THE SEARCH INCIDENT TO ARREST EXCEPTION PLAYS CATCH UP: WHY POLICE MAY NO LONGER SEARCH CELL PHONES INCIDENT TO ARREST WITHOUT A WARRANT

I. INTRODUCTION

On November 3, 2009, Christian Taylor (“Taylor”) went into a Sprint PCS store in San Mateo, California and attempted to purchase thirty Blackberry cell phones.1 Taylor gave the store clerk a southern California address for a company called “Hype Agency.”2 When store representatives tried to contact the company’s owner, the owner claimed she did not know Taylor.3 The store clerk grew suspicious and called the San Mateo, California police.4 When the police officers arrived, they arrested Taylor for unauthorized use of personal identifying information.5 The police officers searched Taylor’s person following the arrest and found Taylor’s iPhone.6 The police officers scrolled through Taylor’s email, text messages, photos, call history, and contact list.7 Based on the information found in Taylor’s iPhone, the police officers obtained a search warrant to conduct a complete investigation of the phone, which led to the state charging Taylor with identity theft, commercial burglary, and attempted grand theft.8

The question whether the state of California may use evidence found in Taylor’s cell phone turns on the search incident to arrest ex-
ception, an area of Fourth Amendment law that has particular significance regarding searches of cell phones. The search incident to arrest exception is an exception to the Fourth Amendment's requirement that law enforcement obtain a warrant before performing a search. Under the search incident to arrest exception, police officers may search the entire person of an arrestee, including any containers found on the arrestee, incident to a lawful arrest. In several instances, law enforcement has rummaged through a disturbing amount of personal information stored in arrestees' cell phones under the authority of the search incident to arrest exception, actions numerous courts have upheld. The purpose of this Article is to demonstrate how lower courts have incorrectly applied the search incident to arrest exception and prior Supreme Court of the United States precedent, issued far before the widespread use of cell phones, to authorize searches of arrestees' cell phones incident to arrest.

While modern cell phones are incredible technological innovations whose proliferation has undoubtedly improved everyday life, they come with largely unexplored legal consequences. The Fourth Amendment protects arrestees' rights to be secure from unreasonable searches and seizures in their persons, homes, and effects. Yet, applying the Fourth Amendment to modern technology such as cell phones posits some fundamental questions.

In the current digital environment, what is embodied by "papers" and "effects" under the

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9. See Taylor, supra note 6, at 7 (arguing that the search incident to arrest exception did not justify the warrantless search of Taylor's iPhone); Adam M. Gershowitz, The iPhone Meets the Fourth Amendment, 56 UCLA L. Rev. 27, 30 (2008) (noting police could arrest individual for simple traffic violation and search through thousands of pages of private data on iPhone found in individual's pocket); see infra notes 10-12 and accompanying text.


13. See infra notes 304-403 and accompanying text.


15. U.S. CONST. amend. IV.

16. See James X. Dempsey, Digital Search & Seizure: Updating Privacy Protections To Keep Pace With Technology, PRACTISING LAW INSTITUTE, 935 PL/I/PAT. 543, 550 (2008) (noting the application of "the Fourth Amendment to modern technology opens some fundamental questions.").
Fourth Amendment? Further, what kind of Fourth Amendment protection should devices such as cell phones receive? Certainly, the Framers of the Fourth Amendment could not have imagined a handheld technological device like the modern cell phone.

This Article proceeds in three sections. First, this Article’s Background section discusses the history and technological capabilities of cell phones. Next, the Background examines Supreme Court of the United States case law on the search incident to arrest exception and lower-court case law on searches of cell phones incident to arrest. This Article’s Argument section then explains how lower courts have used the Supreme Court of the United States’ bright-line rules under the search incident to arrest exception to uphold searches of cell phones incident to arrest. This Article then demonstrates why lower courts erroneously upheld searches of cell phones incident to arrest by failing to consider the digital type and vast amount of information cell phones store, as well as the continually growing technology of cell phones. Next, this Article explains why lower court decisions that allowed searches of cell phones incident to arrest are further incorrect in light of Arizona v. Gant, the Supreme Court’s recent decision on the search incident to arrest exception. Finally, this Article concludes that future courts should interpret the search incident to arrest exception with the unique technological capabilities of cell phones in mind and no longer allow warrantless searches of arrestees’ cell phones.

II. BACKGROUND

A. HISTORY AND CAPABILITIES OF MODERN CELL PHONES

Motorola demonstrated the world’s very first handheld mobile telephone in 1973. In 1983, Motorola made the first cell phone commercially available. The first series of mobile phones, known as first

17. Id.
20. See infra notes 28-496 and accompanying text.
21. See infra notes 28-55 and accompanying text.
22. See infra notes 56-285 and accompanying text.
23. See infra notes 320-21, 325-71 and accompanying text.
24. See infra notes 382-403 and accompanying text.
26. See infra notes 406-07, 412-14, 416-96 and accompanying text.
27. See infra notes 497-506 and accompanying text.
29. JARICE HANSON, 24/7: HOW THE INTERNET AND CELL PHONES CHANGE THE WAY WE LIVE, WORK, AND PLAY 24, 25 (Praeger Publishers 2007). Mobile phones were only
generation ("1G") cell phones, were limited to voice communication connected to wired forms and were analog based. However, the notion of simply thinking of cell phones as mere phones that were portable began to crumble in the 1990s when second generation cell phones emerged. Second generation cell phones used digital waves, which allowed for greater frequency sharing, and offered expanded capabilities, including text messaging, audio and video downloading, and camera functions. As the 1990s progressed, cell phones were multimedia-capable and included such features as clocks, alarms, calendars, calculators, games, and address books. In 1996, Nokia introduced a mobile phone that also functioned as a handheld computer.

The first commercial third generation ("3G") network first appeared in Japan in October 2001. Third-generation cell phone systems are digital and handle data, as well as voice communication. The birth of 3G technologies allowed network operators to give cell phone users a broader range of advanced services, including broadband Internet access, video calls, voice control, and global positioning originally designed for installation in vehicles and were much larger than current cell phones. Maria Literral, What Are 1st, 2nd, and 3rd Generation Mobile Phones?, ¶ 4 (2008), http://www.articlesbase.com/technology-articles/what-are-1st-2nd-and-3rd-generation-mobile-phones-467075.html. Initially, mounting cell phones in vehicles "seemed to be the likely method of creating more mobile communications," although "relatively few consumers seemed interested in car phones, because they were awkward and expensive." Hanson, supra note 29, at 25. Motorola's first phone weighed close to two pounds. Id. Original chunky units designed only for cars "were later converted for use as transportable phones the size of a small suitcase and the rest is history." Literral, supra note 29, ¶ 4.

30. Id., ¶ 3; Hanson, supra note 29, at 25. Analog technology "is the process of taking an audio or video signal (in most cases, the human voice) and translating it into electronic pulses." Paul Wotel, Analog. Digital. What's the Difference?, Telecom, HelloDirect.com, ¶ 2, http://telecom.hellodirect.com/docs/Tutorials/AnalogVsDigital1.051501.asp (last visited Feb. 18, 2010). Digital technology, on the other hand, involves "breaking the signal into a binary format where the audio or video data is represented by a series of '1's and '0's." Id.


32. Hanson, supra note 29, at 25.

33. GERARD GOGGIN, CELL PHONE CULTURE: MOBILE TECHNOLOGY IN EVERYDAY LIFE 32 (Routledge 2006).

34. Farley, supra note 31, at 9. Nokia's handheld-computer cell phone was a "GSM" mobile phone dubbed the "Communicator." Id. GSM, a digital system, originally stood for "Groupe Spéciale Mobile" after the European committee that designed the specifications for the GSM system but now stands for "Global System for Mobile." Id. at 8-9.


system ("GPS") navigation. In one handheld device, a user can download music and movies, take pictures, and handle financial transactions. Third-generation cell phones can also store and track details from calls, including lists of calls received and sent, duration of calls, missed calls, and voice messages. The next generation of cell phone service is the fourth generation ("4G") systems. Sprint plans to sell the carrier’s first 4G cell phone in the summer of 2010; Verizon also plans to offer its 4G network in late 2010.

The term “smartphone” developed for cell phones that are essentially small computers equipped with Internet access, email, music, and GPS capabilities, and the limitless possibilities of downloadable applications ("apps"), which the Apple iPhone first popularized. Wireless carriers have pushed smartphones as the way to go for con-

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38. Id.; see also Apple.com, Apps for Managing Money, http://www.apple.com/iphone/apps-for-everything/managing-money.html (last visited Feb. 5, 2010) (advertising applications such as Mint.com application allowing users to enter banking account and credit card information to “[k]now where your money is wherever you go.”).


40. See Peter Svensson, Cheaper service helps Sprint cut subscriber loss, The Omaha World-Herald, ¶ 17 (Apr. 28, 2010), available at http://www.omaha.com/article/20100428/AF05/304289952 (noting the next big hope for Sprint is its 4G network “or the next generation of cellular broadband service.”).


Wireless providers have launched numerous smartphones on the market; for example, Apple first began selling the iPhone in July 2007; Verizon Wireless launched the Droid phone in October 2009; and Research in Motion introduced the BlackBerry Pearl 3G in April 2010.

Modern cell phones have the ability to store massive amounts of private information. Apple's iPhone 3GS has thirty-two gigabytes of storage space. As an illustration of its enormous storage capacity, the iPhone 3GS is capable of storing about 220,000 copies of the complete text of Lewis Carroll's Alice in Wonderland. Current cell phone memory cards allow for storage space of anywhere from sixteen gigabytes of information, which translates to approximately 9,000 images and sixteen hours of video, to sixty-four gigabytes of informa-


tion. Current cell phones can also store deleted information on Subscriber Identity Module ("SIM") cards.

Cell phones have become ubiquitous and indispensible in Americans' daily lives. From 2002 to 2007, the proportion of adults who owned cell phones surged in almost every country across the globe. By the end of 2008, there were more than four-billion cell phone subscribers worldwide. In the United States alone, an estimated 280 million Americans are current cell phone users as of January 2010. A growing number of Americans also use the latest smartphones; in a 2009 audit, the Nielsen Company estimated that fifteen percent of all households in the United States own a smartphone, while landline telephones are continually evaporating. Through the several benefits they offer, cell phones have fundamentally changed the way Americans work and interact.


55. Id.
B. Supreme Court of the United States Jurisprudence on the Search Incident to Arrest Exception of the Fourth Amendment Warrant Requirement

The Fourth Amendment of the United States Constitution protects individuals from unreasonable searches and seizures. Under the Fourth Amendment, searches performed outside the judicial process, without approval by a magistrate or judge, are per se unreasonable. The warrant requirement is subject only to a few well-delineated and specifically established exceptions. One such traditional and widely accepted exception to the Fourth Amendment warrant requirement is a search incident to a lawful arrest. No doctrine of the Fourth Amendment has a more unpredictable, interesting, and pendular history than the search incident to arrest exception.

1. Chimel v. California: The Supreme Court of the United States Creates the Modern Parameters of the Search Incident to Arrest Exception

The modern parameters of the search incident to arrest exception found their source in the landmark decision *Chimel v. California*, decided in 1969. In *Chimel*, Orange, California and Santa Ana, California police officers went to the home of the petitioner, Ted Steven Chimel ("Chimel"), with a warrant for his arrest for burglarizing a...
Chimel's wife brought the police officers inside the home where they waited for Chimel to return home. Once Chimel returned, the police officers proceeded to look through his entire home, telling Chimel, even after he refused requests to look through the premises, that they would conduct a search regardless based on his lawful arrest. The search ultimately extended to every area of the home. The police officers directed Chimel's wife to open drawers and physically manipulate the contents thereof to view items potentially taken during the burglary, which formed the basis for Chimel's arrest.

The state of California charged Chimel with two counts of burglary, and a jury convicted Chimel on each count. The California Court of Appeals affirmed the convictions, concluding that any errors made at trial were not sufficiently prejudicial to Chimel. The California Supreme Court also affirmed the convictions, reasoning the court should not invalidate the search solely because the search issued from a defective arrest warrant. The Supreme Court of the United States granted certiorari to consider Chimel's substantial constitutional claims.

In its subsequent opinion in Chimel, the Supreme Court of the United States set forth the parameters of a search performed incident to arrest and established the present boundaries of the search incident to arrest exception. Under the parameters set forth in Chimel, it is reasonable for police officers to search (1) the arrestee's person and (2) the area within the arrestee's immediate control. The Supreme Court construed the latter phrase to mean the area within which the arrestee might gain possession of destructible evidence or weapons. The Court also gave two reasons why such a search is reasonable when police officers perform a valid arrest: (1) to remove weapons the arrestee may use to resist arrest or effect escape; and (2) to search for

64. Chimel, 395 U.S. at 753.
65. Id. at 753-54.
66. Id. at 754.
67. Id. at 753-54.
68. Id. at 754.
73. Chimel, 395 U.S. at 763.
74. Id.
and seize evidence on the person of the arrestee to prevent its concealment or destruction.\textsuperscript{75}

2. United States v. Robinson: The Supreme Court of the United States' First Step Towards Expanding the Search Incident to Arrest Exception

Four years after Chimel v. California,\textsuperscript{76} the Supreme Court of the United States issued United States v. Robinson\textsuperscript{77} in which it announced that all searches justified by arrests should be treated alike.\textsuperscript{78} In Robinson, a District of Columbia police officer arrested Willie Robinson, Jr. ("Robinson") for driving a vehicle under a revoked operator's permit.\textsuperscript{79} The police officer searched Robinson following his arrest and found a crumpled cigarette package in the left breast pocket of Robinson's coat.\textsuperscript{80} The police officer opened the package and discovered fourteen capsules filled with heroin.\textsuperscript{81} A jury convicted Robinson in the United States District Court for the District of Columbia for possession of a controlled substance, and he subsequently appealed that conviction.\textsuperscript{82} The United States Court of Appeals for the District of Columbia Circuit reversed Robinson's conviction.\textsuperscript{83} The District of Columbia Circuit reasoned that the Chimel decision's two justifications for the search of a person incident to arrest, evidence preservation and removing weapons from the arrestee, did not justify conducting a full search of Robinson's person when his arrest was for a mere motor vehicle violation.\textsuperscript{84} The Supreme Court of the United States granted certiorari.\textsuperscript{85}

The Supreme Court of the United States held in Robinson that, when a police officer makes a lawful custodial arrest, a full search of the arrestee's person is both reasonable under the Fourth Amendment and an exception to the Fourth Amendment warrant requirement.\textsuperscript{86} Justice William H. Rehnquist, writing for the majority, reasoned that

\textsuperscript{75} See id. at 762-63 (explaining that it is reasonable after an arrest has been made for an officer "to search the person arrested in order to remove any weapons" and "to search for and seize any evidence on the arrestee's person in order to prevent is concealment or destruction").

\textsuperscript{76} 395 U.S. 752 (1969).

\textsuperscript{77} 414 U.S. 218 (1973).


\textsuperscript{79} Robinson, 414 U.S. at 220 (citing D.C. Code Ann. § 40-302(d) (1967)).

\textsuperscript{80} Id. at 221-23.

\textsuperscript{81} Id. at 222.

\textsuperscript{82} Id. at 219.

\textsuperscript{83} Id. at 219-20; United States v. Robinson, 471 F.2d 1082, 1087-88 (D.C. Cir. 1972), rev'd, 414 U.S. 218 (1973).

\textsuperscript{84} Robinson, 471 F.2d at 1093-94.


a police officer's decision as to the parameters of a search incident to arrest is a quick, ad hoc judgment that does not require case-by-case analysis to determine whether weapons or evidence would in fact be found on the arrestee's person. The Supreme Court determined that the mere fact of a lawful arrest establishes the authority to search. The Court made it clear that, although it had issued a line of cases that inconsistently discussed searches incident to arrest prior to Chimel, all of its decisions undoubtedly expressed the basic authority of the arresting police officer to search the arrestee's person.


Following United States v. Robinson, the Supreme Court of the United States decided New York v. Belton, in which it discussed the parameters of a search incident to arrest in the context of vehicle searches. In Belton, the Supreme Court held that when the occupant of a vehicle is lawfully arrested, the arresting police officer may search the passenger compartment of the vehicle contemporaneous to the arrest and may further examine the contents of any containers found inside the passenger compartment of the vehicle. The Belton case arose when a New York State police officer stopped a vehicle for speeding. During the stop of the vehicle, the police officer smelled marijuana, saw a package he associated with marijuana, and arrested the vehicle's four occupants for possession of marijuana. After separating the four arrestees outside of the vehicle, the police officer searched the vehicle's passenger compartment. During the search, the police officer found a leather jacket lying on the backseat, which

88. Id. at 235.
89. See id. at 224-25 (citing Chimel v. California, 395 U.S. 752 (1969); Preston v. United States, 376 U.S. 364 (1964); United States v. Rabinowitz, 339 U.S. 56 (1950); Trupiano v. United States, 334 U.S. 669 (1948); Harris v. United States, 331 U.S. 145 (1947); United States v. Lefkowitz, 285 U.S. 452 (1932); Go-Bart Co. v. United States, 282 U.S. 344 (1931); Marron v. United States, 275 U.S. 192 (1927); Carrol v. United States, 267 U.S. 132 (1925) (noting that the Supreme Court's cases had undoubtedly expressed "the unqualified authority of the arresting authority to search the person of the arrestee" and citing numerous cases doing so).
93. Belton, 453 U.S. at 460.
94. Id. at 455.
95. Id. at 455-56.
96. Id. at 456.
belonged to one of the arrestees, Roger Belton ("Belton"). The police officer unzipped one of the jacket pockets and found cocaine inside. The state of New York indicted Belton for possession of a controlled substance, and Belton later pleaded guilty to a lesser-included offense after the Ontario County Court denied his motion to suppress the cocaine found in his jacket. The Appellate Division of the New York Supreme Court upheld the search as constitutional, a decision the New York Court of Appeals reversed. The Supreme Court of the United States granted certiorari.

The Supreme Court began its analysis by explaining the importance of having familiar standards for police officers in accordance with its previous decision in Robinson. The Court determined applicable case law suggested the generalization that items inside a passenger compartment are generally and inevitably within the area an arrestee might reach to obtain a weapon or evidence. Under such a generalization, the Court articulated its holding: when police officers have made a lawful arrest of the occupant of a vehicle, the police officer, contemporaneous with the arrest, may search the passenger compartment of the vehicle. After discussing the Chimel v. California decision, the Court in Belton reasoned that the category of search incident to arrest cases involving vehicle searches required a workable rule. Thus, the Court explained that law enforcement may also examine the contents of containers discovered inside the passenger compartment because such containers, like the passenger compartment itself, are also within the arrestee’s reach.

