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IN THE SUPREME COURT OF THE UNITED STATES

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FLORIDA, :
Petitioner :
v. : No. 00-391
ROBERT A. THOMAS :
- - - - -X

Washington, D.C.
Wednesday, April 25, 2001

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:14 a.m.

APPEARANCES:

ROBERT J. KRAUSS, ESQ., Senior Assistant Attorney
General, Tampa, Florida; on behalf of the Petitioner.
GREGORY G. GARRE, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on
behalf of the United States, as amicus curiae,
supporting the Petitioner.
CYNTHIA J. DODGE, ESQ., Assistant Public Defender, Bartow,
Florida; on behalf of the Respondent.

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C O N T E N T S

	PAGE
ORAL ARGUMENT OF ROBERT J. KRAUSS, ESQ. On behalf of the Petitioner	3
ORAL ARGUMENT OF GREGORY G. GARRE, ESQ. On behalf of the United States, as amicus curiae, supporting the Petitioner	17
ORAL ARGUMENT OF CYNTHIA J. DODGE, ESQ. On behalf of the Respondent	25
REBUTTAL ARGUMENT OF ROBERT J. KRAUSS, ESQ. On behalf of the Petitioner	36

CHIEF JUSTICE REHNQUIST: We'll hear argument next in Number 00-391, Florida v. Thomas.

Spectators are admonished, do not talk until you leave the courtroom. The Court remains in session.

Mr. Krauss.

ORAL ARGUMENT OF ROBERT J. KRAUSS

ON BEHALF OF THE PETITIONER

MR. KRAUSS: Mr. Chief Justice, and may it please the Court:

The Florida supreme court, based on the facts before it, added an unreasonable and unwarranted condition to this Court's holding in New York v. Belton. The Florida supreme court has determined that it is improper to conduct a Belton search unless the police initiate contact with the arrestee while he is still in the automobile, or he exited at the direction of the police.

The facts of this case are very simple. Mr. Thomas drove his vehicle into the driveway of a residence of a home at which drug arrests were being effected at the time. Mr. Thomas exited his vehicle, walked around the car, and was at the rear right, near the trunk, when Detective Maney stopped him.

Detective Maney asked Mr. Thomas for his name

1 and for his driver's license. An immediate check of that
2 driver's license was run, and it came back outstanding.

3 QUESTION: May I ask -- I forget the facts a
4 little bit. Did the officer go into the house and come
5 back out before he arrested him?

6 MR. KRAUSS: Detective Maney had been in the
7 house.

8 QUESTION: After the man, after the defendant
9 drove into the driveway and got out, did the officer,
10 before he arrested him, go into the house and come back
11 out?

12 MR. KRAUSS: I don't -- do not believe so, Your
13 Honor.

14 QUESTION: You don't?

15 QUESTION: He arrested him and then went into
16 the house.

17 MR. KRAUSS: That is correct.

18 QUESTION: He arrested him, handcuffed him, took
19 him into the house --

20 MR. KRAUSS: Absolutely.

21 QUESTION: -- and then came back and examined
22 the car.

23 MR. KRAUSS: Yes, sir, within 5 minutes of --
24 this whole entire episode took 5 minutes from when --

25 QUESTION: And do you say that Belton allows the

1 person outside the car to be taken away, secured, removed,
2 and then the officers can go back and search the car?

3 MR. KRAUSS: Yes, we do, Your Honor, for --

4 QUESTION: Wasn't one of the stated objectives
5 of the Belton rule to protect officers from the person
6 connected with the car from reaching in and getting
7 weapons or damaging the officer?

8 MR. KRAUSS: We would submit, Your Honor, that
9 the ability to effect valid arrest arises at the moment of
10 that arrest. At the time of arrest, Mr. Thomas was right
11 by the car. Quite frankly --

12 QUESTION: But the search of the vehicle came
13 later. Is there some temporal or spatial limitation to
14 the Belton rule, or do you say there's no such
15 limitations?

16 MR. KRAUSS: No. No, there obviously is a
17 limitation at some point, but certainly this case is not
18 one of them. This was --

19 QUESTION: This might be, if you take the person
20 away.

21 MR. KRAUSS: Well --

22 QUESTION: How do we express that limitation?
23 Could he come back a day later?

24 MR. KRAUSS: No. No, Your Honor.

25 QUESTION: All right, so what's the general

1 principle that expresses the temporal limitation in
2 Justice O'Connor's inquiry?

3 MR. KRAUSS: This was part of one ongoing
4 transaction. There were no --

5 QUESTION: Well, it may have been part of one
6 ongoing transaction, but it -- that does not, I think,
7 affect the fact that the moment of the search seems to
8 have been totally untethered from the justifications for
9 the Belton rule because, as I understand it, at the time
10 the search was made, the defendant was in the house. The
11 defendant couldn't reach into the car for weapons or for
12 evidence. There was nobody else with the defendant still
13 in the car who could have done so, so that it seems to me
14 the justification for the Belton rule has vanished,
15 totally, in this situation.

