STATE V. DEAN: REDEFINING ARIZONA LAW FOR POLICE-INITIATED CONTACT AND AUTOMOBILE SEARCHES INCIDENT TO ARREST

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I. FACTS

On February 7, 2001, Phoenix police officers drove to a house on East Cholla Street in Phoenix after receiving information that Donald Dean, the subject of two felony arrest warrants, lived there and drove a gray Jeep Cherokee.[1] Officers watched the house from an unmarked car, where, at about 6:00 p.m., they saw a Jeep Cherokee back out of the driveway.[2] The driver matched Dean's description, and officers in a marked patrol car followed the Jeep.[3] After a short while, the officers activated the lights on the marked car, but Dean did not pull over.[4] He instead returned to the house on East Cholla Street, parked in the driveway, jumped out of the Jeep, and ran into the garage, leaving the keys in the ignition.[5]

Officers obtained permission from the owner of the house to enter.[6] They found Dean, two and one half hours after he had fled the Jeep, hiding in the attic.[7] With Dean under arrest, officers searched the Jeep without a warrant and discovered methamphetamine in the passenger compartment.[8] Based on this warrantless search, officers obtained a warrant to search the residence where they found additional quantities of methamphetamine, marijuana, drug paraphernalia, and weapons.[9] The State charged Dean with possession of drug paraphernalia,

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1. State v. Dean, 76 P.3d 429, 431 (Ariz. 2003) (en banc).
2. *Id.*
3. *Id.* The marked patrol car was parked nearby, out of sight of the East Cholla street residence. *Id*.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* The delay was due to the fact that a tactical team from the Phoenix Special Assignment Unit was summoned to the scene. *Id*.
8. *Id.*
9. *Id.*

possession of dangerous drugs for sale, and possession of equipment or chemicals for the manufacture of dangerous drugs.[10]

Dean filed a motion in superior court to suppress the evidence seized from the Jeep, alleging an unlawful search and seizure in violation of the Fourth Amendment.[11] The superior court granted the motion, but the court of appeals reversed, holding that the search of the Jeep was incident to Dean's arrest.[12] The Arizona Supreme Court granted review to address the applicability of the "search incident to arrest" exception to the warrant requirement in this type of situation.[13] Specifically, the court analyzed the question of whether a police officer who arrests a recent occupant of a vehicle is precluded from searching the vehicle unless the arrestee was aware of the police before getting out of the vehicle.

The State attempted to justify the warrantless search by virtue of three exceptions to the warrant requirement: Dean abandoned the Jeep, the search was an administrative inventory of its contents, and the search was "incident" to Dean's arrest.[14] The Arizona Supreme Court quickly dismissed the first two arguments, holding that the only conceivably applicable justification for the warrantless search was the "search incident to arrest" exception.[15]

II. SUPREME COURT CASE LAW

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, protects against "unreasonable searches and seizures," and provides that search warrants shall be issued only upon a finding of "probable cause."[16] Searches conducted without a warrant are per se unreasonable unless the search is one of a few specifically established exceptions to the warrant requirement.[17] A search incident to a lawful arrest falls within one of those exceptions.[18]

In *Chimel v. California*, the Supreme Court held that when police make a lawful arrest, they may, without a warrant, search the person in custody as well as the area in the suspect's "immediate control."[19] The Court defined this as the "area from within which [the suspect] might gain possession of a weapon or destructible

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10. *Id.*
11. *Id.*
12. State v. Dean, 55 P.3d 102, 105 (Ariz. Ct. App. 2002), *vacated*, 76 P.3d 429 (Ariz. 2003) (en banc).
13. *Dean*, 76 P.3d at 432.
14. *Id.*
15. *Id.* The superior court also rejected the first two arguments, finding that the parked Jeep in Dean's driveway was not abandoned, and that the search was not an administrative inventory since the purpose of the search according to police testimony was to search for evidence. *Id.* The court of appeals, in finding that the search was justified as a search incident to arrest, did not consider the State's other arguments that Dean abandoned the Jeep and the search was pursuant to a valid inventory search. *Dean*, 55 P.3d at 105.
16. U.S. CONST. amend. IV.
17. Katz v. United States, 389 U.S. 347, 357 (1967).
18. Chimel v. California, 395 U.S. 752, 762–63 (1969).
19. *Id*. at 763.