The Supreme Court in Belton briefly discussed containers found inside a passenger compartment in more detail. First, the Supreme
Court defined a container as any object that is capable of holding another object, thus encompassing closed or open glove compartments, other receptacles inside the passenger compartment, and items such as luggage, bags, boxes, clothing, and the like, which are capable of holding other tangible objects limited by the size of the containers themselves. The Court conceded that such containers would sometimes be incapable of holding a weapon or evidence of the arresting offense. However, the Court explained, as its earlier decision in *Robinson* made clear, that the authority to search the arrestee's person incident to a lawful arrest does not depend on a court's later finding of the probability of finding weapons or evidence on the arrestee's person. Rather, an arrest was a reasonable intrusion justifying a search incident to arrest that required no additional support.

In his dissenting opinion in *Belton*, Justice William J. Brennan stated the majority adopted the fiction that a vehicle's interior is always in the immediate control of an arrestee who was a recent occupant of the vehicle. Through its holding, which allowed police officers to search areas and containers that an arrestee could never reach, Justice Brennan explained that the *Belton* majority had substantially expanded the proper scope of a search performed incident to arrest and disregarded precedent and principle in trying to achieve a more workable standard for police officers. According to Justice Brennan, the majority sought to justify the departure by announcing the need for a "bright-line" rule to guide police officers in their every-day operations.

109. See id. (defining container as "any object capable of holding another object" and listing luggage, boxes, bags, clothing, and open and closed compartments as falling under that definition); Adam M. Gershowitz, *The iPhone Meets the Fourth Amendment*, 56 UCLA L. Rev. 26, 39-40 (2008) (noting search incident to arrest precedent permits police to search "tangible containers" found on arrestees).


111. Id. (quoting United States v. Robinson, 414 U.S. 218, 235 (1973)).

112. Id. (quoting *Robinson*, 414 U.S. at 235); see also Stephen A. Saltzburg, Daniel J. Capra, & Angela J. Davis, *Basic Criminal Procedure* 307 (4th ed., Thomson-West 2005) (stating the Supreme Court in *Belton* noted "a rule giving the officer an automatic right to open containers in the grab area was consistent with *Robinson*").

113. *Belton*, 453 U.S. at 466 (Brennan, J., dissenting). A later panel of the Supreme Court of the United States in Arizona v. Gant discussed Justice Brennan's opinion, saying the *Belton* case had "been widely understood to allow a vehicle search incident to 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." 556 U.S. —, 129 S. Ct. 1710, 1718. The Supreme Court explained in *Gant* that such a reading of *Belton* may have been "attributable to Justice Brennan's dissent in *Belton*, in which he characterized the [Supreme] Court's holding as resting on the 'fiction . . . that the interior of a car is always within the immediate control of an arrestee who has recently been in the car.'" 129 S. Ct. at 1718 (quoting *Belton*, 453 U.S. at 466).

day activities. However, the bright-line rule failed on its terms, he wrote, and would only create more problems than it would solve.

4. Thornton v. United States: Continuing the Trend of Bright-Line Rules Under the Search Incident to Arrest Exception

Thirteen years after New York v. Belton, the Supreme Court of the United States in Thornton v. United States again discussed the parameters of a search incident to arrest in the context of vehicles. In Thornton, a Norfolk, Virginia police officer prepared to stop a driver, Marcus Thornton (“Thornton”), after a check revealed that his license tags were issued to a different vehicle. However, before the police officer could make the stop, Thornton pulled into a parking lot and exited his vehicle. The police officer parked and accosted Thornton, who eventually admitted having narcotics. After arresting Thornton, the police officer searched his vehicle and found a handgun under the driver’s seat. On appeal, the Supreme Court of the United States determined that once a police officer finds probable cause to arrest a recent occupant of a vehicle, it is reasonable for the police officer to search its entire passenger compartment to ensure the safety of police officers and preserve evidence, regardless of the likelihood that the arrestee could access weapons or contraband inside the vehicle. The Supreme Court reasoned that the need for a clear rule that police officers could readily understand justified the generalization enunciated in Belton that police officers could search the entire passenger compartment regardless of any possibility the arrestee could reach the passenger compartment.

115. Id. at 469.
116. Id.
119. See Thornton v. United States, 541 U.S. 615, 617 (2004) (reaching the question of whether Belton’s rule applies when an officer initially makes contact with an arrestee after the arrestee leaves his vehicle).
120. Thornton, 541 U.S. at 617-18.
121. Id. at 618.
122. Id. Thornton also removed baggies of marijuana and crack cocaine from his pocket and showed the baggies to the officer. Id.
123. Id.
124. Id. at 622-23. The Supreme Court conceded that it was unlikely Thornton could have reached his gun located under the driver’s seat of his vehicle once he was outside the vehicle, but explained that “the firearm and the passenger compartment in general were no more inaccessible than were the contraband and the passenger compartment in Belton.” Id. at 622.
125. Id. at 623.
5. Arizona v. Gant: The Supreme Court of the United States Reexamines the Search Incident to Arrest Exception and Explains the New York v. Belton Decision

In Arizona v. Gant,126 decided in 2009, the Supreme Court of the United States reexamined the search incident to arrest exception.127 The Supreme Court held in Gant that the rationales of its Chimel v. California128 decision authorized law enforcement to search a vehicle incident to the arrest of its recent occupant only when (1) the arrestee is within reaching distance of the vehicle's passenger compartment and unsecured at the time of the search or (2) when it is reasonable to believe the vehicle contains evidence of the arresting offense.129 Absent such justifications, the Court stated a search of the vehicle of such an arrestee is unreasonable unless law enforcement obtains a warrant or demonstrates that another exception to the warrant requirement is present.130

In Gant, two Tucson, Arizona police officers went to a residence to investigate suspected drug activity reported from an anonymous tip.131 The police officers spoke with Rodney Gant ("Gant"), who answered the door, at the residence.132 Gant explained that the owner of the residence was expected to return later.133 After the police officers left, they performed a records check and discovered that Gant had an outstanding warrant for driving with a suspended license.134 The police officers returned to the residence later that evening when Gant arrived and parked his vehicle at the end of the driveway.135 One of the police officers met Gant about ten to twelve feet from Gant's vehicle, arrested him, and placed him in handcuffs.136 The arresting police officer called for backup, and, after two other police officers arrived at the scene, the police officers locked Gant in the backseat of one of their patrol cars.137 With Gant handcuffed in the back of the patrol car, the police officers then searched Gant’s vehicle.138 The po-

131. Id. at 1714.
132. Id.
133. Id. at 1714-15.
134. Id. at 1715.
135. Id.
136. Id.
137. Id. The officer called for backup because officers had arrested two other individuals at the residence and secured them in the only other patrol cars available at the scene. Id.
138. Id.
lice officers found a firearm inside the vehicle and a bag of cocaine in a jacket lying on the backseat.139

The state of Arizona charged Gant with possession of drug paraphernalia and possession of a controlled substance.140 The Superior Court of Arizona for Pima County denied Gant's motion to suppress the evidence found in his vehicle and upheld the search of his vehicle as a valid search incident to arrest.141 On appeal, the Arizona Supreme Court held that the search was not justified under the search incident to arrest exception.142 Relying on Chimel, the Arizona Supreme Court determined that the underlying justifications for the Chimel rule were no longer present in Gant's arrest at the time of the search.143 The Arizona Supreme Court reasoned that the arresting police officers had secured the scene and handcuffed Gant; thus, the search of the arrestee's vehicle was not justified as a search necessary to protect the police officers or prevent the destruction of evidence.144 The Supreme Court of the United States granted certiorari in light of the chorus calling for the Supreme Court to revisit New York v. Belton,145 including members of the Supreme Court itself, lower courts, and scholars who questioned the Belton decision's clarity and fidelity to the Fourth Amendment.146

In Gant, the Supreme Court of the United States set forth its opinion as to the proper reading of Belton, stating that the justifications behind the Chimel rule determine the scope of the Belton decision.147 The Supreme Court also noted that the Belton decision has been widely understood to permit a search of a vehicle incident to the arrest of its recent occupant even when there is no possibility the arrestee could obtain access to the vehicle when the search is per-
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formed. However, the Court explained such a broad reading of Belton would authorize a vehicle search incident to the arrest of every recent occupant and would unhinge the rule from the underlying justifications enunciated in Chimel. Accordingly, in Gant, the Court rejected such a broad reading of Belton and announced its holding that the rationale of Chimel authorizes law enforcement to search a vehicle incident to the arrest of its recent occupant only when the arrestee is unsecured and is within reaching distance of the vehicle's passenger compartment at the time the search is conducted. The Court further concluded that, because of the unique circumstances present in the vehicle context, a search incident to arrest is justified when it is reasonable to believe police officers would find evidence relevant to the arresting offense inside the vehicle, even though such a conclusion did not follow from the Chimel decision. Through this conclusion, the Court adopted the approach Justice Antonin Scalia previously advocated in Thornton v. United States that police officers may search incident to arrest when it is reasonable to believe evidence of the crime of arrest will be found.

The Supreme Court ended its discussion by touching on the checkered history of the search incident to arrest exception. The Court explained that the Gant opinion's dissenting justices ignored the exception's history in arguing that stare decisis required adhering to an expansive reading of Belton, even when the Justifications for a search incident to arrest are absent. Rather, the Court's majority stated that blind adherence to the Belton decision's false assumption

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148. Id. at 1718 (quoting Belton, 453 U.S. at 466 (1981) (Brennan, J., dissenting)).

149. Id. at 1719 (quoting Belton, 453 U.S. at 460).

150. Id. at 1719.

151. Id. (quoting Thornton, 541 U.S. at 632).


153. Gant, 129 S. Ct. at 1719, 1723 (citing Thornton v. United States, 541 U.S. 615, 632 (Scalia, J., concurring)).

154. See id. at 1723 (noting that the dissent in Gant "ignore[d] the checkered history of the search incident to arrest exception" and discussing Supreme-Court cases leading up to Chimel).

155. Id. at 1722, 1723. The doctrine of stare decisis, the Court noted, is essential but does not compel the Court to follow a prior decision when its rationale no longer resists "careful analysis." Id. at 1722 (quoting Lawrence v. Texas, 539 U.S. 558, 577 (2003)).
would permit manifold unconstitutional searches. Further, according to the Court, the twenty-eight years since Belton was decided demonstrated that the generalization underlying its broad reading was unfounded.

C. Searches of Cell Phones Incident to Arrest in Lower Courts

In analyzing searches of cell phones incident to arrest, lower courts have treated cell phones as containers under the Supreme Court of the United States' United States v. Robinson and New York v. Belton decisions. Other lower courts have analogized cell phones to personal effects such as purses, wallets, and address books. Finally, some lower courts have reasoned that law enforcement may search cell phones incident to arrest in order to preserve evidence commensurate with one of the rationales for the search incident to arrest exception articulated in the Supreme Court of the United States' Chimel v. California decision.

156. Id. at 1723.
157. Id. The Court stated that "we" now know that items inside the passenger compartment of a vehicle "are rarely 'within the area into which an arrestee might reach.'" Id. (quoting Belton, 453 U.S. at 460).
160. See, e.g., United States v. Finley, 477 F.3d 250, 259-60 (5th Cir. 2007) (citations omitted) (relying on United States v. Robinson, 414 U.S. 218 (1973), and New York v. Belton, 453 U.S. 454 (1981), in concluding search of cell phone incident to arrest was lawful); United States v. Deans, 549 F. Supp. 2d 1085, 1094 (D. Minn. 2008) (citation omitted) (same using Belton); United States v. McCray, No. CR408-231, 2009 WL 29607, at *2 (S.D. Ga. Jan. 5, 2009) (citations omitted) (same using Robinson). Courts have recognized that the owner of a cell phone has a reasonable expectation of privacy in the digital data stored on the cell phone. See, e.g., Quon v. Arch Wireless Operating Co., 529 F.3d 892, 905 (9th Cir. 2008) (finding individuals have a reasonable expectation of privacy in text messages stored on cell phone); Finley, 477 F.3d at 259 (concluding individual had a reasonable expectation of privacy in text messages and call records stored on his cell phone); see Katz v. United States, 389 U.S. 347, 350-51 (1967) (stating "the Fourth Amendment protects people, not places" and that Fourth Amendment issues should not be analyzed using the areas searched but rather the individual privacy the Fourth Amendment protects against certain government intrusion).
161. McCray, 2009 WL 29607, at *2 (citations omitted) (noting Supreme Court and other courts "repeatedly recognized the right of the police to open and inspect papers, wallets, address books, and similar items seized from an arrestee" in determining that officers may briefly inspect a cell phone incident to arrest); United States v. Valdez, No. 06-CR-336, 2008 WL 360548, at *2 (E.D. Wis. Feb. 8, 2008) (citations omitted) (relying on prior case law upholding searches of a wallet and address book incident to arrest in concluding that the search of a cell phone was lawful incident to arrest); United States v. Cote, No. 03CR271, 2005 WL 1323343 (N.D. Ill. May 26, 2005) (determining officers permissibly searched cell phone incident to arrest in analogizing cell phones to wallets and address books).
163. See, e.g., United States v. Murphy, 552 F.3d 405, 411-12 (4th Cir. 2009) (quotation omitted) (citations omitted) (concluding district court properly refused to suppress
1. Courts Finding that Cell Phones Are Containers that Can Be Searched Incident to Arrest

In *United States v. Finley*, the United States Court of Appeals for the Fifth Circuit concluded that a warrantless search of the contents of a cell phone was lawful incident to arrest. In *Finley*, Midland, Texas police officers conducted a controlled purchase of methamphetamine in which an undercover police officer purchased methamphetamine from an individual named Mark Brown ("Brown"). The appellant, Jacob Finley ("Finley"), drove Brown to the location of the controlled purchase. Police officers stopped Finley's vehicle and arrested Finley and Brown immediately after the purchase. Following the arrests, police officers searched Finley's person and found a cell phone in his pocket. A police officer later searched Finley's cell phone for call records and text messages, several of which appeared to relate to narcotics. The state of Texas convicted Finley after the United States District Court for the Western District of Texas denied his motion to suppress the text messages found on his cell phone.

The Fifth Circuit concluded that the search of Finley's cell phone was lawful, reasoning that it was well-settled that a full search of an arrestee is reasonable under the *United States v. Robinson* decision. The Fifth Circuit also noted that the permissible scope of a search incident to arrest extended to containers on the arrestee's person under both *New York v. Belton* and *Robinson*. Because law enforcement searched Finley's cell phone pursuant to arrest, the Fifth Circuit determined the district court had correctly denied Finley's motion citing the "manifest need . . . to preserve evidence"); United States v. Young, No. 07-4213, 2008 WL 2076380, at *3 (4th Cir. May 15, 2008) (per curiam) (same); United States v. Mercado-Nava, 486 F. Supp. 2d 1271, 1278-79 (D. Kan. 2007) (finding search of cell phone justified as search incident to arrest in reasoning that the "need to preserve evidence is underscored where evidence may be lost due to the dynamic nature of the information stored on and deleted from cell phones").

164. 477 F.3d 250 (5th Cir. 2007).
165. *United States v. Finley*, 477 F.3d 250, 259 (5th Cir. 2007).
166. *Finley*, 477 F.3d at 253.
167. Id. at 254.
168. Id.
169. Id.
170. Id. Some of the text messages included an incoming text stating, "'Call Mark I need a 50;' "'So u wanna get some frozen agua[?];'" and "'Any chance I could use ur digitals real quik[?].'" *Id.* at 255 n.2. The officer who reviewed the messages testified that he understood the messages as relating to narcotics. *Id.*
171. Id. at 253, 255.
172. *Finley*, 477 F.3d at 259 (quoting *United States v. Robinson*, 414 U.S. 218, 235 (1973)).
173. Id.
tion to suppress the text messages and call records retrieved from his cell phone.176

The United States District Court for the District of Minnesota, in its decision in United States v. Deans,177 agreed with Finley that police officers with the Minnesota Bureau of Criminal Apprehension could search data electronically stored in a cell phone if it was lawfully seized incident to arrest.178 In Deans, after a controlled purchase of cocaine, police officers arrested one of the defendants, Jason Robert Zeimes ("Zeimes"), and searched his vehicle.179 The police officers found two cell phones inside the vehicle and searched the phones’ electronic memories.180 The Minnesota District Court, like the Fifth Circuit in Finley, cited the Belton rule articulating that the scope of a vehicle search incident to the owner's lawful arrest extends to any containers within the passenger compartment of the vehicle.181 The Minnesota District Court also cited the Belton decision's definition as to what constitutes a container.182 However, the Minnesota District Court noted that the Belton decision did not expressly discuss the authority to search the electronic memory of a device like a cell phone.183

176. Finley, 477 F.3d at 260.
177. 549 F. Supp. 2d 1085 (D. Minn. 2008).
179. Deans, 549 F. Supp. 2d at 1090.
180. Id. at 1093.
181. Id. at 1093-94 (citing New York v. Belton, 453 U.S. 454, 460-61 (1981)); see United States v. Finley, 477 F.3d 250, 260 (5th Cir. 2007) (citing Belton, 453 U.S. at 460-61) (noting the scope of searches incident to arrest extend to any containers found on arrestee's person).
182. See Deans, 549 F. Supp. at 1094 (quoting Belton, 453 U.S. at 460 n.4) (noting that Supreme Court "ruled that a 'container' denotes any object capable of holding another object.").
183. Id. One observer, James X. Dempsey, has observed that it is insufficient to merely search for pre-digital analogies and that, in the current digital world, the analysis of searching digital items must take into account the possibility that conventional rules, even applied to older types of information, may be outdated. James X. Dempsey, Digital Search & Seizure: Updating Privacy Protections To Keep Pace With Technology, PRACTISING LAW INSTITUTE, 935 PLI/PAT. 543, 551 (2008); see Montejo v. Louisiana, 556 U.S. —, 129 S. Ct. 2079, 2093 (2009) (Alito, J., concurring) (noting that the Supreme Court of the United States "had no compunction about casting aside [the] 28 year old bright-line rule" from Belton—that police may always search the passenger compartment of a vehicle incident to the arrest of a recent occupant of the vehicle). Further, Dempsey argues that courts must also consider that rules developed for older forms of information could have devastating effects on privacy if they are applied to new ways of storing information that have become central to Americans' lives. Dempsey, supra note 183.
The court in *Deans* further recognized that the Supreme Court of the United States decided *Belton* in 1981 before the widespread use of cell phones.\(^{184}\)

However, in *Ohio v. Smith*,\(^{185}\) the Ohio Supreme Court disagreed with the categorization the courts made in *Finley* and *Deans* and held that a cell phone was not a closed container under the Fourth Amendment.\(^{186}\) In *Smith*, Beavercreek, Ohio police officers arranged a controlled purchase of crack cocaine with the appellant, Antwaun Smith ("Smith"), and recorded the cell phone conversations made in arranging the purchase.\(^{187}\) Police officers arrested Smith the same evening and seized a cell phone found on Smith's person during the arrest.\(^{188}\) Police officers eventually discovered phone numbers and call records from Smith's cell phone that confirmed Smith was the individual with whom police officers arranged the purchase of crack cocaine.\(^{189}\) The state of Ohio indicted Smith with trafficking in cocaine; possession of cocaine and criminal tools; and tampering with evidence.\(^{190}\)

In determining whether the Fourth Amendment prohibits the warrantless search of cell phones incident to arrest, the Ohio Supreme Court first held that a cell phone is not a closed container.\(^{191}\) The Ohio Supreme Court reasoned that cell phones did not match the *Belton* decision's definition of any object that is capable of holding another object.\(^{192}\) The Ohio Supreme Court then recognized that there were legitimate concerns in allowing warrantless searches of cell phones and smartphones due to the continuing and rapid advancements made in cell phone technology.\(^{193}\) Cell phones, the court explained, are also more intricate and multifunctional than tangible

\(^{184}\) *Deans*, 549 F. Supp. at 1094.

