“THE U. S. SUPREME COURT GETS IT RIGHT IN ARIZONA V. GANT: JUSTIFICATIONS FOR RULES PROTECT CONSTITUTIONAL RIGHTS”

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PROTECT CONSTITUTIONAL RIGHTS

“‘Ratio legis est anima legis, et mutata legis ratione, matatur et lex’—
[Reason is the soul of the law; the reason of the law being changed, the
law also is changed.’”¹

SHENEQUA L. GREY²

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   Edward Coke, Milborn’s Case, 7 Coke 7a (KB 1609)).

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to the loving memory of my parents, Mr. and Mrs. Louis Grey, Jr., for their endless support and
motivation.  I would also like to thank my research assistant, Wade House.
I. INTRODUCTION

In *Arizona v. Gant*, the United States Supreme Court recently revisited the search of an arrestee’s vehicle pursuant to the “search incident to a lawful arrest” exception to the warrant requirement of the Fourth Amendment of the United States Constitution. The Court held “[p]olice 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 [if] it is reasonable to believe the vehicle contains evidence of the offense of arrest.” The Court held these searches were unconstitutional if the suspect has been removed from the proximity of the vehicle where he would be unable to access a weapon or evidence, or if an officer could not reasonably believe that the vehicle contains evidence of

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4. See New York v. Belton, 453 U.S. 454, 460 (1981) (applying the exception to vehicles, the 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”); see also Chimel v. California, 395 U.S. 752, 763 (1969) (authorizing a search of an arrestee’s person and the area within his immediate control to “remove any weapons that the latter might seek to use in order to resist arrest or effect his escape” and to “search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction”); Weeks v. United States, 232 U.S. 383, 393 (1914) (recognizing the “search incident to a lawful arrest” exception to the warrant requirement, thus, authorizing a search without a warrant following a full custodial arrest of one’s person).

5. See Katz v. United States, 389 U.S. 347, 357 (1967) (“[S]earches 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”).

the crime “unless police obtain a warrant or show that another exception to the warrant requirement applies.” The decision revisits and redefines the scope of a search incident to a lawful arrest exception, and to the warrant requirement as it relates to vehicles, as is first applied to the arrest of persons in general, and later analyzed in situations where the arrestee is a recent occupant of a vehicle.

In reaching this decision, the Court in Gant primarily relied on three prior decisions: Chimel v. California, New York v. Belton, and Thornton v. United States. In Chimel, the United States Supreme Court held that the scope of a search incident to a lawful arrest extended to the area within the arrestee’s “immediate control” and “from within which he might gain possession of a weapon or destructible evidence.” In Belton, the Court analyzed the scope of a search incident to a lawful arrest when the suspect is a recent occupant of a vehicle at the time of arrest. This case authorized police to search the passenger compartment of the vehicle upon the justification that the passenger compartment was the area from

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7. Id. at 1724. This article is limited to the search of vehicles pursuant to the search incident to a lawful arrest exception only, and the underlying criteria for its applicability. It does not address other basis upon which police may search a vehicle absent a warrant. See, e.g., Michigan v. Long, 463 U.S. 1032, 1049 (1983). In Long, the Court stated that:

These principals compel our conclusion that the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on ‘specific and articulable facts which, taken together with the rational inferences from those facts reasonably warrant’ the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.

Id.; see also United States v. Ross, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search”). This would extend to all packages within the vehicle, open or closed, regardless of ownership, if it could conceal the object of the search. See Ross, 456 U.S. at 825; see also South Dakota v. Opperman, 428 U.S. 364, 372 (1976) (holding that “inventories of vehicles pursuant to standard police procedures are reasonable”); Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973) (acknowledging the constitutionality of searches and seizures upon consent of a person authorized to grant consent); Carroll v. United States, 267 U.S. 132, 153 (1925) (recognizing the automobile exception, holding that “contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant” where probable cause exists).

8. See Chimel, 395 U.S. at 763.
9. See Belton, 453 U.S. at 460.
10. See Gant, 129 S. Ct. at 1717–19 (providing an extensive analysis of Chimel, Belton, and Thornton prior to reaching a conclusion in this case).
15. Id.
16. See Belton, 453 U.S. at 460.
within which an arrested suspect may be able to obtain a weapon to use against the arresting officers, or to conceal or destroy evidence of the crime. In Thornton, the United States Supreme Court further allowed police to search the passenger compartment of the vehicle in “cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”

Based on these decisions, the Court in Gant held that following the arrest of a recent occupant of a vehicle, police could search the passenger compartment of an arrestee’s vehicle only if: “[1] the arrestee is within reaching distance of the passenger compartment at the time of the search[; or] [2] if it is reasonable to believe the vehicle contains evidence of the offense of arrest.” This decision was clearly based on evidentiary and safety concerns as outlined in Chimel, Belton, and Thornton. In recent years, however, viewing Belton as providing a “bright line rule,” the Courts have expanded upon the original justifications articulated in Chimel and Belton and have allowed automatic searches of an arrestee’s vehicle following all arrests. In other words, law enforcement have begun to routinely search an arrestee’s vehicle pursuant to this exception even when the suspect was no longer within reach of the vehicle, and in some instances, where the suspect had been handcuffed and placed in the patrol car, or “even when the squad car carrying the handcuffed arrestee [had]

17. See id. at 457.
20. See generally Thornton, 541 U.S. at 615–24; Chimel, 395 U.S. at 752–768; Belton, 453 U.S. at 454–63. See also Donald Ostertag, Clarifying Thornton: A Bright-Line Definition of “Recent Occupant”, 28 T. JEFFERSON L. REV. 479, 484–85 (2006) (discussing the twin policy rationales of Chimel as: (1) ensuring officer safety; and (2) preventing the destruction of evidence); David M. Silk, When Bright Lines Break Down: Limiting New York v. Belton, 136 U. PA. L. REV. 281, 284 (1987) (discussing the permissible scope and rationale of the search incident to arrest exception, stating that “the search was justified only by the need to protect police officers and preserve evidence . . . .”) (citation omitted).
21. See discussion infra Part IV.A (discussing Belton as a bright line rule); see also United States v. Hrasky, 453 F.3d 1099, 1100 (8th Cir. 2006) (discussing the rationale for Belton as a “bright-line” rule). Many scholars have also touted Belton as providing a bright line rule. See, e.g., Silk, supra note 20, at 282; Leslie A. Lunney, The (Inevitably Arbitrary) Placement of Bright Lines: Belton and Its Progeny, 79 TUL. L. REV. 365, 366 (2004).
22. See, e.g., United States v. Murphy, 221 Fed. App’x 715, 717 (10th Cir. 2007); United States v. Weaver, 433 F.3d 1104, 1105 (9th Cir. 2006); Hrasky, 453 F.3d at 1100 (8th Cir. 2006); United States v. Dorsey, 418 F.3d 1038, 1041 (9th Cir. 2005); United States v. Osife, 398 F.3d 1143, 1144 (9th Cir. 2005); United States v. Sumrall, 115 Fed. App’x 22, 24 (10th Cir. 2004); United States v. Barnes, 374 F.3d 601, 603 (8th Cir. 2004).
23. See Thornton, 541 U.S. at 628 (recognizing that “[r]eported cases involving this precise factual scenario—a motorist handcuffed and secured in the back of a squad car when the search takes place—are legion.”); see also United States v. Welsey, 293 F.3d 541, 544 (D.C. Cir. 2002);
already left the scene.” Not only has this practice been widely “taught in police academies,” but many lower courts have upheld the practice, treating “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 Chimel.”

In Gant, however, the United States Supreme Court reverted back to the original justification of the rule limiting such authority and held the search of a suspect’s vehicle unconstitutional when the suspect can no longer access the vehicle to conceal or destroy weapons or if an officer could not reasonably believe the vehicle contains evidence of a crime. In doing so, the Court rejected the notion that the practice of automatic searches of vehicles incident to a lawful arrest should be upheld based on a broad reading of Belton effectively authorizing such searches. The Court also refused to uphold the searches under the theory of stare decisis and further noted the searches should not be upheld by balancing a reduced expectation of privacy in vehicles against the need for a bright line rule. Instead, the Court held true to the original justification of the rule as authorized in Chimel and later applied in Belton—access to weapons or evidence.

United States v. Humphrey, 208 F.3d 1190, 1202 (10th Cir. 2000); United States v. Humphrey, 208 F.3d 1190, 1202 (10th Cir. 2000); United States v. McLaughlin, 170 F.3d 889, 890 (9th Cir. 1999); United States v. Mitchell, 82 F.3d 146, 149 (7th Cir. 1996); United States v. Snook, 88 F.3d 605, 606 (8th Cir. 1996); United States v. Doward, 41 F.3d 789, 791 (1st Cir. 1994); United States v. White, 871 F.2d 41, 44 (6th Cir. 1989); WAYNE R. LAFAVE, SEARCH AND SEIZURE § 7.1(c), at 514–24 (4th ed. 2009).

24. Thornton, 541 U.S. at 628; see also McLaughlin, 170 F.3d at 890–91 (9th Cir. 1999) (upholding a search because only five minutes had elapsed since the squad car left); United States v. Snook, 88 F.3d. 605, 606 (8th Cir. 1996); United States v. McCrady, 774 F.2d 868, 871–72 (8th Cir. 1985).


27. See Gant, 129 S. Ct. at 1722–23.

28. See id. at 1718–19.

29. See id. at 1722.

30. See id. at 1720.

31. See id. at 1719; see also Chimel v. California, 395 U.S. 752, 763 (1969) (authorizing a search of an arrestee’s person and the area within his immediate control to “remove any weapons that the latter might seek to use in order to resist arrest or effect his escape” and “to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction”).


33. See Belton, 453 U.S. at 462–63.
The search incident to a lawful arrest exception is only one of several exceptions and numerous other principles established by the Court upon specific justifications. For instance, the Terry “stop and frisk,” the frisk of the vehicle, and the protective sweep are all justified on officer safety principles. The inventory search is based on protection of individual’s property and to prevent accusations of theft. In each case, the principles were established based upon some underlying justification warranting dispensing with the constitutional requirement of a warrant supported by probable cause. This decision seems to be a part of a recent trend of the United States Supreme Court to hold true to those original justifications of rules in deciding new cases before the Court, and to revert back to those justifications when its decisions have diverted from the justifications.

This trend was recently demonstrated in Hudson v. Michigan, where


35. In addition to the exceptions to the warrant requirement, the Court has established other principles based upon specific justifications. See, e.g., New York v. Quarles, 467 U.S. 649, 656–57 (1984) (recognizing a “public safety” exception to the Miranda warnings when a real threat to “public safety” exists that warrants dispensing with the Miranda requirements); Weeks v. United States, 232 U.S. 383 (1914) (establishing the federal exclusionary rule providing that unconstitutionally obtained evidence be inadmissible from trial against a defendant in the prosecution’s case in chief).

36. See Terry, 392 U.S. at 21 (establishing the stop and frisk exception to the warrant requirement, when an officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion”).


38. See Buie, 494 U.S. at 337 (“[T]he Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene”).

39. See South Dakota v. Opperman, 428 U.S. 364, 372 (1976) (recognizing that “inventories of vehicles” pursuant to standard police procedures are reasonable); see also id. at 369 (“These procedures were developed in response to three distinct needs: the protection of the owner’s property while it remains in police custody, the protection [sic] the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger.”) (citation omitted).