16 MR. KRAUSS: Justice Souter, we submit that the
17 arrest, at the time of the arrest, that is when the
18 ability to search arises.

19 What the Court is --

20 QUESTION: Well, if that's going to be your
21 justification, I don't see how you can put any limitation
22 on it at all, because there was just as much an arrest 24
23 hours later, or 48 hours later. There was just as much an
24 arrest as if he had been 3 miles away, or 30 miles away,
25 and on your reasoning that the moment of arrest is the

1 only operative moment here, then they could search 2 days
2 later, and they could search 30 miles away.

3 MR. KRAUSS: No, Your Honor. As I stated, there
4 has to -- it has to be part of a continuing course of
5 arrest. It's an arrest scenario, and it should not be
6 broken up.

7 QUESTION: But I don't see why continuing course
8 of arrest has any relevance except in relation to the
9 preservation of evidence that he might otherwise destroy,
10 or the possibility of a weapon that he might have used to
11 hurt the officer, and when each of those possibility,
12 possibilities has been definitively negated, what is left
13 of Belton?

14 MR. KRAUSS: Well, because at the time of the
15 arrest, Mr. Thomas, or any similarly situated defendant
16 is at the car, and therefore he is within reach, immediate
17 reach of the vehicle. It is almost --

18 QUESTION: And so I can understand, under the
19 Belton rule, that they could search then, but they didn't.

20 MR. KRAUSS: Well, they did --

21 QUESTION: And when they did, he wasn't within
22 immediate reach of the vehicle.

23 MR. KRAUSS: That's correct. It's near-
24 unanimous in all the Federal circuits and most of the
25 States, as we've provided in the briefs, that even if a

1 suspect is handcuffed and led away from the scene, and
2 sometimes often placed in a police vehicle himself, that a
3 Belton search is still permissible.

4 QUESTION: Why? Why is that, because it says in
5 Belton -- it says as a contemporaneous -- as a
6 contemporaneous --

7 MR. KRAUSS: As a contemporaneous --

8 QUESTION: -- of that arrest.

9 MR. KRAUSS: Yes, sir.

10 QUESTION: So -- and Belton is extrapolated and
11 explained in Chimel, so can you -- in Chimel you can
12 search the room when you arrest somebody who's in the
13 house, so under Chimel, can you arrest a person in the
14 house, take him down to the police station, and go back
15 and search the room?

16 MR. KRAUSS: Not necessarily, because there may
17 be too much of an intervening time.

18 QUESTION: So why isn't the --

19 MR. KRAUSS: What the Court --

20 QUESTION: -- key word, contemporaneous, just
21 what everybody's been saying?

22 MR. KRAUSS: What the Court's suggesting, if I
23 may, is that the police should have to make a choice right
24 at that moment when they effect the arrest, either do I
25 search the car, because I know I have the right to do so,

1 or should I take steps to secure the defendant at the
2 scene, so as -- so you have two --

3 QUESTION: Well, presumably the police could
4 secure the car and go get a warrant to search it, couldn't
5 they?

6 MR. KRAUSS: They could, Your Honor, and there
7 are different fact patterns that emerge. We're -- I -- we
8 are presupposing that there's one defendant involved. A
9 lot of these cases involve --

10 QUESTION: Well, we're talking about this case.

11 MR. KRAUSS: Yes, Your Honor.

12 QUESTION: And the court below thought it turned
13 on whether the person stayed in the car, or exited on his
14 own.

15 MR. KRAUSS: That is correct.

16 QUESTION: Now, I'm not sure that Belton had
17 much to do with that distinction.

18 MR. KRAUSS: Agreed.

19 QUESTION: But there may well be other
20 limitations of space and time

21 MR. KRAUSS: There may be, Your Honor.
22 There's -- and I think we've certainly conceded that in
23 our brief, that certain searches will be taken without --

24 QUESTION: Well, certainly the whole basis of
25 the Fourth Amendment is reasonableness --

1 MR. KRAUSS: Absolutely.

2 QUESTION: -- and you would have to -- whatever
3 the interval would be, it would have to be reasonable
4 under the Fourth Amendment.

5 MR. KRAUSS: Yes, Your Honor. It would
6 certainly -- if we're talking about the contemporaneous
7 requirement, certainly it would have to be, and that's why
8 I suggest that, especially in this case, where it was one
9 flowing, fluid arrest scenario, where Mr. Thomas was
10 placed under arrest right when he was by the car, and that
11 is when the need to either preserve evidence or exhibit
12 concern for officer safety arises, at that moment.