\(^{185}\) 920 N.E.2d 949 (Ohio 2009).

\(^{186}\) Compare *Ohio v. Smith*, 920 N.E.2d 949, 954 (Ohio 2009) (holding cell phones are not closed containers), with *United States v. Finley*, 477 F.3d 250, 261 (5th Cir. 2007) (using *Belton* for authority that police may search containers on arrestee's person in concluding search of arrestee's cell phone was lawful); *United States v. Deans*, 549 F. Supp. 2d 1085, 1094 (D. Minn. 2008) (same).

\(^{187}\) *Smith*, 920 N.E.2d at 950. Police had a woman named Wendy Thomas Northern ("Northern"), who identified Smith as Northern's drug dealer, call Smith and arrange the purchase at Northern's residence. *Id*.

\(^{188}\) *Id*.

\(^{189}\) *See id.* (explaining that "at some point police discovered that the call records and phone numbers confirmed that Smith's cell phone had been used to speak with Northern.").

\(^{190}\) *Id.* at 951 (citations omitted).

\(^{191}\) *Id.* at 954.

\(^{192}\) *Id.* (quoting *New York v. Belton*, 453 U.S. 454, 460 n.4 (1981)). The Ohio Supreme Court did acknowledge that courts had likened other electronic devices, such as pagers, to containers but stated that those cases failed "to consider the Supreme Court's definition of 'container' in *Belton*, which implies that the container must actually have a physical object within it." *Id.* (citations omitted).

\(^{193}\) *Id.*
address books or pagers and, thus, are distinguishable from such items.\textsuperscript{194} Therefore, as the court determined cell phones were not containers, and individuals had a heightened privacy interest in the contents of their cell phones than in items such as pagers or address books, the Ohio Supreme Court held that law enforcement may not search the contents of a cell phone incident to a lawful arrest without a warrant.\textsuperscript{195}

2. \textit{Courts Determining Cell Phones Are Similar To Purses, Wallets, and Address Books In Concluding Law Enforcement May Search Cell Phones Incident to Arrest}

In \textit{United States v. McCray},\textsuperscript{196} the United States District Court for the Southern District of Georgia determined that Savannah-Chatham Metropolitan police officers, incident to a person’s arrest, could briefly inspect a cell phone to determine whether it contained evidence relevant to the arresting offense.\textsuperscript{197} The Georgia District Court reasoned that the Supreme Court of the United States and many lower courts repeatedly recognized law enforcement’s right to open and inspect wallets, address books, papers, and similar items seized from an arrestee to determine if the items have evidentiary value.\textsuperscript{198} The Georgia District Court then noted that courts have extended these principles to electronic storage devices found on an arrestee at the time of arrest, including pagers, mobile phones, and digital cameras.\textsuperscript{199} The Georgia District Court reasoned that, although electronic devices such as cell phones are more modern than items like diaries, papers, and other items, the basic principle of allowing searches incident to arrest of the latter category of items is still applicable to allow inspection of arrestees’ cell phones.\textsuperscript{200}

Similarly, in \textit{United States v. Cote},\textsuperscript{201} the United States District Court for the Northern District of Illinois determined that the search of a cell phone was permissible incident to a valid arrest by analogiz-
ing a cell phone to address books and wallets. The Illinois District Court reasoned that courts have long held searches of items such as address books and wallets as valid searches when made incident to arrest. The Illinois District Court considered items such as address books and wallets analogous to cell phones because cell phones would contain similar information as those items.

In California v. Diaz, the California Court of Appeals for the Second District held that Thousand Oaks, California police officers completed a valid search incident to arrest when they accessed a text message in an arrestee’s cell phone. The California Court of Appeals explained that it was not persuaded by the argument that cell phones should afford greater protection than other items carried on one’s person due to the tremendous amount of personal information cell phones may store. Like the courts in McCray and Cote, the California Court of Appeals cited several previous decisions that upheld warrantless searches of items found on one’s person incident to arrest such as wallets, address books, purses, pagers, and even cell phones. The California Court of Appeals reasoned that, although cell phones may contain personal information, so do other items carried on one’s person such as wallets and purses. Further, the court explained the fact that electronic devices may store vast amounts of private information does not raise a heightened expectation of privacy when an arrestee is carrying the device on one’s person at the time of a lawful arrest. However, the California Supreme Court granted a petition for review of the Diaz decision and deferred action pending


203. Id. at *6. (citations omitted).

204. Id.


210. Id.
the Supreme Court of the United States' Arizona v. Gant decision. 211

The United States District Court for the Eastern District of Wisconsin in United States v. Valdez 212 cited decisions similar to those the California Court of Appeals cited in Diaz to reach its conclusion that the search of a cell phone incident to arrest was lawful. 213 According to the Wisconsin District Court, while the United States Court of Appeals for the Seventh Circuit had not specifically discussed cell phone searches incident to arrest, the Seventh Circuit had approved of similar searches incident to arrest, including the search of a wallet, a personal address book, and a pager. 214 Thus, the Wisconsin District Court decided that the search of the cell phone at issue was also lawful under the search incident to arrest exception. 215

In 2007, however, the United States District Court for the Northern District of California in United States v. Park, 216 distinguished modern cell phones from pagers and address books. 217 In Park, the arrestees, Edward Park, Brian Ly, and David Lee, moved to suppress the warrantless search of their cell phones that occurred about an hour and a half after their arrests. 218 The California District Court determined the search was not roughly contemporaneous with the arrest and, thus, would only be lawful if the searches were limited to the arrestees' persons and did not include possessions within the arrestees' immediate control. 219 The court in Park, unlike the United

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215. Valdez, 2008 WL 360548, at *2 (citing Ortiz, 84 F.3d at 984; Rodriguez, 995 F.2d at 777; Molinaro, 877 F.2d at 1346).
216. Id. at *2, 4.
218. See United States v. Park, No. CR 05-375 SI, 2007 WL 1521573, at *8 (N.D. Cal. May 23, 2007) (noting that "[u]nlike pagers or address books" modern cell phones have multiple technological functions such as text messaging and email).
220. Id. at *1.
States Court of Appeals for the Fifth Circuit in *United States v. Finley* found a modern cell phone was a possession within an arrestee's immediate control as opposed to a part of an arrestee's person. The California District Court reasoned that, unlike address books or pagers, modern cell phones record calls, contain address books, calendars, text and voice messages, video, pictures, and email; and are capable of storing immense amount of highly personal information. The California District Court also distinguished cases that upheld searches of pagers incident to arrest, finding that searches of pagers implicated significantly fewer privacy interests considering the technological differences between modern cell phones and pagers. The court further noted that the searches of the cell phones at issue went significantly beyond the original rationales for the search incident to arrest exception, police officer safety and evidence preservation, as police officers performed the searches for a purely investigatory purpose.

3. **Courts Have Reasoned that Police Officers May Search Cell Phones Incident to Arrest to Preserve Evidence Under the Supreme Court of the United States’ Decision in *Chimel v. California***

In *United States v. Murphy*, the United States Court of Appeals for the Fourth Circuit concluded that no error was committed in denying the suppression of a search of a cell phone's contents. In *Murphy*, a Virginia state trooper conducted a traffic stop of a speeding vehicle, in which the arrestee, Damian Antonio Murphy ("Murphy"), was the front seat passenger. The state trooper asked the driver...
and its two passengers for identification, but none could produce a valid driver's license. During his exchange with the state trooper, Murphy identified himself with varying names. To verify his identity, Murphy gave one of the state troopers his cell phone and showed the officer how to use the cell phone to locate his employer's number. The state troopers arrested Murphy for obstruction of justice and subsequently conducted an inventory search of the vehicle. While law enforcement inventoried the items seized from the vehicle, a state trooper determined some of the cell phones seized contained potentially incriminating information. Twenty-three days later, a Drug Enforcement Administration ("DEA") agent examined Murphy's cell phone and identified numerous text messages from a particular individual. The agent subsequently interviewed the individual, who confirmed that Murphy was the individual's drug supplier.

The Fourth Circuit discussed one of Murphy's arguments on appeal that police officers should only be able to search cell phones without a warrant if they first ascertain the storage capacity of the cell phone. The Fourth Circuit rejected the contention that police officers must determine a cell phone's storage capacity to justify a warrantless search incident to arrest, reasoning that such a rule would be both unworkable and unreasonable. The Fourth Circuit also reasoned that the manifest need for evidentiary preservation warranted police officers retrieving text message and other information from cell phones incident to arrest. The Fourth Circuit cited its previous de-

229. Id. at 407-08.
230. Id. at 408.
231. Id.
232. Id.
233. Id. at 409.
234. See id. at 407, 409 (noting Murphy's arrest and the inventory search of the vehicle occurred on June 6, 2006 and that a DEA agent subsequently searched Murphy's cell phone on June 29, 2006).
235. Id. at 409.
236. Id. at 411.
237. Id. The court explained that police would have no way of knowing a cell phone's storage capacity by merely looking at the phone and that, in the time it would take to determine this information, stored information inside the phone could be lost. Id. (citation omitted). The court further noted that Murphy's argument was problematic in failing to offer any standard to determine what would be a large or small storage capacity. Id.
238. Id. (quoting United States v. Young, No. 07-4213, 2008 WL 2076380, at *2-3 (4th Cir. May 15, 2008) (per curiam), cert. denied, — U.S. —, 129 S. Ct. 514 (2008); citing United States v. Hunter, No. 96-4259, 1998 WL 887289, at *3 (4th Cir. Oct. 29, 1998)). The Fourth Circuit in Murphy further cited United States v. Ortiz, 84 F.3d 977 (7th Cir. 1996), which held that the need to preserve evidence similarly justified retrieving text messages and call records from a pager incident to arrest. Id. (citing Ortiz, 84 F.3d at 984). However, one commentator prior to the Murphy decision observed that, once police officers seize a cell phone, there is no longer any risk that an arrestee could reach the phone to destroy evidence held by the phone. See Bryan Andrew Stillwagon,
cision in *United States v. Young* to support the contention in *Murphy* that police officers could search cell phones incident to arrest to preserve evidence.

In *Young*, the Fourth Circuit concluded that police officers properly copied and accessed text messages of the cell phone of the arrestee, Lance D. Young ("Young"), during a search incident to arrest. Police officers searched the cell phone in *Young* after Young's girlfriend gave consent to search the apartment she leased, which she said Young used to traffic heroin. After their initial search of the premises uncovered heroin and firearms, police officers returned to the apartment two days later, handcuffed Young, and searched his person, finding his cell phone. The police officers then accessed stored text messages in the cell phone and wrote the messages down. A jury convicted Young of conspiracy to possess with intent to distribute heroin, among other charges. On appeal, the Fourth Circuit concluded that, because police officers had no way of knowing whether the cell phone would preserve or automatically delete the text messages, the police officers permissibly discovered and copied the messages down incident to arrest. Accordingly, the Fourth Circuit affirmed Young's convictions.

In *United States v. Parada* and *United States v. Mercado-Nava*, the United States District Court for the District of Kansas

_Bringing An End to Warrantless Cell Phone Searches_, 42 GA. L. REV. 1165, 1196 (2008) (noting that any possibility an arrestee may use a cell phone to harm an officer can be avoided by simply seizing the cell phone). Justice Scalia also observed after the _Murphy_ decision during oral arguments for the Supreme Court of the United States' decision in _Arizona v. Gant_, 556 U.S. —, 129 S. Ct. 1710 (2009), that, "if you're going to use [the preservation-of-evidence] rationale you have to link the reason for the arrest with the likelihood that there would be any evidence found in the car that would support the arrest." _Transcript of Oral Argument at 22, Arizona v. Gant_, 556 U.S. —, 129 S. Ct. 1710 (No. 07-542).


240. _Murphy_, 552 F.3d at 411 (citing _Young_, 2008 WL 2076380, at *2-3).


243. _Id._ (explaining that police first searched the apartment on August 24, 2005 finding heroin and firearms and later returned to the apartment on August 26, 2005 and arrested Young).

244. _Id._

245. _Id._. The jury also convicted Young of aiding and abetting the possession with intent to distribute heroin and possession of a firearm in relation to a drug trafficking crime. _Id._

246. _Id._ at *3.

247. _Id._. The court stated that Young's privacy rights in his cell phone were tempered by the need of an arresting officer to preserve evidence. _Id._ at *2.


similarly upheld searches of cell phones incident to arrest in citing the need to preserve evidence.\textsuperscript{250} In \textit{Parada}, the Kansas District Court concluded that a police officer could immediately search or retrieve the memory of a cell phone, specifically numbers of incoming phone calls stored therein, as a matter of exigency to prevent the destruction of evidence.\textsuperscript{251} The police officer who searched the phone, the Kansas District Court explained, recorded the numbers in the event that later incoming calls would delete numbers stored earlier in the cell phone since a cell phone has a limited memory to store incoming numbers.\textsuperscript{252} Later, in \textit{Mercado-Nava}, the Kansas District Court found that searches of cell phones, in which law enforcement accessed stored numbers in the phones, was justified as a search incident to arrest, reasoning that the need to preserve evidence is emphasized when evidence may be lost because of the dynamic nature of information deleted from and stored on cell phones.\textsuperscript{253}

The United States District Court for the District of Arizona similarly concluded that a search of a cell phone was permissible as a search incident to arrest in \textit{United States v. Santillan}\textsuperscript{254} because law enforcement had a legitimate concern that evidence on the cell phone could be destroyed.\textsuperscript{255} The Arizona District Court explained that law enforcement agents had reason to believe other suspects had contacted the arrestee; thus, those law enforcement agents had a legitimate concern that further incoming calls to the cell phone could destroy evidence located on the cell phone's recent contact lists.\textsuperscript{256}

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\textsuperscript{250} See United States v. Parada, 289 F. Supp. 2d 1291, 1303-04 (D. Kan. 2003) (concluding police had the authority to search a cell phone's memory of incoming call records to prevent destruction of evidence); United States v. Mercado-Nava, 486 F. Supp. 2d 1271, 1278, 1279 (D. Kan. 2007) (finding officers' search of cell phone was justified as a search incident to arrest reasoning "[t]he need to preserve evidence is underscored where evidence may be lost due to the dynamic nature of the information stored on and deleted from cell phones.").
\textsuperscript{251} \textit{Parada}, 289 F. Supp. 2d at 1303-04.
\textsuperscript{252} \textit{Id.} The court for the District of Kansas noted that later incoming calls can delete earlier recorded numbers "whether the phone is turned on or off, so it is irrelevant whether the defendant or the officers turned on the phone." \textit{Id.}; see also United States v. Valdez, No. 06-CR-336, 2008 WL 360548, at *1 (E.D. Wis. Feb. 8, 2008) (noting arresting officer's testimony that he "immediately searched defendant's cell phone because he was concerned that the information contained in the phone, such as the call history and the address book, could be erased remotely or lost on deactivation.").
\textsuperscript{254} 571 F. Supp. 2d 1093 (D. Ariz. 2008).
\textsuperscript{256} \textit{Santillan}, 571 F. Supp. 2d at 1102. The agents involved in \textit{Santillan} were Immigration and Customs Enforcement ("ICE") agents, one of whom had observed the defendant, Manuel M. Santillan, jogging back and forth and talking on a cell phone on a road that extended towards the border to Mexico. \textit{Id.} at 1097. The Arizona District Court also determined that the search of the cell phone's call records was permissible
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The Arizona District Court indicated that the law enforcement agents accessed the recent contacts list from the arrestee’s cell phone due to exigency and the need to preserve evidence, noting that evidence destruction was a paramount concern to the agents.\textsuperscript{257} However, other courts have disagreed that law enforcement should always be allowed to search cell phones incident to any arrest to preserve evidence.\textsuperscript{258} The United States District Court for the District of New Mexico determined that the evidence surrounding the search of a cell phone’s contents in \textit{United States v. Morales-Ortiz}\textsuperscript{259} did not justify a finding of exigent circumstances, similar to the Kansas District Court’s finding in \textit{Parada}.\textsuperscript{260} An agent with the Drug Enforcement Administration (“DEA”) testified in \textit{Morales-Ortiz} that retrieving information from the cell phone at issue in the case was necessary to prevent losing evidence if the cell phone’s battery died.\textsuperscript{261} However, the court noted that the Government had not provided any evidence indicating that the DEA agent who searched the cell phone only retrieved its incoming call list, as was the case in \textit{Parada}.\textsuperscript{262} Rather, testimony showed the agent retrieved numbers and names, suggesting the information came from the cell phone book’s memory, which did not justify a finding of exigent circumstances.\textsuperscript{263}

Most recently, in \textit{United States v. Quintana},\textsuperscript{264} the United States District Court for the Middle District of Florida determined that information gleaned from a Florida highway patrol trooper’s search of an arrestee’s cell phone photo album should be suppressed.\textsuperscript{265} In \textit{Quintana}, the police officer stopped the arrestee, Ariel Quintana (“Quintana”), for speeding and smelled marijuana emanating from under the exigent circumstances exception, reasoning that law enforcement had reason to believe that accessing the cell phone was necessary to prevent evidence destruction. \textit{Id.} at 1104.