40. See id. at 369.

41. See id. at 382–83; see also Buie, 494 U.S. at 334; Long, 463 U.S. at 1051; Terry, 392 U.S. at 22.

42. 547 U.S. 586, 599 (2006). For a complete analysis of the Court’s application of the exclusionary rule to violations of the knock and announce rule, see Shenequa L. Grey, Revisiting
the Court reexamined the purpose and justification of the “exclusionary rule”\textsuperscript{43} to conclude that it did not require the exclusion of evidence obtained in violation of the “knock and announce”\textsuperscript{44} rule.\textsuperscript{45} In overruling decades of precedent excluding such evidence,\textsuperscript{46} the Court concluded that exclusion was inappropriate because it did not further the purpose and goal of the exclusionary rule.\textsuperscript{47} The decision, like \textit{Gant}, overruled decades of precedent\textsuperscript{48} and adhered to the original justification of the exclusionary rule.\textsuperscript{49}

The purpose of this article is to demonstrate how the justifications or rationales for legal principles form the basis for compliance with the Fourth Amendment of the United States Constitution; and that therefore, failure to comply with those justifications leads to unconstitutional searches and seizures.\textsuperscript{50} Strict compliance with the underlying justifications prevents the courts from circumventing the Constitution by establishing a rule, then expanding it beyond its intended purpose.\textsuperscript{51} This article demonstrates and reiterates that compliance with the underlying justifications for establishing rules is essential to protecting individual constitutional rights.\textsuperscript{52}

In addressing these issues, Part I of this article gives an overview of \textit{Arizona v. Gant}, setting forth the facts of the case and the issues presented before the Court relative to the search incident to a lawful arrest exception to the warrant requirement.\textsuperscript{53} Part II examines the underlying justifications

\textsuperscript{43} See \textit{Weeks v. United States}, 232 U.S. 383, 398 (1914).
\textsuperscript{44} See \textit{Wilson v. Arkansas}, 514 U.S. 927, 929 (1995), for the requirement that officers knock and announce their presence prior to any forcible entry into a residence.
\textsuperscript{45} See \textit{Hudson}, 547 U.S. at 599.
\textsuperscript{46} See \textit{Sabbath v. United States}, 391 U.S. 585, 586 (1968) (holding that because officers entered without a proper knock and announcement, the subsequent arrest was invalid and the evidence seized in the subsequent search was inadmissible); see also \textit{Miller v. United States}, 357 U.S. 301, 313–14 (1958) (stating that “[b]ecause the petitioner did not receive that notice before the officers broke the door to invade his home, the arrest was unlawful, and the evidence seized should have been suppressed”); \textit{Wilson}, 514 U.S. at 929; \textit{United States v. Dice}, 200 F.3d 978, 986 (6th Cir. 2000).
\textsuperscript{47} See \textit{Hudson}, 547 U.S. at 599.
\textsuperscript{48} See cases cited supra note 46.
\textsuperscript{49} See \textit{Hudson}, 547 U.S. at 599.
\textsuperscript{50} See infra Part VI and accompanying text.
\textsuperscript{51} See infra notes 309–21 and accompanying text. It is this author’s position that this is what occurred with respect to \textit{Belton}—where the decision was based upon the twin policy rationales of \textit{Chimel}, but has been widely interpreted as providing for a “bright line rule” allowing searches of all vehicles following an arrest. This article suggests that such an interpretation of the rule would render such searches unconstitutional.
\textsuperscript{52} See infra notes 309–10 and accompanying text.
\textsuperscript{53} See infra Part II.
for developing the scope of the search incident to a lawful arrest exception to the warrant requirement in general, and as it relates to vehicles. Part III discusses theories offered to support expansion of the rule to include automatic searches of vehicles even when the original underlying justifications are not present and finds that the theories do not support expansion of the rule. Part IV gives an application of the law as defined in Gant to its facts to conclude that the decision is consistent with precedent interpreting the applicable law. Part V discusses the trend of the Court to revert back to the original justifications of rules with specific emphasis on Hudson v. Michigan. It further discusses justifications of other rules articulated by the Court in developing exceptions to the warrant requirement and shows how compliance with those justifications is essential to the constitutionality of the search or seizure and to ultimately protecting individual constitutional rights.

II. ARIZONA V. GANT: AN OVERVIEW

In Arizona v. Gant, police went to Rodney Gant’s home to arrest him on a warrant for a suspended license. When they arrived at Gant’s home, he was not there, but he pulled into the driveway shortly thereafter. One of the officers was able to confirm that it was him when he shined a flashlight into the car as Gant drove by. Gant then parked his car, exited it and approached the officers. Upon contact, the officers immediately arrested Gant, handcuffed him, and placed him inside of a patrol car. After being placed in the patrol car, two other police officers on the scene searched his vehicle where they found a gun and drugs in the pocket of a jacket located in the backseat of the car. Gant was charged with possession of a narcotic drug for sale and possession of drug paraphernalia, and the state sought to use the evidence obtained in the search against him at trial.
Gant objected to the admissibility of the evidence claiming, among other things, the evidence was unconstitutionally obtained in violation of his Fourth Amendment protections against unreasonable searches and seizures. Gant claimed the warrantless search did not comply with the requirements for a search incident to a lawful arrest because he was already handcuffed and in the patrol car at the time of the search. He argued that since he was not able to access drugs or weapons at the time of the search, the search was not authorized under Belton. Furthermore, he argued that since the officers could not have reasonably believed the vehicle contained evidence of the crime for which he was arrested, a traffic offense, the search was similarly not authorized under Thornton. Thus, he argued the evidence was unconstitutionally obtained and therefore, inadmissible against him at trial.

In finding the search unconstitutional, the Court relied on the original justifications for the search incident to a lawful arrest exception as outlined in Chimel and later relied upon in Belton. This decision rejects a broad reading of Belton providing for automatic searches of vehicles whenever there is an arrest, as being inconsistent with the original purpose and intent of the exception. By reverting back to original justifications for the establishment of the exception, the Gant Court was able to clarify the circumstances under which the exception should apply.

III. JUSTIFICATION FOR THE SEARCH INCIDENT TO A LAWFUL ARREST EXCEPTION TO THE WARRANT REQUIREMENT

An analysis of the justification for the search incident to a lawful arrest exception to the warrant requirement begins with the Fourth Amendment of the United States Constitution, which 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 warrant shall issue but upon probable cause, supported by Oath or Affirmation, particularly describing the places to be searched and the persons or things to be seized.

67. See id.
68. See id.
69. See id.
70. See id.
71. See Gant, 129 S. Ct. at 1715.
72. See id. at 1715–16.
73. See id. at 1719.
74. See id.
75. See id. at 1723–24.
76. U.S. Const. amend. IV.
The amendment contains two separate clauses: (1) the Reasonableness Clause; and (2) the Warrant Clause. The Reasonableness Clause sets forth the requirement that searches and seizures by the government must be reasonable. The Warrant Clause sets forth the requirement for compliance with the reasonableness clause—a warrant supported by probable cause—and also includes the requirements for a valid warrant.

Searches and seizures without a warrant are “per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions” to the warrant requirement. Evidence obtained as a result of searches, and searches conducted without a warrant or an exception to the warrant requirement, are generally inadmissible for trial.

Over the past several decades the U.S. Supreme Court has established a number of exceptions to the warrant requirement. The exceptions were established recognizing that “[t]here must be a warrant to permit search [or seizure], barring only inherent limitations upon that requirement when there is a good excuse for not getting a search warrant, i.e., the justifications that dispense with search warrants . . . .” As a result, each exception to the warrant requirement is justified upon some established

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77. See id.; see also Payton v. New York, 445 U.S. 573, 584 (1980) (holding that the Fourth Amendment contains “two separate clauses, the first protecting the basic right to be free from unreasonable searches and seizures and the second requiring that warrants be particular and supported by probable cause”).


79. See U.S. CONST. amend. IV (requiring a valid warrant be issued by a detached and neutral magistrate upon a showing of “probable cause, supported by Oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized”).


81. See, e.g., Weeks v. United States, 232 U.S. 383, 392 (1914). In Weeks, the United States Supreme Court first adopted the federal exclusionary rule providing that unconstitutionally obtained evidence be inadmissible from trial against a defendant in the prosecution’s case in chief. See id.

82. See supra note 31 and accompanying text for examples of exceptions to the warrant requirement.

83. United States v. Rabinowitz, 339 U.S. 56, 83 (1950) (Frankfurter, J., dissenting); see also Phyllis T. Bookspan, Reworking the Warrant Requirement: Resuscitating the Fourth Amendment, 44 VAND. L. REV. 473, 500–01 (1991) (discussing the basis upon which exceptions were established stating that the exceptions were “premised on the need to abandon time-consuming warrant procedures in situations requiring speedy action”); Directors of Columbia Law Review Association, Inc., Riot Control: The Constitutional Limits of Search, Arrest, and Fair Trial Procedure, 68 COLUM. L. REV. 85, 89–90 (1968) (discussing grounds upon which exceptions to the warrant requirement are made).
“criterion of reason”\textsuperscript{84} or some underlying “test of reason that makes a search reasonable”\textsuperscript{85} in the absence of a warrant.

These underlying justifications or criteria may include the surrounding circumstances\textsuperscript{86} or other factors\textsuperscript{87} that must be present in order to relax the stringent constitutional requirement of a warrant supported by probable cause.\textsuperscript{88} The criterion may include the requirement of a legitimate threat to the safety of officers or other individuals,\textsuperscript{89} evidentiary interests,\textsuperscript{90} or some underlying “test of reason that makes a search reasonable” in the absence of a warrant.

\textsuperscript{84} See Chimel v. California, 395 U.S. 752, 765 (1969) (quoting Rabinowitz, 339 U.S. at 83 (Frankfurter, J., dissenting)).

\textsuperscript{85} See id. (quoting Rabinowitz, 339 U.S. at 83 (Frankfurter, J., dissenting)).

\textsuperscript{86} See, e.g., Maryland v. Dyson, 527 U.S. 465, 467 (1999) (authorizing the automobile exception when “the car is readily mobile and probable cause exists to believe it contains contraband” and dispensing with a separate exigency requirement); Maryland v. Buie, 494 U.S. 325, 337 (1990) (permitting a “limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene”); Terry v. Ohio, 392 U.S. 1, 21 (1968) (holding that the stop and frisk exception requires “specific articulable facts” that criminal activity be afoot); Carroll v. United States, 267 U.S. 132, 162 (1925) (stating that the search of a vehicle is allowed without a warrant if there is probable cause to believe the vehicle contains intoxicating liquors).

\textsuperscript{87} See, e.g., City of Indianapolis v. Edmond, 531 U.S. 32, 44, 48 (2000) (authorizing a number of administrative searches based upon the furtherance of legitimate governmental interests “beyond the general interest in crime control” such as public safety); Vernonia Sch. Dist. 471 v. Acton, 515 U.S. 646, 662 (1995) (recognizing the state’s interest in conducting random drug testing of students participating in school sports due to the risk of immediate physical harm to drug using athletes); Mich. Dep’t of State Police v. Sitz, 496 U.S. 444, 455 (1990) (recognizing the state’s interest in conducting checkpoints to remove intoxicated drivers from the highway who pose an immediate threat to other drivers); Delaware v. Prouse, 440 U.S. 648, 663 (1979) (recognizing the states interests in insuring that drivers have proper equipment and providing that checkpoints be conducted pursuant to neutral criteria to remove officers’ discretion in the field); United States v. Martinez-Fuerte, 428 U.S. 543, 562, 566 (1976) (recognizing the state’s interest conducting a permanent checkpoint along the nations border to protect it from illegal immigrants).

\textsuperscript{88} See New York v. Belton, 453 U.S. 454, 457 (1981) (stating there is a strict requirement, under the Fourth Amendment, to obtain a search warrant from a neutral magistrate, based upon probable cause, before a search can be commenced).

\textsuperscript{89} See id. at 460 (finding that the passenger compartment of a vehicle may be searched even if it is not generally in the area into which the arrestee can reach); see also Michigan v. Long, 463 U.S. 1032, 1049 (1983) (allowing a frisk of a suspect when the officer reasonably believes the “suspect is dangerous and . . . may gain immediate control of weapons.”); Chimel, 395 U.S. at 763 (justifying the search incident to a arrest exception based upon the possibility that an arrestee could access a weapon that he could use in order “to resist arrest or [a]ffect his escape”).

