arrested Gant and handcuffed him.

Because the other arrestees were secured in the only patrol cars at the scene, Griffith called for backup. When two more officers arrived, they locked Gant in the backseat of their vehicle. After Gant had been handcuffed and placed in the back of a patrol car, two officers searched his car: One of them found a gun, and the other discovered a bag of cocaine in the pocket of a jacket on the backseat.
Gant was charged with two offenses—possession of a narcotic drug for sale and possession of drug paraphernalia (i.e., the plastic bag in which the cocaine was found). He moved to suppress the evidence seized from his car on the ground that the warrantless search violated the Fourth Amendment.

...  

II

Consistent with our precedent, our analysis begins, as it should in every case addressing the reasonableness of a warrantless search, with the basic rule that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” Among the exceptions to the warrant requirement is a search incident to a lawful arrest. The exception derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations.

In *Chimel*, we held that a search incident to arrest may only include “the arrestee’s person and the area ‘within his immediate control’”—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.” That limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy. If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.

In *Belton*, we considered *Chimel’s* application to the automobile context. A lone police officer in that case stopped a speeding car in which Belton was one of four occupants. While asking for the driver’s license and registration, the officer smelled burnt marijuana and observed an envelope on the car floor marked “Supergold”—a name he associated with marijuana. Thus having probable cause to believe the occupants had committed a drug offense, the officer ordered them out of the vehicle, placed them under arrest, and patted them down. Without handcuffing the arrestees, the officer “split them up into four separate areas of the Thruway... so they would not be in physical touching area of each other” and searched the vehicle, including the pocket of a jacket on the backseat, in which he found cocaine.

The New York Court of Appeals found the search unconstitutional, concluding that after the occupants were arrested the vehicle and its contents were “safely within the exclusive custody and control of the police.” The State asked this Court to consider whether the exception recognized in *Chimel* permits an officer to search “a jacket
found inside an automobile while the automobile’s four occupants, all under arrest, are standing unsecured around the vehicle.” We granted certiorari because “courts ha[d] found no workable definition of ‘the area within the immediate control of the arrestee’ when that area arguably includes the interior of an automobile.”

In its brief, the State argued that the Court of Appeals erred in concluding that the jacket was under the officer’s exclusive control. Focusing on the number of arrestees and their proximity to the vehicle, the State asserted that it was reasonable for the officer to believe the arrestees could have accessed the vehicle and its contents, making the search permissible under Chimel. The United States, as amicus curiae in support of the State, argued for a more permissive standard, but it maintained that any search incident to arrest must be “’substantially contemporaneous’” with the arrest—a requirement it deemed “satisfied if the search occurs during the period in which the arrest is being consummated and before the situation has so stabilized that it could be said that the arrest was completed.” There was no suggestion by the parties or amici that Chimel authorizes a vehicle search incident to arrest when there is no realistic possibility that an arrestee could access his vehicle.

After considering these arguments, we held that when an officer lawfully arrests “the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile” and any containers therein. That holding was based in large part on our assumption “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.’ ”

The Arizona Supreme Court read our decision in Belton as merely delineating “the proper scope of a search of the interior of an automobile” incident to an arrest. That is, when the passenger compartment is within an arrestee’s reaching distance, Belton supplies the generalization that the entire compartment and any containers therein may be reached. On that view of Belton, the state court concluded that the search of Gant’s car was unreasonable because Gant clearly could not have accessed his car at the time of the search. It also found that no other exception to the warrant requirement applied in this case.

Gant now urges us to adopt the reading of Belton followed by the Arizona Supreme Court.

III

Despite the textual and evidentiary support for the Arizona Supreme Court’s reading of Belton, our opinion has been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search. This reading may be
attributable to Justice Brennan’s dissent in Belton, in which he characterized the Court’s holding as resting on the “fiction . . . that the interior of a car is always within the immediate control of an arrestee who has recently been in the car.” Under the majority’s approach, he argued, “the result would presumably be the same even if [the officer] had handcuffed Belton and his companions in the patrol car” before conducting the search.

... Under this broad reading of Belton, a vehicle search would be authorized incident to every arrest of a recent occupant notwithstanding that in most cases the vehicle’s passenger compartment will not be within the arrestee’s reach at the time of the search. To read Belton as authorizing a vehicle search incident to every recent occupant’s arrest would thus untether the rule from the justifications underlying the Chimel exception—a result clearly incompatible with our statement in Belton that it “in no way alters the fundamental principles established in the Chimel case regarding the basic scope of searches incident to lawful custodial arrests.” Accordingly, we reject this reading of Belton and hold that the Chimel rationale authorizes police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.

Although it does not follow from Chimel, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. But in others, including Belton and Thornton, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein.

Neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case. Unlike in Belton, which involved a single officer confronted with four unsecured arrestees, the five officers in this case outnumbered the three arrestees, all of whom had been handcuffed and secured in separate patrol cars before the officers searched Gant’s car. Under those circumstances, Gant clearly was not within reaching distance of his car at the time of the search. An evidentiary basis for the search was also lacking in this case. Whereas Belton and Thornton were arrested for drug offenses, Gant was arrested for driving with a suspended license—an offense for which police could not expect to find evidence in the passenger compartment of Gant’s car. Because police could not reasonably have believed either that Gant could have accessed his car at the time
of the search or that evidence of the offense for which he was arrested might have
been found therein, the search in this case was unreasonable.

