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Balancing the Scales of Justice: How Will Vasquez v. State Affect Vehicle Searching Incident to Arrest in Wyoming

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COMMENT

BALANCING THE SCALES OF JUSTICE: How will *Vasquez v. State* Affect Vehicle Searches Incident to Arrest in Wyoming?

I. INTRODUCTION

The Fourth Amendment to the United States Constitution¹ presents a tension between the “interests . . . of individuals to be free from unreasonable government searches and seizures and the need to effectively discover, punish, and deter those engaged in criminal activity.”² The United States Supreme Court and state courts have determined that warrantless searches are per se unreasonable.³ This dictates that for searches to be reasonable, they must be conducted pursuant to a warrant. While the courts have developed exceptions to this “warrant requirement” for specific situations,⁴ these exceptions must be “narrowly con-

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1. The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. Carol A. Chase, Article, *Privacy Takes a Back Seat: Putting the Automobile Exception Back on Track after Several Wrong Turns*, 41 B.C. L. REV. 71, 96 (December, 1999) (citing *Katz v. United States*, 389 U.S. 347, 356 (1967)). See also *Agnello v. United States*, 269 U.S. 20, 33 (1925).

3. *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (“Time and again, this Court has observed that searches and seizures ‘conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.’ (citations omitted).”).

4. See generally Daniel A. Klein, Annotation, *Validity, Under Federal Constitution, Of Warrantless Search Of Motor Vehicle—Supreme Court Cases*, 89 L. ED. 2d 939 (1999). According to Klein:

The court appears to have treated each of the following situations as constituting an independent exception to the general rule requiring a search warrant: (1) the search was incident to a valid arrest [*see New York v. Belton*, 453 U.S. 454 (1981)], (2) there was probable cause for the search [*see Carroll v. United States*, 267 U.S. 132 (1925)], (3) the search was conducted in order to protect the safety of police officers or the general public [*see Michigan v. Long*, 463 U.S. 1032 (1983)], (4) the search involved an impounded motor vehicle [*see Cooper v. California*, 386 U.S. 58 (1967)], or (5) a valid consent to the search had been obtained [*see Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)]. Moreover, the Supreme Court has concluded that

strued" to be reasonable under Fourth Amendment standards."⁵ This comment focuses on one of these exceptions, the "search incident to lawful arrest."

First recognized by the United States Supreme Court in *Weeks v. United States*, the search incident to lawful arrest exception originally focused on the search of a person arrested and not the area where the arrest occurred.⁶ In the eighty-plus years following *Weeks*, the search incident to arrest exception has gone through a tortured evolution resulting in controversy regarding how best to balance the competing interests of the individual and the government. Throughout search and seizure jurisprudence, the Court has recognized Fourth Amendment implications and emphasized that searches under the incident to arrest exception must be "reasonable."⁷ However what defines "reasonable" has been the subject of innumerable federal and state cases and has led to a variety of interpretations.

In 1981, in *New York v. Belton*, the United States Supreme Court redefined when a search of a vehicle incident to the lawful arrest of the driver is constitutionally reasonable. The Court held that authority for an officer to search the passenger compartment of a vehicle is inherent to such an arrest.⁸ This decision effectively did away with the previously recognized rationale for a search incident to arrest of the driver of a vehicle: the preservation of evidence and assurance of officer safety.⁹

Several states have limited or rejected the bright-line rule estab-

a mere observation of objects in "plain view" in an automobile does not constitute a "search" at all and therefore does not require a search warrant [see *Harris v. United States*, 390 U.S. 234 (1968)] (citations added).

Id.

5. *New York v. Belton*, 453 U.S. 454, 464 (1981) (Brennan, J., and Marshall, J., dissenting) ("It has long been a fundamental principle of Fourth Amendment analysis that exceptions to the warrant requirement are to be narrowly construed.") (citing *Arkansas v. Sanders*, 442 U.S. 753, 759-60 (1979); *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978); *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *Vale v. Louisiana*, 399 U.S. 30, 34 (1970); *Katz v. United States*, 389 U.S. 347, 357 (1967); *Jones v. United States*, 357 U.S. 493, 499 (1958)).

6. 232 U.S. 383 (1914).

7. See generally *United States v. Rabinowitz*, 339 U.S. 56 (1950); *Chimel v. United States*, 395 U.S. 752 (1969); *United States v. Robinson*, 414 U.S. 218, 235 (1973); *United States v. Edwards*, 415 U.S. 800 (1974); *United States v. Chadwick*, 433 U.S. 1 (1977).

8. *Belton*, 453 U.S. at 460 ("[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.").

9. See *Chimel v. United States*, 395 U.S. 752 (1969).

lished by the *Belton* holding.¹⁰ Relying on their state constitutions, these states have chosen to afford their citizens greater protection from unreasonable search and seizure than is provided by the *Belton* interpretation of the Fourth Amendment. In *Vasquez v. State*, the Wyoming Supreme Court exhibited renewed independence when it joined the ranks of those states that have limited the *Belton* rule.¹¹

This comment begins by outlining the history of the search incident to arrest exception. It then proceeds to analyze the *Vasquez* decision and its impact upon the validity and scope of vehicle searches incident to arrest in Wyoming. Next, it proposes reasonable limitations regarding such searches based on evidentiary and safety rationales as established in recent Wyoming case law. This comment supports the adoption of a probable cause standard for searches of vehicles for evidence incident to lawful arrest of the operator and a reasonable suspicion standard for searches relating to safety issues. The searches must also be reasonable under the "totality of the circumstances" test.