\textsuperscript{257} \textit{Id.} at 1103 n.5. The court also noted the agents’ concern for officer safety. \textit{Id.} \textsuperscript{258} See, e.g., \textit{United States v. Morales-Ortiz}, 376 F. Supp. 2d 1131, 1142 (D. N.M. 2004) (determining evidence did not justify finding exigent circumstances existed to support search); \textit{United States v. Quintana}, 594 F. Supp. 2d 1291, 1300 (M.D. Fla. 2009) (determining search of cell phone “had nothing to do with… the preservation of evidence related to the crime of arrest” and suppressing contents of cell phone seized incident to arrest); \textit{United States v. McGhee}, No. 8:09CR31, slip op., 2009 WL 2424104, at *3 (D. Neb. July 21, 2009) (determining law enforcement was not justified in conducting warrantless search of cell phone incident to arrest reasoning in part that “no evidence suggested the cell phone appeared to be or to conceal contraband or other destructible evidence.”). \textsuperscript{259} \textit{Id.} at 1131 (D. N.M. 2004). \textsuperscript{260} \textit{United States v. Morales-Ortiz}, 376 F. Supp. 2d 1131, 1142 (D. N.M. 2004) (citing \textit{United States v. Parada}, 289 F. Supp. 2d 1291, 1303-04 (D. Kan. 2003)).

\textsuperscript{261} \textit{Morales-Ortiz}, 376 F. Supp. 2d at 1142. \textsuperscript{262} \textit{Id.} \textsuperscript{263} \textit{Id.} \textsuperscript{264} \textit{594 F. Supp. 2d 1291 (M.D. Fla. 2009).} \textsuperscript{265} \textit{United States v. Quintana}, 594 F. Supp. 2d 1291, 1301 (M.D. Fla. 2009).
After learning Quintana's license was suspended, the police officer arrested Quintana for driving with a suspended license. Quintana’s cell phone began to ring while he was in custody, and the police officer removed the cell phone from Quintana’s pocket. The police officer looked through information on the cell phone, specifically the cell phone’s photo album, in an attempt to find evidence related to the smell of marijuana coming from Quintana’s vehicle.

Relying on the Supreme Court of the United States’ oral argument in Arizona v. Gant, the Florida District Court reasoned that, rather than trying to preserve evidence that Quintana was driving with a suspended license, the police officer rummaged for information from the cell phone related to the marijuana odor he detected coming from Quintana’s vehicle. The search of the contents of Quintana’s cell phone, the Florida District Court explained, did not have anything to do with preservation of evidence related to the arresting offense. Thus, the Florida District Court determined in Quintana that the Chimel decision’s twin rationales did not justify the search but rather pushed the search incident to arrest exception beyond its permissible limits. The Florida District Court further reasoned that, although police officers may search a cell phone for evidence related to a drug-related arresting offense, citing Justice Antonin Scalia’s statement during oral argument of the Gant decision, the police officer arrested Quintana for driving with a suspended license.

266. Quintana, 594 F. Supp. 2d at 1294.
267. Id. at 1295.
268. Id.
269. Id. at 1295-96.
271. Quintana, 594 F. Supp. 2d at 1300. The court for the Middle District of Florida noted that the Gant decision was forthcoming at the time it issued its decision in Quintana. Id. The court in Quintana specifically discussed comments made by Justice Stevens and Justice Scalia at oral argument for the Gant case. Id. The court for the Middle District of Florida explained that Justice Stevens stated during oral argument that “the interest in preserving evidence really should only be present when there is probable cause to believe there is some evidence.” Id. (citing Transcript of Oral Argument at 21, Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710 (2009) (No. 07-542)). The court also noted Justice Scalia’s statement during oral argument that “if you’re going to use [the preservation-of-evidence] rationale you have to link the reason for the arrest with the likelihood that there would be any evidence found in the car that would support the arrest.” Id. (citing Transcript of Oral Argument at 22, Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710 (2009) (No. 07-542)).
272. Id.
273. Id.
Similarly, in United States v. McGhee, the United States District Court for the District of Nebraska determined that Omaha, Nebraska police officers were not justified in performing a warrantless search of an arrestee’s cell phone incident to arrest and accordingly suppressed information gleaned from the cell phone. In McGhee, the state of Nebraska charged Terrell L. McGhee (“McGhee”) with conspiring from approximately March 14, 2008 through March 24, 2008 to distribute and possess with intent to distribute crack cocaine. Police officers obtained a warrant for McGhee’s arrest for these crimes on January 23, 2009. On January 27, 2009, police officers with the Omaha Police Department Gang Intelligence Unit, as well as various other law enforcement agents, executed arrest warrants for various persons, including McGhee. The police officers arrested McGhee and searched McGhee’s person incident to his arrest, finding a cell phone. Police officers documented the contact list on McGhee’s cell phone at the scene of his arrest.

In determining that the contents retrieved from McGhee’s cell phone should be suppressed, the Nebraska District Court explained that, consistent with the Supreme Court of the United States’ opinion in Gant, it was unreasonable for the police officers to believe that searching McGhee’s cell phone would produce evidence of the crime.

recognized tools of the drug-dealing trade); Adam M. Gershowitz, *The iPhone Meets the Fourth Amendment*, 56 UCLA L. Rev. 26, 49 (2008) (stating if officers make arrest “for possession of drugs with intent to distribute, it would make sense to search his text messages for further evidence of the crime, since that function is commonly used in conjunction with drug sales.”). However, as Gershowitz noted, if an individual is arrested for a traffic violation, it would not be reasonable to believe a cell phone would contain relevant evidence. See Gershowitz, supra (explaining that “[i]f police could only search for evidence related to the crime of arrest, most traffic stops would not permit searches of an iPhone’s contents.”). Further, the United States District Court for the District of Arizona in Santillan also suggested that police officers could reasonably believe a cell phone would store evidence of the arresting offense when police officers observe a suspect using a cell phone during the commission of the crime or while engaging in suspicious activity leading to arrest. See Santillan, 571 F. Supp.2d at 1097, 1102-03 (concluding search incident to arrest of cell phone was permissible after agent observed arrestee talking on cell phone during events that led agent to conclude defendant was likely spotter for drug-smuggling activity and was using cell phone to communicate with occupants of trucks seen driving nearby that appeared modified to smuggle drugs).

277. *McGhee*, 2009 WL 2424104, at *1. McGhee was also charged with distributing cocaine base on or about March 14, 21, and 24, 2008. *Id.*
278. *Id.* at *2.
279. *Id.*
280. *Id.*
281. *Id.*
for which McGhee was arrested.\textsuperscript{282} As the Nebraska District Court explained, McGhee's arrest was for a drug conspiracy during March 2008, and police officers arrested McGhee in January 2009.\textsuperscript{283} The Nebraska District Court also cited the \textit{Gant} decision in which the Supreme Court of the United States indicated that the search incident to arrest exception does not apply when the justifications for the exception—ensuring officer safety and preventing the destruction of evidence—are absent.\textsuperscript{284} Accordingly, the Nebraska District Court reasoned that McGhee's cell phone posed no risk of harm to the police officers, and there was no evidence suggesting that McGhee's cell phone concealed any contraband or destructible evidence.\textsuperscript{285}

III. ARGUMENT

For nearly four decades, the Supreme Court of the United States articulated bright-line rules under the search incident to arrest exception of the Fourth Amendment's warrant requirement.\textsuperscript{286} Particularly, the Supreme Court's decisions in \textit{United States v. Robinson}\textsuperscript{287} and \textit{New York v. Belton}\textsuperscript{288} played a significant role in lower court decisions that analyzed searches of cell phones incident to arrest.\textsuperscript{289} Several lower courts used the Supreme Court's bright-line rules to uphold warrantless searches of cell phones under the search incident to arrest exception.\textsuperscript{289} Lower court decisions incorrectly upheld searches of cell phones incident to arrest for three fundamental reasons: (1) the digital type of information cell phones typically store; (2) the massive amount of private information cell phones store; and (3) the extraordi-

\textsuperscript{282} Id. at *3. (citing Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710, 1719 (2009)). The Nebraska District Court cited to the holding in \textit{Gant} that "law enforcement may search a vehicle incident to a lawful arrest only when 'it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" Id. (quoting \textit{Gant}, 129 S. Ct. at 1719). The Nebraska District explained that the Government in McGhee's case argued that \textit{Gant} was not applicable to the case but that McGhee argued that the \textit{Gant} opinion highlighted "the reasons why officers lacked justification to search the contents of the cell phone without a warrant." Id.

\textsuperscript{283} Id.
\textsuperscript{284} Id. (citing \textit{Gant}, 129 S. Ct. at 1716).
\textsuperscript{285} Id.

\textsuperscript{286} See infra notes 297-319 and accompanying text.
\textsuperscript{287} 414 U.S. 218 (1973).
\textsuperscript{288} 453 U.S. 454 (1981).

\textsuperscript{289} See infra notes 304-19 and accompanying text.

\textsuperscript{290} See, e.g., United States v. Finley, 477 F.3d 250, 259-60 (5th Cir. 2007) (citing United States v. Robinson, 414 U.S. 218, 223-24, 235 (1973); New York v. Belton, 453 U.S. 454, 460-61 (1981)) (concluding search of cell phone incident to arrest was lawful in relying on authority to search the full person of an arrestee and containers incident to arrest from \textit{Robinson} and \textit{Belton}); United States v. Deans, 549 F. Supp. 2d 1085, 1093-94 (D. Minn. 2008) (citing \textit{Belton}, 453 U.S. at 460-61) (determining officers may search data stored on cell phone incident to arrest after citing authority from \textit{Belton} to search containers incident to arrest).
nary technology implicit in modern cell phones. Lower courts also incorrectly upheld searches of arrestees' cell phones in light of the recent change the search incident to arrest exception has undergone following *Arizona v. Gant*, the Supreme Court's most recent decision on the topic. Lower court decisions articulated in the wake of *Gant* have employed the *Gant* Court's reasoning and correctly struck down searches of cell phones performed incident to arrest. Courts should continue the current trend and no longer allow law enforcement to search cell phones without a warrant under the search incident to arrest exception.

A. The Supreme Court of the United States' Bright-Line Rules on the Search Incident To Arrest Exception

The Supreme Court of the United States issued bright-line rules under the search incident to arrest exception throughout the latter half of the twentieth century that expanded law enforcement authority and enabled broad interpretation of the exception. In *Chimel v. California*, the Supreme Court of the United States constrained law enforcement's authority to search incident to arrest based on the underlying rationales for the rule, preserving police officer safety and preventing the destruction of evidence. However, in the more than thirty-five years after *Chimel*, expansive decisions swung the search incident to arrest pendulum in the opposite direction. Accordingly, for nearly four decades, the search incident to arrest exception functioned as a bright-line rule that allowed law enforcement to search the entire person of an arrestee without delving into difficult questions concerning whether there was probable cause to open containers found on an arrestee. Two decisions, *United States v. Robinson* and *New York v. Belton*, played particular importance in expanding

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291. See infra notes 382-403 and accompanying text.
293. See infra notes 406-07, 412-14, 416-68 and accompanying text.
294. See infra notes 473-96 and accompanying text.
295. See infra notes 497-506 and accompanying text.
296. See infra notes 297-319 and accompanying text.
law enforcement’s authority under the search incident to arrest exception.\footnote{303}

In \textit{Robinson}, the Supreme Court of the United States first expanded the scope of the search incident to arrest exception in favor of having a bright-line rule for police officers.\footnote{304} The Supreme Court held in \textit{Robinson} that, in the case of a lawful arrest, a full search of the arrestee’s person, including any containers found on the arrestee’s person, was both reasonable under the Fourth Amendment and an exception to the Fourth Amendment warrant requirement.\footnote{305} The Supreme Court determined in \textit{Robinson} that the authority to search the arrestee incident to arrest did not require case-by-case adjudication.\footnote{306} The Court reasoned that a police officer’s determination of where and how to search an arrestee is a quick, ad hoc judgment, each step of which does not need to be analyzed under the Fourth Amendment.\footnote{307} According to the Court, the authority to search an arrestee incident to a lawful arrest did not require any additional justification other than the occurrence of a lawful, custodial arrest based on probable cause.\footnote{308}

Eight years later in \textit{Belton}, the Supreme Court reaffirmed the need for a bright-line rule under the search incident to arrest exception and instigated a new era of expansion of the search incident to

\footnote{303. \textit{See} United States v. Robinson, 414 U.S. 218, 235 (1973) (holding that a full search of an arrestee’s person incident to arrest is reasonable under the Fourth Amendment regardless of any probability that either justification for the search incident to arrest exception exists at the time of the arrest); New York v. Belton, 453 U.S. 454, 460-61 (1981) (holding that police officers may search an automobile when they have made a lawful arrest of an occupant of the automobile and may also search any containers within the passenger compartment of the automobile regardless of any possibility that any containers within the passenger compartment could contain weapons or evidence of the crime of arrest); \textit{see infra} notes 304-19 and accompanying text.}

\footnote{304. \textit{See} Robinson, 414 U.S. at 235 (determining that a search incident to an arrest of a suspect does not require any justification other than the occurrence of a lawful arrest in reasoning that a police officer’s determination how to search an arrestee’s person is a quick ad hoc judgment of which the Fourth Amendment does not require step-by-step analysis); \textit{see infra} notes 305-08 and accompanying text.}

\footnote{305. \textit{See} United States v. Robinson, 414 U.S. 218, 235-236 (1973) (stating the search of arrestee’s person and seizure of heroin found in crumpled package of cigarettes from arrestee’s person were permissible under the Fourth Amendment); \textit{see also} New York v. Belton, 453 U.S. 454, 461 (1981) (saying the Supreme Court in \textit{Robinson} “rejected the argument that such a container—there a ‘crumpled up cigarette package’—located during the a search of Robinson incident to his arrest could not be searched”); \textsc{Stephen A. Saltzburg, Daniel J. Capra, Angela J. Davis}, \textit{Basic Criminal Procedure} 301 (4th ed. Thomson-West 2005) (explaining that \textit{Robinson} established “the automatic right to search containers found on an arrestee”).}

\footnote{306. \textit{Robinson}, 414 U.S. at 235.}

\footnote{307. \textit{Id.}}

\footnote{308. \textit{Id.}}
arrest exception. To establish a workable rule, the Supreme Court held in *Belton* that when police officers make a lawful arrest of a recent occupant of a vehicle, the police officers may search the passenger compartment of the vehicle incident to the arrest. The Supreme Court further held that police officers may examine the contents of any containers discovered inside the passenger compartment of the vehicle. In *Belton*, the Court articulated what constituted a container under the search incident to arrest exception, explaining that a container denoted any object that is capable of holding another object and, thus, included items such as boxes, bags, and luggage. Citing the bright-line rule earlier articulated in *Robinson*, the Court explained that law enforcement's authority to search such containers did not change, even if containers found could hold neither a weapon nor evidence of the arresting offense. Rather, the custodial arrest based on probable cause allowed for the intrusion and required no additional justification.

Through decisions such as *Belton*, the Supreme Court of the United States consistently, albeit modestly, increased the scope of law enforcement's authority to conduct automatic searches incident to lawful arrests and suggested that courts should expansively interpret the search incident to arrest exception. According to the Supreme Court of the United States, lower courts should treat all custodial arrests alike for search justification purposes. No justification, other than the fact that a lawful arrest had occurred, was required for police officers to have the authority to search the entire person of an arrestee, including any containers found thereon. According to the Su-

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309. See *Belton*, 453 U.S. at 459-60 (citing *Robinson*, 414 U.S. at 235) (explaining the importance of a straightforward, easily-applied rule to guide police); Tomkovicz, supra note 298, at 1437.
311. Id.
312. Id. at 461 n.4. The Supreme Court specifically stated that a container included, "closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like." Id.
313. See id. at 461 (citing United States v. Robinson, 414 U.S. 218, 235 (1973)) (noting that sometimes containers would not be capable of holding weapons or evidence but that law enforcement could search such items regardless consistent with *Robinson*).
315. Tomkovicz, supra note 298, at 1441; Gershowitz, supra note 300, at 35. Gershowitz also noted that, while technology and society have changed drastically in recent decades, "the search incident to arrest rule has remained static." Id. at 31.
316. See United States v. Robinson, 414 U.S. 218, 235 (1973) (noting that there "is an adequate basis for treating all custodial arrests alike for purposes of search justification.").
317. See *Robinson*, 414 U.S. at 235, 236 (explaining that a search incident to arrest does not require any additional justification other than the occurrence of a lawful, custo-
Supreme Court in *Belton*, the authority to search the contents of containers did not depend on the probability that evidence or weapons could be inside, despite the *Chimel* decision's explanation to the contrary.\(^{318}\) Ensuring that police officers had a straightforward rule to follow deserved greater significance, according to the Supreme Court, than analyzing the specific facts of search incident to arrest scenarios.\(^{319}\)

**B. LOWER COURTS REPEATEDLY ALLOWED SEARCHES OF CELL PHONES INCIDENT TO ARREST USING THE SUPREME COURT OF THE UNITED STATES' BRIGHT-LINE JURISPRUDENCE**

Several lower courts have used two rationales drawn heavily from the Supreme Court of the United States' bright-line jurisprudence on the search incident to arrest exception to uphold searches of cell phones incident to arrest.\(^{320}\) First, lower courts authorized searches

\(^{318}\) Compare *Belton*, 453 U.S. at 461 (citing *Robinson*, 414 U.S. at 235) (explaining that the possibility weapons or evidence could be found on arrestee played no role in the authority to search incident to arrest), *with Chimel v. California*, 395 U.S. 752, 762-63 (1969) (determining the "proper extent" of a search incident to arrest encompassed searching an arrestee and the area arrestee could reach in order to ensure officer safety and prevent the concealment or destruction of evidence).

\(^{319}\) See *Belton*, 453 U.S. at 459 (citing *Robinson*, 414 U.S. at 235) (noting that the Court in *Robinson* "hewed to a straightforward rule, easily applied, and predictability enforced that is necessary to guide police and issuing workable rule as a result"); *Robinson*, 414 U.S. at 235 (rejecting suggestion that "there must be litigated in each case the issue of whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest.").

\(^{320}\) See, e.g., *United States v. Finley*, 477 F.3d 250, 260 (5th Cir. 2007) (citing *New York v. Belton*, 453 U.S. 454, 460-61 (1981) (using *Belton*'s authority to search containers found on an arrestee's person to uphold search of cell phone incident to arrest); *United States v. Deans*, 549 F. Supp. 2d 1085, 1093-94 (D. Minn. 2008) (citing *Belton*, 453 U.S. at 460-61 n.4) (using *Belton*'s authority to search containers found inside passenger compartment of vehicle to support search of cell phone found in vehicle incident to the arrest of a recent occupant of the vehicle); *United States v. Valdez*, No. 06-CR0336, 2008 WL 360548 (E.D. Wis. Feb. 8, 2008) (citing United States v. *Robinson*, 414 U.S. 218, 236 (1973)) (upholding search of cell phone incident to arrest after citing *Robinson* for authority that police officers may search containers an arrestee is carrying); see infra notes 325-44, 346-71 and accompanying text. Other lower courts have upheld searches of cell phones incident to arrest by reasoning that law enforcement need to search cell phones to preserve any evidence that may be stored inside a cell phone's memory. See, e.g., *United States v. Mercado-Nava*, 486 F. Supp. 2d 1271, 1278, 1279 (D. Kan. 2007) (finding search of cell phones justified as search incident to arrest reasoning the "need to preserve evidence is underscored where evidence may be lost due to the dynamic nature of the information stored on and deleted from cell phones"); *United States v. Santillan*, 571 F. Supp. 2d 1093, 1102-03 (D. Ariz. 2008) (concluding
of cell phones incident to arrest by categorizing cell phones as contain-
ers under the New York v. Belton decision. Second, lower courts up-
held searches of cell phones incident to arrest by analogizing cell
phones to items such as purses and wallets, which plainly fall under
the Supreme Court’s denotation of a container in Belton.