IV

The State does not seriously disagree with the Arizona Supreme Court’s conclu-
sion that Gant could not have accessed his vehicle at the time of the search, but
it nevertheless asks us to uphold the search of his vehicle under the broad reading
of Belton discussed above. The State argues that Belton searches are reasonable
regardless of the possibility of access in a given case because that expansive rule
correctly balances law enforcement interests, including the interest in a bright-line
rule, with an arrestee’s limited privacy interest in his vehicle.

For several reasons, we reject the State’s argument. First, the State seriously under-
values the privacy interests at stake. Although we have recognized that a motor-
ist’s privacy interest in his vehicle is less substantial than in his home, the former
interest is nevertheless important and deserving of constitutional protection. It is
particularly significant that Belton searches authorize police officers to search not
just the passenger compartment but every purse, briefcase, or other container within
that space. A rule that gives police the power to conduct such a search whenever
an individual is caught committing a traffic offense, when there is no basis for
believing evidence of the offense might be found in the vehicle, creates a serious
and recurring threat to the privacy of countless individuals. Indeed, the character
of that threat implicates the central concern underlying the Fourth Amendment—
the concern about giving police officers unbridled discretion to rummage at will
among a person’s private effects.

At the same time as it undervalues these privacy concerns, the State exaggerates
the clarity that its reading of Belton provides. Courts that have read Belton expan-
sively are at odds regarding how close in time to the arrest and how proximate to
the arrestee’s vehicle an officer’s first contact with the arrestee must be to bring
the encounter within Belton’s purview and whether a search is reasonable when it
commences or continues after the arrestee has been removed from the scene. The
rule has thus generated a great deal of uncertainty, particularly for a rule touted
as providing a “bright line.”

Contrary to the State’s suggestion, a broad reading of Belton is also unnecessary to
protect law enforcement safety and evidentiary interests. Under our view, Belton and
Thornton permit an officer to conduct a vehicle search when an arrestee is within
reaching distance of the vehicle or it is reasonable to believe the vehicle contains
evidence of the offense of arrest.

Construing Belton broadly to allow vehicle searches incident to any arrest would
serve no purpose except to provide a police entitlement, and it is anathema to the
Fourth Amendment to permit a warrantless search on that basis. For these reasons, we are unpersuaded by the State’s arguments that a broad reading of Belton would meaningfully further law enforcement interests and justify a substantial intrusion on individuals’ privacy.

V

... 

The experience of the 28 years since we decided Belton has shown that the generalization underpinning the broad reading of that decision is unfounded. We now know that articles inside the passenger compartment are rarely “within ‘the area into which an arrestee might reach,’” and blind adherence to Belton’s faulty assumption would authorize myriad unconstitutional searches. The doctrine of stare decisis does not require us to approve routine constitutional violations.

VI

Police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. The Arizona Supreme Court correctly held that this case involved an unreasonable search. Accordingly, the judgment of the State Supreme Court is affirmed.

It is so ordered.

[The concurring opinions of Justices Scalia and Breyer are omitted.]

Justice Alito, with whom The Chief Justice and Justice Kennedy join, and with whom Justice Breyer joins except as to Part II–E, dissenting.

Twenty-eight years ago, in New York v. 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.” Five years ago, in Thornton v. United States—a case involving a situation not materially distinguishable from the situation here—the Court not only reaffirmed but extended the holding of Belton, making it applicable to recent occupants. Today’s decision effectively overrules those important decisions, even though respondent Gant has not asked us to do so.

To take the place of the overruled precedents, the Court adopts a new two-part rule under which a police officer who arrests a vehicle occupant or recent occupant may
search the passenger compartment if (1) the arrestee is within reaching distance of the vehicle at the time of the search or (2) the officer has reason to believe that the vehicle contains evidence of the offense of arrest. The first part of this new rule may endanger arresting officers and is truly endorsed by only four Justices; Justice Scalia joins solely for the purpose of avoiding a “4-to-1-to-4 opinion.” The second part of the new rule is taken from Justice Scalia’s separate opinion in *Thornton* without any independent explanation of its origin or justification and is virtually certain to confuse law enforcement officers and judges for some time to come. The Court’s decision will cause the suppression of evidence gathered in many searches carried out in good-faith reliance on well-settled case law, and although the Court purports to base its analysis on the landmark decision in *Chimel v. California*, the Court’s reasoning undermines *Chimel*. I would follow *Belton*, and I therefore respectfully dissent.

...  

II  

Because the Court has substantially overruled *Belton* and *Thornton*, the Court must explain why its departure from the usual rule of *stare decisis* is justified. I recognize that stare decisis is not an “inexorable command,” and applies less rigidly in constitutional cases. But the Court has said that a constitutional precedent should be followed unless there is a “special justification” for its abandonment. Relevant factors identified in prior cases include whether the precedent has engendered reliance, whether there has been an important change in circumstances in the outside world, whether the precedent has proved to be unworkable, whether the precedent has been undermined by later decisions, and whether the decision was badly reasoned. These factors weigh in favor of retaining the rule established in *Belton*.