II. EVOLUTION OF THE SEARCH INCIDENT TO ARREST—FEDERAL LAW

A. *History of Search Incident to Arrest*

At the time the Bill of Rights was adopted, a warrantless search incident to a valid arrest was an accepted practice in the United States.¹² Nonetheless, the scope and applicability of such searches has been the subject of "dispute and inconsistent application in the Supreme Court" for over eighty years.¹³ The United States Supreme Court first approved the warrantless search in 1914. However, this approval was only directed toward the search of a person, not the place or area in which he was arrested.¹⁴ Eleven years later, in *Carroll v. United States*, the scope of

10. See *Vasquez v. State*, 990 P.2d 476 (Wyo. 1999); *State v. Hernandez*, 410 So.2d 1381, 1385 (La. 1982); *State v. Giron*, 943 P.2d 1114, 1121 (Utah App. 1997); *Commonwealth v. Toole*, 448 N.E.2d 1264, 1266-68 (Mass. 1983); *State v. Pierce*, 642 A.2d 947, 960 (N.J. 1994); *People v. Blasich*, 541 N.E.2d 40, 44-45 (N.Y. 1989); *State v. Gilberts*, 497 N.W.2d 93, 97 (N.D. 1993); *State v. Brown*, 588 N.E.2d 113, 114-15 (Ohio 1992), *cert. denied*, 506 U.S. 862 (1992); *State v. Kirsch*, 686 P.2d 446, 448-49 (Ore. App. 1984).

11. *Vasquez*, 990 P.2d 476 (Wyo. 1999).

12. STEPHEN A. SALTZBURG & DANIEL J. CAPRA, *AMERICAN CRIMINAL PROCEDURE* 223 (5th ed. 1996).

13. *Id.*

14. *Weeks v. United States*, 232 U.S. 383, 392 (1914) (There is a "right on the part of the Government, always recognized under English and American Law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime.").

search incident to arrest was broadened to include the place where the arrest occurred.¹⁵ The *Carroll* Court determined that, “[w]hen a man is legally arrested for an offense, whatever is found upon his person or *in his control* which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution.”¹⁶ While the Court reaffirmed the search incident to arrest doctrine several months later in *Agnello v. United States*,¹⁷ it did not define the phrase “in his control” until nearly forty-five years later.¹⁸

In *Marron v. United States*, the Court differentiated between what is constitutionally reasonable when a search is performed pursuant to a valid search warrant and when a search is performed incident to arrest.¹⁹ However, the language of the opinion resulted in confusion regarding when, and to what extent, a search incident to arrest could be conducted.²⁰ This confusion was not clarified until the Court handed down its decisions in *Go-Bart Importing Co. v. United States*²¹ and *United States v. Lefkowitz*.²² In *Go-Bart*, the Court explained that it was the search warrant in *Marron* which allowed the officers to legally access areas outside the immediate control of the suspect, and it was this legally authorized access that ultimately resulted in evidence becoming “visible and accessible and in the offender’s immediate custody.”²³ In *Go-Bart*, the Court determined that the search of a desk and safe without

15. *Carroll v. United States*, 267 U.S. 132, 158 (1925) (“When a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution.”).

16. *Id.* (emphasis added).

17. 269 U.S. 20, 30 (1925). According to the Court:

The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted.

Id.

18. See *Chimel v. United States*, 395 U.S. 752 (1969).

19. *Marron v. United States*, 275 U.S. 192, 193-94 (1927). Officers had a valid warrant to search for intoxicating liquor. While lawfully executing the search warrant, officers observed the proprietor operating an establishment for “retailing and drinking liquor” and placed him under arrest. *Id.* The seizure of ledgers detailing the retailing of liquor was deemed reasonable as a search incident to arrest because the officers had authority, through the search warrant, to examine the closet for liquor. *Id.*

20. *Id.* at 199 (“[The officers] had a right without a warrant contemporaneously to search the place in order to find and seize things used to carry on the criminal enterprise.”).

21. 282 U.S. 344 (1931).

22. 285 U.S. 452 (1932).

23. *Go-Bart*, 282 U.S. at 358.

a valid warrant extended beyond the scope authorized by a search incident to arrest.²⁴ The Court reaffirmed this decision in *Lefkowitz* when it determined that the search of desk drawers and a cabinet, without a search warrant, exceeded the limitations of the exception.²⁵

Controversy regarding the scope of searches made incident to arrest resurfaced fifteen years later, when the Court made two decisions that appeared to be in direct conflict with each other.²⁶ In *Harris v. United States*, the Court determined that the search of an entire four-room apartment was reasonable under the search incident to arrest doctrine.²⁷ In *Trupiano v. United States*, the Court held that where officers had ample opportunity to obtain a search warrant prior to a raid, failure to do so rendered a search incident to arrest unlawful.²⁸ The Court finally addressed the problem it had created in these two decisions twenty-five years later, in *United States v. Rabinowitz*.²⁹ The Court stated "the right 'to search the place where the arrest is made in order to find and seize things connected with the crime . . . ' is lawful without a warrant."³⁰ The Court rejected *Trupiano* and set out a new test in which the court must determine if the search itself was reasonable, not whether it was reasonable for officers to procure a search warrant.³¹

Realizing that there was still confusion surrounding the proper application of the search incident to arrest exception, the Court established parameters under which such a search would be constitutionally reasonable in *Chimel v. United States*.³² Condemning the search of an entire residence incident to arrest, the Court stated, "[n]o consideration relevant to the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the areas from which the

24. *Id.*

25. *Lefkowitz*, 285 U.S. at 465.

26. *Harris v. United States*, 331 U.S. 145 (1947); *Trupiano v. United States*, 334 U.S. 699 (1948).

27. *See Harris*, 331 U.S. 145.

28. *Trupiano*, 334 U.S. at 702. On information received long before a raid was made, that an illegal still was being operated on certain property, a Federal agent, present with the consent of the property owner, noticed when approaching a building on the property the odor of fermenting mash and the sound of a gasoline motor, and on moving closer saw a still column, a boiler, and a gasoline pump in operation and also one of the petitioners bending down near the pump, whereupon he entered the building, placed the petitioner under arrest, and seized the illicit distillery. *Id.*

29. 339 U.S. 56, 58 (1973). Here, officers arrested a suspect on a warrant for dealing stamps with forged overprints and subsequently "searched the desk, safe, and file cabinets in the office for about an hour and a half" seizing numerous items as evidence. *Id.*

30. *Id.* at 61.

31. *Id.* at 66.