evidence."[20] The Court advanced two justifications of the "search incident to arrest" exception—officer safety and preservation of evidence.[21] For a search to fall within the exception, the scope of the search must be strictly tied to these "twin aims."[22]

The warrantless search in *Chimel* took place between forty-five minutes to an hour after the defendant was arrested, during which time officers searched the defendant's entire house.[23] The Court ruled that, because the search went far beyond the defendant's person and the area from which the defendant could have grabbed a weapon or destroyed evidence to be used against him, the search was unreasonable under the Fourth Amendment.[24]

The Supreme Court extended the justifications for searches incident to arrest to automobile searches in *New York v. Belton*, holding that officers may search the entire passenger compartment of a vehicle, and all containers therein, as a "contemporaneous incident" to a lawful arrest.[25] The Court expanded the scope of the search incident to an arrest involving automobiles in order to set forth a clear rule for police officers in the field and to avoid case-by-case litigation of the reasonableness of such searches.[26] While the rule is a bright line with respect to what officers may search in a vehicle, the *Belton* Court did not specifically address when a defendant is a "recent occupant" of a vehicle. The Court only noted that the search of Belton's vehicle occurred immediately after he was arrested and that Belton was a passenger "just before he was arrested."[27] The Court also did not clearly establish where a defendant must be located in relation to the vehicle at the time of the arrest in order to justify a warrantless search of the passenger compartment.[28]

The *Belton* Court noted that it was not retreating from *Chimel*, and the "fundamental principles" established in *Chimel* regarding the basic scope of searches incident to lawful custodial arrests remain unchanged.[29] The Arizona Supreme Court interpreted this to mean that the bright-line rule in *Belton* did not dispense with the twin aims of *Chimel*—police safety and preservation of evidence.[30]

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20. *Id.*
21. *Id*.
22. *Id.*
23. *Id.*
24. *Id.* at 768.
25. 453 U.S. 454, 460 (1981).
26. *Id*.
27. *Id.* at 462.
28. *Id.* The defendant in *Belton* was located in close proximity to the car at the time of the arrest. *Id.* at 456.
29. *Id.* at 460 n.3.
30. State v. Dean, 76 P.3d 429, 436 (Ariz. 2003) ("The search incident to arrest exception explicated in *Belton* and *Chimel* was designed to protect officer safety and avoid the destruction of evidence.").

III. ARIZONA APPELLATE COURT DECISIONS

One year before *Dean*, an Arizona appellate court in *State v. Gant* attempted to define when a police officer could search the passenger compartment of a vehicle incident to an arrest.[31] At the time of the *Gant* decision, neither *Belton* nor any subsequent U.S. Supreme Court case[32] clearly provided the parameters for when a defendant is a "recent occupant" of a vehicle. Both federal and state courts struggled to define the term.[33] Some jurisdictions focused on whether a police officer initiates contact with the suspect while the suspect is still inside the vehicle.[34] These jurisdictions held that, if an occupant of a vehicle voluntarily leaves the automobile and walks away from it before the police officer initiates contact, *Belton* does not apply, and the officer is not authorized to search the passenger compartment of the vehicle.[35] Instead, *Chimel*'s case-by-case analysis for reasonableness becomes necessary.[36] The Arizona Court of Appeals adopted this approach in *Gant*.[37]

In *Gant*, a police officer waiting at Gant's residence shined his flashlight into a car pulling into the driveway and recognized Gant as someone wanted on an outstanding warrant and whose license was suspended.[38] Gant parked the car, exited, and began walking toward the officer.[39] The officer took Gant into custody pursuant to the warrant and for driving with a suspended license.[40] The officer's warrantless search of Gant's vehicle turned up a weapon and cocaine.[41] The superior court upheld the search, but the court of appeals reversed, holding that *Belton* was factually distinguishable and did not apply.[42]

The court held that the rule in *Belton* is limited to when "the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and

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31. State v. Gant, 43 P.3d 188 (Ariz. 2002), *cert. granted*, 538 U.S. 976 (2003), *vacated and remanded by* 124 S. Ct. 461 (2003).

32. Subsequent to *Gant* and *Dean*, the U.S. Supreme Court decided *Thornton v. United States*, 124 S. Ct. 2127 (2004). *See* discussion *infra* Part V.