1. Lower Courts Categorized Cell Phones as Containers Under New
York v. Belton

The broad rules and bright-line jurisprudence the Supreme Court
of the United States long articulated under the search incident to ar-
rest exception influenced lower courts in classifying cell phones as
containers. Under Belton, police officers may search any containers
found on the person of an arrestee or in the arrestee’s grabbable space,
including the passenger compartment of vehicles. Accordingly, if
courts considered a cell phone a container, then law enforcement could
open and search that cell phone’s contents with no probable cause re-
quired, so long as the police officers did so incident to a valid arrest.

In recent years, lower courts have cited Belton as authority to search
containers, as well as the Belton decision’s denotation of a container,
in determining that searches of cell phones are lawful incident to ar-
rest. However, the courts that classified cell phones as mere con-

search of cell phone was permissible search incident to arrest reasoning officers had
valid concern arrestee’s cell phone could destroy evidence located on cell phone’s recent
contact’s lists); United States v. Murphy, 552 F.3d 405, 411 (4th Cir. 2009) (quoting
United States v. Young, No. 07-4213, 2008 WL 2076380, at *3 (4th Cir. May 15, 2008))
(concluding no error made by district court in denying motion to suppress contents of
arrestee’s cell phone citing “manifest need . . . to preserve evidence”). In upholding
searches of cell phones incident to arrest, lower courts have also reasoned that prior
courts have upheld searches of pagers, another digital device, incident to arrest. See,
E.g., Mercado-Nava, 486 F. Supp. 2d at 1277, 1278 (citations omitted) (citing decisions
upholding searches of pagers incident to arrest in upholding search of cell phone inci-
dent to arrest); United States v. McCray, No. CR408-231, 2009 WL 29607, at *3 (S.D.
at *2 (E.D. Wis. 2008) (citations omitted) (same).

322. See infra notes 325-44 and accompanying text.
323. See infra notes 346-71 and accompanying text.
324. See infra notes 325-44 and accompanying text.
Robinson, 414 U.S. 218, 235 (1973)) (reading the definition of the limits of the area law
enforcement may search from Chimel v. California, 395 U.S. 752 (1969), as encompass-
ing the passenger compartment of a vehicle and any containers therein when law en-
forcement arrest a recent occupant of the vehicle).
326. See Adam M. Gershowitz, The iPhone Meets the Fourth Amendment, 56 UCLA
L. Rev. 27, 31 (2008) (noting that “if we think of an iPhone as a container . . . police can
open and search the contents inside with no questions asked and no probable cause
required, so long as they are doing so pursuant to a valid arrest.”).
327. See, e.g., United States v. Finley, 477 F.3d 250, 260 (5th Cir. 2007) (citing Bel-
ton, 453 U.S. at 460-61) (using Belton’s authority to search containers found on an ar-
restee’s person to uphold search of cell phone incident to arrest); United States v.
tainers did not analyze whether a cell phone is indeed a container under Belton or why a cell phone should fit the Belton decision's container classification.328

For example, in United States v. Finley,329 the United States Court of Appeals for the Fifth Circuit authorized the search of an arrestee's cell phone by employing the bright-line rule from Belton.330 The Fifth Circuit concluded that the search of the arrestee Jacob Finley's ("Finley") cell phone following his arrest for a controlled purchase of methamphetamine was lawful under the search incident to arrest exception.331 The Fifth Circuit cited Belton for the authority that the permissible scope of a search performed incident to arrest encompassed containers found on the arrestee's person.332 Although the Fifth Circuit did not explain why a cell phone fit the Belton decision's container classification, it ultimately upheld the search under that decision's authority.333

Similarly, in United States v. Deans,334 the United States District Court for the District of Minnesota also used the Supreme Court of the United States' decision in Belton to justify the search incident to arrest of a cell phone.335 The Minnesota District Court determined in Deans that police officers could search any data stored on two cell phones seized from the arrestee Jason Robert Zeimes' ("Zeimes") vehi-

328. Compare Finley, 477 F.3d at 260 (noting general law from Belton that proper scope of search incident to arrest encompassed containers in upholding search of arrestee's cell phone but not discussing why a cell phone fit Belton's classification of a container), and Deans, 549 F. Supp. 2d at 1093-94 (same), with State v. Smith, 920 N.E.2d 949, 953 (Ohio 2009) (distinguishing definition of container given in Belton in holding that a cell phone is not a "container" under a Fourth Amendment analysis).

329. 477 F.3d 250 (5th Cir. 2007).

330. See infra notes 331-33 and accompanying text.


332. Finley, 477 F.3d at 260 (citing United States v. Johnson, 846 F.2d 279, 282 (5th Cir. 1988) (per curiam); Belton, 453 U.S. at 460-61; United States v. Robinson, 414 U.S. 218, 223-24 (1973)). Oddly enough, the appellant, Jacob Pierce Finley, argued using authority from Walter v. United States, 447 U.S. 649 (1980), that "since a cell phone is analogous to a closed container," the police did not have the authority to inspect its contents without a search warrant. Finley, 477 F.3d at 460 (citing Walter, 447 U.S. at 657). However, the Fifth Circuit explained that the Walter case was inapplicable to Finley's case as the Walter decision did not involve any exception to the Fourth Amendment's warrant requirement. Id.

333. See id. (citing Belton for the authority to search any containers-open or closed-found on an arrestee's person but not discussing what constituted a container under Belton or why a cell phone constituted a container under Belton).


335. See infra notes 336-40 and accompanying text.
The Minnesota District Court reasoned that the Belton decision authorized a search of a vehicle, as well as any containers found therein, performed incident to the lawful arrest of a recent occupant of the vehicle. The Minnesota District Court further cited the Belton decision's definition of a container, which encompassed any object that is capable of holding another object, including luggage, boxes, or bags. The Minnesota District Court noted that the Belton decision was decided in 1981 prior to cell phones' widespread use and that Belton did not specifically address the authority to search a cell phone. Yet, despite the concession, the Minnesota District Court did not discuss why a cell phone fit within the Supreme Court of the United States' denotation of a container or why it ultimately treated the cell phone as a container under Belton.

Both the Fifth Circuit in Finley and the Minnesota District Court in Deans used the Belton decision's authority to search containers and the Belton decision's denotation of a container to justify searches of cell phones under the search incident to arrest exception. Accordingly, both courts treated cell phones as containers under Belton. However, neither court analyzed the object searched, a cell phone, or discussed why a cell phone fit the Belton decision's definition of a container. As the Fifth Circuit and Minnesota District Court's deci-

338. Id. at 1094 (citing Belton, 453 U.S. at 460 n.4).
339. Id.
340. See id. (citing Belton for the authority to search any containers found in passenger compartment of vehicle but not discussing why a cell phone constituted a container under Belton).
341. See United States v. Finley, 477 F.3d 250, 259, 260 (5th Cir. 2007) (citing Belton, 453 U.S. at 460-61; United States v. Robinson, 414 U.S. 218, 223-24 (1973)) (citation omitted) (citing Belton and Robinson rule that officers may search any containers found on arrestee's person in concluding that search of cell phone was lawful incident to arrest); Deans, 549 F. Supp. 2d at 1093-94 (citing Belton, 453 U.S. at 460-61, 461 n.4) (using Belton in agreeing that officers could search cell phone incident to arrest); see also Gershowitz, supra note 326, at 38 (explaining that the court in Finley relied on "the conventional search incident to arrest case law-namely United States v. Robinson and New York v. Belton").
342. See Finley, 477 F.3d at 259, 260 (citing Belton, 453 U.S. at 460-61) (citations omitted) (citing Belton's rule that officers may search any containers found on an arrestee's person in concluding search of cell phone was lawful incident to arrest); Deans, 549 F. Supp. 2d at 1093-94 (citing Belton, 453 U.S. at 460-61, 461 n.4) (using Belton's authority that officers may search the passenger compartment of a vehicle and any containers therein incident to the arrest of a recent occupant of the vehicle in agreeing that officers could search cell phone seized from vehicle's passenger compartment incident to the arrest of the vehicle's driver).
343. See Finley, 477 F.3d at 260 (citing Belton, 453 U.S. at 460-61) (citing Belton's authority that a search of a lawful arrest includes any containers on the arrestee's person in immediately determining no warrant was required to search a cell phone on the
sions were void of any analysis on the specific object searched, both courts set deficient, yet, in the case of *Finley*, frequently cited precedent for later courts faced with challenges of cell phone searches performed incident to arrest.\textsuperscript{344}

2. Lower Courts Analogized Cell Phones to Items That Plainly Fall Under the Definition of a Container in *New York v. Belton*

The bright-line jurisprudence the Supreme Court of the United States long articulated on the search incident to arrest exception additionally influenced lower courts that upheld searches incident to arrest of cell phones by analogizing cell phones to items that fall under the plain language of the *New York v. Belton*\textsuperscript{345} decision’s denotation of a container.\textsuperscript{346} When the Supreme Court explained what a container constituted in *Belton*, the Court specifically listed boxes, bags, luggage, and clothing as falling under the definition of a container.\textsuperscript{347} Accordingly, for years after *Belton*, several courts determined that searches of purses, wallets, and similar items found on an arrestee’s person fell under the plain language of the *Belton* decision’s container classification, and, thus, police officers could search such items incident to arrest.\textsuperscript{348} Recently, lower courts confronted with the

defendant’s person when the search was performed pursuant to the defendant’s arrest but not discussing why a cell phone was a container under *Belton*); *Deans*, 549 F. Supp. 2d at 1093-94 (citing *Belton’s* authority to search any containers found in the passenger compartment of a vehicle in upholding the search of a cell phone seized from the passenger compartment of the defendant’s vehicle without discussing why a cell phone fit *Belton’s* container classification).

344. Compare *State v. Smith*, 920 N.E.2d 949, 954 (Ohio 2009) (discussing unique nature of cell phone and massive amount of private information cell phones store incident to arrest), *with Finley*, 477 F.3d at 260 (using *Belton’s* authority that a search incident to arrest includes any containers on the arrestee’s person in immediately determining no warrant was required to search a cell phone on the defendant’s person when the search was performed pursuant to the defendant’s arrest but not discussing why a cell phone constituted a container under *Belton*); see, e.g., United States v. Murphy, 552 F.3d 405, 411, 412 (4th Cir. 2009) (citing *Finley* for authority upholding search of cell phone incident to arrest in ultimately validating search of cell phone); United States v. Young, No. 07-4213, 2008 WL 2076380, at *3 (4th Cir. May 15, 2008) (per curiam) (same); *State v. Smith*, No. 07-CA-47, 2008 WL 2861693, at *7, 8 (Ohio App. 2 Dist. July 25, 2008), rev’d, 920 N.E.2d 949 (Ohio 2009) (same).


347. *Belton*, 453 U.S. at 461 n.4. According to the Supreme Court, a container denoted “any object capable of holding another object.” *Id.*

348. See, e.g., United States v. Rodriguez, 995 F.2d 776, 778 (7th Cir. 1993) (upholding copying of contents of arrestee’s address book incident to arrest); People v. Decker, 176 Cal. App. 3d 1247, 1253 (Cal. Ct. App. 1986) (upholding search of arrestee’s purse incident to arrest); United States v. Richardson, 764 F.2d 1514, 1527 (11th Cir. 1985) (upholding search of wallet and papers found on arrestees’ person incident to arrest); compare *Belton*, 453 U.S. at 461 n.4 (explaining officers may search containers in pas-
searches of technological devices such as cell phones have analogized cell phones to purses, wallets, and the like in validating searches of cell phones under the search incident to arrest exception. However, the courts using the analogy did not address what similarities cell phones share with such items or why cell phones deserve the same treatment under the search incident to arrest exception.

In United States v. McCray, for example, the United States District Court for the Southern District of Georgia used prior decisions upholding searches of items such as purses and wallets, which were based on the Supreme Court of the United States' bright-line jurisprudence, in holding that police officers may inspect a cell phone incident to arrest. The Georgia District Court cited United States v. Robinson for the legal authority to search containers on an arrestee's person, as well as a string of lower court case law that repeatedly upheld law enforcement's inspection of papers, address books, wallets, and similar items seized from arrestees. The Georgia District Court then reasoned that, because law enforcement may search a purse, wallet, or address book incident to arrest, law enforcement may also

senger compartment of vehicle and that a container "denotes any object capable of holding another object" and includes such items as "luggage, boxes, bags, clothing, and the like."), and United States v. Robinson, 414 U.S. 218, 235 (1973) (holding that a full search of the arrestee's person including containers found on the arrestee's person such as a cigarette package is permissible under the Fourth Amendment), with Rodriguez, 995 F.2d at 778 (determining officers permisibly copied contents of arrestee's address book found on arrestee's person incident to his arrest).

349. See, e.g., United States v. Valdez, No. 06-CR-336, 2008 WL 360548, at *2, 4 (E.D. Wis. Feb. 8, 2008) (citations omitted) (analogizing cell-phone searches incident to arrest to searches incident to arrest of a wallet and personal address book); People v. Diaz, 165 Cal. App. 4th 732, 738 (Cal. Ct. App. 2008) (stating cell phones do not give rise to a heightened expectation of privacy than objects such as "wallets, purses and the like" that also contain personal information); United States v. Cote, No. 03CR271, 2005 WL 1323343, at *6 (N.D. Ill. May 26, 2005) (analogizing cell phones to "items such as wallets and address books... since they would contain similar information")

350. Compare United States v. McCray, No. CR408-231, 2009 WL 29607, at *2, 4 (determining cell phone search incident to arrest was valid after citing numerous cases that repeatedly authorized searches of purses, wallets, and the like incident to arrest), and Valdez, 2008 WL 360548, at *2 (same), with United States v. Smith, 920 N.E.2d 949, 953-54 (Ohio 2009) (specifically distinguishing cell phones from address books and rejecting claim that cell phones are analogous to items that fall under the closed-container classification because such items-unlike cell phones-are traditionally physical objects capable of holding other physical objects under Belton).


352. See infra notes 352-55 and accompanying text.


354. McCray, 2009 WL 29607, at *2 (citing United States v. Robinson, 414 U.S. 218, 223-24, 236 (1973) (upholding search incident to arrest of crumpled cigarette package on arrestee's person); United States v. Rodriguez, 995 F.2d 776, 778 (7th Cir. 1993) (same of address book and wallet); United States v. Richardson, 764 F.2d 1514, 1527 (11th Cir. 1985) (same of wallet and papers); United States v. McFarland, 653 F.2d 427, 429 (5th Cir. 1980) (same of piece of notebook paper); United States v. Castro, 596 F.2d 674, 677 (5th Cir. 1979) (same of paper found in arrestee's pocket)).
search a cell phone incident to arrest. However, the court did not discuss why cell phones are similar to items such as purses, wallets, and address books, which other prior courts had properly treated as containers under Belton.

Similarly, in United States v. Valdez, the United States District Court for the Eastern District of Wisconsin used prior case law upholding searches of address books and wallets incident to arrest in concluding that the search of an arrestee's cell phone was lawful. The Wisconsin District Court cited Robinson for the authority that police officers may search containers found on an arrestee and multiple cases approving warrantless searches of containers such as wallets and personal address books incident to arrest. Under the weight of the authority authorizing searches incident to arrest of items such as wallets and address books, the Wisconsin District Court then reasoned that law enforcement may also search a cell phone incident to arrest. However, the Wisconsin District Court did not discuss why cell phones are similar to items such as purses, wallets, and address books that other courts properly treated as containers under Belton.

The United States District Court for the Northern District of Illinois in United States v. Cote also analogized cell phones to wallets

355. See id. at *2, 4 (citations omitted) (citing cases upholding searches incident to arrest of purses, address books, and the like in ultimately validating search of cell phone incident to arrest). The Georgia District Court further reasoned that other courts had authorized searches of other "electronic storage devices" found on arrestees, namely, searches of pagers, mobile telephones, and digital cameras. Id. at *3 (citing United States v. Finley, 477 F.3d 250, 259-60 (5th Cir. 2007)) (citations omitted).

356. See id. at *2, 4 (citing authority upholding searches of address books, wallets, and similar items incident to arrest and ultimately upholding search of cell phone search incident to arrest but not discussing similarities between such items); compare New York v. Belton, 453 U.S. 454, 461 n.4 (1981) (explaining a container denoted "any object capable of holding another object" and included bags, boxes, and luggage), with People v. Decker, 176 Cal. App. 3d 1247, 1253 (Cal. Ct. App. 1986) (upholding search of arrestee's purse), and Rodriguez, 995 F.2d at 778 (upholding search of address book and wallet found on arrestee's person).


359. Valdez, 2008 WL 360548, at *1-2 (citations omitted). The Wisconsin District Court also cited case law upholding searches of pagers and cell phones incident to arrest and reasoned that officers knew call histories on the arrestee's cell phone could be deleted or lost, "giving rise to a legitimate concern about destruction of evidence." Id. at *2, 3 (citations omitted).

360. See id. at *2, 4 (citing weight of authority upholding searches incident to arrest of wallets, address books, pagers, and cell phones in finding search of cell phone was lawful incident to arrest).