32. *Chimel v. United States*, 395 U.S. 752 (1969).

person arrested might obtain weapons or evidentiary items."³³ Thus, incident to a lawful arrest, an officer may only search the person of the subject arrested and the area within that subject's immediate control—the area in which the subject may reach a weapon or evidence of the crime.³⁴ The Court emphasized the principles of *Terry v. Ohio*,³⁵ stating, "[t]he scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation possible."³⁶ Throughout the *Chimel* decision, the Court focused on whether the search was reasonable or not, noting, "facts and circumstances must be viewed in the light of established Fourth Amendment principles."³⁷ The Court also stated that for a search to be reasonable, it must meet the immediate control test.³⁸ In so limiting the scope of search incident to arrest, the Court quoted Judge Learned Hand when he compared limitless authority for search incident to arrest to the general warrants of old.³⁹

The Supreme Court further clarified the limitations of a search incident to a lawful arrest in *United States v. Robinson*.⁴⁰ In *Robinson*, the Court established a bright-line rule that a person lawfully arrested may always be searched for weapons or evidence.⁴¹ The Court stated that a law enforcement officer need not have reason to believe that there may be evidence of the crime on the person, nor that the person may possess

33. *Id.* at 766.

34. *Id.* at 770 (White, J., dissenting).

35. *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

36. *Chimel*, 395 U.S. at 762.

37. *Id.* at 765.

38. *Id.* at 766-68. According to the Court:

No consideration relevant to the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person was arrested. . . . Application of sound Fourth Amendment principles to the facts of this case produces a clear result. The search here went far beyond the petitioner's person and the area from within which he may have obtained either a weapon or something that could have been used as evidence against him. There is no constitutional justification, in the absence of a search warrant, for extending the search beyond that area.

Id.

39. *Id.* at 767-68 (quoting *United States v. Kirschenblatt*, 16 F.2d 202, 203 (2nd Cir. 1926)). In *Kirschenblatt*, the court stated:

After arresting a man in his house, to rummage at will among his papers in search of whatever will convict him, appears to us to be indistinguishable from what might be done under a general warrant; indeed, the warrant would give more protection, for presumably it must be issued by a magistrate.

Kirschenblatt, 16 F.2d at 203.

40. 414 U.S. 218 (1973).

41. *Id.* at 226 (citing *Harris v. United States*, 331 U.S. 145 (1947); *United States v. Rabinowitz*, 339 U.S. 56 (1950)).

an object that could be a threat to the officer's safety.⁴² The right to search a person who has been lawfully arrested is inherent to the arrest itself.⁴³

B. Differentiating Automobiles

In 1925, the United States Supreme Court recognized that automobiles, because of their inherent mobility, create unique problems for law enforcement.⁴⁴ This resulted in the development of the automobile exception to the warrant requirement and a broadening of the scope and application of the search incident to arrest doctrine as it applies to automobiles. The Court held that a search of an automobile, upon probable cause to believe the automobile contains contraband, is constitutionally reasonable without a warrant.⁴⁵ This holding was due, at least in part, to the Court's determination that a person has a lesser expectation of privacy in an automobile than in a residence.⁴⁶

The inherent mobility of an automobile led the Court in *United States v. Robinson* to broaden the scope of a search incident to the arrest

42. *Id.* at 225.

43. *See id.*

44. *Carroll v. United States*, 267 U.S. 132, 153 (1925). According to the Court:

[T]he Fourth Amendment has been construed, practically since the beginning of government as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Id.

45. *Id.* at 146. According to the Court:

On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.

Id. *See also* *Chambers v. Maroney*, 399 U.S. 42 (1970) (“[A]utomobiles and other conveyances may be searched without a warrant in circumstances that would not justify the search without a warrant of a house or an office, provided that there is probable cause to believe that the car contains articles that the officer are entitled to seize.”).

46. *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (“The search of an automobile is far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building.”).

of the driver to include the passenger compartment of the vehicle.⁴⁷ However, until *Belton*, the search incident to the arrest doctrine required that the evidentiary or safety standards as set out in *Chimel* be met before such a search could be performed.⁴⁸

In 1981, the United States Supreme Court decided the case of *New York v. Belton*.⁴⁹ In that case, a police officer stopped a car for a traffic violation and smelled marijuana.⁵⁰ The officer noticed an envelope on the floor of the vehicle labeled "supergold," which he associated with marijuana.⁵¹ The officer removed the driver and three passengers from the vehicle, searched them, placed them under arrest, and searched the vehicle.⁵² In a zipped jacket pocket, he found cocaine.⁵³

In *Belton*, the United States Supreme Court addressed two concerns of law enforcement regarding vehicle searches incident to lawful arrest of the driver.⁵⁴ The first concern was the scope of the search.⁵⁵ The second was under what circumstances such a search could be performed, or when the doctrine becomes applicable.⁵⁶ In addressing these concerns, the Court re-emphasized and extended the *Robinson* holding. First, the *Belton* Court held that an officer, incident to lawful arrest of the driver, can search the entire passenger compartment of the vehicle.⁵⁷ The Court also extended the bright-line rule promulgated in *Robinson*, holding that the search of an automobile is inherent to lawful arrest of the driver and

47. 414 U.S. 218, 224 (1973).

48. *Chimel v. United States*, 395 U.S. 752, 768 (1969). Incident to lawful arrest, an officer may search "the area from within which [the person arrested may] have obtained either a weapon or something that could have been used as evidence against him." *Id.*

49. 453 U.S. 454 (1981).

50. *Id.* at 455-56.

51. *Id.*

52. *Id.*

53. *Id.* at 456.

54. *Id.* at 459-60.

55. *Id.* at 459.

56. *Id.* at 460.

57. *Id.* at 460-61. The Court stated:

Accordingly we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest search the passenger compartment of that automobile. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment. . . . Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have. (footnotes omitted).

Id.

requires no further justification.⁵⁸ The Court concluded that such a search is reasonable under the Fourth Amendment of the United States Constitution regardless of whether or not there are safety or evidentiary concerns present at the time of arrest.⁵⁹

Joining several other states, Wyoming, in the case of *Vasquez v. State*, declined to adopt this broadening of the applicability of the search incident to arrest doctrine.⁶⁰ In doing so, the Wyoming Supreme Court held that the Wyoming Constitution requires that the search be reasonable under the totality of the circumstances and evidentiary or safety concerns must exist at the time of the arrest.⁶¹

III. REASONABLENESS OF SEARCHES AS INTERPRETED BY THE WYOMING SUPREME COURT

The Wyoming Supreme Court does not have a long history of independent state constitutional interpretation.⁶² Wyoming had "all but abandoned independent analysis of the state constitutional provision" regarding search and seizure in the 1920s and 1930s.⁶³ This was primarily due to the United States Supreme Court's increased concern with individual rights and the imposition of the requirement that the states must recognize its Fourth Amendment protections.⁶⁴ However in recent

58. *Id.* at 467 ("Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of a that arrest, search the passenger compartment of that automobile.").