33. *See, e.g.*, United States v. Sholala, 124 F.3d 803 (7th Cir. 1997); United States v. Snook, 88 F.3d 605 (8th Cir. 1996); United States v. Hudgins, 52 F.3d 115 (6th Cir. 1995); United States v. Adams, 26 F.3d 702 (7th Cir. 1994); United States v. Strahan, 984 F.2d 155 (6th Cir. 1993); United States v. Fafowara, 865 F.2d 360 (D.C. Cir. 1989); United States v. Schecter, 717 F.2d 864 (3d Cir. 1983); People v. Savedra, 907 P.2d 596 (Colo. 1995); State v. Foster, 905 P.2d 1032 (Idaho Ct. App. 1995); State v. Wanzek, 598 N.W.2d 811 (N.D. 1999); Glasco v. Commonwealth, 513 S.E.2d 137 (Va. 1999).

34. *See, e.g.*, *Hudgins*, 52 F.3d 115; *Strahan*, 984 F.2d 155; *Fafowara*, 865 F.2d 360; Thomas v. State, 761 So. 2d 1010 (Fla. 1999); Commonwealth v. Santiago, 575 N.E.2d 350 (Mass. 1991); People v. Fernegel, 549 N.W.2d 391 (Mich. Ct. App. 1996).

35. State v. Dean, 76 P.3d 429, 435 (Ariz. 2003).

36. *Id.*

37. 43 P.3d 188 (2002).

38. *Id.* at 190. The warrant was for failure to appear. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 192.

the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile)."[43] Under this approach, a police officer may search the vehicle's entire passenger compartment only if the officer initiates contact with a suspect while he is still inside the vehicle.[44] In all other cases, *Chimel*'s "immediate control" test applies.[45] In instances where an officer first encounters an arrestee outside of the vehicle, the twin concerns of officer safety and evidence preservation that justify the "search incident to arrest" exception discussed in *Chimel* disappear because the vehicle's passenger compartment is no longer within the immediate control of the arrestee.[46] Because Gant voluntarily exited the car before the police officer approached him, the search of his car must satisfy the *Chimel* test.[47] The court concluded that the passenger compartment was not within Gant's immediate control at the time of his arrest, and thus the search was not lawful as incident to arrest.[48]

The *Gant* court noted, however, that a "vehicle's occupant cannot avoid *Belton*'s application and create a haven for contraband" by exiting the vehicle when officers approach.[49] Therefore, if the police "overtly initiat[e]" contact before a suspect exits a vehicle and the suspect is subsequently arrested, the vehicle may be searched without a warrant as incident to an arrest under *Belton*.[50]

In *Dean*, the appellate court applied *Gant*'s interpretation of *Belton*, holding that if an officer confronts the occupant of a vehicle and then lawfully arrests that occupant, the officer may search the vehicle incident to the occupant's arrest.[51] Applying this analysis, the court held that because the police could have searched the vehicle incident to an arrest if Dean had been apprehended either inside or outside of it, Dean could not "evade a search" by leaving the Jeep before the officers could arrest him.[52] The court attributed the time between Dean's exit of the vehicle and arrest, and his distance from the vehicle at the time of arrest, to Dean's attempt to evade the police.[53] The appellate court reasoned that if Dean had not fled into the house, he would have been arrested near the Jeep, and any subsequent search of the vehicle would plainly have been incident to his arrest.[54] The officers, under the *Belton* rule, would have been authorized to search the vehicle compartment without a warrant incident to Dean's arrest.[55]

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43. *Id.* (quoting United States v. Hudgins, 52 F.3d 115, 119 (6th Cir. 1995)).
44. State v. Dean, 76 P.3d 429, 436 (Ariz. 2003) (en banc).
45. *Id.*
46. *Gant*, 43 P.3d at 192.
47. *Id.* at 194.
48. *Id.*
49. *Id.* at 192.
50. *Id.*
51. State v. Dean, 55 P.3d 102, 106 (Ariz. Ct. App. 2002).
52. *Id.*
53. *Id.*
54. *Id*.
55. *Id*.