13 QUESTION: Why -- Mr. Krauss, he's in the house
14 with handcuffs, so any concern about his destroying
15 evidence or getting a weapon is attenuated, but the need
16 with respect, even to the car -- isn't it ordinarily the
17 case that if you arrest a person, and there's the car out
18 there on the street, the car will be impounded, and there
19 will be an inventory inspection, and there will turn up
20 the same thing that this turned up on the scene, so why do
21 the police, once they've gotten the driver out of it, have
22 to search on the spot, instead of going through the lawful
23 procedure of getting the inventory --

24 MR. KRAUSS: I respectfully submit to you,
25 Justice Ginsburg, that in this case the State could not

1 have conducted an inventory search. First of all, the
2 vehicle was not even Mr. Thomas'. Second of all,
3 it was already parked in the driveway. It did not pose
4 any safety hazards, say, that Colorado v. --

5 QUESTION: It made a difference that he was
6 parked in the driveway, rather than on the street.

7 MR. KRAUSS: And I also have concern because,
8 even though there were several people that were arrested
9 in the house, Mr. Thomas' sister was not, and
10 there's nothing that could have said that she couldn't
11 have moved -- if it was necessary to move the car, that
12 she couldn't have been the one to move it, and if she has
13 an ability to remove it, she obviously has the ability to
14 get any weapons or destroy any evidence that was in the
15 car also.

16 QUESTION: Why shouldn't -- under Belton, why
17 shouldn't a policeman be put to the choice? You can
18 protect yourself the Belton way, do an immediate search
19 while the arrested person is still nearby the car, and
20 possibly able to dive in and get a gun, or, if you want to
21 play it really safe, handcuff him and take him back to the
22 police cruiser.

23 MR. KRAUSS: Because I --

24 QUESTION: But if you do the latter, you've
25 assured your safety, and there's no basis for conducting a

1 search.

2 MR. KRAUSS: Because I don't necessarily believe
3 that in the volatile and dangerous situation that is the
4 arrest, that we have to give the police these types of
5 choices to make. The -- especially --

6 QUESTION: Why? That's not a hard choice.
7 Assure your safety. If you can handcuff him and lead him
8 to the car, you're safe.

9 MR. KRAUSS: But I don't know that the officer
10 would want to make the wrong choice at that point.

11 QUESTION: What you're saying is, you think the
12 officer wants to be able to search the car.

13 MR. KRAUSS: No, Your Honor. I think the
14 officer has the constitutional right to search the car,
15 because he arrested someone who was in proximity to the
16 car at the time of the arrest.

17 QUESTION: Well, he does or he doesn't,
18 depending, perhaps, on what we decide in this case.

19 (Laughter.)

20 MR. KRAUSS: And I will submit that that's why
21 the Court accepted this case, yes.

22 QUESTION: Just -- following Justice Scalia, if
23 the justification for Chimel, or Chimel --

24 MR. KRAUSS: Yes.

25 QUESTION: -- is that you must protect the

1 officer, and the defendant, or the suspect is in the
2 patrol car in handcuffs, what justification is there left,
3 other than protecting the public safety by inventory
4 searches and so forth?

5 MR. KRAUSS: I think those are very valid
6 justifications, and --

7 QUESTION: Well, but under Chimel itself, it
8 seems to me that the rationale has now disappeared.

9 MR. KRAUSS: Well, CHimel -- Belton was created
10 just so the police don't have to make these case-by-case
11 determinations as to what the area to search is, so -- and
12 I do come back to the quote in U.S. v. Robinson, where the
13 very fact of arrest alone is enough to justify the search,
14 and it's the same situation in a Belton search.

15 I would further submit that at least via dicta,
16 this Court has recognized the point of law we are
17 advancing today in Michigan v. Long. It was assumed in a
18 footnote that had the suspect in that case been arrested
19 for speeding or driving along intoxicated, that a valid
20 Belton search could be effected --

21 QUESTION: Mr. Krauss --

22 MR. KRAUSS: -- and that's what we have here.
23 Mr. --

24 QUESTION: -- Mr. Krauss, what exactly was done
25 with Mr. Thomas, when he was taken into the -- he had

1 driven up in the driveway. He was taken into the house,
2 and what happened?

3 MR. KRAUSS: He was taken --

4 QUESTION: Does the record show?

5 MR. KRAUSS: There were other officers in the
6 house at the time, because they had been effecting some
7 drug arrests at the time. They brought Mr. Thomas in
8 there for safekeeping, not unlike the common situation
9 that's assumed in these cases, where a suspect is
10 handcuffed and placed in the patrol car. As we have
11 stated, the need to do the search arises at the time that
12 he is arrested in the proximity of the car.

13 QUESTION: So he was taken into the house,
14 handcuffed, and then the officer came out.

15 MR. KRAUSS: Immediately thereafter. The entire
16 procedure, from when Mr. Thomas exited his car, the
17 warrant was checked, and he was taken into the house, and
18 then the officer came back and completed the search, all
19 within five minutes.

20 QUESTION: Do the cases talk about whether
21 there's a possibility that persons other than the arrested
22 person might go into the car, i.e., there might have been
23 somebody in the house that would have gone in and got the
24 gun? Do our cases talk about that in the context of the
25 Chimel rule, or is there some other rule?