59. *Id.*

60. 990 P.2d 476 (Wyo. 1999).

61. *Id.* at 488-89. According to the Court:

Article 1, § 4 allows searches incident to arrest and can be said to allow automobile searches because arrestees had possession of it, and the arrest authorizes law enforcement to search it for evidence related to the crime. The provision requires, however, that searches be reasonable under all of the circumstances. . . . In this particular case, we believe that the arrest justified a search of the passenger compartment of the vehicle and all containers in it, open or closed, locked or unlocked, for evidence related to the crime and for weapons or contraband which presented an officer or a public safety concern.

Id.

62. *Id.* at 483.

63. *Id.*

64. *Id.* at 484. The Court stated:

This practice was essentially required in order to comply with the Supreme Court's expansive protection provided to individual rights during the 1960s and 1970s, enforced by the Supreme Court's mandate that states comply with its interpretations of the minimum Fourth Amendment protections offered or have the exclusionary rule imposed (citation omitted).

years, there has been a divergence between what the United States Supreme Court has determined as the limits to individual rights in the nation, and what Wyoming Supreme Court Justices perceive those limits should be for Wyoming citizens.⁶⁵ Recent decisions indicate that the Wyoming Supreme Court may be taking a stand for increased individual rights.⁶⁶ This attitude toward increased protection of individual rights in regard to search incident to arrest reached a crescendo in the case of *Vasquez v. State*.

In *Vasquez*, the Wyoming Supreme Court rejected the *Belton* rule by interpreting the Wyoming Constitution to provide the citizens of Wyoming more protection against search and seizure than its federal counterpart.⁶⁷ However, the court did not explain the extent of this decision.⁶⁸ It is therefore necessary to examine the history and development of "reasonableness" in Wyoming as it relates to search and seizure in order to determine the consequences of this decision.

A. *The History of Reasonableness in Wyoming*

In 1920, the Wyoming Supreme Court first acknowledged that the Wyoming Constitution provides more protection against unreasonable search and seizure than its federal counterpart.⁶⁹ The court also recognized the right of an officer to seize from a subject under arrest, property connected with the crime and found on the subject's "person or possession."⁷⁰ Possession was loosely defined as what a subject has on his person and "other things that he carries about with him."⁷¹ In *State v.*

Id.

65. See generally *Vasquez*, 990 P.2d 476. See also *Houghton v. State*, 956 P.2d 363 (Wyo. 1998), *rev'd*, *Wyoming v. Houghton*, 526 U.S. 295 (1999).

66. *Vasquez*, 990 P.2d 476.

67. *Id.* at 483.

68. *Id.* at 489.

69. *State v. Peterson*, 194 P. 342, 346 (Wyo. 1920).

70. *Wiggin v. State*, 206 P. 373, 376 (Wyo. 1922). According to the court:

[A]n officer has the right to search the party arrested and take from his person and from his possession property reasonably believed to be connected with the crime, and the fruits, means, or evidences thereof, and he may take and hold them to be disposed of as the court directs.

Id.

71. *Id.* The court explained:

What is meant by 'possession' of defendant in this connection is not entirely clear. There is no doubt whatever under the authorities that, if the property of the kind mentioned above is in the immediate possession of the defendant, it may, after lawful arrest of the defendant, be seized. Thus not alone what a defendant has on his per-

George however, the court cautioned that evidence seized without a warrant and under circumstances that do not fall within one of the recognized exceptions to the warrant requirement, or “unreasonably,” in many cases has the same effect as having one testify against oneself.⁷²

The Wyoming Supreme Court’s definition of a reasonable search was soon extended to consensual searches.⁷³ The court found a search based upon consent to be reasonable as long as it was shown by clear and positive testimony that consent was given and that such consent was voluntary.⁷⁴ The search of an automobile upon probable cause was also deemed reasonable under the Wyoming Constitution.⁷⁵ However, the court made it clear that in all searches in which no warrant has been issued, the burden was upon the state to show that the search was reasonable.⁷⁶

In *Gilkson v. State*, the Wyoming Supreme Court revisited the automobile search and addressed the difference between the search of a vehicle and that of a home:

[T]he distinction that has always been observed in the laws of the United States between a home and vehicles, and that, while no search and seizure without a warrant in a home is permitted, a search of an automobile without a warrant, authorized by law, cannot be said to be unreasonable under all circumstances.⁷⁷

The court subsequently adopted the automobile exception, holding that in cases where there is probable cause to believe that there is contraband in a vehicle, the test is “whether or not under the circumstances present

son, but also his hand bags, sacks, and other things that he carries about with him, if of evidentiary value, may be thus seized. . . . Nor can there be any doubt that, where property of that character is, at a place to which lawful access has been obtained, visible to the officer, ready to be taken, he may, upon the lawful arrest of the defendant, seize and take it into his possession.

Id.

72. *State v. George*, 231 P. 683, 685 (Wyo. 1924) (quoting *State v. Slamon*, 50 A. 1097 (Vt. 1901) (“The seizure of a person’s private property to be used in evidence against him is equivalent to compelling him to be a witness against himself and in a prosecution for a crime is within the constitutional prohibition.”)).

73. *Tobin v. State*, 255 P. 788 (Wyo. 1927).

74. *Id.* (“[E]vidence obtained by search can only be used where the testimony clearly shows that the consent was really voluntary and with a desire to invite search, and not done merely to avoid resistance.”).

75. *See State v. Kelly*, 268 P. 571, 572 (Wyo. 1928); *State v. Young*, 281 P. 17, 20 (Wyo. 1929).

76. *State v. Munger*, 4 P.2d 1094, 1095 (Wyo. 1931).