IV. ARIZONA SUPREME COURT REJECTS ANALYSIS OF APPELLATE COURTS

After analyzing the rationale taken by the appellate divisions in *Dean* and *Gant*, the Arizona Supreme Court held that the approach taken by the Arizona appellate divisions was not supported by the rationale of either *Belton* or *Chimel*.[56] Whether or not a police officer initiates contact with a vehicle, a "suspect arrested next to a vehicle presents the same threat to officer safety and the same potential for destruction of evidence."[57] The court criticized an approach that would apply two separate tests for arrests that are "for all relevant intents and purposes the same situation."[58] Additionally, the focus on police-initiated contact contradicts the purposes underlying *Belton*, which were to provide the police with a "familiar standard" for automobile searches and to avoid case-by-case litigation as to whether the search of part or all of a passenger compartment was within the scope of a search incident to arrest.[59] The *Gant* approach would force courts back to the case-by-case analysis that *Belton* sought to eradicate, since a court must determine whether the arrestee was aware of police presence before leaving the vehicle.[60] For all these reasons, the court agreed with a number of jurisdictions and held that police initiation is irrelevant in determining whether an arrestee is a "recent occupant" of a vehicle under *Belton*.[61] Instead, the appropriate inquiry focuses on "*when* and *where*" the custodial arrest took place.[62]

The court adopted the rule set forth by the Supreme Court of Virginia: "[A] defendant is 'a recent occupant of a vehicle within the limits of the Belton rule' when he is arrested in 'close proximity to the vehicle immediately after the defendant exits the automobile.'"[63] The court acknowledged that analyzing "close proximity" and "immediately after" will depend on the circumstances, but the concepts directly correspond to officer safety and the preservation of evidence.[64] The test is also consistent with "the general notions that the Fourth Amendment disfavors warrantless searches and that any exceptions to that general rule are narrowly limited in light of their underlying justifications."[65]

After reviewing case results in a broad array of factual circumstances, the court found no case where the search of a passenger compartment was upheld

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56. State v. Dean, 76 P.3d 429, 436 (Ariz. 2003).
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* The Court found that a number of courts have ruled initiation of contact by the police irrelevant in determining whether an arrestee is a "recent occupant." *Id. See, e.g.*, United States v. Thornton, 325 F.3d 189 (4th Cir. 2003); United States v. Sholala, 124 F.3d 803 (7th Cir. 1997); United States v. Snook, 88 F.3d 605 (8th Cir. 1996); United States v. Adams, 26 F.3d 702 (7th Cir. 1994); United States v. Schecter, 717 F.2d 864 (3d Cir. 1983).
62. *Dean*, 76 P.3d at 436 (emphasis in original).
63. *Id.* at 437 (citing Glasco v. Commonwealth, 513 S.E.2d 137, 142 (Va. 1999)).
64. *Id.*
65. *Id.*

under *Belton* when the driver was arrested "as long after he left the vehicle *and* as far from the vehicle" as Dean was in this case.[66] The court concluded that, because of the physical distance between Dean and the vehicle and the long lapse of time between the arrest and Dean's exiting of the vehicle, the search was not incident to an arrest.[67] Neither justification for a warrantless search of the vehicle—police safety nor preservation of evidence—was present at the time of Dean's arrest.[68]

V. U.S. SUPREME COURT AGREES WITH ARIZONA SUPREME COURT'S APPROACH

Nearly eight months after the Arizona Supreme Court decided *Dean*, the U.S. Supreme Court granted certiorari in *Thornton v. United States*[69] to clarify the conflict among the circuit courts over whether *Belton*'s rule is limited to situations where the officer initiates contact with an occupant who is still inside the vehicle, or whether it also applies when the officer makes contact after the arrestee steps out of the vehicle.[70] In *Thornton*, a uniformed police officer driving an unmarked car became suspicious of Thornton after he slowed down his vehicle to avoid driving next to the officer.[71] The officer pulled off onto a side street, allowed Thornton to pass him, and ran a check on Thornton's vehicle tags.[72] The tags were issued to a vehicle different from the one Thornton was driving.[73] Before the officer was able to pull him over, Thornton drove into a parking lot, parked, and got out of the vehicle.[74] The officer approached Thornton, who appeared nervous and began rambling.[75] The officer, fearing for his safety, frisked Thornton and found marijuana and crack cocaine.[76] After arresting Thornton, the officer searched the vehicle and found a BryCo .9-millimeter handgun under the driver's seat.[77] A grand jury charged Thornton with drug possession and two counts of firearm possession.[78] Thornton sought to suppress the firearm as the fruit of an illegal search, arguing that the officer could not search his vehicle without a warrant, as *Belton* was limited to situations where the officer initiated contact with an arrestee while he was still an occupant of the car.[79] The district court denied the motion to suppress the firearm, and the Fourth Circuit affirmed.[80]