1 MR. KRAUSS: As far as other --

2 QUESTION: Some other line of cases.

3 MR. KRAUSS: I'm not aware of any, Your Honor.

4 QUESTION: So you think that the Chimel rule may
5 apply as well to protect the officer from other persons
6 who might grab a weapon, or destroy --

7 MR. KRAUSS: No. I think when you're at the
8 scene and you're dealing with vehicles, there are
9 different interests involved. We are dealing with an
10 automobile versus a home. There are certainly further
11 protections in a home, and when you're in a situation on
12 the street, where anything can happen, it's a volatile
13 situation, there may be other codefendants or other
14 confederates mulling about, the ability for the police to
15 protect themselves is paramount.

16 QUESTION: Well, so that -- so that, then, do
17 you agree that under the Chimel rule, a search can be made
18 to protect the officer not just against the contingency of
19 the arrested person grabbing a weapon, but of other
20 persons?

21 MR. KRAUSS: Yes, but it does not --

22 QUESTION: I mean, I'm trying to help you, and
23 you seem to be resisting.

24 (Laughter.)

25 MR. KRAUSS: The Chimel rule helps, but I want

1 to make it clear that Chimel is limited to the immediate
2 area of control, whereas Belton is a little more
3 expansive, in that you have defined what that area is, and
4 I think that is a little more expansive, and I am saying
5 that Belton would assist the officer in that type of
6 situation if there are others in the area, absolutely.

7 QUESTION: Mr. Krauss, there's another
8 distinction, another unusual feature of this case, in
9 addition to the defendant being removed from the scene.
10 That is, in Belton the man was speeding, I think. In all
11 the other cases that I know of, there was a stop because
12 of a traffic violation, and here, the car wasn't
13 implicated in the justification for the arrest at all. He
14 wasn't doing anything wrong with the car. The car is
15 totally apart from -- the justification for the arrest is
16 the probation violation.

17 MR. KRAUSS: Agreed, Your Honor, and we would
18 submit that there is no nexus, as the Court is suggesting.
19 No nexus is necessary. For authority for that
20 proposition, we would rely on United States v. Robinson,
21 where --

22 QUESTION: May I ask -- excuse me. Are you not
23 finished with your answer? I didn't mean to interrupt
24 you, if you hadn't finished your answer.

25 MR. KRAUSS: I --

1 QUESTION: He said there was no nexus
2 requirement.

3 QUESTION: May I ask, do you think at the time,
4 after the man was arrested, there was probable cause to
5 search the car?

6 MR. KRAUSS: No, definitely not. This officer
7 had no suspicions, and I'll be even further candid with
8 the Court. If Mr. Thomas had said, no, I'm not going to
9 give you my name or license, the officer candidly said, I
10 couldn't have done anything about it, so those are the
11 facts that we're dealing with.

12 If the Court has no objection, I'd like to
13 reserve the rest of my time.

14 QUESTION: Very well, Mr. Krauss.

15 Mr. Garre, we'll hear from you.

16 ORAL ARGUMENT OF GREGORY G. GARRE

17 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

18 SUPPORTING THE PETITIONER

19 MR. GARRE: Thank you, Mr. Chief Justice, and
20 may it please the Court:

21 When an individual is arrested alongside the car
22 that he has just occupied, the rule of New York v. Belton
23 permits the police to search the car incident to the
24 arrest. In our view, that is true regardless of the reason
25 that the suspect got out of the car before the arrest.

17

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1 The Florida supreme court's contrary ruling in
2 this case should be reversed for three reasons. First, it
3 compromises officer safety in the dangerous and recurring
4 context of vehicle-side arrests. Second, it needlessly
5 complicates --

6 QUESTION: Let me just ask you about that,
7 taking one other time. What was the particular threat to
8 the officer after the man was in the house and under -- in
9 the custody of the police?

10 MR. GARRE: I'd like to make one thing clear on
11 that at the outset. Respondent has never challenged the
12 search in this case on the ground that it was not
13 contemporaneous with the arrest. That was not a basis for
14 any of the decisions below. It's not within the question
15 presented by petitioner.

16 QUESTION: I'm not sure that responds to my
17 question.

18 MR. GARRE: Absolutely. We cite statistics in
19 our brief, I believe it's on page 22, where people who are
20 handcuffed and on the scene do continue to pose a danger
21 to the police. We think that with respect to the
22 question --

23 QUESTION: The danger was totally unrelated to
24 the car, wasn't it, because he was in the house.

25 MR. GARRE: The danger was related to the fact

1 of the arrest, and that's what justifies the search under
2 the Belton doctrine as well under the search incident to
3 arrest doctrine. When someone is placed under arrest, he
4 immediately has an increased incentive to get to a weapon
5 that may be nearby, or get to evidence that may be nearby.

6 QUESTION: Yes, but after the person has been
7 removed -- arrested and handcuffed and removed from the
8 scene, put in a house, what's left of Belton to justify
9 the officer going back to the car and making a search?