\textsuperscript{90} See Belton, 453 U.S. at 457 (stating that searches have long been valid in order to remove any weapons from the arrestee that may be used in order to resist arrest or escape); Chimel, 395 U.S. at 763 (commenting that in addition to officer safety, the exception is justified on the need to prevent the concealment or destruction of evidence that may be within the reach of a recently arrested suspect); Thornton v. United States, 541 U.S. 615, 632 (2004) (Scalia, J., concurring) (holding that searches incident to a lawful arrest should extend to “cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle”); Carroll v. United States, 267 U.S. 132, 153 (1925) (authorizing a search of an automobile without a warrant where
furthering state interests such as public safety, or the protection of property. In each case, the underlying criterion may vary depending on the exception, but in all instances some requirement must be present.

One established exception to the warrant requirement is the search incident to a lawful arrest. This exception, like all of them, was developed based upon some criterion that forms the justification for the rule. In the absence of that justification, police conduct is unreasonable and therefore unconstitutional. In other words, there are reasons for rules and those reasons are designed to comply with the constitutional requirement of reasonableness and to, therefore, protect an individual’s constitutional rights. In the absence of that justification, the exception fails to comply with the constitutional requirement that searches and seizures be reasonable, and is therefore unconstitutional.

probable cause exists of criminal activity and the vehicle can be moved quickly).

91. See Chimel, 395 U.S. at 765 (quoting Rabinowitz, 339 U.S. at 83 (Frankfurter, J., dissenting)).

92. See South Dakota v. Opperman, 428 U.S. 364, 372 (1976) (recognizing that “inventories [of vehicles] pursuant to state police procedures are reasonable); see also id. at 369 (“The procedures were developed in response to three distinct needs: [(1)] the protection of the owner’s property while it remains in police custody; [(2)] the protection the police against claims or disputes over lost or stolen property; and [(3)] the protection of the police from potential danger.”).

93. See, e.g., McDonald v. United States, 335 U.S. 451, 454–56 (1948) (holding that police discretion is not enough to search a vehicle without a warrant, unless the exigencies of the situation make it imperative); Carroll, 267 U.S at 156 (stating that there is a requirement of reasonable or probable cause in order for an officer to conduct a search of an automobile without a warrant).

94. See Weeks v. United States, 232 U.S. 383, 392 (1914) (establishing the search incident to a lawful arrest exception to the warrant requirement by recognizing a right “to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime”).

95. See Chimel, 395 U.S. at 763 (stating the justification for a search of an arrestee’s person is to “remove any weapons that the latter might seek to use in order to resist arrest or effect his escape” and to “search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction”).

96. See Arizona v. Gant, 129 S. Ct. 1710, 1723–24 (2009) (stating that searching an arrestee’s vehicle is unreasonable without a warrant or an established exception to the warrant requirement); Katz v. United States, 389 U.S. 347, 357 (1967) (holding warrantless searches “are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions”).

97. See supra note 87 and accompanying text for examples of rules and reasons that comport with reasonableness under the Fourth Amendment.

98. See Gant, 129 S. Ct. at 1723–24; Katz, 389 U.S. at 357.
A. JUSTIFICATION FOR THE SEARCH INCIDENT TO A LAWFUL ARREST EXCEPTION- GENERAL

In a long line of cases, the United States Supreme Court has developed the current parameters for the search incident to a lawful arrest exception to the warrant requirement. This exception to the warrant requirement was first applied to the arrest of persons in general then later expanded to the arrest of persons in, or who are recent occupants of a vehicle. The exception provides that upon being arrested police are authorized to search the area within the arrestee’s “immediate control” and “from within which he might gain possession of a weapon or destructible evidence.” This exception is based upon the presumption that after making an arrest, police have an interest in “remov[ing] any weapons that the [suspect] might seek to use in order to resist arrest or [a]ffect his escape.” The arresting officers also have an interest in collecting evidence of the crime for which the suspect has been arrested by “prevent[ing] its concealment or destruction.” The justification here is one of officer safety and preservation of evidence, which have come to be

99. See, e.g., Marron v. United States, 275 U.S. 192, 198–99 (1927) (holding that since the agents had made a lawful arrest, “[t]hey had a right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise”); Carroll v. United States, 267 U.S. 132, 158 (1925) (holding that “[w]hen a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution”); Agnello v. United States, 269 U.S. 20, 33 (1925) (finding that there is no state statute that authorizes the search of a house without a warrant); Weeks, 232 U.S. at 392 (establishing the search incident to a lawful arrest exception to the warrant requirement). See also Chimel, 395 U.S. at 755–62 (addressing the development of the exception to its current parameters and limiting its scope to that area within an arrestee’s immediate control and from which he might gain possession of a weapon or destructible evidence); Carson Emmons, Arizona v. Gant: An Argument for Tossing Belton and All Its Bastard Kin, 36 ARIZ. ST. L.J. 1067, 1069–80 (2004) (discussing the development of the automobile search incident to arrest); Donald Ostertag, Clarifying Thornton: A Bright-Line Definition of “Recent Occupant”, 28 T. JEFFERSON L. REV. 479, 483–90 (2006) (tracing the evolution of the search incident to arrest doctrine in American jurisprudence).

100. See Chimel, 395 U.S. at 763.

101. See id. 395 U.S. at 768 (holding that justification existed for a search of an individual’s person, but that the justification for the warrantless search did not extend beyond that).

102. See New York v. Belton, 453 U.S. 454, 462–63 (1980) (finding that the area surrounding where the arrestee passenger sat inside the vehicle is within his immediate control, and therefore, can be searched without a warrant).

103. Chimel, 395 U.S. at 763.

104. Id.

105. Id.

106. Id.
referred to as the twin policy rationales of Chimel.\textsuperscript{107}

“A search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest[] regarding safety and evidentiary concerns. Considering the concerns justifying the exception, its scope has been limited to only include a suspect’s ‘[grab] area,’”\textsuperscript{109} or the area from within which he may actually access a weapon or evidence. This area may include drawers, underneath mattresses, or anywhere else from which the suspect may actually be able to obtain a weapon or destroy evidence.\textsuperscript{110}

In limiting its scope to these areas, the Court held true to the principles established in Terry v. Ohio, that “[t]he scope of [a] search must be ‘strictly tied to and justified by’ the circumstances which rendered its initiation permissible.”\textsuperscript{111} These circumstances “must be something more in the way of necessity than merely a lawful arrest.”\textsuperscript{112} Here, the circumstances are the inherent dangers that accompany taking a suspect into custody, and the need to preserve evidence to prove the offense charged at trial.\textsuperscript{113} The limitations imposed on this 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.”\textsuperscript{114} Expanding these searches to any other areas following an arrest would not be justified by the circumstances rendering them permissible. Those searches would exceed the scope of the circumstances justifying them.

As pointed out above, the underlying justification or reasons for the rules are designed to comply with the constitutional requirement of reasonableness and to therefore, protect an individual’s constitutional rights.\textsuperscript{115} In the absence of that justification (in this case accessibility to

\begin{itemize}
  \item \textsuperscript{107} See Thornton v. United States, 541 U.S. 615, 624 (2004) (O’Connor, J., concurring in part) (referring to the “twin rationales of Chimel v. California”); see also Ostertag, supra note 99, at 483–84 (discussing the twin policy rationales of Chimel v. California as: (1) insuring officer safety; and (2) preventing the destruction of evidence); Silk, supra note 20, at 284.
  \item \textsuperscript{108} Trupiano v. United States, 334 U.S. 699, 708 (1948).
  \item \textsuperscript{109} Silk, supra note 107, at 284 (alteration in original); see also Arizona v. Gant, 129 S. Ct. 1710, 1714 (2009).
  \item \textsuperscript{110} See Chimel v. California, 395 U.S. 752, 763 (1969).
  \item \textsuperscript{111} Terry v. Ohio, 392 U.S. 1, 19 (1968).
  \item \textsuperscript{112} Trupiano, 334 U.S. at 708.
  \item \textsuperscript{113} See Chimel, 395 U.S. at 773.
  \item \textsuperscript{114} Gant, 129 S. Ct. at 1716.
  \item \textsuperscript{115} See supra note 87 and accompanying text for examples of rules and reasons that comport with reasonableness under the Fourth Amendment.
\end{itemize}
weapons or evidence), the search fails to comply with the constitutional requirement that searches and seizures be reasonable and is therefore, unconstitutional.\textsuperscript{116} Thus, a search conducted pursuant to the search incident to arrest exception must be limited in scope to the area from which the suspect may be able to gain access to a weapon or conceal or destroy weapons.\textsuperscript{117} Only then are the government’s safety and evidentiary interests furthered.\textsuperscript{118} Otherwise, the search is unreasonable, and therefore unconstitutional.\textsuperscript{119}

B. JUSTIFICATION FOR THE SEARCH INCIDENT TO A LAWFUL ARREST—VEHICLE

The search incident to a lawful arrest was later applied in New York v. Belton, where an arrestee was a recent occupant of a vehicle.\textsuperscript{120} At the time Belton was decided, the authority to search incident to a lawful arrest was well settled.\textsuperscript{121} In Belton, however, the Court specifically addressed the permissible “scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants.”\textsuperscript{122} This case specifically addressed the question of the scope of the search of the vehicle.\textsuperscript{123}

In resolving this issue, the Court heavily relied upon its reasoning in Chimel.\textsuperscript{124} As outlined above, the primary justification in Chimel was officer safety and evidentiary concerns.\textsuperscript{125} As a result, the scope of a search incident to a lawful arrest in a vehicle was limited to the area from within which a suspect may be able to access a weapon or conceal or destroy evidence—the passenger compartment and containers therein.\textsuperscript{126}

Relying upon the justifications in Chimel, the Court in Belton 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.”\textsuperscript{127} The Court

\textsuperscript{116} See Chimel, 395 U.S. at 768.
\textsuperscript{117} See Gant, 129 S. Ct. at 1716.
\textsuperscript{118} See Chimel, 395 U.S. at 762–63.
\textsuperscript{119} See Gant, 129 S. Ct. at 1723–24.
\textsuperscript{121} See supra note 87 and accompanying text for the historical development of the search incident to arrest exception which dates back several decades although the full scope and application of the exception continues to be defined. See also Gant, 129 S. Ct. at 1716.
\textsuperscript{122} Belton, 453 U.S. at 459.
\textsuperscript{123} See id.
\textsuperscript{124} See id. at 460.
\textsuperscript{125} See Trupiano v. United States, 334 U.S. 699, 708 (1948).
\textsuperscript{126} See Belton, 453 U.S. at 460.
\textsuperscript{127} Id.
reasoned that the passenger compartment of a vehicle was within the area from within which the suspect would be able to access a weapon to use against police officers or conceal or destroy evidence located inside the vehicle.\textsuperscript{128}

In further reliance upon this rationale, the \textit{Belton} Court also held the permissible scope of the search would also extend to “any containers found within the passenger compartment,”\textsuperscript{129} reasoning that “if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.”\textsuperscript{130} The Court further noted that searches of the containers are permissible whether they are “open or closed,”\textsuperscript{131} all based upon the officer’s safety and evidentiary interests. As a result, a \textit{Belton} search has been held to “include the glove compartment, hatchback, front seat, console, floor areas under the floor mates[,] and containers brought out of the vehicle by the arrestee.”\textsuperscript{132}