77. 404 P.2d 755, 759 (Wyo. 1965).

in the case a man of prudence and caution would have had reason to believe" evidence of a crime is located in the vehicle.⁷⁸ The court extended this test to searches incident to the arrest of the driver of a vehicle in *Whiteley v. State*.⁷⁹ There the court said, "the validity of a [vehicle] search without a warrant as incident to an arrest turns upon reasonableness under *all* the circumstances and not upon practicality of procuring a search warrant."⁸⁰

The scope of a search incident to arrest was examined in *Belondon v. City of Casper*.⁸¹ In *Belondon*, the court held that it was reasonable for an officer to seize the property of a business believed to be connected to a crime, where the officer was in a place to which lawful access had been obtained.⁸² The court, emphasizing the *Wiggin* holding, noted:

It is undisputed in the evidence that defendant had already been arrested on the two charges we are now considering, and the search and seizure complained of was incident to such arrest. . . . It is clear from the record in the instant case that the police were voluntarily admitted by defendant, and there is no claim they did not have lawful access to the rooms where the property was found. The rule we have referred to from the *Wiggin* case is still good law in this jurisdiction. It has been followed quite recently⁸³

Realizing that it was next to impossible to create an exact definition of reasonableness, the Wyoming Supreme Court, in *Jesse v. State*, recognized a need to examine each case, balancing the "public interest in question against the invasion of personal rights the search calls for."⁸⁴ Citing *Bell v. Wolfish*, the court held that in balancing these interests the court "must probe the scope of the particular intrusion, the manner in which it is carried on, the justification for its initiation, and the place in

78. *Id.*

79. 418 P.2d 164, 167 (Wyo. 1966).

80. *Id.* (emphasis added).

81. 456 P.2d 238, 241 (Wyo. 1969). According to the court:

With respect to what is meant by 'possession' in this connection, Justice Blume went on to say, where property of evidentiary value is at a place to which lawful access has been obtained, the officer may upon the lawful arrest of defendant seize and take the property into his possession.

Id.

82. *Id.*

83. *Id.*

84. 640 P.2d 56, 61 (Wyo. 1982).

which it is conducted.”⁸⁵ The court cautioned that there must be a balance, and that the constitution should not be stretched to provide more individual rights than the constitution intended.⁸⁶ Neither can the Wyoming Constitution be limited so as to provide more power to police than was intended. An officer may not use an “arrest on a minor offense as a means to engage in an overbroad search [incident to arrest in an effort] to uncover evidence of an unrelated offense.”⁸⁷

In *Roose v. Wyoming*, the Wyoming Supreme Court adopted the standard set out in *Chimel v. California*, holding it reasonable for an officer to search areas incident to arrest where the person arrested “might gain possession of a weapon or destructible evidence.”⁸⁸

In *Saldana v. State*, the Wyoming Supreme Court reiterated that in determining whether a search is reasonable, it is necessary to find “a balance between the interest of the state in protecting its citizens from the criminal conduct of others and its interest in preserving the freedom of the individual from overly intrusive governmental invasion.”⁸⁹ As long as a search does not invade a legitimate expectation of privacy to the extent that it invokes the protections of the Fourth Amendment or Article 1 Section 4 of the Wyoming Constitution,⁹⁰ the search must be unreasonable to be unconstitutional.⁹¹ Whether a search is reasonable is determined by the totality of the circumstances surrounding each case.⁹²

The Wyoming Supreme Court and the United States Supreme Court have developed divergent views of what is “reasonable” in regard to a vehicle search incident to arrest. One of the most interesting and

85. *Id.* (citing *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

86. *Id.* at 62 (“The theme . . . is also found in *State v. George* where it was said that to say an examination is invalidly made at a place where an officer has a right to be would unreasonably stretch the constitutional provision invoked.”).

87. *Brown v. State*, 738 P.2d 1092, 1097 (Wyo. 1987).

88. 759 P.2d 478, 482 (Wyo. 1988) (quoting *Chimel v. California*, 395 U.S. 752, 762-63 (1969)).

89. 846 P.2d 604, 610 (Wyo. 1993).

90. WYO. CONST. art. I, § 4. Security against search and seizure. “The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized.” *Id.*

91. *Saldana*, 846 P.2d at 611.

92. *Gronski v. State*, 910 P.2d 561, 564 (Wyo. 1996) (“Reasonableness is determined by all the circumstances of each case.”). *See also* *Brown v. State*, 944 P.2d 1168, 1172 (Wyo. 1997) (quoting *United States v. Perdue*, 8 F.3d 1455, 1462 (10th Cir. 1993) (“The intrusiveness of a search or seizure will be upheld if it was reasonable under the totality of the circumstances.”)).

relevant cases illustrating this divergence, both as to the scope and applicability of a vehicle search incident to arrest, is *Houghton v. State*.⁹³ From *Houghton*, an inference can be made that the Wyoming Supreme Court would hold that the state constitution provides greater protections under Art. I, Section 4, than its federal counterpart. However, because the defendant in *Houghton* did not make a Wyoming constitutional argument, the court did not rule on the issue.⁹⁴ The Wyoming Supreme Court decided that, under the Fourth Amendment to the United States Constitution, it was unreasonable for an officer to search a purse located in the back seat of a vehicle when the owner of the purse was unknown, even though the officer had probable cause to believe there was contraband in the vehicle.⁹⁵ The court stated, “[w]here the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person.”⁹⁶ The United States Supreme Court disagreed and overruled the Wyoming court’s interpretation, stating that the search was reasonable under the Fourth Amendment, and that probable cause was not required.⁹⁷ The United States Supreme Court held that the government’s interests in searching the belongings of the passenger of a vehicle was stronger than the expectation of privacy of the passenger due to the decreased expectation of privacy in a vehicle.⁹⁸

93. *Houghton v. State*, 956 P.2d 363 (Wyo. 1998), *rev’d*, *Wyoming v. Houghton*, 526 U.S. 295 (1999).

94. *Houghton*, 956 P.2d at 366 (“General seizures are prohibited; all searches must be supported by probable cause to believe evidence of a crime will be found.”). According to the court:

WYO. CONST. art. I, § 4 is “somewhat stronger than its federal counterpart, in that under our Wyoming Constitution it is mandatory that the search warrant be issued upon an affidavit.” *Hall*, 911 P.2d at 1368. Although *Houghton*’s claims rely on both federal and state constitutional mandate, she does not distinguish the protection afforded by the Wyoming Constitution from that of its federal counterpart.

