SUPREME COURT OF THE UNITED STATES

No. 03–5165

MARCUS THORNTON, PETITIONER *v.*
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[May 24, 2004]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court except as to footnote 4.

In *New York* v. *Belton,* 453 U. S. 454 (1981), we held that when a police officer has made a lawful custodial arrest of an occupant of an automobile, the Fourth Amendment allows the officer to search the passenger compartment of that vehicle as a contemporaneous incident of arrest. We have granted certiorari twice before to determine whether *Belton*'s rule is limited to situations where the officer makes contact with the occupant while the occupant is inside the vehicle, or whether it applies as well when the officer first makes contact with the arrestee after the latter has stepped out of his vehicle. We did not reach the merits in either of those two cases. *Arizona* v. *Gant*, 540 U. S. ___ (2003) (vacating and remanding for reconsideration in light of *State* v. *Dean*, 206 Ariz. 158, 76 P. 3d 429 (2003)); *Florida* v. *Thomas,* 532 U. S. 774 (2001) (dismissing for lack of jurisdiction). We now reach that question and conclude that *Belton* governs even when an officer does not make contact until the person arrested has left the vehicle.

Officer Deion Nichols of the Norfolk, Virginia, Police

Department, who was in uniform but driving an unmarked police car, first noticed petitioner Marcus Thornton when petitioner slowed down so as to avoid driving next to him. Nichols suspected that petitioner knew he was a police officer and for some reason did not want to pull next to him. His suspicions aroused, Nichols pulled off onto a side street and petitioner passed him. After petitioner passed him, Nichols ran a check on petitioner's license tags, which revealed that the tags had been issued to a 1982 Chevy two-door and not to a Lincoln Town Car, the model of car petitioner was driving. Before Nichols had an opportunity to pull him over, petitioner drove into a parking lot, parked, and got out of the vehicle. Nichols saw petitioner leave his vehicle as he pulled in behind him. He parked the patrol car, accosted petitioner, and asked him for his driver's license. He also told him that his license tags did not match the vehicle that he was driving.

Petitioner appeared nervous. He began rambling and licking his lips; he was sweating. Concerned for his safety, Nichols asked petitioner if he had any narcotics or weapons on him or in his vehicle. Petitioner said no. Nichols then asked petitioner if he could pat him down, to which petitioner agreed. Nichols felt a bulge in petitioner's left front pocket and again asked him if he had any illegal narcotics on him. This time petitioner stated that he did, and he reached into his pocket and pulled out two individual bags, one containing three bags of marijuana and the other containing a large amount of crack cocaine. Nichols handcuffed petitioner, informed him that he was under arrest, and placed him in the back seat of the patrol car. He then searched petitioner's vehicle and found a BryCo .9-millimeter handgun under the driver's seat.

A grand jury charged petitioner with possession with intent to distribute cocaine base, 84 Stat. 1260, 21 U. S. C. §841(a)(1), possession of a firearm after having been pre-

viously convicted of a crime punishable by a term of imprisonment exceeding one year, 18 U. S. C. §922(g)(1), and possession of a firearm in furtherance of a drug trafficking crime, §924(c)(1). Petitioner sought to suppress, *inter alia*, the firearm as the fruit of an unconstitutional search. After a hearing, the District Court denied petitioner's motion to suppress, holding that the automobile search was valid under *New York* v. *Belton, supra,* and alternatively that Nichols could have conducted an inventory search of the automobile. A jury convicted petitioner on all three counts; he was sentenced to 180 months' imprisonment and 8 years of supervised release.

Petitioner appealed, challenging only the District Court's denial of the suppression motion. He argued that *Belton* was limited to situations where the officer initiated contact with an arrestee while he was still an occupant of the car. The United States Court of Appeals for the Fourth Circuit affirmed. 325 F. 3d 189 (2003). It held that "the historical rationales for the search incident to arrest doctrine—'the need to disarm the suspect in order to take him into custody' and 'the need to preserve evidence for later use at trial,'" *id.*, at 195 (quoting *Knowles* v. *Iowa,* 525 U. S. 113, 116 (1998)), did not require *Belton* to be limited solely to situations in which suspects were still in their vehicles when approached by the police. Noting that petitioner conceded that he was in "close proximity, both temporally and spatially," to his vehicle, the court concluded that the car was within petitioner's immediate control, and thus Nichols' search was reasonable under *Belton*.[1] 325 F. 3d, at 196. We granted certiorari, 540 U. S. ___ (2003), and now affirm.