A  

Reliance. While reliance is most important in “cases involving property and contract rights,” the Court has recognized that reliance by law enforcement officers is also entitled to weight. . . .[T]here certainly is substantial reliance here. The *Belton* rule has been taught to police officers for more than a quarter century. Many searches—almost certainly including more than a few that figure in cases now on appeal—were conducted in scrupulous reliance on that precedent. It is likely that, on the very day when this opinion is announced, numerous vehicle searches will be conducted in good faith by police officers who were taught the *Belton* rule.

The opinion of the Court recognizes that “*Belton* has been widely taught in police academies and that law enforcement officers have relied on the rule in conducting
vehicle searches during the past 28 years.” But for the Court, this seemingly counts for nothing. The Court states that “[w]e have never relied on stare decisis to justify the continuance of an unconstitutional police practice,” but of course the Court routinely relies on decisions sustaining the constitutionality of police practices without doing what the Court has done here—sua sponte considering whether those decisions should be overruled. And the Court cites no authority for the proposition that stare decisis may be disregarded or provides only lesser protection when the precedent that is challenged is one that sustained the constitutionality of a law enforcement practice.

. . .

B

Changed circumstances. Abandonment of the Belton rule cannot be justified on the ground that the dangers surrounding the arrest of a vehicle occupant are different today than they were 28 years ago. The Court claims that “[w]e now know that articles inside the passenger compartment are rarely ‘within “the area into which an arrestee might reach,”’ but surely it was well known in 1981 that a person who is taken from a vehicle, handcuffed, and placed in the back of a patrol car is unlikely to make it back into his own car to retrieve a weapon or destroy evidence.

C

Workability. The Belton rule has not proved to be unworkable. On the contrary, the rule was adopted for the express purpose of providing a test that would be relatively easy for police officers and judges to apply. The Court correctly notes that even the Belton rule is not perfectly clear in all situations. Specifically, it is sometimes debatable whether a search is or is not contemporaneous with an arrest, but that problem is small in comparison with the problems that the Court’s new two-part rule will produce.

The first part of the Court’s new rule—which permits the search of a vehicle’s passenger compartment if it is within an arrestee’s reach at the time of the search—reintroduces the same sort of case-by-case, fact-specific decisionmaking that the Belton rule was adopted to avoid. As the situation in Belton illustrated, there are cases in which it is unclear whether an arrestee could retrieve a weapon or evidence in the passenger compartment of a car.

Even more serious problems will also result from the second part of the Court’s new rule, which requires officers making roadside arrests to determine whether there is reason to believe that the vehicle contains evidence of the crime of arrest. What this rule permits in a variety of situations is entirely unclear.
D

**Consistency with later cases.** The *Belton* bright-line rule has not been undermined by subsequent cases. On the contrary, that rule was reaffirmed and extended just five years ago in *Thornton*.

E

**Bad reasoning.** The Court is harshly critical of *Belton*’s reasoning, but the problem that the Court perceives cannot be remedied simply by overruling *Belton*. *Belton* represented only a modest—and quite defensible—extension of *Chimel*, as I understand that decision.

Prior to *Chimel*, the Court’s precedents permitted an arresting officer to search the area within an arrestee’s “possession” and “control” for the purpose of gathering evidence. Based on this “abstract doctrine,” the Court had sustained searches that extended far beyond an arrestee’s grabbing area.

The *Chimel* Court, in an opinion written by Justice Stewart, overruled these cases. Concluding that there are only two justifications for a warrantless search incident to arrest—officer safety and the preservation of evidence—the Court stated that such a search must be confined to “the arrestee’s person” and “the area from within which he might gain possession of a weapon or destructible evidence.”

Unfortunately, *Chimel* did not say whether “the area from within which [an arrestee] might gain possession of a weapon or destructible evidence” is to be measured at the time of the arrest or at the time of the search, but unless the *Chimel* rule was meant to be a specialty rule, applicable to only a few unusual cases, the Court must have intended for this area to be measured at the time of arrest.

This is so because the Court can hardly have failed to appreciate the following two facts. First, in the great majority of cases, an officer making an arrest is able to handcuff the arrestee and remove him to a secure place before conducting a search incident to the arrest (stating that it is “the rare case” in which an arresting officer cannot secure an arrestee before conducting a search). Second, because it is safer for an arresting officer to secure an arrestee before searching, it is likely that this is what arresting officers do in the great majority of cases. (And it appears, not surprisingly, that this is in fact the prevailing practice.) Thus, if the area within an arrestedee’s reach were assessed, not at the time of arrest, but at the time of the search, the *Chimel* rule would rarely come into play.

Moreover, if the applicability of the *Chimel* rule turned on whether an arresting officer chooses to secure an arrestee prior to conducting a search, rather than searching first and securing the arrestee later, the rule would “create a perverse incentive for an arresting officer to prolong the period during which the arrestee
is kept in an area where he could pose a danger to the officer.” If this is the law, the D.C. Circuit observed, “the law would truly be, as Mr. Bumble said, ‘a ass.’ ”

I do not think that this is what the Chimel Court intended. Handcuffs were in use in 1969. The ability of arresting officers to secure arrestees before conducting a search—and their incentive to do so—are facts that can hardly have escaped the Court’s attention. I therefore believe that the Chimel Court intended that its new rule apply in cases in which the arrestee is handcuffed before the search is conducted.

