

THORNTON V. UNITED STATES

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On May 24, 2004, in *Thornton v. United States*, 541 U.S. ____ (2004), the Supreme Court held that the Fourth Amendment allows a police officer who has made a lawful custodial arrest of the prior occupant of a car to search the entire passenger compartment of that car, even when the officer does not initiate contact until the occupant has left the car. Indeed, here the suspect was handcuffed and placed in the back seat of the patrol car when his car was searched without a warrant. This was an extension of a prior case, *New York v. Belton*, 453 U.S. 454 (1981), where the Court held the same as above, only with the occupant inside his car at the time of arrest. The Court noted that, “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.” The Court went on to explain that anything less than a simple, bright-line test would require a determination that “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. . . . 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.”

In a separate opinion concurring in the result, Justice Scalia (joined by Justice Ginsburg) expressed his strong disapproval of what has become a venerable legal fiction. Justice Scalia saw “three reasons why the search in this case might have been justified to protect officer safety or prevent concealment or destruction of evidence.” None persuaded him. First, he noted the dubiety of the idea that “despite being handcuffed and secured in the back of a squad car, petitioner might have escaped and retrieved a weapon or evidence from his vehicle – a theory that calls to mind . . . the mythical arrestee ‘possessed of the skill of Houdini and the strength of Hercules.’” Second, Justice Scalia raised the common observation that, because the officer could have conducted the search at the time of arrest when the suspect was still near the car, “he should not be penalized for having taken the sensible precaution of securing the suspect in the squad car first.” Justice Scalia wrote that this assumes the search *must* take place. The government, however, does not have the right to conduct such a search; such searches are instead justified solely as a necessity to protect officers and preserve evidence, an exception to the rule against general searches. Finally, Justice Scalia limned the third defense: the idea that, because *Belton* searches in general are reasonable, the benefits of a bright-line rule justify upholding those searches that, on their particular facts, are not reasonable.

Justice Scalia assembled a small sampling of cases involving what has become over the years a routine scenario: a motorist handcuffed and secured in the backseat of a police car when the search takes place. Such a scenario, of course, is a logical outgrowth of the rule in *Belton*, a rule that serves only to profoundly undermine its entire rationale. As Justice Scalia wrote: “If *Belton* entitles an officer to search a vehicle upon arresting the driver despite having taken measures that eliminate any danger, what rational officer would not take those measures?”

Admirably, Justice Scalia set out to dispense with this legal fiction, and made a strong historical case that, “if *Belton* searches are justifiable, it is not because the arrestee might grab a weapon or evidentiary item from his car, but simply because the car might

contain evidence relevant to the crime for which he was arrested.” Justice Scalia collected a host of older authorities to support this more honest legal rationale, and explained precisely where and when the Court had lost its way, substituting a dubious idea of exigency for a more common-sense (and realistic) analytical approach.

Thus, with close reasoning, thorough research, and no small measure of judicial candor, Justice Scalia has gone a long way towards maintaining, and improving, the integrity of constitutional common law judging. Although it is only a concurring opinion, its persuasiveness should gain it more adherents with the passage of time.