10 MR. GARRE: Well, first of all, I think it's
11 important for the Court to recognize that this case is a
12 little bit unusual in that the person was put into a
13 house. In the more typical Belton situation --

14 QUESTION: Well, but do you mind answering the
15 question that I asked? So it's unusual.

16 MR. GARRE: Belton --

17 QUESTION: But what is left of the Belton
18 justification for going back to the car and making a
19 search later?

20 MR. GARRE: The justification for the search is
21 provided by the arrest. Belton requires that the search
22 be a contemporaneous incident to the arrest, and we think
23 in a situation like this, where the search and the arrest
24 are plainly part of the same process, where only five
25 minutes separates the arrest from the search -- the

1 officer on this scene had a choice. When he arrested the
2 respondent at the car, he was by himself outside. He had
3 a choice of leaving the respondent unattended by the car
4 as he searched the car, or he had the choice of bringing
5 the respondent into the house, which, although the record
6 is a little bit unclear on this, it suggests it was only
7 about 20 feet away, where other officers were, and where
8 other people were after drug arrests had been made in that
9 house.

10 We think that the Constitution and the Fourth
11 Amendment gives the officer in Officer Maney's position
12 the leeway to make that choice, and if the Court were to
13 adopt a different regime, it would be inviting all the
14 sorts of line-drawing, case-by-case determinations that it
15 sought to foreclose in Belton with respect to the initial
16 just --

17 QUESTION: Well, I wonder if your view doesn't
18 require new line-drawing where we've gotten the line
19 already drawn in Belton.

20 MR. GARRE: With respect --

21 QUESTION: I mean, you say 5 minutes. What
22 about 10 minutes, 15 minutes --

23 MR. GARRE: Well, we --

24 QUESTION: -- 2 hours?

25 MR. GARRE: Sure. We know from cases like

1 Preston and Dyke that where the person is taken off the
2 scene, he's in the police station, his car's removed from
3 the scene, that that's not substantially contemporaneous
4 under the --

5 QUESTION: Well, so if he's taken off the scene,
6 why isn't the scene where the policeman, the police car,
7 and the car are all there together, but what isn't the
8 scene is a house?

9 MR. GARRE: Well --

10 QUESTION: I mean, that would be like common
11 sense. When you arrest somebody in a car, a house, inside
12 the house anyway, isn't the scene.

13 MR. GARRE: We think the scene in this case
14 would include the house. The respondent drove up to a
15 house where drug-related arrests were being made. He
16 parked in the driveway right outside the house. He's on
17 the --

18 QUESTION: Would the policemen have gone in
19 under a different circumstance? Let's assume there were
20 no policemen in the house yet. After he arrested him
21 outside of the car, could he go in and search the house?

22 MR. GARRE: No. The Belton rule is limited to
23 the vehicle. We're not asking --

24 QUESTION: So once you've searched the car, you
25 can't go in the house, but once you're in the house, you

1 can go out and search the car. That's the rule?

2 MR. GARRE: With respect, no. The rule is that
3 once the officer has a justification for the search, the
4 search must be contemporaneous with the arrest, and we
5 think that that requirement is met, as every court of
6 appeals of which we are aware has held that it has been
7 met where the search and the arrest are part of the same
8 process, one continuous event.

9 QUESTION: Is there anything in any of those
10 cases that's comparable to taking him out of the car and
11 putting him in a house?

12 MR. GARRE: Well, every case is comparable in
13 that the officer typically puts the suspect in the squad
14 car.

15 QUESTION: In the squad car.

16 MR. GARRE: Which --

17 QUESTION: I gave you the squad car. I said,
18 the squad car is part of the scene. I'm saying, is there
19 anything in the cases that's comparable to the house?

20 MR. GARRE: No, and we think that that case is
21 unusual in that respect, but we would urge the Court to
22 keep very much in mind the much -- very typical case in
23 which the suspect is in the squad car, and in that
24 situation it's clear that we think that the search would
25 be contemporaneous with the arrest, and again, to remind

1 the Court, that issue we don't believe is before the Court
2 in this case. The issue --

3 QUESTION: Is there jurisdiction, then, here,
4 because in fact there is a problem they haven't passed
5 definitively in Florida on the question of whether the
6 evidence should be suppressed, and your side has two more
7 arguments to make, or one, and the other side has one.
8 One is the house, and the other one is whether Chimel
9 would justify it.

10 MR. GARRE: Well, we think that the --

11 QUESTION: We don't have a final judgment either
12 on the suppression point.

13 MR. GARRE: We think that there is jurisdiction.
14 We think that the Belton issue has been finally decided,
15 and the way it's been decided is based on the proposition
16 on which this Court granted certiorari, which is whether
17 or not the application of the Belton rule depends on
18 initiation of contact with the suspect in the car, and
19 there are situations where police come upon a suspect
20 after he's gotten out of the car.

21 Michigan v. Long, which was decided just a year
22 after this Court's decision in Belton, is that type of
23 situations. Police may be conducting surveillance
24 activities. They may choose that for their own safety
25 it's not wise to initiate contact while the person's in

1 the car. The supreme court, the Florida supreme court's
2 rule in this case is, it compromises officer safety,
3 because it requires --

4 QUESTION: Going back to the finality, which you
5 went over very quickly, is that enough that this issue has
6 been to Florida, it's not going to redesign the Belton
7 issue? Is that enough to make a State judgment final for
8 purposes of this Court's review?