Based upon this \textit{Belton} rationale, and the Court’s reliance on the justification in \textit{Chimel}, it is clear that the Court intended to \textit{exclude} areas that would not be within the suspects reach.\textsuperscript{133} This would include the trunk of the vehicle,\textsuperscript{134} locked containers inside the passenger

\begin{itemize}
\item \textsuperscript{128} See id. (citing \textit{Chimel}, 395 U.S. at 763).
\item \textsuperscript{129} Id.; see also United States v. Robinson, 414 U.S. 218, 220–224 (1973)
\item \textsuperscript{130} \textit{Belton}, 453 U.S. at 460; see also Robinson, 414 U.S. at 223 (stating that it was permissible for the officer to pat down the Respondent’s jacket pocket, revealing an object that turned out to be a crumpled up cigarette package containing heroine); \textit{Draper}, 358 U.S. at 310 (acknowledging that after the arrest, the officer searched Petitioner and found “two envelopes containing heroine” clutched in his left hand inside his raincoat pocket).
\item \textsuperscript{131} \textit{Belton}, 453 U.S. at 461.
\item \textsuperscript{132} Silk, supra note 20, at 301.
\item \textsuperscript{133} See United States v. Marchena-Borjas, 209 F.3d 698, 700 (8th Cir. 2000) (holding that \textit{Belton} was insufficient to justify search of engine compartment of a van); see also United States v. Patterson, 65 F.3d 68, 71 (7th Cir. 1995) (holding that \textit{Belton} did not authorize dismantling the tailgate of a sports utility vehicle); United States v. Hernandez, 901 F. 2d 1217, 1220 (5th Cir. 1990) (holding that \textit{Belton} did not authorize searching the trailer compartment of a tractor-trailer; State v. Cuellar 211 N.J. Super. Ct. 299, 302–03 (1986) (addressing which areas are not included in \textit{Belton}’s opinion); State v. Berrios, 478 So. 2d 890, 891 (Fla. 1985) (finding that there was no evidence that the hatchback portion of a car was accessible from the interior so as to justify reversal under \textit{Belton}); Silk, supra note 20, at 301–302 (discussing the scope of the search incident to arrest under \textit{Belton}).
\item \textsuperscript{134} See \textit{Cuellar}, 211 N.J. Super. Ct. at 303. But cf. United States v. Caldwell, 97 F.3d 1063, 1067 (8th Cir. 1996) (holding that after a lawful arrest \textit{Belton} permits a search of the rear compartment of a hatchback car or station wagon).
\end{itemize}
compartment, or even the passenger compartment itself if the suspect has been handcuffed and placed inside the patrol car or removed from the scene. In those situations, the underlying justification for the search, accessibility to weapons or evidence, is not present so a search would fail to comply with the constitutional requirement for reasonableness.

The existence of the underlying criterion of accessibility to weapons or evidence is necessary to comply with the constitutional requirement for reasonableness because only then does the government’s interests in officer safety and evidentiary interests outweigh the minimal intrusion into a person’s individual rights. In the absence of that justification, the exception fails to comply with the constitutional requirement that searches and seizures be reasonable, and is thus unconstitutional. As a result, accessibility to weapons or evidence is essential to the protection of an individual’s constitutional rights.

Therefore, under Belton a search of a vehicle incident to a lawful arrest is only constitutional when the suspect arrested is in close proximity to the vehicle. If he has been handcuffed and placed within a patrol car or removed from the scene, a search of the vehicle is unconstitutional. This is the rationale upon which the Court in Gant found the search of the vehicle unconstitutional, and this decision is fully supported by the Courts prior decisions interpreting this law.

C. ADDITIONAL AUTHORITY FOR SEARCH OF VEHICLE UNDER EXCEPTION

In Thornton v. United States, the United States Supreme Court revisited and further expanded the scope of the authority to conduct a

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136. See Arizona v. Gant 129 S. Ct. 1710, 1714 (2009) (holding that a search of the suspect’s vehicle was impermissible under the search incident to arrest exception when he had been handcuffed and placed in a patrol car and incapable of accessing evidence or a weapon).
137. See id. at 1716.
138. See Cuellar, 211 N.J. Super. Ct. at 303 (“Accessibility is therefore the fundamental principle which provides not only the foundation of Belton’s ‘bright-line’ rule, but its parameters as well.”).
141. See Gant, 129 S. Ct. at 1719.
142. See Belton, 453 U.S. at 457.
144. See Gant, 129 S. Ct. at 1719 (finding that “[n]either the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case”).
search incident to a lawful custodial arrest. In Justice Scalia’s concurring opinion, the Court held that searches incident to a lawful arrest should extend to “cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” The Court in *Gant* relied upon this opinion and held that in addition to officer safety and preservation of evidence, a search incident to a lawful arrest also includes the authority to search the vehicle for evidence of the crime for which the suspect is arrested.

This authority is based on the rationale that “circumstances unique to the vehicle context justify a search incident to a lawful arrest” even if the suspect has been removed from close proximity of the vehicle. Although neither the Court in *Gant* nor *Thornton* specifically addressed what those circumstances were, arrests surrounding a vehicle are clearly unique. First, “it is not illogical to assume that evidence of a crime is most likely to be found where the suspect was apprehended.” With evidence of the crime likely being in an arrestee’s vehicle, the justification to search the vehicle is not unlike that which supports the automobile exception to the warrant requirement—probable cause and the ready mobility of the vehicle.

Under the automobile exception to the warrant requirement, officers may search a vehicle when they have probable cause to believe it contains evidence of a crime due to the fact that the mobility of the vehicle would

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146. *See Thornton*, 541 U.S. at 617 (noting that the Court specifically addressed the question of “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”).

147. *Id.* at 625 (Scalia, J., concurring in the judgment).

148. *Id.* at 632.

149. *See Gant*, 129 S. Ct. at 1719 (quoting *Thornton*, 541 U.S. at 632 (Scalia, J., concurring in judgment)).

150. *Id.*

151. *See Gant*, 129 S. Ct. 1710, 1714–19 (failing to explain what constitutes unique circumstances that allow for a vehicle search incident to an arrest); *see also Thornton*, 541 U.S. at 617–24 (recognizing the existence of circumstances, but not unique circumstances).

152. *Thornton*, 541 U.S. at 630.

153. *See United States v. Ross*, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search”); *see also Carroll v. United States*, 267 U.S. 132, 153–54 (1925) (“[C]ontraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant” where probable cause exists).

154. *See Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996); *see also Carroll*, 267 U.S. at 153–54; *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (holding that “[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more”) (quoting *Labron*, 518 U.S. at 940); *Ross*, 456 U.S. at 825.
make it impractical for an officer to leave the vehicle to obtain a warrant. 155
Similarly, in this situation, if an officer has reason to believe that the
vehicle contains evidence of a crime, he should be able to search the
passenger compartment for that evidence—a more limited search than
allowed under the automobile exception. 156 If the officer were to leave the
vehicle, it may not be there when he returns with a warrant, or it might
have been tampered with or removed by a bystander. 157

Based on this rationale, the Court in Thornton upheld the search of an
arrestee’s vehicle even though the arrestee had been handcuffed and placed
in the patrol car. 158 In doing so, the Court reasoned that it was reasonable
for the police “to believe that further contraband or similar evidence
relevant to the crime for which he had been arrested might be found in the
vehicle from which he had just alighted and which was still within his
vicinity at the time of arrest.” 159 It was upon this same rationale that the
Court held that Belton could have similarly been upheld even aside from
the arrestee’s possible access to weapons. 160 Both Thornton and Belton
involved drug offenses, so additional evidence of those offenses could
likely have been found in the arrestees’ vehicle, ultimately warranting the

155. See Ross, 456 U.S. at 825. This article does not suggest that all requirements for the
automobile exception are present whenever the search incident to a lawful arrest exists. See cases
cited supra note 93. The automobile exception to the warrant requirement also requires, among
other things, that probable cause exist and allows a search of all areas to which the probable cause
extends. See id.; see also Ross, 465 U.S. at 800, 818 (discussing, however, if probable cause that
the vehicle contains evidence of a crime or contraband either exists or develops, the automobile
exception may be applicable, justifying a more extensive search of the vehicle); Belton, 453 U.S.
at 457 (finding that when there is a search incident to a lawful arrest exception, the officers need
only a reasonable belief that the vehicle contains evidence of the crime for which the suspect has
been arrested and the search extends only to the passenger compartment of the vehicle); Carroll,
267 U.S. at 132 (establishing the automobile exception).
156. See Belton, 453 U.S. at 460.
157. See Carroll, 267 U.S. at 153 (distinguishing a search of a fixed dwelling from that of an
automobile because a “vehicle can be quickly moved out of the locality or jurisdiction in which
the warrant must be sought”); see also Ross, 456 U.S. at 807 (recognizing that officers seeking to
search a vehicle cannot be expected “to post guard at the vehicle while a warrant is obtained or to
tow the vehicle itself to the station” in every instance).
159. Id. at 632 (Scalia, J., concurring in judgment).
160. See id. at 625–32 (Scalia, J., concurring in judgment) (arguing for a much broader
reading of Belton). In his opinion, Justice Scalia argued that the Court should authorize searches
of an arrestee’s vehicle when it is reasonable to believe evidence relevant to the crime of arrest
might be found in the vehicle, rather than a more limited authority of allowing searches only to
prevent the concealment or destruction of evidence). See id. Under this rationale, the searches in
Belton and Thornton would be justified on the basis of the officer’s having probable cause to
believe the vehicles in those cases contained evidence of the drug offenses for which the suspects
were arrested even though they could not have accessed the passenger compartments of the
vehicles. See id.
searches. Thus, the underlying justification of a reasonable belief that the vehicle contains evidence of the crime for which the suspect was arrested, accompanied by the circumstances unique to a vehicle, renders a search of the vehicle without a warrant reasonable under *Thornton*. The presence of this criterion justifies an intrusion into an individual’s privacy interests in his vehicle and renders the search reasonable. When this criterion does not exist, officers are not justified in searching a vehicle under *Thornton*. Thus, searches of a vehicle following the arrest for a mere traffic offenses would not be reasonable under *Thornton*, since a police officer could not reasonably believe the vehicle contains evidence of the crime for which the suspect was arrested.

As outlined above, the underlying rationale for the rule is what protects constitutional rights by setting forth requirements that comply with the constitutional requirement for reasonableness. As in the case of justifying the search incident to a lawful arrest on an evidentiary and safety basis, similarly, there are underlying criteria that must be present for the applicability of *Thornton*. In either instance, the criterion must be present to protect an individual’s constitutional rights.

D. CLEAR REASONS FOR THE RULE—DESIGNED TO PROTECT CONSTITUTIONAL RIGHTS

In developing the search incident to a lawful arrest exception to the warrant requirement, the United States Supreme Court in *Gant* has clearly articulated the circumstances under which the exception is applicable. Based on the Court’s rationale in *Chimel*, *Belton*, and *Thornton*, the search incident to a lawful arrest exception warrants the search of the passenger compartment of an arrestee’s vehicle only when: (1) the passenger compartment of the vehicle is within the suspect’s immediate reach, such that he could obtain a weapon or evidence, or (2) when the officers

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161. See *Arizona v. Gant* 129 S. Ct. 1710, 1719 (2009) (stating that *Gant* differs from *Thornton* and *Belton* because drugs were not the subject of the arrest).
162. See *id.* at 1714 (applying the holding to *Thornton*, along with the suggestions following Justice Scalia’s opinion, which concurred with that judgment).
163. See *Belton*, 453 U.S. at 461 (justifying the infringement of privacy rights when searching an arrestee’s container).
164. See *Gant*, 129 S. Ct. at 1723–24.
165. See *id.* at 1719.
166. See *id.* at 1723 (“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
reasonably believe the vehicle contains evidence of the crime for which the suspect is arrested.167

These parameters are clearly based on evidentiary and safety concerns.168 They are designed to protect the officers and possible evidence that may be found in the vehicle after a suspect has been arrested.169 The government’s interests in furthering these interests clearly outweigh the minimal intrusion in the arrestee’s privacy interests in his vehicle.170 Only when these legitimate interests are at stake is law enforcement warranted in infringing upon that individual’s privacy interests by conducting the search of the vehicle.171 As a result, this exception requires that the suspect be within reaching distance of the vehicle at the time of arrest in order for the safety or evidentiary concerns warranting the search to exist; or alternatively, that the officers reasonably believe the vehicle contains evidence of the crime.172 Only then are the searches justified. “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.”173

As outlined above, searches and seizures without a warrant “are per se unreasonable under the Fourth Amendment[,] subject only to a few specifically established and well-delineated exceptions” to the warrant requirement.174 The exceptions were established recognizing that there should only be “limitations upon that [warrant] requirement when there is a

arrest”).