361. See id. at *2 (relying on cases authorizing searches of papers and wallets incident to arrest but not discussing similarities of such items with cell phones).

and address books in determining that the search of a cell phone incident to arrest was permissible.\textsuperscript{363} The Illinois District Court cited to other court decisions that validated searches incident to arrest of address books and wallets in reasoning that police officers did not need the arrestee's consent or a search warrant before searching the call log, wireless web inbox, and phone book of the arrestee's cell phone.\textsuperscript{364} The Illinois District Court briefly analyzed why it considered a cell phone analogous to items such as wallets and address book, stating that they all contained similar information.\textsuperscript{365} Beyond the brief note, however, the Illinois District Court did not discuss the type of information it considered cell phones, wallets, and address books contained in common.\textsuperscript{366}

Lower courts ultimately used \textit{Belton} and the Supreme Court of the United States' bright-line jurisprudence on the search incident to arrest exception to validate searches of arrestees' cell phones, rather than properly analyzing the object at issue.\textsuperscript{367} Consistent with the bright-line guidance from the Supreme Court of the United States, several lower courts took a broad approach and, without hesitation, applied the search incident to arrest exception to new situations unforeseen by the Supreme Court.\textsuperscript{368} The search incident to arrest exception was created with a world of tangible evidence in mind, including when the Supreme Court decided \textit{Belton} in 1981 before the widespread use of cell phones.\textsuperscript{369} In fact, in 1981, the first handheld mobile phone had not yet been introduced in the United States.\textsuperscript{370}

\begin{itemize}
  \item \textsuperscript{363} United States v. Cote, No. 03CR271, 2005 WL 1323343, at *6 (N.D Ill. May 26, 2005) (citation omitted).
  \item \textsuperscript{364} \textit{Cote}, 2005 WL 1323343, at *6 (citing United States v. Rodriguez, 995 F.2d 776 (7th Cir. 1993)).
  \item \textsuperscript{365} \textit{Id}. In People v. Diaz, the California Court of Appeal for the Second District gave a similar approach as the Illinois District Court in \textit{Cote}, explaining that cell phones, wallets, purses, and the like all contain personal information. See 165 Cal. App. 4th 732, 738 (Cal. Ct. App. 2008) (determining that cell phones contain personal information just as purses, wallets, and the like do). The California Court of Appeals further explained that the fact that electronic devices have the ability to store vast amounts of private information does not lead to a heightened expectation of privacy when an individual is carrying the device on his person and is subject to a lawful arrest. \textit{Id}.
  \item \textsuperscript{366} See \textit{Cote}, 2005 WL 1323343, at *6 (finding cell phones analogous to address books merely because the items contain "similar information").
  \item \textsuperscript{367} See \textit{infra} notes 368-71 and accompanying text.
  \item \textsuperscript{368} See supra notes 297-319, 320-21, 325-65 and accompanying text; Adam M. Gershowitz, \textit{The iPhone Meets the Fourth Amendment}, 56 UCLA L. Rev. 27, 35 (2008).
  \item \textsuperscript{369} Gershowitz, supra note 367, at 36; see United States v. Deans, 549 F. Supp. 2d 1085, 1094 (D. Minn. 2008) (noting the \textit{Belton} decision was decided years before cell-phone use was widespread).
\end{itemize}
However, in recent years, courts such as the Fifth Circuit in Finley and the Georgia District Court in McCray have confronted whether the exception should apply to information digitally stored in electronic devices. As a result of the Supreme Court’s bright-line jurisprudence, lower courts analyzing searches of cell phones broadly inferred that the Supreme Court would not exempt a cell phone from the Belton decision’s container classification, despite any unique traits cell phones may have.

C. LOWER COURTS ERRONEOUSLY ALLOWED SEARCHES OF CELL PHONES BY INCORRECTLY CATEGORIZING CELL PHONES AS CONTAINERS AND INCORRECTLY ANALOGIZING CELL PHONES TO ITEMS THAT PLAINLY CONSTITUTE A CONTAINER UNDER NEW YORK V. BELTON

A cell phone does not constitute a container under New York v. Belton, contrary to the United States Court of Appeal for the Fifth Circuit’s and the United States District Court for the District of Minnesota’s decisions in United States v. Finley and United States v. Deans, respectively. Further, cell phones are not analogous to items such as wallets, purses, and the like. Lower courts have erroneously categorized cell phones as containers and analogized cell phones to items such as purses, wallets, and address books for three main reasons. First, cell phones only store digital information, as opposed to the tangible objects that containers such as purses, wallets, and the like contain. Second, modern cell phones store massive amounts of information and feature ever-increasing storage capac-

371. Gershowitz, supra note 367, at 36; see, e.g., United States v. Finley, 477 F.3d 250, 259-60 (5th Cir. 2007) (confronting search of cell phone incident to arrest); Deans, 549 F. Supp. 2d at 1093-94 (same).

372. Compare United States v. Robinson, 414 U.S. 218, 235 (1973) (authorizing searches incident to arrest in any arrest scenario regardless of the possibility that evidence would be found), with Finley, 477 F.3d at 259-60 (authorizing searches incident to arrest of cell phones in light of rules from Robinson and Belton on containers found incident to arrest on arrestee’s person), and Deans, 549 F. Supp. 2d at 1093-94 (citing Belton authorizing search of cell phones found in arrestee’s vehicle incident to arrest in upholding search of cell phone incident to arrest).


374. 477 F.3d 250 (5th Cir. 2007).


376. See infra notes 382-83, 385-90, 392-403 and accompanying text; see supra notes 325-44 and accompanying text; see State v. Smith, 920 N.E.2d 949, 954 (Ohio 2009) (holding that a cell phone does not constitute a container under the Fourth Amendment).

377. See infra notes 382-83, 385-90, 392-403 and accompanying text; see supra notes 346-71 and accompanying text; see State v. Smith, 920 N.E.2d 949, 954-55 (Ohio 2009) (distinguishing cell phones from items such as address books).

378. See infra notes 382-83, 385-90, 392-403 and accompanying text.

379. See infra notes 382-83 and accompanying text.
Third, cell phones feature a wide array of technological capabilities that move them further away from the Belton decision's classification of a container under the search incident to arrest exception.

First, cell phones do not fall under the Supreme Court of the United States' definition of a container in Belton due to the entirely different category of information cell phones store compared to the items specifically enumerated by the Supreme Court in Belton. Items such as luggage, boxes, bags, and clothing that the Supreme Court listed in Belton are all capable of holding other tangible objects limited by the size of the containers themselves. In contrast, a cell phone does not contain other tangible objects but only digital information such as stored text messages, call records, voicemail messages, and Internet browsing histories.

Cell phones further fail to qualify under the Belton decision's container classification and are distinguishable from items such as purses and wallets that plainly match the Belton decision's container classification due to the increasing storage capacities of current cell phones. While the storage capacity of tangible items such as purses, briefcases, wallets, and the like to hold other tangible items is limited by the size of the containers themselves, the ability of cell phones to store digital information has grown increasingly unlimited. Modern cell phones have the ability to store massive amounts of private information. The latest version of the iPhone, the iPhone 3GS, is capable of storing thirty-two gigabytes of information, enough storage space for nearly 220,000 complete copies of Lewis Carroll's *Alice*.

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380. See infra notes 385-90 and accompanying text.
381. See infra notes 392-96 and accompanying text.
382. See infra notes 382-83 and accompanying text.
384. See United States v. Park, No. CR 05-375 SI, 2007 WL 1521573, at *8 (N.D. Cal. May 23, 2007) (noting the vast amount of digital information cell phones can store); Gershowitz, *supra* note 382, at 41-2 (noting tremendous amounts of information stored on an iPhone including contact information, call histories, text messages, pictures, email, and audio and video files).
385. See infra notes 385-90 and accompanying text.
386. See Gershowitz, *supra* note 382, at 40-41 (noting that "no matter what theoretical similarities" may exist between a device like an iPhone and an object like a cigarette package, "the former stores tremendously more information and in a very different way"). Gershowitz treated iPhones differently than a "conventional cell phone," for the same reasons. Id. at 40, 45.
Current cell phone memory cards can store anywhere from twelve or sixteen gigabytes of information, translating into nine-thousand images and sixteen hours of video, to sixty-four gigabytes of information in memory cards that are specifically designed for the increasing capabilities available with advanced smartphones. While some courts have reasoned that police officers have a legitimate interest in searching cell phones to retrieve information that may be deleted or lost, such a concern seems irrelevant when considering that current cell phones can store deleted information on Subscriber Identity Module ("SIM") cards. Similar to retrieving seemingly deleted information from computers, third parties can retrieve information erased from cell phones using tools, such as technological retrieval devices used by law enforcement.

Finally, cell phones do not fit the container classification under Belton due to the ever-increasing technological capabilities and features of modern cell phones. As the complexity of cell phones grows, it becomes harder to analogize cell phones to a container such

390. See, e.g., United States v. Mercado-Nava, 486 F. Supp. 2d 1271, 1278-79 (D. Kan. 2007) (finding search of cell phones justified as search incident to arrest in reasoning that the "need to preserve evidence is underscored where evidence may be lost due to the dynamic nature of the information stored on and deleted from cell phones"); United States v. Santillan, 571 F. Supp. 2d 1093, 1102-03 (D. Ariz. 2008) (concluding search of cell phone was permissible search incident to arrest reasoning officers had valid concern arrestee's cell phone could destroy evidence located on cell phone's recent contact's lists); United States v. Murphy, 552 F.3d 405, 411, 412 (4th Cir. 2009) (concluding no error made by district court in denying motion to suppress contents of arrestee's cell phone citing manifest need to preserve evidence that permits officers to retrieve information from cell phones seized incident to arrest); see Productivity Portfolio, Deleting Cell Phone Data Before Upgrading Phones, Sept. 9, 2009, ¶ 3, http://www.timeatlas.com/Cell_Phone/General/Delet- ing_Cell_Phone_Data_Before_Upgrading_Phones (noting GSM cell phone store address-book data on SIM cards); GSM World, Market Data Summary, Oct. 19, 2009, ¶ 2, http://www.gsmworld.com/newsroom/market-data/market_data_summary.htm (noting that there are 299,057,084 users of GSM technology in the United States and Canada as of October 2009).
392. See infra notes 392-96 and accompanying text.
as a wallet.\textsuperscript{393} A modern cell phone, such as an iPhone, provides access to information that police officers would have almost never found before in an arrestee's pockets or immediate grabbable area but that could still potentially subject the arrestee to criminal prosecution.\textsuperscript{394} Modern cell phones can store a variety of different types of digital information, including records of incoming and outgoing calls; sent and received text messages, email, pictures, and video; personal calendars, address books, and voicemails.\textsuperscript{395} Cell phones also record information stemming from the continually expanding list of applications ("apps") cell phones may feature.\textsuperscript{396} Current cell phones can store such personal information from Internet browsing histories, destinations and directions from global positioning system ("GPS") navigation systems, voice-activated controls, text messaging, music and video files, and personal bank account data.\textsuperscript{397}

After the Supreme Court of the United States' decision in Belton, several lower courts incorrectly validated searches of cell phones incident to arrest by classifying cell phones as containers and analogizing cell phones to items that plainly constitute containers under Belton.\textsuperscript{398} However, the courts rarely analyzed why cell phones should fall under the container classification or deserve similar treatment as

\textsuperscript{393} Gershowitz, supra note 382, at 43.
\textsuperscript{394} Id. Gersowitz explained that law enforcement could find bank statements accessed via saved passwords on a website on an iPhone or personal and potentially incriminating information on MySpace or Facebook webpages. \textit{Id}.
\textsuperscript{398} See, e.g., United States v. Finley, 477 F.3d 250, 259-60 (5th Cir. 2007) (citations omitted) (upholding search of cell phone incident to arrest reasoning the permissible scope of a search incident to arrest encompasses containers found on an arrestee's person); United States v. Deans, 549 F. Supp. 2d 1085, 1093-94 (D. Minn. 2008) (citations omitted) (same reasoning scope of search incident to arrest of vehicle extends to containers in passenger compartment of vehicle where cell phones at issue were discovered); United States v. McCray, No. CR408-231, 2009 WL 29607, at *2, 4 (S.D. Ga. Jan. 5, 2009) (same reasoning that the Supreme Court repeatedly recognized law enforcement's right to search address books, wallets, and similar items on an arrestee's person).
items that clearly are containers under Belton.\textsuperscript{399} Searching for pre-digital analogies is insufficient.\textsuperscript{400} In the current digital world, the analysis surrounding searches of digital items must take into account the possibility that conventional legal rules, even when applied to older types of information, may be outdated.\textsuperscript{401} Courts must also consider that rules developed for older forms of information could have devastating effects on privacy if they are applied to new ways of storing information that have become central to Americans' lives.\textsuperscript{402} Further, applying ill-fitting bright-line rules to a context in which police officers could search through sophisticated technological devices such as cell phones, which store vast amounts of private information and are carried by approximately 280 millionAmericans, is undesirable and inappropriate.\textsuperscript{403} Ultimately, courts should no longer employ the twenty-eight year old Belton rule allowing searches of containers and similar prior decisions to validate searches of cell phones incident to arrest.\textsuperscript{404}

\textsuperscript{399} See, e.g., Finley, 477 F.3d at 259-60 (citations omitted) (upholding search of cell phone incident to arrest reasoning the permissible scope of a search incident to arrest encompasses containers found on an arrestee's person but failing to explain why or if cell phones should be treated as containers); United States v. Deans, 549 F. Supp. 2d 1085, 1093-94 (D. Minn. 2008) (citations omitted) (same reasoning scope of search incident to arrest of vehicle extends to containers in passenger compartment of vehicle where cell phones at issue were discovered but failing to discuss why a cell phone should fit the Belton decision's container classification even when noting that the Belton decision was decided long before long before the widespread use of cell phones); United States v. McCray, No. CR408-231, 2009 WL 29607, at *2, 4 (S.D. Ga. Jan. 5, 2009) (same reasoning that the Supreme Court repeatedly recognized law enforcement's right to search address books, wallets, and similar items on an arrestee's person but failing to explain why cell phones are similar to such items).


\textsuperscript{402} Dempsey, supra note 399.

\textsuperscript{403} United States v. Park, No. CR 05-375 SI, 2007 WL 1521573, at *8 (N.D. Cal. May 23, 2007); see Suzanne Choney, Is 2010 the year of wireless congestion?, Msnbc.com, ¶ 3, Jan. 4, 2010, http://www.msnbc.msn.com/id/34634571/ns/technology_and_science-technology_and_gadgets/ (explaining that cell-phone network congestion has been caused by "nearly 280 million Americans' increasing reliance on cell phones."); Gershowitz, supra note 382, at 46 (arguing that applying the Supreme Court's bright-line rules to the context of iPhones is undesirable).

D. LOWER COURT DECISIONS INCORRECTLY UPHOLD SEARCHES OF CELL PHONES INCIDENT TO ARREST IN LIGHT OF THE SUPREME COURT OF THE UNITED STATES' RECENT DECISION IN ARIZONA V. GANT

The Supreme Court of the United States' recent decision in Arizona v. Gant further illustrates why courts have incorrectly upheld searches of cell phones incident to arrest. Although the vast majority of lower courts upheld searches of cell phones incident to arrest for several years, recent developments have changed how courts should analyze searches incident to arrest of cell phones. Prior to the Supreme Court of the United States' decision in Gant, lower courts repeatedly and predominantly upheld warrantless searches of arrestees' cell phones incident to arrest. However, the Gant decision demonstrated why lower courts should reexamine the issue. While the search incident to arrest exception operated as a bright-line rule for decades, the Supreme Court rejected the notion that courts should

406. See infra notes 406-07, 412-14, 416-96 and accompanying text.
407. See, e.g., United States v. Valdez, No. 06-CR-336, 2008 WL 360548, at *4 (E.D. Wis. Feb. 8, 2008) (concluding search of cell phone incident to arrest was lawful); United States v. Young, No. 07-4213, 2008 WL 2076380, at *3 (4th Cir, May 15, 2008) (per curiam), cert. denied, — U.S. —, 129 S. Ct. 1710 (2009), on April 21, 2009. Murphy, 552 F.3d at 405; Gant, 129 S. Ct. at 1710. Only a handful of courts have invalidated searches of cell phones incident to arrest prior to Gant. See, e.g., United States v. Park, No. CR 05-375, 2007 WL 1521573, at *1 (N.D. Cal. May 23, 2007) (suppressing information seized from cell phone during search incident to arrest); United States v. Morales-Ortiz, 376 F. Supp. 2d 1131, 1142 (D. Mass. 2004) (determining that neither the search incident to arrest exception nor exigent circumstances applied to justify the search of a cell phone when the cell phone was not carried on the arrestee's person but was found on the kitchen counter of the arrestee's residence that officers searched). After Gant, several courts have invalidated searches of cell phones incident to arrest. See, e.g., State v. Smith, 920 N.E.2d 949, 955 (Ohio 2009) (holding that police must first procure a search warrant before they may search a cell phone incident to arrest); United States v. Quintana, 594 F. Supp. 2d 1291, 1300-01 (M.D. Fla. 2008) (suppressing data seized from cell phone incident to arrest when neither justification for search incident to arrest exception were present); United States v. McGhee, No. 8:09CR31, slip op., 2009 WL 2424104, at *3 (D. Neb. July 21, 2009) (same).
408. See infra notes 412-414, 416-496 and accompanying text.
broadly interpret the exception. Further, the Supreme Court's decision in Gant reinstated the importance of the Chimel decision's twin rationales for the search incident to arrest exception, neither of which authorize searching cell phones incident to arrest. Finally, several lower-court decisions issued after Gant have deemed searches of cell phones unlawful under the search incident to arrest exception. Through the changes evident from the Gant decision, the Fourth Amendment privacy interest individuals enjoy in their cell phones has been properly protected.

1. The Supreme Court of the United States in Arizona v. Gant Rejected Lower Courts' Broad Interpretation of New York v. Belton

The Supreme Court of the United States' recent rejection of lower courts' broad interpretation of New York v. Belton in Arizona v. Gant demonstrates that lower courts erroneously interpreted Belton to encompass such modern technological devices as cell phones. While the search incident to arrest exception operated as a bright-line rule for decades and suggested that courts interpret the exception expansively, the Gant Court had no compunction in casting aside the Belton decision's twenty-eight year old bright-line rule. The rule in

410. Adam M. Gershowitz, The iPhone Meets the Fourth Amendment, 56 UCLA L. Rev. 27, 30 (2008); see James J. Tomkovicz, Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity, 2007 U. Ill. L. Rev. 1417, 1473 (2007) (noting that Chimel v. California, 395 U.S. 752 (1969), set the current state of search incident to arrest law and that the rule steadily moved in the opposite direction thereafter); see infra notes 416-23 and accompanying text.

411. See infra notes 424-40 and accompanying text; Gershowitz, supra note 409, at 35.

412. See infra notes 473-496 and accompanying text.

413. Compare Finley, 477 F.3d at 280 (upholding denial of motion to suppress text messages seized from search of cell phone search incident to arrest), with Quintana, 594 F. Supp. 2d at 1300-01 (granting motion to suppress data seized from cell phone search incident to arrest in light of Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710 (2009)).