9 MR. GARRE: That may not be enough in itself,
10 but that, coupled with the fact that if the State were to
11 prevail on remand, the Belton issue would be lost, the
12 State of Florida and officers in Florida would be governed
13 by the Florida supreme court's erroneous interpretation of
14 Belton in this case --

15 QUESTION: Do you have a similar Fourth
16 Amendment case where we treated the judgment as final for
17 purposes of our review?

18 MR. GARRE: We've cited cases that are
19 interlocutory in the respect that they come up on a
20 suppression motion, New York v. Quarles in our brief.

21 This case, we believe it's very important for
22 this Court to decide the Federal question presented. If
23 the State did lose -- did prevail on remand, that issue
24 would be lost. We think that there's a compelling Federal
25 interest in this Court setting the Florida supreme court

1 straight on the proper application of Belton, that the
2 application of that rule does not depend on a requirement
3 that the officer initiate contact with the suspect while
4 he's still in the car.

5 QUESTION: And that doesn't depend on any 5-
6 minute interval, I take it?

7 MR. GARRE: That issue was never raised by the
8 respondent in this case, and we don't believe it's within
9 the question presented. It's not even within the question
10 formulated by the respondent in the opposition brief.

11 If there are no further questions --

12 QUESTION: Thank you, Mr. Garre.

13 Ms. Dodge, we'll hear from you.

14 ORAL ARGUMENT OF CYNTHIA J. DODGE

15 ON BEHALF OF THE RESPONDENT

16 MS. DODGE: Mr. Chief Justice, and may it please
17 the Court:

18 The facts in this case are very, very different
19 from the facts confronting the officer in Belton. In
20 Belton, the officer stopped a car for speeding on a busy
21 Thruway. It was the New York Thruway. The officer was
22 confronted with four individuals. When he approached the
23 car, he smelled the odor of burnt marijuana, and he looked
24 inside, and saw an envelope marked Super Gold.

25 That envelope he immediately recognized as being

1 associated with marijuana. Therefore, he had probable
2 cause to believe not only that these four passengers were
3 in possession of marijuana, but that they had used
4 marijuana because of the burnt marijuana smoke.

5 He ordered the passengers out of the car and
6 placed them under arrest. He did not handcuff them,
7 either because he could not, because there were four of
8 them, or because he chose not to do so. What he did to
9 protect himself was merely to separate them on the
10 Thruway. He separated them so that they could not touch
11 each other, being in reaching distance of each other, and
12 this was one officer without backup, and he was confronted
13 with four individuals.

14 With the --

15 QUESTION: Well, you don't think Belton's
16 limited to an arrest of four people, surely?

17 MS. DODGE: No, certainly not.

18 QUESTION: So what does that have to do with
19 this, and why does the reason for the person arrested
20 leaving the car make a difference for Belton? What
21 difference could it possibly make that the person arrested
22 here voluntarily got out of the car, as opposed to being
23 ordered out?

24 MS. DODGE: It makes a difference with regard to
25 the fact that Mr. Thomas didn't suspect that the officer

1 wanted to make contact with him, so he did not have an
2 incentive to grab any weapons or destroy evidence, because
3 the officer was merely there, and he hadn't signaled his
4 desire to make contact with Mr. Thomas at the time.

5 QUESTION: No, but Belton would apply even if
6 the individual was standing outside the car. He might not
7 have any weapon on him, he might not have any evidence on
8 him, but if, in the course of the interview with the
9 officer, he thought it was in his interest to leap back
10 into the car, or grab into the car and get a gun, or get
11 some evidence that he could swallow, or something of that
12 sort, the -- that was the justification for Belton, and I
13 would suppose that that would be the justification, even
14 if the individual had himself voluntarily gotten out of
15 the car.

16 MS. DODGE: Perhaps so. However, --

17 QUESTION: Well, if that is so, then the Florida
18 distinction really cannot be sustained.

19 MS. DODGE: The way I see it is that once a
20 person gets out of the car on his own, without the
21 prompting from the officer or without initiating contact,
22 he's outside of the car, and the regular considerations of
23 Chimel control.

24 In other words, what this contact rule does is,
25 it doesn't say to the officer, you're not allowed ever to

1 search the car. If you feel as though the person is
2 within actual grabbing area, in other words, if you are
3 overwhelmed, if the door is open --

4 QUESTION: But Ms. Dodge, one of the virtues of
5 Belton, as stated in its opinion, is that it was a bright-
6 line rule, without all these nuances that you're adding to
7 it. Do you think that the nuances -- and certainly they
8 are adopted by the supreme court of Florida in its
9 opinion -- are really consistent with that sort of a
10 bright-line rule?