167. See id.
168. See id. at 1714 (holding that “[t]he safety and evidentiary justifications underlying Chimel’s reaching-distance rule determine Belton’s scope”); see also supra note 20 and accompanying text.
169. See id. at 1716 (citing Chimel, 395 U.S. at 762–63).
170. See Terry v. Ohio, 392 U.S. 1, 21 (1968) (quoting Camara v. Municipal Court, 387 U.S. 523, 534–37 (1967)). The Terry Court elaborated on the language in Camara when it stated that there is “no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.” Id. (alteration in original); see also Michigan v. Summers, 452 U.S. 692, 701 n.12 (1981) (noting the “the key principal of the Fourth Amendment is reasonableness—the balancing of competing interests”); David S. Rudstein, Belton Redux: Reevaluating Belton’s Per Se Rule Governing the Search of an Automobile Incident to An Arrest, 40 WAKE FOREST L. REV. 1287, 1305–06, 1351 (2005) (discussing the Court’s use of the balance of individual rights against officer safety to determine the reasonableness of police conduct).
172. See Arizona v. Gant 129 S. Ct. 1710, 1721 (2009) (stating that in the Court’s view, an officer can search “a vehicle 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”).
173. Id. at 1723–24.
good excuse for not getting a search warrant, i.e., the justifications that
dispense with search warrants.\footnote{175} Absent those justifications, searches and
seizures are nothing more than arbitrary intrusions on an individual’s
constitutional rights.\footnote{176} So the underlying justifications warranting the
exceptions are necessary to protect an individual’s constitutional rights.\footnote{177} Absent those justifications, the conduct is unconstitutional.

Therefore, in the case of the search incident to a lawful arrest, when
no legitimate safety or evidentiary interests are at stake to warrant
dispensing with the warrant requirement, the searches are invalid.\footnote{178} As a
result, the Gant Court correctly required that with respect to the search
incident to arrest, officers may only search an arrestee’s vehicle if he is
within reaching distance of the vehicle at the time the arrest is made, or if
the officer reasonably believes the vehicle contains evidence of the crime
for which he was arrested.\footnote{179} By requiring the presence of either of these
underlying justifications for the search incident to arrest, the Court
continued to protect an individual’s right to be free from unreasonable
searches and seizures.\footnote{180}

IV. EXPANSION OF THE RULE IS NOT SUPPORTED UNDER THE
LAW

Even though the Court in Chimel, and later in Belton, clearly set forth
the basis upon which a search incident to an arrest would be justified, over
the last twenty-eight years since Belton was decided, law enforcement has
come to automatically search an arrestees’ vehicle even when those
circumstances did not exist.\footnote{181} These searches have come to be
automatically conducted irrespective of the suspects’ proximity to the
vehicle at the time of the search. In other words, accessibility to weapons
or evidence has not always been required by police officers in order to
search a suspect’s vehicle following an arrest. Furthermore, these searches

\footnote{175} United States v. Rabinowitz, 339 U.S. 56, 83 (1950) (Frankfurter, J., dissenting).
\footnote{176} See id. at 72–75.
\footnote{177} See id.
\footnote{178} See id. at 72.
\footnote{180} See id.
\footnote{181} See id. at 1722 (holding that the State’s reading of 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 twenty-eight years). One of the arresting officers, upon being asked at
the suppression hearing why they searched Gant’s vehicle testified, “[b]ecause the law says we
can do it.” Id. at 1715. The Court held that “[b]ecause a broad reading of Belton has been widely
accepted, the doctrine of qualified immunity will shield officers from liability for searches
conducted in reasonable reliance on that understanding.” Id. at 1723 n.11.
were conducted irrespective of whether the officers reasonably believed the vehicle contained evidence of the crime for which the suspect was arrested.

Since the development of this rule, numerous decisions have upheld these blanket searches. Some courts have upheld searches under Belton “even when . . . the handcuffed arrestee has already left the scene.” These decisions and police practices have effectively expanded the rule beyond what was originally intended in Belton and Chimel—an application that lacks any legal justification.

The respondents in Gant assert that the authority to conduct such searches is warranted based upon a “broad reading of Belton.” “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;” and irrespective of whether the officer reasonably believes the vehicle contains evidence of the instant offense. In ultimately finding that a broad interpretation of Belton was not warranted, the Court in Gant relied heavily on its analysis in Chimel and Belton in developing the rule. Furthermore, the Gant Court was unable to find sufficient authority for blanket searches following arrests based on stare decisis—another basis argued by respondents.

The Gant Court continued its analysis of an expansion of the Belton rule by balancing the officer’s interests in conducting such searches against the intrusion on individual interests in this context. The Court rounded out an ultimate finding that expansion of this rule was not warranted by considering whether this interpretation of Belton was necessary to further law enforcement and evidentiary interests. After considering this myriad of possible justifications for supporting such searches, the Court was unable to find that expansion of the rule was warranted under the law and continued to require the underlying justifications of a legitimate threat to

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182. See supra note 20 and accompanying text.
183. Thornton v. United States, 541 U.S. 615, 628 (2004); see also United States v. McLaughlin, 170 F.3d 889, 890–91 (9th Cir. 1999) (holding that a search of the car conducted approximately five minutes after McLaughlin was taken from the scene constituted a search incident to arrest).
185. Gant, 129 S. Ct. at 1719.
186. See id. at 1720.
188. See Gant, 129 S. Ct. at 1722–23.
189. Id. at 1720.
190. Id. at 1721.
safety or evidentiary interests. 191

A. A BROAD READING OF BELTON DOES NOT WARRANT EXPANSION OF THE RULE

In determining whether blanket searches of vehicles following an arrest were warranted under the law, the Gant Court considered the original justifications articulated in its development of the rule as it relates to vehicles in Belton. 192 The Court analyzed whether the opinion established a “bright line” rule authorizing searches of all vehicles following an arrest. 193 In Gant, the Court concedes that Belton “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.” 194 The Court reasons that this broad reading of Belton is perhaps based on Justice Brennan’s dissenting opinion in that case. 195 In Justice Brennan’s dissent, he characterized the majority’s opinion as “resting on the ‘fiction. . . [sic] that the interior of a car is always within the immediate control of an arrestee who has recently been in the car.’” 196 Although this language may have been a significant factor in leading to such an interpretation of Belton, it does not stand alone. Additional language in Belton may further add to the interpretation of the Court’s opinion.

Having held that “a custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment,” 197 a position well supported by the law, 198 the Court went on to conclude that “a search incident to [that] arrest requires no additional justification.” 199 This language seems to suggest that the Court supported blanket searches of automobiles following arrests upon the validity of the arrest itself, a seizure under the law, 200 rather than requiring independent justification for the

191. See id.

192. Id. at 1717.

193. See id. at 1720–21.


198. See U.S. CONST. amend. IV.


200. See Terry v. Ohio, 392 U.S. 1, 10 (1968) (recognizing an “arrest” as a “‘seizure’ of a
separate search of the vehicle. However, there is no additional language in *Belton* to support such a position.\(^{201}\)

Relying heavily on the justifications articulated in *Chimel*, the *Gant* Court “reject[ed] this reading of *Belton*”\(^{202}\) finding that the rationale would “alter[ ] the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests.”\(^{203}\) The Court further noted that “[t]o 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.”\(^{204}\) This language clearly demonstrates the Court’s intent to comply with the underlying justifications of *Belton* and *Chimel* in deciding *Gant*. As a result, the Court refused to recognize *Belton* as providing a bright line rule to support automatic searches of vehicles following an arrest.\(^{205}\)

**B. STARE DECISIS DOES NOT WARRANT EXPANSION OF THE RULE**

The Court in *Gant* also considered whether a broad reading of *Belton* was required under the doctrine of stare decisis.\(^{206}\) The doctrine of stare decisis stands for the principle “under which a court must follow earlier judicial decisions when the same points arise again in litigation.”\(^{207}\) In other words, the Court considered whether they were required to follow precedent upholding such searches. This principle was the primary basis upon which the dissenting judges in *Gant*,\(^{208}\) with Justice Alito writing for the dissent,\(^{209}\) refused to follow the majority’s opinion.\(^{210}\) The dissent argues that in a long line of cases,\(^{211}\) the United States Supreme Court has repeatedly upheld the “*Belton* rule.” They argue that because this precedent has been repeatedly relied upon by law enforcement,\(^{212}\) it should not be

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203. Id. (quoting Belton, 453 U.S. at 460).
204. Id.
205. See id. at 1720.
206. See id. at 1722.
207. BLACK’S LAW DICTIONARY 1537 (9th ed. 2009).
208. See Gant, 129 S. Ct. at 1726 (Alito, J., dissenting). It is important to note that *Gant* was a 5-4 decision. Id.
209. Id.
210. See id. at 1731–32.
211. See supra note 20.
212. Gant, 129 S. Ct. at 1722.
overruled unless “special justifications” exist—none of which were found to exist under these circumstances.

Although the Court recognizes that “[t]he doctrine of stare decisis is of course ‘essential to the respect accorded to the judgments of the Court and to the stability of the law,’” the Court has “never relied on stare decisis to justify the continuance of an unconstitutional police practice” or to “follow a past decision when its rationale no longer withstands ‘careful analysis.’” “If it is clear that a practice is unlawful, individuals’ interest in its discontinuance clearly outweighs any law enforcement ‘entitlement’ to its persistence.” This doctrine does not require the Court “to approve routine constitutional violations.”

As explained above, the Belton rule, as it has been applied by law enforcement, is unconstitutional. The rule has been interpreted to provide for routine searches of a vehicle whenever there is an arrest regardless of whether there were actual safety or evidentiary issues at stake. That type of broad application is not justified by any circumstances that comply with constitutional requirements for reasonableness, such as officer safety or evidentiary interests. These underlying criteria must be present in order to relax the stringent requirement of a warrant supported by probable cause. In the absence of some criterion for reasonableness, the conduct in question is unreasonable and therefore, unconstitutional.

Since applying the doctrine of stare decisis would uphold “the continuance of an unconstitutional police practice,” the Court is not required to follow it. This rule clearly does not withstand careful analysis.

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213. *Id.* at 1728 (Alito, J. dissenting) (citing Dickerson v. United States, 530 U.S. 428, 443 (2000)). Before overruling the established precedent, the Court considered the following: 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. *Id.* (citations omitted). It is worth noting that even in these limited situations when the Court has held that the established precedent may be overruled, the Court continues to require “special justifications” for doing so. See *id.* at 1728.

214. See generally *id.* at 1728–31 (discussing the reasoning of the dissenting Justices).

215. *Id.* at 1722 (quoting Lawrence v. Texas, 539 U.S. 558, 577 (2003)).

216. *Id.*


218. *Id.* at 1723. Cf. Mincey v. Arizona, 437 U.S. 385, 393 (1978) (claiming that “[t]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment”).


221. *Gant*, 129 S. Ct. at 1722.
under Chimel. Since the practice is clearly unlawful under Chimel and Belton, “its discontinuance clearly outweighs any law enforcement ‘entitlement’ to its persistence,” and cannot stand under the doctrine of stare decisis. As a result, the doctrine does not warrant the expansion of the rule.

C. Expansion of the Rule is Not Needed to Protect Law Enforcement and Evidentiary Interests—Justification on Other Basis

Furthermore, contrary to the State’s argument in Gant, a broad reading of Belton is not needed to protect law enforcement and evidentiary interests. Generally, the State argues that failing to allow blanket searches of all vehicles incident to arrest would impede officer safety and limit its ability to discover relevant evidence. However, the Court noted that the search incident to a lawful arrest exception to the warrant requirement is not always necessary to further those interests. “Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand.”

For instance, the “frisk of vehicle” established in Michigan v. Long on the principles of Terry v. Ohio “permits an officer to search a vehicle’s passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is ‘dangerous’ and might access the vehicle to ‘gain immediate control of weapons.’” This exception gives officers great latitude in protecting themselves because under this exception officers may conduct a search of a vehicle when safety concerns warrant it, even when there has been no arrest.