416. See infra notes 416-23 and accompanying text.

417. Adam M. Gershowitz, The iPhone Meets the Fourth Amendment, 56 UCLA L. Rev. 27, 30, 35 (2008); James J. Tomkovicz, Divining and Designing the Future of the Search Incident to Arrest Doctrine: Avoiding Instability, Irrationality, and Infidelity, 2007 U. Ill. L. Rev. 1417, 1441 (2007); Montejo v. Louisiana, 556 U.S. —, 129 S. Ct. 2079, 2093 (2009) (Alito, J., concurring). Gershowitz also noted that, while technology and society drastically changed in recent decades, "the search incident to arrest rule has remained static." Gershowitz, supra, at 31. According to Tomkovicz, the Supreme Court consistently, albeit modestly, increased the scope of police authority to conduct automatic searches incident to lawful arrests. Tomkovicz, supra, at 1441. Finally, in Montejo, Justice Alito criticized the dissenting opinion in Montejo, which invoked the "antiquity" in Michigan v. Jackson, 475 U.S. 625 (1986), that "a simple, bright-line rule should weigh in favor of its retention." 129 S. Ct. at 2093.
Belton authorized searches of vehicles, including containers therein, incident to the lawful arrest of a recent occupant of the vehicle. The search incident to arrest exception is broad, allowing searches of vehicles even when there was no conceivable way arrestees could grab a weapon or destroy evidence inside the vehicle.

Read broadly, as many lower courts did, the Belton decision allowed searches of vehicles incident to any arrest, even when there was no conceivable way arrestees could grab a weapon or destroy evidence inside the vehicle. The broad reading treated the ability to search a vehicle incident to arrest as a police officer entitlement, rather than an exception justified by the twin rationales of Chimel v. California, the Supreme Court of the United States decision that set the parameters of the search incident to arrest exception. The Supreme Court's decision in Gant, however, rejected the broad reading of Belton and reinstated the importance of the Chimel decision's twin rationales in searches incident to arrest.

In light of the Supreme Court rejecting a broad reading of the Belton rule, courts should re-think whether it is appropriate to broadly interpret the Belton decision's denotation of a container to encompass such modern

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418. New York v. Belton, 453 U.S. 454, 460 (1981); see Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710, 1717 (2009) (noting that the holding in Belton "was based in large part on our assumption "that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within the area into which an arrestee might reach.") (quoting Belton, 453 U.S. at 460)). Justice William J. Brennan criticized the assumption in his dissent in Belton, stating that the majority's holding in Belton rested on the "fiction . . . that the interior of a car is always within the immediate control of an arrestee who has recently been in the car." Belton, 453 U.S. at 466 (Brennan, J., dissenting).

419. See Gant, 556 U.S. —, 129 S. Ct. at 1718-19 (noting that a broad reading of Belton would permit a search incident to every arrest of a recent occupant and that Justice Brennan's reading of the majority's decision in Belton permitting such a search predominated in lower courts since Belton).


421. Gant, 129 S. Ct. at 1719; Thornton v. United States, 541 U.S. 615, 624 (2004) (O'Connor, J., concurring in part); see Tomkovicz, supra note 416, at 1427 (noting that the source of current search incident to arrest law came from the Warren Court's "landmark decision" in Chimel v. California, 395 U.S. 752 (1969)). In her concurring opinion in Thornton, Justice O'Connor noted that the concern regarding lower courts' treatment of the ability to search a vehicle incident to the arrest of a recent occupant of the vehicle was a "direct consequence of Belton's shaky foundation" and that the approach offered by Justice Scalia in Thornton was "built on firmer ground." Thornton, 541 U.S. at 624-25.

422. Gant, 129 S. Ct. at 1719; see id. at 1716 (stating the search incident to arrest exception does not apply if "both justifications for the search incident to arrest exception are absent."). The Supreme Court further explained that reading Belton broadly to authorize a vehicle search incident to every arrest of a recent occupant would "untether the rule from the justifications underlying the Chimel exception." Id. at 1719. Thus, the Supreme Court rejected the broad reading of Belton. Id.
technological devices as cell phones. Decisions that relied on Belton are now subject to reexamination in light of Gant.

2. The Twin Rationales of the Search Incident To Arrest Exception That Were Reaffirmed in Arizona v. Gant Do Not Support Searching Cell Phones Incident To Arrest

The Arizona v. Gant decision further refuted the contention that police officers may search cell phones incident to arrest by reaffirming that any search conducted under the search incident to arrest exception must be based on the two underlying rationales for that exception. In Chimel v. California, the Supreme Court of the United States articulated the two justifications for the search incident to arrest exception: officer safety and preventing the destruction of evidence, that is, preserving evidence. The Supreme Court later stated in New York v. Belton that, although containers sometimes would not contain weapons or evidence of the arresting offense, police officers' authority to search incident to arrest did not depend on the probability that they would find weapons or evidence. However, the Supreme Court determined in Gant that when both of the Chimel decision's justifications for the search incident to arrest exception are absent, the exception does not apply. Because the Gant decision

423. Compare Gant, 129 S. Ct. at 1719 (rejecting a broad reading of Belton that would authorize a search incident to every arrest of a recent occupant of the vehicle), with United States v. Finley, 477 F.3d 250, 260-61 (5th Cir. 2007) (citations omitted) (reasoning that the scope of a search incident to arrest extends to any containers found on an arrestee's person at the time of the arrest in concluding that the search of an arrestee's cell phone was lawful incident to his arrest). It is also significant to note that, in light of the Supreme Court of the United States' decision in Gant, the California Supreme Court granted review in People v. Diaz, 165 Cal. App. 4th 732, 734, 738 (Cal. Ct. App. 2008), in which the California Court of Appeal for the Second District reasoned that it considered cell phones similar to purses, wallets, and the like in holding that the search of a cell phone incident to arrest was lawful. Diaz, 165 Cal. App. 4th at 734, 738; People v. Diaz, 196 P.3d 220 (2008).


426. See Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710, 1716 (2009) (stating that the search incident to arrest exception does not apply if "both justifications for the search incident to arrest exception are absent."). One Fourth-Amendment commentator has also observed that, because of Gant, the Chimel decision has finally returned to its roots after 28 years. John Wesley Hall, A Great Reawakening, Champion, June 2009, 33-June Champion 5, 6.


431. Gant, 129 S. Ct. at 1716.
reinstated the importance of the *Chimel* decision's underlying rationales for the search incident to arrest exception, and neither rationale justifies searching cell phones incident to arrest, courts should no longer justify searches of cell phones under the exception.432

First, cell phones pose little, if any, threat to police officer safety.433 The mere content of text messages or any other data stored on a cell phone presents no danger of physical harm to police officers who affect arrests or others.434 Further, unlike bags, boxes, and luggage that could hold firearms or other dangerous weapons, cell phones are incapable of carrying such weapons.435 Second, and contrary to what several courts have determined, the preservation of evidence rationale also does not support searching cell phones incident to arrest.436 Once police officers seize a cell phone, there is no longer any risk that an arrestee could reach the phone to destroy evidence.437 Using the preservation of evidence rationale to validate searching cell phones is also tenuous due to the massive storage capacities of modern

432. Compare *Gant*, 129 S. Ct. at 1716 (stating the search incident to arrest exception does not apply when both justifications for the exception of ensuring officer safety and preserving evidence are absent), *with Belton*, 453 U.S. at 461 (explaining the authority to search incident to arrest does not depend on the probability that weapons or evidence may be found and justifies searching even when containers could hold neither evidence nor weapons) (quoting *Robinson*, 414 U.S. at 235).

433. See infra notes 433-40 and accompanying text.


435. See *United States v. Chadwick*, 433 U.S. 1, 15 n.9 (1977) (indicating officers should open luggage and disarm any immediately dangerous instrumentality such as explosives that luggage may contain); Bryan Andrew Stillwagon, *Bringing An End to Warrantless Searches of Cell Phones*, 42 GA. L. REV. 1165, 1196-97 (2008) (noting that cell phones are distinguishable from items such as rifle cases, briefcases, and purses as cell phones only store electronic components and do not contain weapons).

436. See, e.g., *United States v. Murphy*, 552 F. 3d 405, 411-12 (4th Cir. 2009) (citing the “manifest need . . . to preserve evidence” in concluding that district court committed no error in refusing to suppress contents of cell phone searched incident to arrest); *United States v. Young*, No. 07-4213, 2008 WL 2076380, at *3 (4th Cir, May 15, 2008) (per curiam), cert. denied, — U.S. —, 129 S. Ct. 514 (2008) (reasoning “officers had no way of knowing whether the text messages would automatically delete themselves or be preserved” in concluding that officers permissibly accessed text messages in cell phone pursuant to arrest); *United States v. Mercado-Nava*, 486 F. Supp. 2d 1271, 1278 (D. Kan. 2007) (stating need to preserve evidence is underscored when evidence could be lost due to “the dynamic nature of the information stored on and deleted from cell phones” and finding search lawful as a result).

437. See Stillwagon, supra note 434, at 1196 (noting that any possibility an arrestee may use a cell phone to harm an officer can be avoided by simply seizing the cell phone). Justice Scalia also observed during oral arguments for the *Gant* decision that, "if you’re going to use [the preservation-of-evidence] rationale you have to link the reason for the arrest with the likelihood that there would be any evidence found in the car that would support the arrest." Transcript of Oral Argument at 22, *Arizona v. Gant*, 556 U.S. —, 129 S. Ct. 1710 (No. 07-542).
cell phones. Any risk that cell phones would automatically delete information after police officers effectuate an arrest, reasoning that several courts have employed in validating cell phone searches incident to arrest, is negligible in observing the enormous amount of information cell phones can store. In very recent cases following Gant, lower courts have recognized that neither the police officer safety nor the preservation of evidence rationale in Chimel justified searching cell phones incident to arrest. Because the twin rationales for the search incident to arrest exception are absent when police officers search a cell phone incident to arrest, the rule should not apply to allow such searches.

438. Murphy, 552 F.3d at 411-12 (quotation omitted) (upholding search of cell phone incident to arrest citing “the manifest need to preserve evidence”); United States v. Parada, 289 F. Supp. 2d 1291, 1303-04 (D. Kan. 2003) (concluding law enforcement agents had authority to search cell phone’s incoming phone call records to prevent the destruction of evidence); Mercado-Nava, 486 F. Supp. 2d at 1278-79 (finding state troopers’ search of arrestee’s cell phone was justified as search incident to arrest reasoning that “the need to preserve evidence is underscored where evidence may be lost due to the dynamic nature” of information stored on cell phones); see infra notes 438-40 and accompanying text.

439. Compare Declan McCullagh, Police push for warrantless searches of cell phones, Cnet.com, ¶ 8, Feb. 18, 2010, http://news.cnet.com/8301-13578-3-10455611-38.html (noting 32-gigabyte storage space available in latest version of Apple’s iPhone—the iPhone 3GS), and Press Release, Kingston Technology Co., Inc., Flash Memory Card offers 16 GB capacity for mobile phones, ¶ 1 (Feb. 26, 2009), available at http://news.thomasnet.com/fullstory/556272 (offering memory card for cell phones allowing for 16 gigabytes of storage space translating to approximately 9,000 images and 16 hours of video), and Press Release, SanDisk, SanDisk Doubles Storage Capacity for Mobile Phones and Portable Devices With Introduction of 64GB iNAND Embedded Flash Drives, ¶ 2 (Jan. 7, 2008), available at http://www.sandisk.com/about-sandisk/press-room/press-releases/2010/2010-02-15-sandisk-doubles-storage-capacity-for-mobile-phones-and-portable-devices-with-introduction-of-64gb-inand- (announcing new cell phone memory card with 64 gigabytes of storage space), with Young, 2008 WL 4527980, at*3 (concluding officers permissibly accessed text messages on cell phone incident to arrest by reasoning that “officers had no way of knowing whether the text messages would automatically delete themselves or be preserved.”). The United States District Court for the District of Arizona in United States v. Santillan, 571 F. Supp. 2d 1093 (D. Ariz. 2008), similarly reasoned that searching a cell phone is necessary to preserve evidence as more incoming calls to the defendant’s phone could have deleted prior call records, and agents had good reason to believe other suspects had been contacting the defendant. Santillan, 571 F. Supp.2d at 1102-03. However, the court in Santillan also relied on fact that the arresting agent in Santillan observed the defendant using the cell phone at issue when the officer saw the arrestee’s suspicious behavior that led to the defendant’s arrest. Id. at 1097.

440. See United States v. Quintana, 594 F. Supp. 2d 1291, 1300-01 (M.D. Fla. 2009) (suppressing information gleaned from cell phone incident to arrest when the search was not supported by either ensuring officer safety or preserving evidence relating to the crime of arrest); United States v. McGhee, No. 8:09CR31, slip op., 2009 WL 2424104, at *3 (D. Neb. July 21, 2009) (same).

441. Compare Gant, 129 S. Ct. at 1716 (stating that when both justifications for the search incident to arrest exception are absent the rule does not apply), with Quintana, 549 F. Supp.2d at 1300-01 (invalidating search of cell phone incident to arrest when
3. The Arizona v. Gant Decision Potentially Limited Searches Based on the Nature of the Arresting Offense

In Arizona v. Gant, the Supreme Court of the United States held that police may search a vehicle incident to the arrest of a recent occupant of the vehicle only when the arrestee is within reaching distance of the passenger compartment and is unsecured at the time of the search. The Supreme Court also concluded in Gant that police may search a vehicle incident to arrest when it is reasonable to believe that evidence of the arresting offense may be found inside the vehicle. In Gant, Tucson, Arizona police officers arrested Rodney Gant ("Gant") for driving with a suspended license. Thus, according to the Supreme Court, the police officers could not have expected to find evidence of the crime of driving with a suspended license in the passenger compartment of Gant's vehicle. The police officers had also searched Gant's vehicle after they had handcuffed Gant and placed him in the back of a patrol car. Thus, Gant was also not within reaching distance of his vehicle at the time of the search, and the justifications for the search incident to arrest exception, protecting arresting police officers and safeguarding evidence of the crime of arrest, were absent. Accordingly, the Court found the search of Gant's vehicle was unreasonable.

The Supreme Court's holding in Gant that police officers may search a vehicle incident to a recent occupant's arrest when police officers have a reasonable basis to believe evidence of the arresting offense will be found inside the vehicle stemmed from Justice Antonin Scalia's concurring opinion to the Court's 2004 Thornton v. United States decision. In his concurring opinion to Thornton, Justice Scalia explained that police officers may arrest a motorist for a wide

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445. Id. at 1714-15.
446. Id. at 1719.
447. Id. at 1715.
448. Arizona v. Gant, 556 U.S. __, 129 S. Ct. 1710, 1719 (2009); see Gant, 129 S. Ct. at 1716 (citing United States v. Thornton, 541 U.S. 615, 632 (2004) (Scalia, J., concurring) (noting the purposes of a search incident to arrest of protecting arresting officers and safeguarding evidence of the arresting offense and explaining that "if there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.").
449. Id.
variety of crimes.\textsuperscript{452} However, in many cases, arresting officers have no reasonable basis to believe that evidence relevant to the arresting offense may be found inside the vehicle.\textsuperscript{453} Therefore, Justice Scalia explained that he would limit searches of a vehicle incident to a recent occupant’s arrest when it is reasonable for police officers to believe that evidence relevant to the arresting offense may be found inside the vehicle.\textsuperscript{454} Justice Scalia ultimately affirmed the decision that upheld the search at issue because, in Thornton, a Norfolk, Virginia police officer arrested the arrestee, Marcus Thornton (“Thornton”), for a drug offense; thus, according to Justice Scalia, it was reasonable for the arresting officer to believe that contraband or other evidence relevant to the crime of arrest may be found inside Thornton’s vehicle.\textsuperscript{455}

Since the Supreme Court adopted Justice Scalia’s approach on the search incident to arrest exception in \textit{Gant}, lower courts have used the holding in \textit{Gant} to invalidate searches incident to arrest of cell phones when police officers had no reason to believe evidence of the crime of arrest would be found the arrestee’s cell phone.\textsuperscript{456} Because the underlying justifications for the search incident to arrest exception do not authorize searching cell phones incident to arrest, it appears that the Court’s holding in \textit{Gant}, which authorizes searches when it is reasonable to believe evidence of the crime of arrest will be found, would never justify searches of cell phones incident to arrest.\textsuperscript{457} However, some commentators and courts have suggested that there are exceptions when police officers would have reason to believe an arrestee’s cell phone stores evidence of the crime of arrest.\textsuperscript{458} For example, consist-

\textsuperscript{452} Thornton, 541 U.S. at 632.
\textsuperscript{453} Id.
\textsuperscript{454} Id.
\textsuperscript{455} See id. at 617, 619, 632 (explaining he would affirm the decision below by the United States Court of Appeals for the Fourth Circuit that concluded the police officer’s search of Thornton’s vehicle was reasonable).
\textsuperscript{456} See, e.g., United States v. Quintana, 594 F. Supp. 2d 1291, 1300 (M.D. Fla. 2009) (2009) (suppressing information gleaned from cell phone when a police officer searched the photo album of the arrestee’s cell phone and the crime of arrest was for driving with a suspended license); United States v. McGhee, No. 8:09CR31, slip op., 2009 WL 2424104 (D. Neb. July 21, 2009) (suppressing information obtained from cell phone when the crime of arrest stemmed from a drug conspiracy that occurred ten months prior to the time when the police officers effectuated the arrestee’s arrest and searched the arrestee’s cell phone).
\textsuperscript{457} See supra notes 424-40, 442-55 and accompanying text.
\textsuperscript{458} See, e.g., Adam M. Gershowitz, \textit{The iPhone Meets the Fourth Amendment}, 56 UCLA L. Rev. 26, 49 (2008) (stating that if officers make an arrest “for possession of drugs with intent to distribute, it would make sense to search his text messages for further evidence of the crime, since that function is commonly used in conjunction with drug sales.”); United States v. Santillan, 571 F. Supp.2d 1093, 1097, 1102-03 (D. Ariz. 2008) (concluding search incident to arrest of cell phone was permissible after agent
tent with Justice Scalia’s concurring opinion in Thornton, police officers could reasonably believe a cell phone would store evidence of the crime of arrest when the arrest is drug-related. Police officers could also reasonably believe a cell phone would store evidence of the arresting offense when police officers observe a suspect using a cell phone during the commission of the crime or while engaging in suspicious activity leading to arrest. If police officers arrest an individual for a traffic violation, then it would not be reasonable to believe a cell phone would contain evidence relevant to that particular crime and, thus, the search incident to arrest exception would not support searching the cell phone.