11 MS. DODGE: Yes, I think they are, because when
12 you look at Belton itself, Belton allows the search of an
13 occupant's vehicle pursuant to arrest. When you get to a
14 consideration of who is a recent occupant, then your
15 bright line evaporates, because the -- on page 5 of the
16 blue brief, petitioner proposes a rule. If a valid
17 custodial arrest of an occupant or recent occupant of a
18 motor vehicle has been effected --

19 QUESTION: Well --

20 MS. DODGE: -- a contemporaneous search is
21 allowed.

22 QUESTION: -- there are always lines to be
23 drawn in Fourth Amendment cases, but in this case,
24 certainly, Mr. Thomas was about as recent an occupant as
25 there could have been, other than someone who simply

1 stayed in the car.

2 MS. DODGE: Yes, Your Honor, he was a recent
3 occupant. However --

4 QUESTION: In Belton the people were no more
5 than recent occupants. They didn't remain in the car.

6 MS. DODGE: Correct. However, what the Florida
7 Supreme Court has done is drafted a bright line definition
8 of the term, occupant. So in other words, once you get --
9 someone has left the car --

10 QUESTION: Well, they probably erred in drawing
11 that line. I mean, I don't see any justification at all
12 in this Court's cases, and certainly not in Belton, for
13 the line the Florida court drew.

14 MS. DODGE: No. What I think that they saw was
15 that there was -- they made a rule that in essence
16 dovetails with the rule in Belton. It sees that there is
17 a problem in that there's no definition of who is an
18 occupant, and it's very hard to determine who is a recent
19 occupant, because of the fact that, you know, somebody
20 could distance themselves very quickly from a car. They
21 could also have gone into a convenience store, or into a
22 supermarket.

23 QUESTION: Well, as I understand the Florida
24 rule, correct me if I'm wrong, but the policeman puts the
25 siren on, stops the car, and the man runs out of the car

1 and goes and talks to the policeman.

2 MS. DODGE: His car --

3 QUESTION: In -- as I understand the rule, the
4 police have no justification for searching the car under
5 Chimel -- maybe under an inventory -- but under Chimel,
6 the justification for the search evaporates, correct?

7 MS. DODGE: Correct.

8 QUESTION: That's a silly rule, because number
9 1, it encourages everybody to jump out of their car.

10 MS. DODGE: Correct, and the Florida rule
11 eliminates that possibility. Once the officer signaled
12 contact, the person could jump and run as far as he wants,
13 and that car is -- it can be searched.

14 So in other words, if it were a knowledgeable
15 subject it would be a disincentive to distance yourself,
16 because not only that, you might get a charge for fleeing
17 and eluding. You're running out of the car, but that car
18 is always subject to search once that officer has put on
19 those lights, has put on the siren, has announced over a
20 loudspeaker that he wishes confrontation, has shouted, hey
21 you, sir. It covers even when an officer wishes to
22 initiate a consensual encounter.

23 QUESTION: So what? That is to say, I'm having
24 a hard time seeing how a person -- I mean, I read Belton,
25 and I don't understand how the Supreme Court of Florida,

1 having read it, could come to its conclusion.

2 What Belton says, in exact language is, it says,
3 as a custodial arrest of the occupant, as a
4 contemporaneous incident of that arrest, you may search
5 the passenger compartment, and then to make clear what
6 they're talking about, they say, we're asking when police
7 may search inside the automobile after the arrestee is no
8 longer in it, all right.

9 Now, I read, after the arrestee is no longer in
10 it, you may search the passenger compartment as a
11 contemporaneous incident of the arrest. That's what the
12 language says, so now, where does this distinction come
13 from --

14 MS. DODGE: The court --

15 QUESTION: -- the distinction as to whether the
16 person voluntarily got out of the car, after there was eye
17 contact, before there was eye contact? Where does that
18 come from?

19 MS. DODGE: The court believed that Mr. Thomas
20 was no longer an occupant.

21 QUESTION: The person -- they're talking about
22 people who are no longer occupants. Belton says it's
23 talking about a person after the arrestee is no longer in
24 it.

25 MS. DODGE: Yes.

1 QUESTION: And, of course, the person in Belton
2 was no longer in it.

3 MS. DODGE: Yes. He had been removed from the
4 car by the officer in order to, number 1, effectuate the
5 arrest. It would be very difficult to search a car with
6 four people in it, or even one person in it. It would be
7 impractical to do so.

8 Not only that, I think it would be very
9 dangerous to tell a person who is still in control of the
10 accelerator, the steering wheel, and the key, you are
11 under arrest. I think that that might be an invitation to
12 get run over, so it might be a good idea to wait and say,
13 would you please get out of the car, and now that he has
14 some modicum of control over this individual, because in
15 Mimms face-to-face confrontation reduces the danger, then
16 say, sir, I am placing you under arrest.

17 QUESTION: Ms. Dodge, your stress on
18 confrontation, or at least signaling, leaves out the case
19 where the police are tailing someone because they think
20 they will be led to the crack house, and they deliberately
21 do not want to confront or signal, so in your argument, I
22 take it, someone in that situation would not come within
23 the Belton rule, because the police hadn't signaled, is
24 that right?

25 MS. DODGE: Yes, Your Honor. That person would

1 not come under the automatic Belton rule. In other words,
2 the person is distancing themselves from the car.