The Belton Court, in my view, proceeded on the basis of this interpretation of Chimel. Again speaking through Justice Stewart, the Belton Court reasoned that articles in the passenger compartment of a car are “generally, even if not inevitably” within an arrestee’s reach. This is undoubtedly true at the time of the arrest of a person who is seated in a car but plainly not true when the person has been removed from the car and placed in handcuffs. Accordingly, the Belton Court must have proceeded on the assumption that the Chimel rule was to be applied at the time of arrest. And that is why the Belton Court was able to say that its decision “in no way alter[ed] the fundamental principles established in the Chimel case regarding the basic scope of searches incident to lawful custodial arrests.” Viewing Chimel as having focused on the time of arrest, Belton’s only new step was to eliminate the need to decide on a case-by-case basis whether a particular person seated in a car actually could have reached the part of the passenger compartment where a weapon or evidence was hidden. For this reason, if we are going to reexamine Belton, we should also reexamine the reasoning in Chimel on which Belton rests.

The Court, however, does not reexamine Chimel and thus leaves the law relating to searches incident to arrest in a confused and unstable state. The first part of the Court’s new two-part rule—which permits an arresting officer to search the area within an arrestee’s reach at the time of the search—applies, at least for now, only to vehicle occupants and recent occupants, but there is no logical reason why the same rule should not apply to all arrestees.

The second part of the Court’s new rule, which the Court takes uncritically from Justice Scalia’s separate opinion in Thornton, raises doctrinal and practical problems that the Court makes no effort to address. Why, for example, is the standard for this type of evidence-gathering search “reason to believe” rather than probable cause? And why is this type of search restricted to evidence of the offense of arrest? It is true that an arrestee’s vehicle is probably more likely to contain evidence of the crime of arrest than of some other crime, but if reason-to-believe is the governing standard for an evidence-gathering search incident to arrest, it is not easy to see why an officer should not be able to search when the officer has reason to believe that the vehicle in question possesses evidence of a crime other than the crime of arrest.
Nor is it easy to see why an evidence-gathering search incident to arrest should be restricted to the passenger compartment. The Belton rule was limited in this way because the passenger compartment was considered to be the area that vehicle occupants can generally reach, but since the second part of the new rule is not based on officer safety or the preservation of evidence, the ground for this limitation is obscure.

III

Respondent in this case has not asked us to overrule Belton, much less Chimel. Respondent’s argument rests entirely on an interpretation of Belton that is plainly incorrect, an interpretation that disregards Belton’s explicit delineation of its holding. I would therefore leave any reexamination of our prior precedents for another day, if such a reexamination is to be undertaken at all. In this case, I would simply apply Belton and reverse the judgment below.
RILEY v. CALIFORNIA
UNITED STATES v. WURIE

United States Supreme Court,
573 U.S. 373 (2014)

[Chief Justice Roberts delivered the opinion of the Court.]

[Justice Alito filed a concurring opinion.]

These two cases raise a common question: whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested.

I

A

In the first case, petitioner David Riley was stopped by a police officer for driving with expired registration tags. In the course of the stop, the officer also learned that Riley’s license had been suspended. The officer impounded Riley’s car, pursuant to department policy, and another officer conducted an inventory search of the car. Riley was arrested for possession of concealed and loaded firearms when that search turned up two handguns under the car’s hood.

An officer searched Riley incident to the arrest and found items associated with the “Bloods” street gang. He also seized a cell phone from Riley’s pants pocket. According to Riley’s uncontradicted assertion, the phone was a “smart phone,” a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity. The officer accessed information on the phone and noticed that some words (presumably in text messages or a contacts list) were preceded by the letters “CK”—a label that, he believed, stood for “Crip Killers,” a slang term for members of the Bloods gang.

At the police station about two hours after the arrest, a detective specializing in gangs further examined the contents of the phone. The detective testified that he “went through” Riley’s phone “looking for evidence, because . . . gang members will often video themselves with guns or take pictures of themselves with the guns.”
Although there was “a lot of stuff” on the phone, particular files that “caught [the detective’s] eye” included videos of young men sparring while someone yelled encouragement using the moniker “Blood.” The police also found photographs of Riley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

Riley was ultimately charged, in connection with that earlier shooting, with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. The State alleged that Riley had committed those crimes for the benefit of a criminal street gang, an aggravating factor that carries an enhanced sentence.

Prior to trial, Riley moved to suppress all evidence that the police had obtained from his cell phone. He contended that the searches of his phone violated the Fourth Amendment, because they had been performed without a warrant and were not otherwise justified by exigent circumstances. The trial court rejected that argument. At Riley’s trial, police officers testified about the photographs and videos found on the phone, and some of the photographs were admitted into evidence.