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[1]The Court of Appeals did not reach the District Court's alternative holding that Nichols could have conducted a lawful inventory search. 325 F. 3d, at 196.

In *Belton*, an officer overtook a speeding vehicle on the New York Thruway and ordered its driver to pull over. 453 U. S., at 455. Suspecting that the occupants possessed marijuana, the officer directed them to get out of the car and arrested them for unlawful possession. *Id.*, at 454–455. He searched them and then searched the passenger compartment of the car. *Id.*, at 455. We considered the constitutionally permissible scope of a search in these circumstances and sought to lay down a workable rule governing that situation.

We first referred to *Chimel* v. *California,* 395 U. S. 752 (1969), a case where the arrestee was arrested in his home, and we had described the scope of a search incident to a lawful arrest as the person of the arrestee and the area immediately surrounding him. 453 U. S., at 457 (citing *Chimel*, *supra,* at 763). This rule was justified by the need to remove any weapon the arrestee might seek to use to resist arrest or to escape, and the need to prevent the concealment or destruction of evidence. 453 U. S., at 457. Although easily stated, the *Chimel* principle had proved difficult to apply in specific cases. We pointed out that in *United States* v. *Robinson,* 414 U. S. 218 (1973), a case dealing with the scope of the search of the arrestee's person, we had rejected a suggestion that "'there must be litigated in each case the issue of whether or not there was present one of the reasons supporting the authority'" to conduct such a search. 453 U. S., at 459 (quoting *Robinson*, *supra,* at 235). Similarly, because "courts ha[d] found no workable definition of the 'area within the immediate control of the arrestee' when that area arguably include[d] the interior of an automobile and the arrestee [wa]s its recent occupant," 453 U. S., at 460, we sought to set forth a clear rule for police officers and citizens alike. We therefore 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." *Ibid.* (footnotes omitted).

In so holding, we placed no reliance on the fact that the officer in *Belton* ordered the occupants out of the vehicle, or initiated contact with them while they remained within it. Nor do we find such a factor persuasive in distinguishing the current situation, as it bears no logical relationship to *Belton*'s rationale. There is simply no basis to conclude that the span of the area generally within the arrestee's immediate control is determined by whether the arrestee exited the vehicle at the officer's direction, or whether the officer initiated contact with him while he remained in the car. We recognized as much, albeit in dicta, in *Michigan* v. *Long,* 463 U. S. 1032 (1983), where officers observed a speeding car swerve into a ditch. The driver exited and the officers met him at the rear of his car. Although there was no indication that the officers initiated contact with the driver while he was still in the vehicle, we observed that "[i]t is clear . . . that if the officers had arrested [respondent] . . . they could have searched the passenger compartment under *New York* v. *Belton*." *Id.*, at 1035–1036, and n. 1.

In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle. An officer may search a suspect's vehicle under *Belton* only if the suspect is arrested. See *Knowles, supra*, at 117–118. A custodial arrest is fluid and "[t]he danger to the police officer flows from *the fact of the arrest*, and its attendant proximity, stress, and uncertainty," *Robinson, supra*, at 234–235, and n. 5 (emphasis added). See *Washington* v. *Chrisman,* 455 U. S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer"). The stress is no less merely because the arrestee exited his car before the officer initiated contact, nor is an arrestee less likely to

attempt to lunge for a weapon or to destroy evidence if he is outside of, but still in control of, the vehicle. In either case, the officer faces a highly volatile situation. It would make little sense to apply two different rules to what is, at bottom, the same situation.

In some circumstances it may be safer and more effective for officers to conceal their presence from a suspect until he has left his vehicle. Certainly that is a judgment officers should be free to make. But under the strictures of petitioner's proposed "contact initiation" rule, officers who do so would be unable to search the car's passenger compartment in the event of a custodial arrest, potentially compromising their safety and placing incriminating evidence at risk of concealment or destruction. The Fourth Amendment does not require such a gamble.