3 However, if there is probable cause to believe
4 that that person is going to the crack house and is
5 carrying contraband, then the car could be searched
6 pursuant to the automobile exception, so it would be a
7 decision -- the officer in that case might want to search
8 that car. He might desperately want to do so, to see
9 what's in it, but it doesn't equate with the necessity to
10 do so to protect himself or to protect any evidence that
11 someone might grab during an arrest process that occurs as
12 the person has distanced himself from the car.

13 QUESTION: So you are supporting the Florida
14 rule about, is it confrontation or signal, but you're not
15 stressing -- you don't put any weight on the absence of a
16 nexus here, that this, unlike the Belton line of cases,
17 did not involve a traffic violation?

18 MS. DODGE: Correct. I don't think it
19 necessarily has to be a nexus, for example, if an officer
20 were following a car, he knew the occupant's identity, and
21 he knew for sure that there had been a warrant issued for
22 the arrest, he would be stopping for the warrant and not
23 for a traffic violation, so that there would not be,
24 necessarily, a nexus, other than the fact that the person
25 is in the car at the time that he is actually apprehended,

1 or the officer's pursuing him.

2 What this does -- and I believe the Florida
3 courts have never considered the Chimel aspects, or Chimel
4 aspects of this case. They've never decided whether or
5 not the passenger compartment and all of the closed
6 containers, the glove box, the pocket on the side of the
7 door were still within the actual grabbing area of Mr.
8 Thomas.

9 In fact, the record is rather sparse with regard
10 to the facts. We know that the door was closed. However,
11 we don't know whether or not the door was locked. We know
12 that Mr. Thomas was in the company of at least three or
13 four narcotics agents who were in the house finishing up
14 the arrests of the residents, so what we're saying is,
15 this case isn't really finished. It was remanded back to
16 the trial court to determine whether or not the officer
17 could have searched the car under Chimel, or Chimel.

18 QUESTION: Is there evidence in the case against
19 him, aside from the drugs they received, any significant
20 evidence? In other words, if you win your suppression
21 motion, is -- as a practical matter, is that the end of
22 this case?

23 MS. DODGE: Yes, it is.

24 QUESTION: All right.

25 MS. DODGE: There was nothing found on his

1 person.

2 QUESTION: All right. Well then, this, as a
3 practical matter, it's over.

4 MS. DODGE: Yes, sir.

5 QUESTION: It's either -- because you'll win the
6 Chimel issue, I would think.

7 MS. DODGE: I --

8 QUESTION: If he was in the house, I don't see
9 he's going to grab the --

10 MS. DODGE: I would hope so.

11 QUESTION: All right.

12 MS. DODGE: Well, we believe that the contact
13 rule is a reasonable rule, even though it does -- it does,
14 admittedly, it expands Belton, but it's reasonable,
15 because the officer starts the person's thought processes,
16 adrenaline going the minute he starts saying, you know, I
17 would like to have contact with you.

18 There are officers on the street everywhere.
19 Not any of them is a threat to an individual unless the
20 officer is in pursuit of that individual, or has somehow
21 put him on notice that there's going to be some kind of
22 confrontation.

23 So I think it's a good balance to be struck
24 between the privacy rights of an individual in a vehicle
25 and in his containers, because Belton does -- it does

1 cover containers therein, very personal items. That would
2 be purses, brief cases, anything that's in the console,
3 any decorations or mail that you might happen to be
4 carrying from the post office -- if you picked it up at
5 your post office box, that might be carried in your car --
6 and so it's a good rule that protects both the officers
7 and the individual's right to privacy.

8 If there are no other questions --

9 QUESTION: Thank you, Ms. Dodge.

10 Mr. Krauss, you have 4 minutes remaining.

11 REBUTTAL ARGUMENT OF ROBERT J. KRAUSS

12 ON BEHALF OF THE PETITIONER

13 MR. KRAUSS: Thank you, Your Honor. I just want
14 to address very briefly the jurisdictional issue that
15 Justice Breyer raised.

16 It would be our point that, first of all, what
17 the Supreme Court of Florida has done has remanded to
18 determine whether the Chimel factors exist. That is a
19 question of fact. No matter how that is determined below,
20 the question of law that has been decided, the question of
21 Fourth Amendment interpretation made by the Florida
22 Supreme Court limiting this Court's Belton holding is
23 going to survive, and we therefore submit that this Court
24 certainly has jurisdiction. It's the final decision of
25 the highest court in the State, and it will not be

1 modified.

2 Lastly, I would just like to point out, at pages
3 31 and 32 of respondent's brief, they make a statement
4 that the danger arises to the officer at the moment that
5 contact is made with the arrestee. Well, in this case, as
6 in many cases that we've cited, that danger arises
7 regardless of the reason. Therefore, if the arrestee
8 voluntarily exits, it makes no -- there is no
9 constitutional distinction.

10 Thank you.

11 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Krauss.

12 The case is submitted.

13 (Whereupon, at 11:53 a.m., the case in the
14 above-entitled matter was submitted.)

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