Riley was convicted on all three counts and received an enhanced sentence of 15 years to life in prison. The court relied on the California Supreme Court’s decision in *People v. Diaz*, 51 Cal. 4th 84 (2011), which held that the Fourth Amendment permits a warrantless search of cell phone data incident to an arrest, so long as the cell phone was immediately associated with the arrestee’s person.

The California Supreme Court denied Riley’s petition for review, and we granted certiorari.

B

In the second case, a police officer performing routine surveillance observed respondent Brima Wurie make an apparent drug sale from a car. Officers subsequently arrested Wurie and took him to the police station. At the station, the officers seized two cell phones from Wurie’s person. The one at issue here was a “flip phone,” a kind of phone that is flipped open for use and that generally has a smaller range of features than a smart phone. Five to ten minutes after arriving at the station, the officers noticed that the phone was repeatedly receiving calls from a source identified as “my house” on the phone’s external screen. A few minutes later, they opened the phone and saw a photograph of a woman and a baby set as the phone’s wallpaper. They pressed one button on the phone to access its call log, then another button to determine the phone number associated with the “my house” label. They next used an online phone directory to trace that phone number to an apartment building.
When the officers went to the building, they saw Wurie's name on a mailbox and observed through a window a woman who resembled the woman in the photograph on Wurie's phone. They secured the apartment while obtaining a search warrant and, upon later executing the warrant, found and seized 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm and ammunition, and cash.

Wurie was charged with distributing crack cocaine, possessing crack cocaine with intent to distribute, and being a felon in possession of a firearm and ammunition. He moved to suppress the evidence obtained from the search of the apartment, arguing that it was the fruit of an unconstitutional search of his cell phone. The District Court denied the motion. Wurie was convicted on all three counts and sentenced to 262 months in prison.

A divided panel of the First Circuit reversed the denial of Wurie's motion to suppress and vacated Wurie's convictions for possession with intent to distribute and possession of a firearm as a felon. The court held that cell phones are distinct from other physical possessions that may be searched incident to arrest without a warrant, because of the amount of personal data cell phones contain and the negligible threat they pose to law enforcement interests. We granted certiorari.

II

The Fourth Amendment provides:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

As the text makes clear, “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’ ” Our cases have deter- mined that “[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrong- doing, . . . reasonableness generally requires the obtaining of a judicial warrant. Such a warrant ensures that the inferences to support a search are “drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.

The two cases before us concern the reasonableness of a warrantless search incident to a lawful arrest. In 1914, this Court first acknowledged in dictum “the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime.” Since that time, it has been well accepted that such
a search constitutes an exception to the warrant requirement. Indeed, the label “exception” is something of a misnomer in this context, as warrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant.

Although the existence of the exception for such searches has been recognized for a century, its scope has been debated for nearly as long. That debate has focused on the extent to which officers may search property found on or near the arrestee. Three related precedents set forth the rules governing such searches:

The first, *Chimel v. California*, 395 U. S. 752 (1969), laid the groundwork for most of the existing search incident to arrest doctrine. Police officers in that case arrested Chimel inside his home and proceeded to search his entire three-bedroom house, including the attic and garage. In particular rooms, they also looked through the contents of drawers.

The Court crafted the following rule for assessing the reasonableness of a search incident to arrest:

“When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction . . . .There is ample justification, therefore, for a search of the arrestee’s person and the area ‘within his immediate control’—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.” The extensive warrantless search of Chimel’s home did not fit within this exception, because it was not needed to protect officer safety or to preserve evidence.

Four years later, in *United States v. Robinson*, 414 U. S. 218 (1973), the Court applied the *Chimel* analysis in the context of a search of the arrestee’s person. A police officer had arrested Robinson for driving with a revoked license. The officer conducted a patdown search and felt an object that he could not identify in Robinson’s coat pocket. He removed the object, which turned out to be a crumpled cigarette package, and opened it. Inside were 14 capsules of heroin.

The Court of Appeals concluded that the search was unreasonable because Robinson was unlikely to have evidence of the crime of arrest on his person, and because it believed that extracting the cigarette package and opening it could not be justified as part of a protective search for weapons. This Court reversed, rejecting the notion that “case-by-case adjudication” was required to determine “whether or not there was present one of the reasons supporting the authority for a search of
the person incident to a lawful arrest.” As the Court explained, “[t]he 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.” Instead, a “custodial arrest
of a suspect based on probable cause is a reasonable intrusion under the Fourth
Amendment; that intrusion being lawful, a search incident to the arrest requires
no additional justification.”

The Court thus concluded that the search of Robinson was reasonable even though
there was no concern about the loss of evidence, and the arresting officer had no
specific concern that Robinson might be armed. In doing so, the Court did not
draw a line between a search of Robinson’s person and a further examination of
the cigarette pack found during that search. It merely noted that, “[h]aving in
the course of a lawful search come upon the crumpled package of cigarettes, [the
officer] was entitled to inspect it.” A few years later, the Court clarified that this
exception was limited to “personal property . . . immediately associated with the
person of the arrestee.”