Id. at n.2. See also *Gronski*, 910 P.2d 561 (Wyo. 1996), where the court stated:

[I]n recent cases, invitations to independently interpret the state provision, unaccompanied by appropriate constitutional analysis, have been rejected. *Guerra v. State*, 897 P.2d 447, 451 (Wyo. 1995); *Saldana v. State*, 846 P.2d at 612; *Goettl v. State*, 842 P.2d 549, 557 (Wyo. 1992). . . . Until appropriate state constitutional analysis is presented, an invitation that we should expand the rights protected by the state constitution beyond the protection provided by the federal constitution will not receive the court’s attention. *Goettl*, 842 P.2d at 557.

Gronski, 910 P.2d at 566.

95. *Houghton v. State*, 956 P.2d 363, 370-71 (Wyo. 1998).

96. *Id.* at 367 (quoting *Ybarra v. Illinois*, 444 U.S. 85 (1979)).

97. *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999).

98. See *id.*

B. Automobile Searches

As previously stated, Wyoming differentiates between the search of an automobile and the search of a residence, based both on a vehicle's inherent mobility and a person's decreased expectation of privacy in a vehicle.⁹⁹ Both the United States Supreme Court and the Wyoming Supreme Court have concluded that a warrant is not required for the search of a vehicle when there is probable cause to believe that there is contraband in the vehicle.¹⁰⁰

In *Lopez v. State*, the Wyoming Supreme Court addressed the scope of an automobile search made incident to arrest of the driver.¹⁰¹ Quoting *Belton v. New York*, the court held that it was reasonable for a search incident to arrest to include the entire passenger compartment of a vehicle.¹⁰² Although the *Lopez* court adopted the *scope* of a vehicle search incident to arrest of the driver as defined in *Belton*, it did not address the *applicability* of such a search and the validity of the bright-line rule established in *Belton*.¹⁰³

The Wyoming Supreme Court has consistently held that for a search incident to arrest to be reasonable there must be articulable safety or evidentiary reasons for the search.¹⁰⁴ The applicability of the search incident to arrest doctrine, as it applies to the driver of a vehicle in Wyoming was addressed in *Vasquez v. State*.¹⁰⁵ The court determined that the *Belton* bright-line rule overextended the definition of what is a reasonable search incident to arrest in that it allows for a search of a vehicle when there is no legitimate evidentiary or safety concern.¹⁰⁶ In making this decision, Wyoming joined the ranks of states that have rejected the *Belton* rule.

99. See *Gilkison v. State*, 404 P.2d 755, 757-58 (Wyo. 1965); *Neilson v. State*, 599 P.2d 1326 (Wyo. 1979).

100. *Gilkison*, 404 P.2d 755, 757-58.

101. 643 P.2d 682 (Wyo. 1982).

102. *Id.* at 685.

103. See *id.*

104. See *State v. Peterson*, 194 P. 342 (Wyo. 1920); *Wiggin v. State*, 206 P. 373 (Wyo. 1922); *State v. Kelly*, 268 P. 571 (Wyo. 1928); *State v. Young*, 281 P. 17 (Wyo. 1929); *State v. Munger*, 4 P.2d 1094 (Wyo. 1931); *Gilkison v. State*, 404 P.2d 755 (Wyo. 1965); *Whiteley v. State*, 418 P.2d 164 (Wyo. 1966); *Neilson v. State*, 599 P.2d 1326 (Wyo. 1979); *Lopez v. State*, 643 P.2d 682 (Wyo. 1982); *Roose v. State*, 759 P.2d 478 (Wyo. 1988).

105. 990 P.2d 476 (Wyo. 1999).

106. *Id.* at 489.

IV. OTHER STATES' LIMITATIONS TO THE BELTON RULE

New York v. Belton sparked marked controversy not only in Wyoming, but in several other states as well.¹⁰⁷ This was due to what has been called a "dramatic lowering of federal standards."¹⁰⁸ Although most state courts follow the doctrines established by the United States Supreme Court,¹⁰⁹ state courts can, and several do, interpret their own constitutions to afford greater protections, "particularly in the legal contexts of criminal procedure" and "right to privacy."¹¹⁰ As the Washington Supreme Court pointed out in *Washington v. Chrisman*: "[t]he federal constitution only provides minimum protection of individual rights. Accordingly, it is well established that decisions from the federal courts 'do not limit the right of state courts to accord . . . greater rights.'"¹¹¹ In *Abbate v. United States*, the Supreme Court noted that "the States under our federal system have the principal responsibility for defining and prosecuting crimes."¹¹²

The interstitial model of interpretation and application of state constitutional provisions was well articulated by Justice Stevens in his concurring opinion in the case of *Massachusetts v. Upton*.¹¹³

The right question is not whether a state's guarantee is the same as or broader than its federal counterpart as interpreted by the Supreme Court. The right question is what the state's guarantee means and how it applies to the case at hand. The answer may turn out the same as it would under federal law. The state's law may prove to be more protective than federal law. The state law also may be less protective. In that case the court must go on to

107. See *Vasquez v. State*, 990 P.2d 476 (Wyo. 1999); *State v. Hernandez*, 410 So.2d 1381, 1385 (La. 1982); *State v. Giron*, 943 P.2d 1114, 1121 (Utah App. 1997); *Commonwealth v. Toole*, 448 N.E.2d 1264, 1266-68 (Mass. 1983); *State v. Pierce*, 642 A.2d 947, 960 (N.J. 1994); *People v. Blasich*, 541 N.E.2d 40, 44-45 (N.Y. 1989); *State v. Gilberts*, 497 N.W.2d 93, 97 (N.D. 1993); *State v. Brown*, 588 N.E.2d 113, 114-15 (Ohio 1992), *cert. denied*, 506 U.S. 862 (1992); *State v. Kirsch*, 686 P.2d 446, 448-49 (Ore. App. 1984).

108. Catherine Hancock, Comment, *State Court Activism And Search Incident To Arrest*, 68 VA. L. REV. 1085, 1128 (1982).

109. *Id.* ("This reluctance to reject United States Supreme Court decisions may be due, in part, to the fact that state courts are unaccustomed to what some commentators view as the state courts 'new leadership role.'").