Another exception to the warrant requirement upon which officers may rely when evidentiary concerns require it, is the “automobile

222. See id. (“[The Court is not] compel[led] to follow a past decision when its rationale no longer withstands ‘careful analysis’”) (quoting Lawrence, 539 U.S. at 577).
223. Id. at 1723. Cf. Mincey, 437 U.S. at 393.
224. Gant, 129 S. Ct. at 1721.
225. Id. at 1720.
226. Id. at 1721.
227. Id.
exception.” This exception would authorize a search of any area of the vehicle in which the evidence might be found “if there is probable cause to believe a vehicle contains evidence of criminal activity.” This exception also provides even more protection for evidentiary interests than the search incident to a lawful arrest because it authorizes searches of any part of the vehicle in which officers have probable cause that evidence may be located.

Finding these exceptions to the warrant requirement adequately protect officer safety and evidentiary interests, the Court in Gant was “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.”

D. BALANCING POLICE INTERESTS AGAINST INDIVIDUAL RIGHTS DOES NOT WARRANT EXPANSION OF THE RULE

In a further attempt to justify the search in Gant, “[t]he 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.” However the Court in Gant was not convinced that balancing these interests warranted the conduct in question.

First, the Court noted the “State seriously undervalues the [individual’s] privacy interests at stake.” Although the Court has long held that there is a reduced expectation of privacy in one’s vehicles, the Court has also held that the privacy interest in a vehicle is “important and

232. See Carroll v. United States, 267 U.S. 132, 153 (1925) (holding that “contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant”).

233. See Gant, 129 S. Ct. at 1721.

234. United States v. Ross, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”). This would extend to all packages within the vehicle open or closed regardless to ownership if it could conceal the object of the search. Id.

235. See id.

236. Gant, 129 S. Ct. at 1721.

237. Id. at 1720.

238. See id.

239. Id.

deserving of constitutional protection." In fact, that interest has only been disturbed when individual privacy interests are outweighed by the State’s interests in conducting a search or seizure. This is simply not the case at hand.

As noted above, after a suspect had been arrested and is placed in the patrol car or removed from the scene, he no longer poses a serious threat to police to warrant an infringement upon the person’s constitutional rights. Furthermore, when legitimate safety or evidentiary interests are at issue, other exceptions to the warrant requirement are applicable, removing or significantly limiting any governments’ interests in infringing upon the suspects privacy interests.

In further support of the State’s interest in conducting these searches, the State argues its “interest in a bright-line rule.” This argument suggests that it would be much easier for law enforcement to carry out their duties if a rule were in place allowing automatic searches of all vehicles incident to arrests, rather having the ifs, ands, or buts, of trying to determine if the requirements are sufficiently present in each case to warrant a search of the vehicle.

Rejecting this argument as well, the Court noted that this rule has not provided the type of clarity for advancing law enforcement goals expected of a bright line rule. Instead the Court noted, the rule has “generated a great deal of uncertainty, particularly for a rule touted as providing a

242. *See Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (recognizing that a person has a reasonable expectation of privacy in their automobile, which may only be invaded by the requirement of a warrant supported by probable cause unless an exception to the warrant requirement exists). Exceptions allowing searches of the vehicle include the automobile exception, inventory search, a search incident to a lawful arrest, frisk of the vehicle and consent. *See supra* notes 34–41 and accompanying text. With the exception of consent searches, even in cases where an exception to the warrant requirement applies, there must be either: 1) probable cause for the search; or 2) a balancing of interests whereby the state’s interest in conducting the search or seizure outweighs individual privacy interests. *See, e.g.*, *Carroll*, 267 U.S. at 153 (establishing the automobile exception based on the requirement that officers have probable cause that the vehicle contains evidence of a crime or contraband); *Michigan v. Long*, 463 U.S. 1032 (1983) (recognizing the “frisk of the vehicle” when officers have specific articulable facts that the suspect may be dangerous and may be able to access a weapon from the vehicle). The preceding decision relies on the justification in *Terry v. Ohio*, that the officer’s safety outweighs the minimal intrusion into the suspect’s privacy interests invaded by the limited search for weapons. *See Terry v. Ohio*, 392 U.S. 1, 24 (1968).
244. *See id.* at 1721.
245. *See id.*
246. *Id.* at 1720.
247. *Id.*
‘bright line.’ Unable to find that this infringement on constitutional rights is warranted by balancing the State’s interest against individual rights, the Court declined to expand the rule on this basis.

Therefore, although the search incident to an arrest exception has been expanded in its interpretation by many courts, and in its application by law enforcement, there is no legal authority for upholding this application. As outlined above, blanket searches of the passenger compartment of a vehicle incident to all arrests are not warranted under the Court’s analysis in Belton. Furthermore, expanding this rule is not required under stare decisis, not warranted by a balancing of State versus individual interests, nor is it necessary to further law enforcement and evidentiary interests. As a result, the Court holds true to its original justification of the search incident to a warrant requirement as outlined in Chimel, allowing searches of the vehicles only when the arrestee is within reaching distance of the passenger compartment at the time of the search, or if it is reasonable to believe the vehicle contains evidence of the offense of arrest.

V. THE LAW AS APPLIED IN ARIZONA V. GANT

As outlined in sections II and III, the Court in Gant resolved the long debated proximity issue of the search incident to a lawful arrest and held Belton should be construed in compliance with Chimel. The Court also applied the law in Thornton to further round out the full applicability of the search incident to a lawful arrest of a suspect in a vehicle. Applying the law of Belton and Thornton to the facts in Gant, the Court correctly held the evidence seized from Rodney Gant’s vehicle inadmissible.

249. See id. (holding that a broad reading of Belton would not “meaningfully further law enforcement interests and justify a substantial intrusion on individuals’ privacy”).
250. See id. at 1719 (stating that reading Belton as “authorizing a vehicle search incident to every recent occupant’s arrest would thus untether the rule from . . . Chimel [which provides the] basic scope of searches incident to lawful arrests”).
251. Id. at 1723.
252. See id. at 1719 (“[T]he 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”).
253. See Gant, 129 S. Ct. at 1719 (citing Thornton v. United States, 541 U.S. 615, 632 (2004)) (Scalia, J., concurring in judgment) (holding 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”).
A. ANALYSIS UNDER THE WEAPONS AND EVIDENCE JUSTIFICATION
(CHIMEL/BELTON)

In Gant, the Court first analyzed the constitutionality of the search of Gant’s vehicle under Belton.254 The record is clear that at the time Gant’s vehicle was searched, he had been handcuffed and placed inside of the patrol car.255 While inside of the patrol car, Gant could not have accessed a weapon from his vehicle that he could have used to “resist arrest or effect his escape.”256 Furthermore, from this location Gant could not have accessed evidence that he could have concealed or destroyed.257 Gant was not in close proximity to his car, and could not have removed the handcuffs or left the patrol car.258 At the time his vehicle was searched, the passenger compartment of his vehicle was no longer in his grab area, wingspan, or within his immediate control.259 Thus, the justifications for the search, officer safety and preservation of evidence, were no longer present. As a result, the officers were not justified in searching the vehicle pursuant to Belton.

As stated above, when the justifications for the exception to the warrant requirement are not present, the search and seizure fail to comply with constitutional requirements of reasonableness. Since the justifications were not present in this case, the search of Gant’s vehicle was unreasonable and unconstitutional under Belton.

B. ANALYSIS UNDER THE EVIDENCE OF CRIME JUSTIFICATION
(THORNTON)

The Court then analyzed the search of Gant’s vehicle under Thornton,260 which authorized police to search a vehicle incident to arrest if the officers had reason to believe evidence of the crime might be found in the vehicle.261 As outlined in the facts, Gant was arrested on a warrant for a suspended license.262 Since it was a traffic offense, the police could not have reasonably believed that they could have found evidence of the crime

254. See id. at 1719.
255. Id. at 1715.
256. Id.; see also Chimel v. California, 395 U.S. 752, 763 (1969).
257. Gant, 129 S. Ct. at 1715.
258. Id.
259. Id.
260. See id. at 1719.
261. See id. at n.3 (“The practice of searching vehicles incident to arrest after the arrestee has been handcuffed and secured in a patrol car has not been abated since we decided Thornton.”).
262. See id. at 1715.
in Gant’s vehicle. No such evidence existed for having a suspended license. In the absence of the need to search for or preserve evidence of the crime for which he was arrested, the justification underlying a search in accordance with Thornton similarly does not exist.  

As stated above, the justifications establishing the exception must be present to justify a search without a warrant. Absent the underlying justification for the search, as outlined in Thornton, the search is unreasonable and therefore unconstitutional.

C. EVIDENCE CORRECTLY EXCLUDED IN GANT

Under the analysis in Belton and Thornton, the evidence was correctly excluded in Gant. At the time Rodney Gant’s vehicle was searched, he could not have accessed a weapon or drugs from the vehicle because he was inside the patrol car. Furthermore, the officers did not reasonably believe evidence of the traffic offense would be found in the vehicle. In the absence of either justification, the search was unreasonable and unconstitutional, and correctly excluded in Gant.

VI. JUSTIFICATIONS FOR RULES PROTECT CONSTITUTIONAL RIGHTS

As demonstrated above, in establishing rules, the United States Supreme Court justifies them based on the requirement of some underlying criterion for their applicability. Compliance with the underlying criteria for the application of legal principles is essential for reasonableness when the Court has relaxed the stringent warrant requirements of the United States Constitution to establish them. As demonstrated above in the case of searches incident to a lawful arrest, the Courts interpretation of a rule sometimes gradually move away from its intended purpose in deciding new cases. However, as demonstrated by Gant, the Court in recent years has

263. See id.
264. See id. at 1715–16, 1722; see also discussion supra Parts III.B–C.
265. See Gant, 129 S. Ct. at 1719, 1723–24.
266. Id. at 1715.
267. Id. at 1719.
268. See id. at 1723–24.
270. See infra Part VI.2.
271. See Thornton v. United States, 541 U.S. 615, 632 (2004) (stating that Belton should be limited to cases when it is reasonable to believe that additional evidence may be obtained under the circumstances); New York v. Belton, 453 U.S. 454, 462–63 (1981) (holding that a search was constitutional in light of Chimel); Chimel v. California, 395 U.S. 752, 768 (1969) (holding that a search was unconstitutional when it exceeded the scope of what would have been justified by the
demonstrated its intent to strictly comply with the underlying justifications for rules in deciding new cases.\(^{272}\) Another example is another recent United States Supreme Court decision—\textit{Hudson v. Michigan}.\(^{273}\)

A. \textit{Hudson v. Michigan}: A “Case” in Point

In \textit{Hudson}, the United States Supreme Court revisited whether the exclusionary rule required the exclusion of evidence obtained in violation of the knock and announce rule.\(^{274}\) In holding that it did not, the Court closely examined the purpose of the exclusionary rule\(^{275}\) and concluded that excluding evidence obtained in violation of the knock and announce rule did not further the purpose of the rule.\(^{276}\) Since excluding such evidence would not further its purpose, the Court held the exclusionary rule inapplicable in such cases.\(^{277}\) In other words, under these circumstances, the underlying justifications providing for its application did not exist, so the principle could not be applied.\(^{278}\)

In coming to its conclusion, the Court in \textit{Hudson} thoroughly explained the knock and announce rule.\(^{279}\) This rule generally requires police officers executing a warrant at a person’s home to knock and announce their presence prior to any forcible entry into the home.\(^{280}\) Only after being denied entry, or if other necessary justifications exist,\(^{281}\) can police then forcibly enter the home.\(^{282}\) Prior to \textit{Hudson}, evidence obtained in violation of this rule was excluded from use at trial against the defendant in the prosecution’s case in chief for being unconstitutionally obtained.\(^{283}\)

\begin{footnotesize}
\begin{itemize}
\item 272. \textit{See Gant}, 129 S. Ct. at 1723–24.
\item 274. \textit{See generally id.}
\item 275. \textit{Hudson}, 547 U.S. at 591–92.
\item 276. Id. at 599 (holding that when a knock and announce violation has occurred, “[r]esort[ing] to the massive remedy of suppressing evidence of guilt is unjustified”).
\item 277. \textit{See id.}
\item 278. \textit{See id.}
\item 279. Id. at 589–90.
\item 280. \textit{See Wilson v. Arkansas}, 514 U.S. 927, 929 (1995) (recognizing the requirement that officers knock and announce their presence prior to any forcible entry into a residence); \textit{see also} \textit{Miller v. United States}, 357 U.S. 301, 306 (1958) (addressing the statutory requirement of announcement found in 18 U.S.C. § 3109 (1958)).
\item 281. \textit{See Wilson}, 514 U.S. at 934–36 (stating that justifications warranting an exception to the “knock and announce” rule include “threat of physical violence; . . . where a prisoner escapes from [an officer] and retreats to his dwelling; . . . [and] where police officers have reason to believe that evidence would likely be destroyed if advanced notice were given”) (citations omitted).
\item 282. \textit{See id.} at 931–33.
\item 283. \textit{See Miller}, 357 U.S. at 313–14 (holding that because officers failed to give Miller notice
\end{itemize}
\end{footnotesize}
In *Hudson*, however, the Supreme Court held that violation of the knock and announce rule did not automatically require the suppression of evidence found in these searches.\(^{284}\)

In coming to this conclusion, the Court carefully considered the historical purpose for applying the exclusionary rule and concluded that evidence obtained in this manner did not further that purpose. The Court accomplished this by applying a “cost/benefit analysis”\(^{285}\) to find that the costs of exclusion outweighed the deterrent benefits of applying the rule.\(^{286}\) Applying this analysis, the *Hudson* Court held the evidence obtained in violation of the knock and announce rule was admissible because its exclusion would not further the deterrent goal of the exclusionary rule.\(^{287}\) In other words the underlying justification for the rule, deterrence, did not exist and therefore application would be inappropriate.