The search incident to arrest trilogy concludes with Gant, which analyzed searches
of an arrestee’s vehicle. Gant, like Robinson, recognized that the Chimel concerns
for officer safety and evidence preservation underlie the search incident to arrest
exception. As a result, the Court concluded that Chimel could authorize police to
search a vehicle “only when the arrestee is unsecured and within reaching distance
of the passenger compartment at the time of the search.” Gant added, however, an
independent exception for a warrantless search of a vehicle’s passenger compartment
“when it is ‘reasonable to believe evidence relevant to the crime of arrest might be
found in the vehicle.’ ” That exception stems not from Chimel, the Court explained,
but from “circumstances unique to the vehicle context.”

III

These cases require us to decide how the search incident to arrest doctrine applies
to modern cell phones, which are now such a pervasive and insistent part of daily
life that the proverbial visitor from Mars might conclude they were an important
feature of human anatomy. A smart phone of the sort taken from Riley was unheard
of ten years ago; a significant majority of American adults now own such phones.
Even less sophisticated phones like Wurie’s, which have already faded in popularity
since Wurie was arrested in 2007, have been around for less than 15 years. Both
phones are based on technology nearly inconceivable just a few decades ago, when
Chimel and Robinson were decided.

Absent more precise guidance from the founding era, we generally determine
whether to exempt a given type of search from the warrant requirement “by assess-
ing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” Such a balancing of interests supported the search incident to arrest exception in *Robinson*, and a mechanical application of *Robinson* might well support the warrantless searches at issue here.

But while *Robinson*’s categorical rule strikes the appropriate balance in the context of physical objects, neither of its rationales has much force with respect to digital content on cell phones. On the government interest side, *Robinson* concluded that the two risks identified in *Chimel*—harm to officers and destruction of evidence—are present in all custodial arrests. There are no comparable risks when the search is of digital data. In addition, *Robinson* regarded any privacy interests retained by an individual after arrest as significantly diminished by the fact of the arrest itself. Cell phones, however, place vast quantities of personal information literally in the hands of individuals. A search of the information on a cell phone bears little resemblance to the type of brief physical search considered in *Robinson*.

We therefore decline to extend *Robinson* to searches of data on cell phones, and hold instead that officers must generally secure a warrant before conducting such a search.

A

We first consider each *Chimel* concern in turn. In doing so, we do not overlook *Robinson*’s admonition that searches of a person incident to arrest, “while based upon the need to disarm and to discover evidence,” are reasonable regardless of “the probability in a particular arrest situation that weapons or evidence would in fact be found.” Rather than requiring the “case-by-case adjudication” that *Robinson* rejected, we ask instead whether application of the search incident to arrest doctrine to this particular category of effects would “untether the rule from the justifications underlying the *Chimel* exception.”

I

Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee’s escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one.

Perhaps the same might have been said of the cigarette pack seized from Robinson’s pocket. Once an officer gained control of the pack, it was unlikely that Robinson could have accessed the pack’s contents. But unknown physical objects may always pose risks, no matter how slight, during the tense atmosphere of a custodial arrest.
The officer in *Robinson* testified that he could not identify the objects in the cigarette pack but knew they were not cigarettes. Given that, a further search was a reasonable protective measure. No such unknowns exist with respect to digital data. As the First Circuit explained, the officers who searched Wurie’s cell phone “knew exactly what they would find therein: data. They also knew that the data could not harm them.”

The United States and California both suggest that a search of cell phone data might help ensure officer safety in more indirect ways, for example by alerting officers that confederates of the arrestee are headed to the scene. There is undoubtedly a strong government interest in warning officers about such possibilities, but neither the United States nor California offers evidence to suggest that their concerns are based on actual experience. The proposed consideration would also represent a broadening of *Chimel*’s concern that an arrestee himself might grab a weapon and use it against an officer “to resist arrest or effect his escape.” And any such threats from outside the arrest scene do not “lurk[] in all custodial arrests.” Accordingly, the interest in protecting officer safety does not justify dispensing with the warrant requirement across the board. To the extent dangers to arresting officers may be implicated in a particular way in a particular case, they are better addressed through consideration of case-specific exceptions to the warrant requirement, such as the one for exigent circumstances.

The United States and California focus primarily on the second *Chimel* rationale: preventing the destruction of evidence.

Both Riley and Wurie concede that officers could have seized and secured their cell phones to prevent destruction of evidence while seeking a warrant. That is a sensible concession. And once law enforcement officers have secured a cell phone, there is no longer any risk that the arrestee himself will be able to delete incriminating data from the phone.

The United States and California argue that information on a cell phone may nevertheless be vulnerable to two types of evidence destruction unique to digital data—remote wiping and data encryption. Remote wiping occurs when a phone, connected to a wireless network, receives a signal that erases stored data. This can happen when a third party sends a remote signal or when a phone is preprogrammed to delete data upon entering or leaving certain geographic areas (so-called “geofencing”). Encryption is a security feature that some modern cell phones use in addition to password protection. When such phones lock, data becomes protected by sophisticated encryption that renders a phone all but “unbreakable” unless police know the password.