110. Scott Carbone, Note, *The Unreasonable Expectation Of Privacy: The "New" New Jersey Supreme Court Reevaluates State Constitutional Protections*, 30 SETON HALL L. REV. 361, 389 nn.3-4 (1999).

111. 676 P.2d 419, 422 (1984) (citation omitted).

112. 359 U.S. 187, 195 (1957).

113. 466 U.S. 727.

decide the claim under federal law, assuming it has been raised.¹¹⁴

While states recognize that interpretation of their own constitution may allow for broader protections of individual rights,¹¹⁵ only ten have interpreted their constitution as rejecting the *Belton* rule.¹¹⁶ Of the states specifically rejecting *Belton*, the lack of probable cause for the search is the greatest concern. The Louisiana Supreme Court, in rejecting the *Belton* rule, stated that "even if *Belton* weren't distinguishable from the instant case, a search without probable cause violates the Louisiana Constitution."¹¹⁷

Other states have employed similar rationale to reject the *Belton* rule. In *State v. Pierce*, the New Jersey court noted that "in the context of arrests for motor-vehicle violations, the bright-line *Belton* holding extends the *Chimel* rule beyond the logical limits of its principle."¹¹⁸ In *People v. Blasich*, the New York Court of Appeals held, "the proper in-

114. *Id.* at 738-39 (1984) (Stevens, J., dissenting) (quoting Hans A. Linde, Article, *E Pluribus—Constitutional Theory And State Courts*, 18 GA L. REV 165, 179 (1984)).

115. *See State v. Wilkins*, 692 A.2d 1233, 1241 (Conn. 1997) ("It is well established that federal constitutional . . . law establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights. . . .") (quoting *State v. Oquendo*, 613 A.2d 1300 (1992)). *See also State v. Ortiz*, 683 P.2d 822, 825 n.2 (Haw. 1984) ("In *Kaluna*, however, we noted that then article I, section 5 (now Article I, section 7) of our Hawaii constitution may in some instances extend greater protection against warrantless searches than the Fourth Amendment.") (quoting *State v. Kaluna*, 520 P.2d 51, 58-59 (Haw. 1974)).

116. *State v. Hernandez*, 410 So.2d 1381, 1385 (La. 1982); *Commonwealth v. Toole*, 448 N.E.2d 1264, 1266-68 (Mass. 1983); *State v. Pierce*, 642 A.2d 947, 960 (N.J. 1994); *People v. Blasich*, 541 N.E.2d 40, 44-45, 543 (N.Y. 1989); *State v. Greenwald*, 858 P.2d 36, 37 (Nev. 1993); *State v. Gilberts*, 497 N.W.2d 93, 97 (N.D. 1993); *State v. Brown*, 588 N.E.2d 113, 114-15 (Ohio 1992), *cert. denied*, 506 U.S. 862, (1992); *State v. Kirsch*, 686 P.2d 446, 448-49 (Ore. App. 1984); *Commonwealth v. White*, 669 A.2d 896, 908 (Pa. 1995); *State v. Stroud*, 720 P.2d 436, 440-41 (Wash. 1986); *State v. Giron*, 943 P.2d 1114, 1121 (Utah App. 1997). *See also Thomas v. State*, 761 So.2d 1010 (Fla. 1999) (limiting, but not rejecting *Belton*).

117. *Hernandez*, 410 So.2d at 1385 ("Although the *Belton* case is distinguishable and therefore inapplicable here, it should be noted that we do not consider it to be a correct rule of police conduct under our state constitution.").

118. 642 A.2d 947, 960 (N.J. 1994). Additionally, the court noted that on "several occasions this Court has determined that article I, paragraph 7 of our State Constitution affords greater protection against unreasonable searches and seizures than the federal Constitution affords." (citations omitted). *Id.* The court went on to "reject not the rationale of *Chimel*, but *Belton's* automatic application of *Chimel* to authorize vehicular searches following all arrests for motor-vehicle offenses." *Id.*

quiry in assessing the propriety of a *Belton* search is simply whether the circumstances gave the officer probable cause to search the vehicle."¹¹⁹

Ohio courts have addressed the issue of search incident to arrest on several occasions. Indicative of Ohio's position on the issue is the decision in *State v. Brown*, where the Ohio Supreme Court held, "[i]f *Belton* does stand for the proposition that a police officer may conduct a detailed search of an automobile solely because he has arrested one of its occupants, on any charge, we decline to adopt its rule."¹²⁰

In *State v. Stroud*, the Washington Supreme Court noted its dissatisfaction with the minimal protections afforded by the *Belton* rule.

If we were to decide this case merely by following United States Supreme Court precedent, the search of the car pursuant to this lawful arrest would clearly be valid. We decline to do so, however, based on our belief that our Washington State Constitution affords individuals greater protections against warrantless searches than does the Fourth Amendment.¹²¹

While state courts have utilized constitutional interpretation as a means of providing greater protections to their citizens, Massachusetts has legislated greater protections from search and seizure. In the case of *Commonwealth v. Toole*, officers performed a valid arrest based on an outstanding warrant for assault and battery.¹²² In the subsequent search of the defendant's truck, officers found and seized a gun.¹²³ In compli-

119. *People v. Blasich*, 541 N.E.2d 40, 45 (N.Y. 1989).

120. 588 N.E.2d 113, 115 (Ohio 1992), *cert. denied*, 506 U.S. 862 (1992). According to the court:

As Justice Stevens pointed out, this rule permits an extensive search based on facts that could never support a warrant because of the lack of probable cause. We do not believe that the certainty generated by a bright-line test justifies a rule that automatically allows police officers to search every nook and cranny of an automobile just because the driver is arrested for a traffic violation (citations omitted).

Id.

121. 720 P.2d 436, 439 (Wash. 1986). The court also stated:

[I]n recent cases, the United States Supreme Court has enlarged the narrow exceptions to the prohibition in the Fourth Amendment against warrantless searches. The effect has been to make lawful a warrantless search of a passenger compartment of a car, and all containers (luggage, paper bags, etc.) inside it, pursuant to a lawful custodial arrest. . . . The rationale for these decisions was that the exigencies of the situation surrounding a car search pursuant to a custodial arrest outweighed whatever privacy interests the driver and passengers had in the articles and containers in the car." (Citations omitted). *Id.* at 438.