However, it is not entirely clear whether the Supreme Court’s holding in Gant, which adopted Justice Scalia’s approach, would authorize searching cell phones incident to arrest. The Supreme Court explained in Gant that circumstances unique to the vehicle context confirmed its conclusion authorizing searches when it is reasonable for a police officer to believe evidence relevant to the arresting offense may be found inside the vehicle. The Supreme Court did not clearly elucidate what it meant by the phrase circumstances unique to the vehicle context. However, the Supreme Court’s cita-

459. See Gershowitz, supra note 457 (stating officers could search a cell phone incident to arrest as functions such as text messaging are commonly used in drug sales); Quintana, 594 F. Supp. 2d at 1300 (noting that “[w]here a defendant is arrested for drug-related activity, police may be justified in searching the contents of a cell phone for evidence related to the crime of arrest”); Santillan, 571 F. Supp.2d at 1100-01 (citations omitted) (stating cell phones are recognized tools of the drug-dealing trade).

460. See Santillan, 571 F. Supp.2d at 1097, 1102-03 (concluding search incident to arrest of cell phone was permissible after agent observed arrestee talking on cell phone during events that led agent to conclude defendant was likely spotter for drug-smuggling activity and was using cell phone to communicate with occupants of trucks seen driving nearby that appeared modified to smuggle drugs).

461. See Gershowitz, supra note 457 (explaining that “[i]f police could only search for evidence related to the crime of arrest, most traffic stops would not permit searches of an iPhone’s contents.”); Gant, 129 S. Ct. at 1719 (saying when a recent occupant of a vehicle is arrested for a traffic violation “there will be no reasonable basis to believe the vehicle contains relevant evidence.”); see also Knowles v. Iowa, 525 U.S. 113, 114, 118 (1998) (declining to extend bright-line rule of United States v. Robinson, 414 U.S. 218 (1973), giving authority to conduct a full field search incident to arrest to a situation in which an individual was cited for speeding but not arrested and the officer conducted a full search of the vehicle).

462. See infra notes 462-67 and accompanying text.


464. See United States v. Arriaza, 641 F. Supp. 2d 526, 535 (E.D. Va. 2009) (citation omitted) (explaining that “although the Supreme Court did not squarely elucidate what it meant by ‘circumstances unique to the vehicle content’” in its Gant opinion, “the Supreme Court’s citation in Gant to Justice Scalia’s Thornton concurrence makes clear
tion in *Gant* to Justice Scalia’s concurring opinion in *Thornton* made it clear that the circumstances elucidated by the Court encompassed the mobility and reduced expectation of privacy justifications that also drive the automobile exception of the Fourth Amendment’s warrant requirement.\(^{465}\) In his earlier opinion in *Thornton*, Justice Scalia specifically observed that *Belton* was limited to searches of vehicles, a context that gives rise to heightened law enforcement needs and a reduced expectation of privacy.\(^{466}\) Contrastingly, individuals have a legitimate, reasonable expectation of privacy in the digital contents stored in their cell phones that is not reduced in any way.\(^{467}\) Accordingly, despite what some courts have alluded to after the *Gant* decision, the Supreme Court’s holding in *Gant* may not authorize searching cell phones incident to arrest even if it may be reasonable to believe the cell phone would store evidence of the arresting offense.\(^{468}\) Ultimately, however, as *Chimel*’s twin rationales for the search incident to arrest exception do not support searching arrestees’ cell phones, the only justification for searching a cell phone incident to arrest after *Gant* would depend upon the nature of the crime of arrest and the particular facts or suspicions the police officers have as to the arrestee’s cell phone in a given case.\(^{469}\)

4. **Lower Courts Post-Arizona v. Gant Have Correctly Struck Down Searches of Cell Phones Performed Incident to Arrest**

In the wake of the Supreme Court’s decision in *Arizona v. Gant*,\(^{470}\) several lower courts have correctly struck down warrantless

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\(^{467}\) See *Quon* v. Arch Wireless Operating Co., 529 F.3d 892, 905 (9th Cir. 2008) (finding reasonable expectation of privacy in text messages stored on cell phone); United States v. Finley, 477 F.3d 250, 259 (2007) (concluding defendant had a reasonable expectation of privacy in text messages and call records on his cell phone).

\(^{468}\) See, e.g., United States v. Quintana, 549 F. Supp.2d 1291, 1300-01 (M.D. Fla. 2009) (invalidating search of cell phone incident to arrest when it was unreasonable for officer to believe evidence of the arresting offense—a traffic violation—would be found on the arrestee); United States v. McGhee, No. 8:09CR31, slip op., 2009 WL 2424014, at *3 (D. Neb. July 21, 2009) (same when events that formed the basis for the arrest occurred months before police effected the arrest); compare *Thornton*, 541 U.S. at 631 (explaining that in the context of vehicles owners have a reduced expectation of privacy and law enforcement have a heightened need to search based on ready mobility of vehicles), with *Quon*, 529 F.3d at 905 (finding reasonable expectation of privacy in digital contents of cell phone), and *Finley*, 477 F.3d at 259 (same).

\(^{469}\) See supra notes 424-55, 457-60, 462-67 and accompanying text.

searches of cell phones performed incident to arrest, illustrating how the *Gant* decision changed the analysis surrounding searches of arrestees’ cell phones.\(^{471}\) Most recently, in *Ohio v. Smith*,\(^{472}\) decided eight months after *Gant*, the Ohio Supreme Court took broad leaps in upholding the privacy interest inherent in a personal cell phone.\(^{473}\) Two other post-*Gant* decisions, *United States v. Quintana*\(^{474}\) and *United States v. McGhee*,\(^{475}\) demonstrated how Justice Scalia’s approach in his concurring opinion in *Thornton*, adopted by the Supreme Court in *Gant*, limited searches of cell phones based on the crime of arrest, although it is not entirely clear that such reasoning is directly supported by *Gant* in regards to cell phones specifically.\(^{476}\)

The Ohio Supreme Court held in *Smith* that law enforcement may not search a cell phone incident to arrest without a warrant.\(^{477}\) First, the Ohio Supreme Court reasoned that a cell phone is not a closed container under *New York v. Belton*\(^{478}\) due to the capabilities of modern cell phones and the fact that a cell phone is not a physical object capable of holding other physical objects as the definition of a container in *Belton* described.\(^{479}\) Second, the Ohio Supreme Court

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\(^{471}\) See, e.g., *State v. Smith*, 920 N.E.2d 949, 955 (Ohio 2009) (holding law enforcement may not search a cell phone incident to arrest without first obtaining a search warrant); *United States v. Quintana*, 594 F. Supp. 2d 1291, 301 (M.D. Fla. 2009) (determining information gleaned from an arrestee’s cell phone should be suppressed); *United States v. McGhee*, No. 8:09CR31, slip op., 2009 WL 2424104, at *3 (D. Neb. July 21, 2009) (determining police officers were not justified in performing a warrantless search of an arrestee’s cell phone incident to arrest); see infra notes 473-79, 481-86, 488-92, 494-96 and accompanying text.

\(^{472}\) 920 N.E.2d 949 (Ohio 2009).

\(^{473}\) See infra notes 476-79 and accompanying text.

\(^{474}\) 594 F. Supp. 2d 1291 (M.D. Fla. 2009).


\(^{476}\) Compare *United States v. Thornton*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring) (determining that searches made under the authority of *New York v. Belton*, 453 U.S. 454 (1981), should be limited “to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”), and *Arizona v. Gant*, 556 U.S. —, 129 S. Ct. 1710, 1719 (2009) (concluding that law enforcement may search a vehicle incident to the arrest of a recent occupant of the vehicle when there is a reasonable basis to believe evidence relevant to the arresting offense may be found inside the vehicle), with *United States v. Quintana*, 594 F. Supp. 2d 1291, 1300 (M.D. Fla. 2009) (suppressing evidence gleaned from the arrestee’s cell phone incident to his arrest for driving with a suspended license when the search of the cell phone “had nothing to do with ...the preservation of evidence related to the crime of arrest.”), and *United States v. McGhee*, No. 8:09CR31, slip op., 2009 WL 2424104, at *3 (D. Neb. July 21, 2009) (suppressing evidence gleaned from the arrestee’s cell phone when “it was not reasonable for the [arresting police] officers to believe a search of [the arrestee’s] cell phone would produce evidence related to the crime for which he was arrested.”); see supra notes 441-68 and accompanying text; see infra notes 481-86, 488-92 and accompanying text.

\(^{477}\) *State v. Smith*, 920 N.E.2d 949, 955 (Ohio 2009).


\(^{479}\) *Smith*, 920 N.E.2d at 954 (quoting *Belton*, 453 U.S. at 460 n. 4).
struck down the argument that traditional principles governing searches incident to arrest covered the search of an arrestee's cell phone when the state of Ohio presented no evidence that either justification for the exception, police officer safety and preservation of evidence, were present.480

The United States District Court for the Middle District of Florida's decision in Quintana employed the Gant decision's second holding that limited searches based on the arresting offense and its description of the importance the Chimel decision's twin rationales.481 In Quintana, police officers arrested Ariel Quintana ("Quintana"), the owner of a cell phone, who was arrested for driving with a suspended license.482 The Florida District Court explained that, by searching the cell phone, the arresting police officer did not seek to preserve evidence that Quintana was driving with a suspended license.483 Rather, the police officer rummaged for information related to a separate suspicion.484 Further, according to the Florida District Court, searching the cell phone had no basis in preserving evidence related to the arresting offense or in ensuring officer safety.485 Thus, the Florida District Court determined in Quintana that the search of Quintana's cell phone pushed the search incident to arrest exception beyond its limits and that the Chimel decision's twin rationales justifying the search incident to arrest exception did not justify the search.486 Accordingly, the Florida District Court suppressed the information police officers obtained from the cell phone.487

The United States District Court for the District of Nebraska's decision in McGhee also similarly used the Gant decision's second holding that limited searches based on the crime of arrest and its reit-

480. Id. at 955. According to the Ohio Supreme Court, neither the call records nor the phone numbers seized from the arrestee's cell phone were subject to imminent destruction, and searching the cell phone was not necessary to ensure officer safety. Id.
481. See infra notes 481-86 and accompanying text.
482. United States v. Quintana, 594 F. Supp. 2d 1291, 1295 (M.D. Fla. 2009). Although Quintana was decided before the Supreme Court issued its opinion in Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710 (2009), the Florida District Court clearly articulated its decision with Gant heavily in mind, discussing the oral argument in the Gant case in-depth and deciding the case around the Supreme Court's reasoning given during oral argument. See Quintana, 594 F. Supp. 2d at 1300 (noting specific statements made by Justice Stevens and Justice Scalia during oral argument for Gant case and distinguishing facts at issue from the rationales given during oral argument in Gant).
483. Id. at 1295.
484. Id.
485. Id.
486. Id. at 1300.
487. Id. at 1300-01. The court also observed that, when the arresting offense is for drug-related activity, there was a reasonable probability that data stored in the device was evidence of the arresting offense. Id. at 1299 (quotation omitted).
eration of the importance of the Chimel decision's twin rationales. In McGhee, the police officers arrested Terrell L. McGhee ("McGhee") for a drug-distribution conspiracy. However, police officers made the arrest in January 2009 pursuant to an arrest warrant based on a drug conspiracy that allegedly occurred in March 2008. Thus, according to the Nebraska District Court, police officers could not have reasonably believed that a search of McGhee's cell phone at the time of arrest would produce evidence related to the arresting offense, which had occurred ten months earlier. The Nebraska District Court further noted that McGhee's cell phone did not present any harm to the police officers, and no evidence suggested McGhee's cell phone concealed any destructible evidence. Therefore, the Nebraska District Court determined that the search incident to arrest exception did not justify performing a warrantless search of the cell phone.

The lower court decisions issued in the wake of the Gant decision suggest a very favorable change in the area of cell phone searches performed incident to arrest. For several years before the Supreme Court issued Gant, the vast majority of lower courts determined that law enforcement could limitlessly explore the contents of arrestees' cell phones, reasoning that cell phones were containers under the Supreme Court of the United States' decision in Belton. However, suddenly, lower courts that have most recently employed the Supreme Court of the United States' reasoning in Gant, in which the Supreme Court rejected a broad interpretation of Belton and reestablished the

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488. See infra notes 488-92 and accompanying text.
491. Id.
492. Id. Before giving the discussion that the cell phone did not present any risk to the officers, the court cited to the Gant opinion, which explained that "if there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search incident to arrest exception are absent and the rule does not apply." Id. (quoting Arizona v. Gant, 556 U.S. —, 129 S. Ct. 1710, 1716 (2009)).
493. Id.
494. See infra notes 494-96 and accompanying text.
495. See, e.g., United States v. Finley, 477 F.3d 250, 260-61 (5th Cir. 2007) (upholding search of cell phone performed incident to arrest reasoning that a cell phone is a container under Belton); United States v. Deans, 549 F. Supp. 2d 1085, 1093-94 (D. Minn. 2008) (same). Only a handful of courts have invalidated searches of cell phones incident to arrest prior to Gant. See, e.g., United States v. Park, No. CR 05-375 SI, 2007 WL 1521573, at *1 (N.D. Cal. May 23, 2007) (suppressing information seized from cell phone during search incident to arrest); United States v. Morales-Ortiz, 376 F. Supp. 2d 1131, 1142 (2004) (determining that neither the search incident to arrest exception nor exigent circumstances applied to justify search of cell phone when the cell phone was not carried on the arrestee's person but was found on the kitchen counter of a residence officers searched).
importance underlying rationales for the search incident to arrest exception, have determined the exception does not support searching cell phones incident to arrest. The new trend in lower courts has led to correct and thorough analyses of the parameters of the search incident to arrest exception, rather than merely employing the Belton decision's twenty-eight year old rule to continually allow the warrantless search of modern cell phones.

IV. CONCLUSION

Technological innovation has changed what objects courts are called upon to analyze under the Fourth Amendment. Today, complex technological devices such as modern cell phones, which store immense amounts of personal information and feature a wide array of applications and capabilities, have become a ubiquitous personal effect for millions of Americans. Present circumstances warrant a modern interpretation of the Fourth Amendment in light of the technological revolution that has undoubtedly changed how society functions, something courts have only realized to a limited extent. Of course, not every change in technology warrants altering Fourth Amendment law to require greater privacy protection. However,


497. Compare Quintana, 594 F. Supp. 2d at 1300-01 (discussing Gant in depth and employing reasoning from Gant that search of cell phone did not seek to preserve evidence of arresting offense and "had nothing to do with officer safety" in ultimately suppressing photo album gleaned from search of arrestee's cell phone), with Finley, 477 F.3d at 259-60 (citing United States v. Belton, 453 U.S. 454, 460-61 (1981); United States v. Robinson, 414 U.S. 218, 223-24, 235 (1973)) (citation omitted) (relying on authority Belton and Robinson allowing search of containers found on the person of an arrestee as primary reasoning for justifying search of text messages on arrestee's cell phone).

498. Bryan Andrew Stillwagon, Bringing An End To Warrantless Cell Phone Searches, 42 GA. L. Rev. 1165, 1194-95 (2008); see United States v. Deans, 549 F. Supp. 2d 1085, 1094 (D. Minn. 2008) (noting prior Supreme Court case law on the search incident to arrest exception did not specifically address searches of technological devices such as cell phones).


500. Stillwagon, supra note 497.

501. See Orin S. Kerr, The Fourth Amendment and New Technologies: Constituional Myths and the Case for Caution, 102 MICH. L. Rev. 801, 804-05 (2004) (challenging the "popular view" that the Fourth Amendment "should be interpreted broadly in
courts must consider that rules developed for older forms of information could have devastating effects on privacy if they are applied to new ways of storing information that have become central to Americans' lives.\textsuperscript{502} Further, applying ill-fitting bright-line rules to a context in which police officers could limitlessly search through sophisticated technological devices such as cell phones is undesirable and inappropriate.\textsuperscript{503} Proposals such as having state legislatures limit searches to evidence relevant to the crime of arrest pose preferable alternatives to doing nothing and allowing law enforcement to search thousands of pages of private information on cell phones without probable cause or a warrant.\textsuperscript{504}

The Supreme Court issued bright-line rules under the search incident to arrest exception for several years in an attempt to clarify the law for police officers.\textsuperscript{505} However, its bright-line jurisprudence led several courts to skip careful study of the purpose of the exception and the nature of the particular object searched when analyzing cell phone searches incident to arrest. By simply classifying cell phones as a container under the \textit{New York v. Belton}\textsuperscript{506} decision, lower courts repeatedly and incorrectly authorized police officers to explore the contents of arrestees' cell phones in an effort to find any information relevant for prosecution. As a result, lower courts created case law that severely limited the privacy interest millions of Americans have in their personal cell phones and wholly failed to recognize the unique nature of modern cell phones. However, through its recent decision in response to technological change" and arguing that "considerations of doctrine, history, and function tend to counsel against an aggressive judicial role in the application of the Fourth Amendment to developing technologies."); \textit{but see} Orin S. Kerr, \textit{Digital Evidence and the New Criminal Procedure}, 105 \textit{COLUM. L. REV.} 279, 280 (2005) (arguing that "the use of computers in criminal activity has popularized a new form of evidence, digital evidence," and that new methods of gathering digital evidence should lead to reforms in criminal procedure law regulating the collection of digital evidence).

\textsuperscript{502} See Dempsey, \textit{supra} note 498, at 551 (explaining that the analysis for courts and legislatures when dealing with emerging technologies must take into account that "rules developed for older forms of communication and information handling would be devastating to privacy if applied to the new forms of communication and new ways of storing information that have become central to our lives."); \textit{see also} Quon v. Arch Wireless Operating Co., 529 F.3d 892, 905 (9th Cir. 2008) (finding reasonable expectation of privacy in information stored on cell phone) (citation omitted).

\textsuperscript{503} See Adam M. Gershowitz, \textit{The iPhone Meets the Fourth Amendment}, 56 \textit{UCLA L. REV.} 27, 31, 46 (2008) (noting doubt in courts restraining themselves "by applying an ill-fitting bright-line rule to the iPhone" in particular).

\textsuperscript{504} \textit{Id.} at 57-58.

\textsuperscript{505} \textit{Id.} at 30; \textit{see also} New York v. Belton, 453 U.S. 454, 459-60 (1981) (issuing workable rule relying on "straightforward" and "easily applied" rule set forth in United States v. Robinson, 414 U.S. 218, 235 (1973), in order to provide a "single, familiar standard" to guide police).

\textsuperscript{506} 453 U.S. 454 (1981).
Arizona v. Gant, the Supreme Court of the United States reinstated the importance of the rationales for the search incident to arrest exception and abandoned expansive interpretation of the Belton decision. In the wake of Gant, a number of lower courts fittingly struck down warrantless searches of cell phones incident to arrest. With the change evident in these decisions, it appears that courts will acknowledge the uniqueness of modern cell phones and protect the privacy interest millions of Americans enjoy in their cell phones with far greater care in the future.

Chelsea Oxton – ’10