...
We have . . . been given little reason to believe that either problem is prevalent. The briefing reveals only a couple of anecdotal examples of remote wiping triggered by an arrest. Similarly, the opportunities for officers to search a password-protected phone before data becomes encrypted are quite limited. Law enforcement officers are very unlikely to come upon such a phone in an unlocked state because most phones lock at the touch of a button or, as a default, after some very short period of inactivity. This may explain why the encryption argument was not made until the merits stage in this Court, and has never been considered by the Courts of Appeals.

Moreover, in situations in which an arrest might trigger a remote-wipe attempt or an officer discovers an unlocked phone, it is not clear that the ability to conduct a warrant-less search would make much of a difference. The need to effect the arrest, secure the scene, and tend to other pressing matters means that law enforcement officers may well not be able to turn their attention to a cell phone right away.

Cell phone data would be vulnerable to remote wiping from the time an individual anticipates arrest to the time any eventual search of the phone is completed, which might be at the station house hours later. Likewise, an officer who seizes a phone in an unlocked state might not be able to begin his search in the short time remaining before the phone locks and data becomes encrypted.

In any event, as to remote wiping, law enforcement is not without specific means to address the threat. Remote wiping can be fully prevented by disconnecting a phone from the network. There are at least two simple ways to do this: First, law enforcement officers can turn the phone off or remove its battery. Second, if they are concerned about encryption or other potential problems, they can leave a phone powered on and place it in an enclosure that isolates the phone from radio waves. Such devices are commonly called “Faraday bags,” after the English scientist Michael Faraday. They are essentially sandwich bags made of aluminum foil: cheap, light-weight, and easy to use. They may not be a complete answer to the problem, but at least for now they provide a reasonable response. In fact, a number of law enforcement agencies around the country already encourage the use of Faraday bags. To the extent that law enforcement still has specific concerns about the potential loss of evidence in a particular case, there remain more targeted ways to address those concerns. If “the police are truly confronted with a ‘now or never’ situation,”—for example, circumstances suggesting that a defendant's phone will be the target of an imminent remote-wipe attempt—they may be able to rely on exigent circumstances to search the phone immediately. Or, if officers happen to seize a phone in an unlocked state, they may be able to disable a phone's automatic-lock feature in order to prevent the phone from locking and encrypting data. Such a preventive measure could be analyzed under the principles set forth in our decision in McArthur, 531 U. S. 326, which approved officers’ reasonable steps to secure a scene to preserve evidence while they awaited a warrant.
The search incident to arrest exception rests not only on the heightened government interests at stake in a volatile arrest situation, but also on an arrestee’s reduced privacy interests upon being taken into police custody. *Robinson* focused primarily on the first of those rationales. But it also quoted with approval then-Judge Cardozo’s account of the historical basis for the search incident to arrest exception: “Search of the person becomes lawful when grounds for arrest and accusation have been discovered, and the law is in the act of subjecting the body of the accused to its physical dominion. Put simply, a patdown of Robinson’s clothing and an inspection of the cigarette pack found in his pocket constituted only minor additional intrusions compared to the substantial government authority exercised in taking Robinson into custody.

The fact that an arrestee has diminished privacy interests does not mean that the Fourth Amendment falls out of the picture entirely. Not every search “is acceptable solely because a person is in custody.” To the contrary, when “privacy-related concerns are weighty enough” a “search may require a warrant, notwithstanding the diminished expectations of privacy of the arrestee.” One such example, of course, is *Chimel*. *Chimel* refused to “characteriz[e] the invasion of privacy that results from a top-to-bottom search of a man’s house as ‘minor.’ ” Because a search of the arrestee’s entire house was a substantial invasion beyond the arrest itself, the Court concluded that a warrant was required.

The United States asserts that a search of all data stored on a cell phone is “materially indistinguishable” from searches of these sorts of physical items. That is like saying a ride on horseback is materially indistinguishable from a flight to the moon. Both are ways of getting from point A to point B, but little else justifies lumping them together. Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse. A conclusion that inspecting the contents of an arrestee’s pockets works no substantial additional intrusion on privacy beyond the arrest itself may make sense as applied to physical items, but any extension of that reasoning to digital data has to rest on its own bottom.

1

Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee’s person. The term “cell phone” is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.
One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy. Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so. And if they did, they would have to drag behind them a trunk of the sort held to require a search warrant in *Chadwick*, rather than a container the size of the cigarette package in *Robinson*.

But the possible intrusion on privacy is not physically limited in the same way when it comes to cell phones. The current top-selling smart phone has a standard capacity of 16 gigabytes (and is available with up to 64 gigabytes). Sixteen gigabytes translates to millions of pages of text, thousands of pictures, or hundreds of videos.

... 

Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception. According to one poll, nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower. A decade ago police officers searching an arrestee might have occasionally stumbled across a highly personal item such as a diary. But those discoveries were likely to be few and far between. Today, by contrast, it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate. Allowing the police to scrutinize such records on a routine basis is quite different from allowing them to search a personal item or two in the occasional case.