1. **Deterring Police Misconduct—the Underlying Justification**

The exclusionary rule is a judicially created remedy for constitutional violations whereby unconstitutionally obtained evidence is excluded from trial against the defendant in the prosecution’s case in chief.\(^{288}\) The United

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\(^{284}\) \*See* *Hudson* v. Michigan, 547 U.S. 586, 599 (2006).

\(^{285}\) \*See* United States v. Calandra, 414 U.S. 338, 348 (1974) (acknowledging the use of the cost/benefit analysis to determine whether the application of the exclusionary rule is appropriate); \*see also* Alderman v. United States, 394 U.S. 165, 174–75 (1969) (holding that the application of the exclusionary rule would turn on balancing the costs and benefits of exclusion); Weeks v. United States, 232 U.S. 383 (1914).

\(^{286}\) \*See* *Hudson*, 547 U.S. at 599 (applying the cost/benefit analysis, whereby the court weighs the costs of application of the rule against the benefits of its application to help determine whether exclusion of the evidence is warranted); \*see also* Pennsylvania Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 363 (1998) (quoting United States v. Leon, 468 U.S. 897, 907 (1984) (holding that the exclusionary rule is only applicable “where its deterrence benefits outweigh its ‘substantial social costs’”)).

\(^{287}\) \*See* *Hudson*, 547 U.S. at 594–99. The *Hudson* Court held the social costs of applying the exclusionary rule of knock and announce violations are considerable. \*Id*. The Court further held that:

In addition to the grave adverse consequence that exclusion of relevant incriminating evidence always entails . . . imposing that massive remedy for a knock and announce violation would generate a constant flood of alleged failures to observe the rule, and claims that any . . . justifications . . . had inadequate support.

*Id. at* 595.

\(^{288}\) \*See* *Weeks*, 232 U.S. 383 (holding that unconstitutionally obtained evidence would be inadmissible at a trial against a defendant in the prosecution’s case in chief under the adoption of the Supreme Court federal exclusionary rule).
States Supreme Court has held that the purpose of the exclusionary rule is to deter unlawful police misconduct. In other words, under this rule evidence should only be excluded from use at trial if its exclusion would likely discourage police from acting improperly in the future for fear of the exclusion of the evidence obtained. This is referred to as the “deterrent benefits” of the rule. As the underlying justification for the exclusion of evidence, the Court has stressed that evidence should not be excluded from trial if it does not further this purpose.

In order to determine whether exclusion of the evidence sufficiently furthers its purpose in order to warrant application of the rule, the Court applied a cost/benefit analysis. This analysis requires the costs of excluding such evidence be weighed against its deterrent benefits. In other words, the Court weighs the extent to which exclusion furthers the purpose of the exclusionary rule against the social costs of exclusion. Evidence is excluded “only where its deterrence benefits outweigh its ‘substantial social costs.’”

In addressing the deterrent benefit of the rule, the Hudson Court concluded that excluding evidence obtained in violation of the knock and announce rule only minimally furthers the goal of the exclusionary rule. The Court reasoned that for the most part, prior to a knock and announce violation, a police officer has already acted reasonably in a number of ways: (1) he has conducted an investigation and has established probable cause for a search or an arrest; (2) he has properly prepared an affidavit demonstrating those facts; and (3) he has presented the affidavit to a

289. See Illinois v. Gates, 462 U.S. 213, 260 n.14 (1983) (“[R]ecent opinions of the Court make clear that the primary function of the exclusionary rule is to deter violations of the Fourth Amendment.”); see also United States v. Janis, 428 U.S. 433, 446 (1976) (expressing that the “‘prime purpose’ of the rule, if not the sole one, ‘is to deter future unlawful police conduct’”) (quoting Calandra, 414 U.S. at 347).

290. See Janis, 428 U.S. at 454.

291. See Hudson, 547 U.S. at 595; see also Scott, 524 U.S. at 363 (quoting Leon, 468 U.S. at 907) (holding the exclusionary rule has only been applied where its deterrence benefits outweigh its “substantial social costs”).

292. See Illinois v. Krull, 480 U.S. 340, 347 (1987) (quoting Calandra, 414 U.S. at 347) (holding the application of the exclusionary rule may not be appropriate if it would have little deterrent effect on future police misconduct, which is the “‘prime purpose’ of the exclusionary rule”); see also Scott, 524 U.S. at 363 (citing Calandra, 414 U.S. at 348) (holding the exclusionary rule is a “judicially created means of deterring illegal searches and seizures”).

293. See Hudson, 547 U.S. at 593–99 (analyzing the application of the cost/benefit analysis to knock and announce violations).


295. Id. (quoting Leon, 468 U.S. at 907).

296. See Hudson, 547 U.S. at 596 (stating “deterrence of knock-and-announce violations is not worth a lot”).
magistrate who, satisfied that probable cause exists, has issued a warrant.\textsuperscript{297} At this point the officer goes to the residence to execute the warrant, at which time the violation occurs.\textsuperscript{298}

Under these circumstances, it is apparent that excluding evidence obtained as a result of this type of search or seizure will have little, if any, deterrent benefit on the officers future conduct. It is well known that at the core of the Fourth Amendment is the requirement of a warrant supported by probable cause.\textsuperscript{299} When this type of violation has occurred, the officer has complied with this stringent constitutional requirement. Excluding the evidence will hardly encourage him to act more reasonably in the future. There is little, if anything, that he could do differently in a subsequent case that he has not already done prior to violating this rule. So excluding the evidence would not deter future police misconduct in a situation when he has already acted properly in so many ways.\textsuperscript{300}

Against what the Court considered to be minimal deterrent benefits of excluding evidence obtained in this manner, the Court weighed the costs of its application.\textsuperscript{301} The most important cost of excluding evidence in a criminal trial is the possibility of “setting the guilty free and the dangerous at large.”\textsuperscript{302} Another cost of applying the exclusionary rule is the fact that it does not provide for any direct sanction to the individual official whose illegal conduct results in the exclusion of evidence.\textsuperscript{303} Furthermore, application of the rule results in “extensive litigation to determine whether particular evidence must be excluded”\textsuperscript{304} and in some cases could result in opening the floodgates of litigation and become, in effect, a “get-out-of-
Based on this cost/benefit analysis, the Court in *Hudson* found the costs outweighed the benefits. In other words, excluding evidence obtained in violation of the knock and announce rule did not sufficiently further the purpose of the exclusionary rule (deterrence) in order to apply it. Having found the underlying justification for applying the rule was not present under these circumstances, the Court held the rule inapplicable. In doing so, the Court overruled decades of precedent excluding evidence obtained in this manner, and demonstrated its intent to strictly comply with the historical purpose and function of the rule when applying it. Like the Court in *Gant*, in this case the Court also held true to the original purpose for initially developing the rule in determining its continued application.

2. Compliance with the Purpose is Essential to Constitutionality

When the Court establishes principles of law there must be some established “criterion of reason” based upon the circumstances in which each applies. These criteria include the surrounding circumstances or other factors which must be in place in order to avoid unreasonably infringing upon individuals’ constitutional rights. Whether there are safety considerations for officers or individuals, evidentiary interests,

305. *Id.*; see also *Gates*, 462 U.S. at 258 (recognizing that another cost is the loss of respect for the criminal justice system when defendants are set free based on what the public may view as a technicality); *Stone v. Powell*, 428 U.S. 465, 490–91 (1976) (noting application of the exclusionary rule, “if applied indiscriminately . . . may well have the opposite effect of generating disrespect for the law and administration of justice”); *Bustamonte*, 412 U.S. at 268 n. 26 (“The use of the exclusionary rule imposes excessive costs on the criminal justice system. It provides no recompense for the innocent and it frees the guilty.”).

306. See *Hudson*, 547 U.S. at 599.

307. *Id.*


309. See *supra* notes 86–87 and accompanying text.

310. See generally *New York v. Belton*, 453 U.S. 454, 457 (1981); *Chimel*, 395 U.S. at 763 (justifying the search incident to an arrest exception is based upon the possibility that an arrestee could access a weapon that he could use in order “to resist arrest or effect his escape”). See also *Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (allowing a “frisk” of a suspect when the officer reasonably believes the “suspect is dangerous and . . . may gain immediate control of weapons”).

311. See generally *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in the judgment) (noting searches incident to a lawful arrest should extend to “cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle”); *Belton*, 453 U.S. at 457; *Chimel*, 395 U.S. at 763 (explaining “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”); *Carroll v. United States*, 267 U.S. 132, 149 (1925) (authorizing a search of an automobile without a warrant where probable cause exists of criminal activity).
furthering State interests such as public safety, or the protection of property, the presence of these underlying interests or justifications for rules enable the government to infringe upon personal rights in accordance with the Constitution. Just as in the case of the search incident to a lawful arrest exception to the warrant requirement, the Court also established underlying criteria for application of the exclusionary rule. Specifically, application depends upon whether the deterrent benefit of excluding evidence from trial outweighs the “substantial social costs” of excluding such evidence. In other words, the underlying justification of the exclusionary rule is to further the goal of deterrence. If the courts remove the requirement that this goal be furthered and allow arbitrary exclusion of evidence, then the protection of individual rights are sacrificed.

Specifically, without the underlying deterrence justification, officers would no longer have the incentive to act constitutionally since exclusion would not be based on their actions but instead upon the whim of the court. Secondly, society would more often suffer many of the substantial social costs outlined above when evidence is excluded. Among them being the possibility of “setting the guilty free and the dangerous at large.” Additionally, assertions of constitutional violations could, in effect, become a “get-out-of-jail-free card” if the rule is arbitrarily applied. And the courts could be faced with “extensive litigation to determine whether particular evidence must be excluded” under the rule. Constitutional rights would be infringed upon if society were forced to experience such costs.