Petitioner argues, however, that *Belton* will fail to provide a "bright-line" rule if it applies to more than vehicle "occupants." Brief for Petitioner 29–34. But *Belton* allows police to search the passenger compartment of a vehicle incident to a lawful custodial arrest of both "occupants" and "recent occupants." 453 U. S., at 460. Indeed, the respondent in *Belton* was not inside the car at the time of the arrest and search; he was standing on the highway. In any event, while an arrestee's status as a "recent occupant" may turn on his temporal or spatial relationship to the car at the time of the arrest and search,[2] it certainly

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[2] Petitioner argues that if we reject his proposed "contact initiation" rule, we should limit the scope of *Belton* to "recent occupants" who are within "reaching distance" of the car. Brief for Petitioner 35–36. We decline to address petitioner's argument, however, as it is outside the question on which we granted certiorari, see this Court's Rule 14.1(a), and was not addressed by the Court of Appeals, see *Peralta* v. *Heights Medical Center, Inc.,* 485 U. S. 80, 86 (1988). We note that it is unlikely that petitioner would even meet his own standard as he apparently conceded in the Court of Appeals that he was in "close proximity, both

does not turn on whether he was inside or outside the car at the moment that the officer first initiated contact with him.

To be sure, not all contraband in the passenger compartment is likely to be readily accessible to a "recent occupant." It is unlikely in this case that petitioner could have reached under the driver's seat for his gun once he was outside of his automobile. But the firearm and the passenger compartment in general were no more inaccessible than were the contraband and the passenger compartment in *Belton*. The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort of generalization which *Belton* enunciated.[3] Once an officer determines that there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment.

Rather than clarifying the constitutional limits of a *Belton* search, petitioner's "contact initiation" rule would

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temporally and spatially," to his vehicle when he was approached by Nichols. 325 F. 3d 189, 196 (CA4 2003).

[3]JUSTICE STEVENS contends that *Belton*'s bright-line rule "is not needed for cases in which the arrestee is first accosted when he is a pedestrian, because *Chimel* [v. *California,* 395 U. S. 752 (1969),] itself provides all the guidance that is necessary." *Post*, at 4 (dissenting opinion). Under JUSTICE STEVENS' approach, however, even if the car itself was within the arrestee's reaching distance under *Chimel*, police officers and courts would still have to determine whether a particular object within the passenger compartment was also within an arrestee's reaching distance under *Chimel*. This is exactly the type of unworkable and fact-specific inquiry that *Belton* rejected by holding that the entire passenger compartment may be searched when " 'the area within the immediate control of the arrestee' . . . arguably includes the interior of an automobile and the arrestee is its recent occupant." 453 U. S., at 460.

obfuscate them. Under petitioner's proposed rule, an officer approaching a suspect who has just alighted from his vehicle would have to determine whether he actually confronted or signaled confrontation with the suspect while he remained in the car, or whether the suspect exited his vehicle unaware of, and for reasons unrelated to, the officer's presence. This determination would be inherently subjective and highly fact specific, and would require precisely the sort of ad hoc determinations on the part of officers in the field and reviewing courts that *Belton* sought to avoid. *Id.,* at 459–460. Experience has shown that such a rule is impracticable, and we refuse to adopt it. So long as an arrestee is the sort of "recent occupant" of a vehicle such as petitioner was here, officers may search that vehicle incident to the arrest.[4]

The judgment of the Court of Appeals is affirmed.

It is so ordered.

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[4] Whatever the merits of JUSTICE SCALIA's opinion concurring in the judgment, this is the wrong case in which to address them. Petitioner has never argued that *Belton* should be limited "to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle," *post*, at 9, nor did any court below consider JUSTICE SCALIA's reasoning. See *Pennsylvania Dept. of Corrections* v. *Yeskey,* 524 U. S. 206, 212–213 (1998) ("'Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them'" (quoting *Adickes* v. *S. H. Kress & Co.,* 398 U. S. 144, 147, n. 2 (1970))). The question presented—"[w]hether the bright-line rule announced in *New York* v. *Belton* is confined to situations in which the police initiate contact with the occupant of a vehicle while that person is in the vehicle," Pet. for Cert.—does not fairly encompass JUSTICE SCALIA's analysis. See this Court's Rule 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court"). And the United States has never had an opportunity to respond to such an approach. See *Yee* v. *Escondido,* 503 U. S. 519, 536 (1992). Under these circumstances, it would be imprudent to overrule, for all intents and purposes, our established constitutional precedent, which governs police authority in a common occurrence such as automobile searches pursuant to arrest, and we decline to do so at this time.