Although the data stored on a cell phone is distinguished from physical records by quantity alone, certain types of data are also qualitatively different. An Internet search and browsing history, for example, can be found on an Internet-enabled phone and could reveal an individual’s private interests or concerns—perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD. Data on a cell phone can also reveal where a person has been. Historic location information is a standard feature on many smart phones and can reconstruct someone’s specific movements down to the minute, not only around town but also within a particular building.
Mobile application software on a cell phone, or “apps,” offer a range of tools for managing detailed information about all aspects of a person’s life. There are apps for Democratic Party news and Republican Party news; apps for alcohol, drug, and gambling addictions; apps for sharing prayer requests; apps for tracking pregnancy symptoms; apps for planning your budget; apps for every conceivable hobby or pastime; apps for improving your romantic life. There are popular apps for buying or selling just about anything, and the records of such transactions may be accessible on the phone indefinitely. There are over a million apps available in each of the two major app stores; the phrase “there’s an app for that” is now part of the popular lexicon. The average smart phone user has installed 33 apps, which together can form a revealing montage of the user’s life.

In 1926, Learned Hand observed (in an opinion later quoted in *Chimel*) that it is “a totally different thing to search a man’s pockets and use against him what they contain, from ransacking his house for everything which may incriminate him.”

If his pockets contain a cell phone, however, that is no longer true. Indeed, a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is.

To further complicate the scope of the privacy interests at stake, the data a user views on many modern cell phones may not in fact be stored on the device itself. Treating a cell phone as a container whose contents may be searched incident to an arrest is a bit strained as an initial matter.

But the analogy crumbles entirely when a cell phone is used to access data located elsewhere, at the tap of a screen. That is what cell phones, with increasing frequency, are designed to do by taking advantage of “cloud computing.” Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself. Cell phone users often may not know whether particular information is stored on the device or in the cloud, and it generally makes little difference. Moreover, the same type of data may be stored locally on the device for one user and in the cloud for another.
The United States concedes that the search incident to arrest exception may not be stretched to cover a search of files accessed remotely—that is, a search of files stored in the cloud. Such a search would be like finding a key in a suspect’s pocket and arguing that it allowed law enforcement to unlock and search a house. But officers searching a phone’s data would not typically know whether the information they are viewing was stored locally at the time of the arrest or has been pulled from the cloud.

C

Apart from their arguments for a direct extension of Robinson, the United States and California offer various fallback options for permitting warrantless cell phone searches under certain circumstances. Each of the proposals is flawed and contravenes our general preference to provide clear guidance to law enforcement through categorical rules. “[I]f police are to have workable rules, the balancing of the competing interests . . . ‘must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers.’ ”

The United States first proposes that the Gant standard be imported from the vehicle context, allowing a warrantless search of an arrestee’s cell phone whenever it is reasonable to believe that the phone contains evidence of the crime of arrest. But Gant relied on “circumstances unique to the vehicle context” to endorse a search solely for the purpose of gathering evidence. Justice Scalia’s Thornton opinion, on which Gant was based, explained that those unique circumstances are “a reduced expectation of privacy” and “heightened law enforcement needs” when it comes to motor vehicles. For reasons that we have explained, cell phone searches bear neither of those characteristics.

At any rate, a Gant standard would prove no practical limit at all when it comes to cell phone searches. In the vehicle context, Gant generally protects against searches for evidence of past crimes. In the cell phone context, however, it is reasonable to expect that incriminating information will be found on a phone regardless of when the crime occurred. Similarly, in the vehicle context Gant restricts broad searches resulting from minor crimes such as traffic violations.

That would not necessarily be true for cell phones. It would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to suppose evidence of just about any crime could be found on a cell phone. Even an individual pulled over for something as basic as speeding might well have locational data dispositive of guilt on his phone. An individual pulled over for reckless driving might have evidence on the phone that shows whether he was texting while driving. The sources of potential pertinent information are virtually unlimited, so applying the Gant standard to cell phones would in effect give “police officers unbridled discretion to rummage at will among a person’s private effects.”
Finally, at oral argument California suggested a different limiting principle, under which officers could search cell phone data if they could have obtained the same information from a pre-digital counterpart. But the fact that a search in the pre-digital era could have turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery. The fact that someone could have tucked a paper bank statement in a pocket does not justify a search of every bank statement from the last five years. And to make matters worse, such an analogue test would allow law enforcement to search a range of items contained on a phone, even though people would be unlikely to carry such a variety of information in physical form. In Riley’s case, for example, it is implausible that he would have strolled around with videotapes, photo albums, and an address book all crammed into his pockets. But because each of those items has a pre-digital analogue, police under California’s proposal would be able to search a phone for all of those items—a significant diminution of privacy.

In addition, an analogue test would launch courts on a difficult line-drawing expedition to determine which digital files are comparable to physical records. Is an e-mail equivalent to a letter? Is a voicemail equivalent to a phone message slip? It is not clear how officers could make these kinds of decisions before conducting a search, or how courts would apply the proposed rule after the fact. An analogue test would “keep defendants and judges guessing for years to come.”

IV

We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals. Privacy comes at a cost.

Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest. Our cases have historically recognized that the warrant requirement is “an important working part of our machinery of government,” not merely “an inconvenience to be somehow ‘weighed’ against the claims of police efficiency.”

Recent technological advances similar to those discussed here have, in addition, made the process of obtaining a warrant itself more efficient.
Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life.” The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.

Test Your Knowledge

To assess your understanding of the material in this chapter, click here to take a quiz.