Principles of law are established based on some “criterion of

\[\text{312. See supra note 91 and accompanying text.}\]
\[\text{313. See South Dakota v. Opperman, 428 U.S. 364, 369 (1976) (recognizing the inventory searches pursuant to state police procedures as reasonable because the "procedures [were] developed in response to three distinct needs: the protection of the owner's property while it remains in police custody, the protection [of] the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger") (internal citations omitted).}\]
\[\text{314. See Terry v. Ohio, 392 U.S. 1, 20 (1968) ("The police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure . . . or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances") (internal citations omitted).}\]
\[\text{315. See United States v. Calandra, 414 U.S. 338, 348 (1974) (holding the exclusionary rule applicable only "where its remedial objectives are thought most efficaciously served").}\]
\[\text{318. Id. at 595.}\]
\[\text{319. Id.}\]
reason” based on the circumstances in which each applies. The presence of the requirements is essential to comply with constitutional protections. In the absence of the criteria, the government conduct is generally unreasonable and therefore unconstitutional. Thus, compliance with the underlying justifications of the rules is essential to constitutionality. The Court in both Gant and Hudson demonstrated an intent to strictly comply with the underlying justifications. As a result, both cases were decided in accordance with longstanding principles of constitutionality.

B. UNDERLYING JUSTIFICATIONS: OTHER EXAMPLES

Among the principles established by the United States Supreme Court are a number of exceptions to the warrant requirements. In establishing the exceptions, the Court articulated specific criteria upon which to justify them. In each case, compliance with the aforementioned justifications is essential to the reasonableness requirement of the Fourth Amendment of the United States Constitution.

One example of such an exception is the protective sweep. In Buie, the United States Supreme Court authorized a search of a person’s residence when the police officers reasonably believed “based on specific and articulable facts[,] that the area to be swept harbors an individual posing a danger to those on the arrest scene.” This exception allows police officers to conduct a cursory inspection of those spaces within the residence where a person may be found. This may include various rooms or closets within the residence, but would exclude places where a suspect could not hide, such as inside of drawers, underneath mattresses or on shelves.

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321. See Maryland v. Buie, 494 U.S. 325, 327 (1990) (“The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene”).
322. Id. at 337.
323. See id. at 335; see also id. at 327 (“A ‘protective sweep’ is a quick and limited search of [the] premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.”).
324. See id. at 334. To ensure personal safety for officers, the Buie Court held that when executing an arrest warrant:

[O]fficers could . . . look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that . . . there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be
In developing this exception, the Court relied upon the balance of officer safety interests versus the minimal level of intrusion on individual rights relied upon in Terry and Long, and similarly justified this exception based upon officer safety. As a result, its application requires that a true safety issue be at stake. If officers do not reasonably believe the residence harbors a person who may pose a danger to the officer, a search of the residence would be unreasonable and therefore, unconstitutional.

Another exception to the warrant requirement based upon officer safety is the “stop and frisk” exception. In Terry v. Ohio, the Court authorized police to stop an individual when officers have reasonable suspicion that the person is engaged in criminal activity. Terry further authorized a limited search of the individual when officers also believed the person could be armed with a dangerous weapon. A stop and frisk constitutes a search and seizure within the meaning of the Fourth Amendment. This search and seizure is justified based on the State’s interest in “crime prevention and detection” when the circumstances exist, and in the officer’s safety, when he reasonably believes the person is armed with a dangerous weapon.

swept harbors an individual posing a danger to those on the arrest scene.

Id.

325. Id. at 333–34.

326. See id. at 333.

327. See Buie, 494 U.S. at 326; see also United States v. Menendez, 431 F.3d 420, 428 (5th Cir. 2005) (citing United States v. Gould, 364 F.3d 578, 587 (5th Cir. 2004)). In Menendez, the court applied the protective sweep doctrine as outlined in Gould on the following conditions:

A protective sweep of a house is legal if: (1) the government agents have a ‘legitimate law enforcement purpose’ for being in the house; (2) the sweep is ‘supported by a reasonable, articulable suspicion that the area to be swept harbors an individual posing a danger to those on the scene;’ (3) the sweep is ‘no more than a cursory inspection of those spaces where a person may be found;’ and (4) the sweep ‘last[s] no longer than is necessary to dispel the reasonable suspicion of danger’ and ‘last[s] no longer than the police are justified in remaining on the premises.

Menendez, 431 F.3d at 428; see also United States v. Groce, 255 F. Supp. 2d 936, 941–42 (E.D. Wis. 2003) (concluding that officers could not reasonably fear for their safety or suspect any dangerous individuals were upstairs after not fully checking possible hiding places on the first floor and chatting with the defendant in the living room downstairs for ten minutes).

328. Terry v. Ohio, 392 U.S. 1, 22 (1968) (establishing the “stop and frisk” exception to the warrant requirement when an officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion).

329. See id. at 30.

330. See id.

331. See id. at 19.

332. See id. at 22 (“[I]t is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.”).

333. See id. at 27.
The Court in *Terry* elaborated on how the State’s interest in conducting this search and seizure outweighed the minimal invasion on the individual’s rights in order to demonstrate why the warrantless search and seizure is valid under these circumstances. The Court elaborated on the fact that the search and seizure is valid only when the officer has reason to believe, based on specific articulable facts, that criminal activity is afoot. Only then does the State’s interest in investigating the crimes outweigh the intrusion on individual rights. Absent the underlying justification of reasonable suspicion of criminal activity and dangerousness, the State’s interest in conducting a search and seizure does not outweigh the intrusion on individual rights. Under those circumstances, the search and seizure would be invalid and unconstitutional.

*Terry* is merely another example demonstrating the underlying justification for establishing a principle which provides for government intrusion on individual rights as a requirement to comply with the constitutional requirement of reasonableness. Absent the justification, the conduct is unreasonable and therefore, unconstitutional.

Like *Terry*, the Court also authorized a search of the passenger compartment of a vehicle in *Michigan v. Long* when a “police officer possesses a reasonable belief based on ‘specific and articulable facts which, taken together with the rational inferences from those facts reasonably warrant’ the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.”

Relying on the justifications in *Terry*, this search was also justified based on officer safety considerations recognizing that “roadside encounters between police and suspects are especially hazardous, and that danger may arise from the

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336. *See id.* at 24. The *Terry* Court stated that protecting the safety of officers and the public is reasonable:

> When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would . . . be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

*Id.*

337. *See id.* at 21–22 (citing *Beck v. State*, 379 U.S. 89, 91 (1964)) (noting that in determining whether a search is justified, facts must be judged per an objective standard—whether the facts and circumstances known to the officer at the moment of the search warranted a reasonably prudent man to believe criminal activity was afoot or danger was imminent—so as to avoid unnecessary intrusions upon an individual’s constitutionally guaranteed rights based on mere “inarticulate hunches”).

possible presence of weapons in the area surrounding a suspect."\textsuperscript{339}

Borrowing the rationale from \textit{Chimel} and \textit{Belton},\textsuperscript{340} the \textit{Long} Court authorized the search of the passenger compartment of the vehicle reasoning that it was the area from within which the suspect may be able to gain access to weapons to injure officers or others nearby, or otherwise hinder legitimate police activity.\textsuperscript{341} Like \textit{Terry}, the search requires a legitimate threat to officer safety.\textsuperscript{342} Only then does the government’s interest in intruding upon the suspect’s privacy interest outweigh the suspect’s interest in being free from such an intrusion.\textsuperscript{343} Absent this legitimate interest in government safety, such searches would be unreasonable and therefore, unconstitutional.

These are just a few examples of the numerous principles\textsuperscript{344} established by the Court with some requirement of an underlying criterion for reasonableness which must be present to comply with the constitution.\textsuperscript{345} In each instance when the underlying justifications for reasonableness are absent, the police conduct in question is unreasonable and therefore, unconstitutional. The presence of such justifications is essential to the protection of individuals’ constitutional rights.

\textbf{VII. CONCLUSION}

The search incident to a lawful arrest exception to the warrant requirement was established to protect officers and preserve evidence. Under \textit{Gant}, the rule now provides that following the arrest of a recent occupant of a vehicle, police can search the passenger compartment of an arrestee’s vehicle “only if [(1)] the arrestee is within reaching distance of the passenger compartment at the time of the search[,] or [(2)] it is reasonable to believe the vehicle contains evidence of the offense of

\textsuperscript{339} Id.
\textsuperscript{340} See id. at 1048.
\textsuperscript{341} Id. at 1049 n.14. The Court, however, distinguished a search pursuant to the \textit{Terry} justification and the search incident to a lawful arrest authorized in \textit{Chimel} and \textit{Belton}, recognizing that there is no evidentiary interest in a \textit{Terry} search because the suspect has not been arrested for a crime, only a safety concern. See id. The Court recognized that the similarity stemmed from the “scope” of the search, which is limited to the passenger compartment of the vehicle because it is the area from within which the suspect may actually be able to gain access to a weapon to use against a police officer or others. See id. at 1050.
\textsuperscript{342} See id. (citing \textit{Terry}, 392 U.S. at 29) (stating that “[t]he sole justification of the search . . . is the protection of the police officer and others nearby”) (alteration in original).
\textsuperscript{343} See \textit{Terry}, 392 U.S. at 21.
\textsuperscript{344} See \textit{supra} notes 34–35 and accompanying text.
The United States Supreme Court limited the search in these respects reasoning that following an arrest, the passenger compartment was the area from within which a suspect may actually be able to access a weapon to use against the police or to conceal or destroy evidence. The Court also reasoned that circumstances unique to an automobile justified a search for evidence of the crime for which the suspect has just been arrested when an officer reasonably believed the vehicle contained evidence of such crime.

By limiting these searches to only those situations when legitimate safety or evidentiary issues are at stake, the Court held true to the original justification and purpose of the exception. In doing so, the Court excluded situations when, for example, the suspect is handcuffed and inside of a patrol car. In those situations, the Court reasoned the justifications for the search are not present because the suspect could not access a weapon or evidence. Only when a recently arrested suspect is within reaching distance of the vehicle or the officers reasonably believe the vehicle contains evidence of the instant offense, do safety and evidentiary interests warrant dispensing with the warrant requirement to allow an intrusion into the suspect’s privacy interest.

Although this rule has been expanded in its application (to automatic searches of the passenger compartment of all vehicles following an arrest), the Court in Gant reverted back to the original justifications underlying the rule and upon which the exception was established. In doing so, the Court adhered to the principle that rules established by the Court which intrude upon individual liberties are constitutional because of some established “criterion of reason” based upon the circumstances in which each applies. These principles require some underlying “test of reason which makes a search reasonable” in the absence of a warrant. The underlying criteria may be a legitimate threat to officer or public safety, protection of property, or preservation of evidence. But in each instance, there must be some established criteria to warrant the intrusion into

347. Id. at 1717 (citing New York v. Belton, 453 U.S. 454, 460 (1981)).
348. Id. at 1719.
349. See id. at 1719–20.
350. Id. at 1714.
351. See id.
352. Gant, 129 S. Ct. at 1714.
353. Id. at 1724 (Scalia, J., concurring).
355. Id.
personal rights.

The search incident to a lawful arrest exception is just one of several exceptions established by the Court with justifications providing for the intrusion. Those justifications recognize that there should only be “limitations upon that [warrant] requirement when there is a good excuse for not getting a search warrant, i.e., the justifications that dispense with search warrants . . . .”356 The justifications warranting the exceptions are necessary to protect an individual’s constitutional rights. Absent the justifications, the conduct is unconstitutional.

This case, like Hudson v. Michigan,357 (another decision of the Supreme Court which reverted back to the underlying justification for establishing a principle when deciding a recent case),358 demonstrates the Court’s intent to strictly comply with the underlying justification of rules when deciding new cases requiring application of the principles.359 Those principles, like all of the principles allowing intrusion upon privacy interests, have some underlying justification. In each instance, strict compliance with those justifications, without exception, is required to protect constitutional rights.

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356. Rabinowitz, 339 U.S. at 83 (Frankfurter, J., dissenting).
358. See id. at 593–94 (holding that the exclusionary rule was inapplicable to a violation of the knock and announce rule because the underlying justification for the knock and announce rule was protection of human life, property interests, and privacy/dignity interests; the knock and announce rule was never meant to protect evidence described in a warrant).
359. See id.; see also Gant, 129 S. Ct. at 1719 (holding that the search incident to arrest exception did not apply because the underlying justifications for the exception were protection for the officer or to prevent destruction of evidence of the crime, and thus both justifications were not warranted when the arrestee had already been handcuffed and locked in the patrol car).