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66. *Id.* (emphasis in original).
67. *Id.*
68. *Id.*
69. 124 S. Ct. 2127 (2004).
70. *Id*. at 2129.
71. *Id*.
72. *Id*.
73. *Id*.
74. *Id*.
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.* Thornton was charged with possession with intent to distribute cocaine base, possession of a firearm after having been previously convicted of a crime punishable by a term of imprisonment exceeding one year, and possession of a firearm in furtherance of a drug trafficking crime. *Id.*
79. *Id.* at 2130.
80. *Id*.

Although not expressly citing to *Dean*, the Supreme Court agreed with the Arizona Supreme Court's ruling in *Dean*, holding that the span of area within an arrestee's immediate control is not determined by whether the arrestee exited the vehicle at his discretion or whether the officer initiated contact while the occupant was still inside the car.[81] The Court also agreed with *Dean*'s criticism of applying different rules to what is essentially the same situation, since the identical concerns for officer safety and preservation of evidence are present whether the arrestee exited the vehicle before police initiated contact or is still inside the vehicle when police initiate contact.[82] Under *Belton*, an arrestee's status as a "recent occupant" does not turn on "whether he was inside or outside the car at the moment that the officer first initiated contact with him."[83]

The Court underscored the need for a clear rule that can be readily understood by police officers and which does not depend upon a case-by-case inquiry of what items were within the reach of an arrestee.[84] Rather than clarifying this rule, a "contact initiation" rule would obscure the limits of *Belton*, since an officer approaching a suspect who has exited his vehicle must determine whether he initiated the contact with the suspect or whether the suspect exited the vehicle unaware of the officer's presence.[85] Such a rule is "impracticable" because it is inherently subjective and highly fact-specific.[86] The Court held that as long as an arrestee is the "sort of 'recent occupant'" of a vehicle as Thornton was in this case, officers may search the suspect's vehicle incident to a lawful arrest.[87]

The Court did not address a situation in which the arrestee may not be the "sort of 'recent occupant'" as Thornton was, and whether a fact pattern similar to that in *Dean* would move the analysis away from *Belton* and back to a *Chimel* totality of the facts analysis.

VI. CONCLUSION

The rule in *Belton*, which allows police to search the passenger compartment and any container therein, is a bright-line rule regarding the scope of an automobile search incident to arrest. There is no comparable bright-line rule for assessing which temporal and spatial parameters trigger the *Belton* rule. "Recent occupant" remains the operative term. It is arguable that the approach taken by *Gant* attempts to formulate a bright-line rule by defining the "recent occupant" of an automobile as someone with whom the police officer initiates contact. Both the Arizona Supreme Court and U.S. Supreme Court rejected this approach, claiming a contact-initiation rule complicates the constitutional analysis of automobile searches incident to arrest. *Dean* held, and *Thornton* confirmed, that *Belton* applies whenever a police officer makes a lawful arrest of a recent occupant of a vehicle and searches the passenger compartment of the automobile as a contemporaneous

81. *Id.* at 2131.
82. *Id.*
83. *Id.* at 2131–32.
84. *Id*. at 2132.
85. *Id*.
86. *Id*.
87. *Id*.

incident of that arrest, and whether or not police initiate contact is irrelevant. The Arizona Supreme Court took one step further to hold that *Belton* did not dispense with all analysis of whether a police officer may search a vehicle at all. When the arrest occurs long after the defendant has left the vehicle and is far from the vehicle, *Chimel*'s twin aims of officer safety and preservation of evidence remain essential in determining whether the situation justifies dispensing with the warrant requirement by focusing on the totality of the facts. In other words, if the arrestee is not a recent occupant, then the court must look to whether the search of the automobile is justified under *Chimel*, and if the arrestee is a recent occupant, then *Belton*'s bright-line rule of the scope of the search applies. The threshold question under *Dean*, then, is recent occupancy. The holdings in *Dean* and *Thornton* continue to beg the question of who is a "recent occupant." *Dean* simply provides one example of who is *not* a "recent occupant" of an automobile.