122. 448 N.E.2d 1264, 1265-66 (Mass. 1983).

123. *Id.* at 1266.

ance with the relevant Massachusetts' statute, the court granted defendant's motion to suppress the gun, stating, "[t]he amendment requires searches only be undertaken to obtain evidence of the crime for which a person has been arrested."¹²⁴ The court went on to say that a blanket search is statutorily prohibited and that "it is difficult to conceive of what evidence of a simple assault and battery there could have been" in the cab of his truck.¹²⁵

In each of the aforementioned decisions, the courts interpreted their state constitutions to prevent searches extending beyond the basic principles of *Chimel*. Each of the courts held that their state constitution requires more than mere arrest of the driver to justify the search of a vehicle.

V. ANALYSIS

The Wyoming Supreme Court has determined that a warrantless search of a vehicle incident to the arrest of the driver must be reasonable under the totality of the circumstances and must include an articulable evidentiary or safety concern.¹²⁶ Rejecting the *Belton* rule, the court supported case-by-case analysis of the search to determine its reasonableness.¹²⁷ Wyoming case law supports a probable cause standard for evi-

124. *Id.* at 1267 n.3 (citing MASS. GEN. LAWS ANN. CH. 276 §1 (West 2000)). The statute reads in pertinent part:

A search conducted incident to an arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction or concealment; and removing any weapons that the arrestee might use to resist arrest or effect his escape. Property seized as a result of a search in violation of the provisions of this paragraph shall not be admissible in evidence in criminal proceedings.

MASS. GEN. LAWS ANN. CH. 276 §1 (West 2000).

125. *Id.* at 1266. According to the court:

By a 1974 amendment to G.L. c. 276, §1, . . . the Legislature adopted a statutory exclusionary rule concerning evidence seized during a search incident to an arrest. This rule requires the exclusion of evidence that the Supreme Court of the United States would not exclude in its implementation of the prohibition against unreasonable searches and seizures expressed in the Fourth Amendment to the United States Constitution.

Id.

126. *Vasquez v. State*, 990 P.2d 476, 489 (Wyo. 1999) ("The inherent mobility of automobiles in combination with officer and public safety concerns created when a driver or a passenger is arrested are exigent circumstances weighing in favor of not restricting the scope, timing, or intensity of such a search. ").

127. *Id.* ("This result eschews a bright-line rule and maintains a standard that requires a search be reasonable under all of the circumstances as determined by the judiciary. ").

dentiary searches and a reasonable suspicion standard where safety is a concern.

A. *The Road to Vasquez*

In *Lopez v. State*, the Wyoming Supreme Court held that a search of the passenger compartment of a vehicle incident to lawful arrest is reasonable.¹²⁸ However, in *Vasquez*, the court rejected the *Belton* rule and held that an automatic search of the passenger compartment of a vehicle incident to the arrest of the driver is not reasonable under the Wyoming Constitution absent articulable evidentiary or safety concerns.¹²⁹ By opting to retain a judicial determination over a bright-line rule, the confusion regarding the *Chimel* standard that *Belton* was intended to eradicate remains a concern for the Wyoming judicial system. In addressing the confusion, the *Belton* Court noted:

[A]lthough the principle that limits a search incident to a lawful custodial arrest may be stated clearly enough, courts have discovered the principle difficult to apply in specific cases. . . . [N]o straightforward rule has emerged from the litigated cases. . . . When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority.¹³⁰

However, the *Vasquez* court determined that the protection of individual rights on a state level should not acquiesce to bright-line rules meant to define minimal national constitutional protections.¹³¹

The Wyoming Supreme Court has addressed an officer's "scope of authority," and outlined when warrantless searches may be performed.¹³² The first step in determining the validity of a search incident

128. 643 P.2d 682, 685 (Wyo. 1982).

129. *Vasquez*, 990 P.2d at 489 ("[T]he arrest justified a search of the passenger compartment of the vehicle . . . for evidence related to the crime and for weapons or contraband which presented an officer or a public safety concern.").

130. *New York v. Belton*, 453 U.S. 454, 458-60 (1981).

131. *Vasquez*, 990 P.2d at 489 ("*Belton* clearly offers minimal protection against an unreasonable search and seizure in order to effectively apply to the vast, national citizenry with which the United States Supreme Court must be concerned. . . . but *Belton's* national citizenry rationale does not apply in Wyoming.").

132. *Morris v. State*, 908 P.2d 931, 935-36 (Wyo. 1995) (citing *Dickenson v. State*, 843 P.2d 606, 610 (Wyo. 1992)). According to the court:

[The] recognized exceptions to warrantless searches and seizures that may be in-

to arrest is to determine if the arrest has been lawfully made.¹³³ A lawful arrest is grounded in the standard of probable cause and is based on an objective look at the evidence in the record.¹³⁴ The second step is to determine if the search "amounted to a search which was incident to arrest."¹³⁵ To make this determination, the Wyoming court specifically applies the *Chimel* test, emphasizing the "immediate control" aspect.¹³⁶

A recent case which provides insight into Wyoming's position on the need for probable cause is *Houghton*. In *Houghton*, the court expressed concern about officers searching passengers of vehicles without any probable cause to have done so.¹³⁷ The court stated, "[a]fter review-

voked include: 1) search of an arrested suspect and the area within his control; 2) a search conducted while in hot pursuit of a fleeing suspect; 3) a search and/or seizure to prevent the imminent destruction of evidence; 4) a search and/or seizure of an automobile upon probable cause; 5) a search which results when an object is inadvertently in the plain view of police officers while they are where they have a right to be; 6) a search and/or seizure conducted pursuant to consent; and 7) a search which results from an entry into a dwelling in order to prevent loss of life or property.

Id.

133. *Roose v. State*, 759 P.2d 478, 481 (Wyo. 1988) (citing *Neilson v. State*, 599 P.2d 1326, 1333 (1979), *cert. denied*, 444 U.S. 1079, 100 S.Ct. 1031, 62 L.Ed.2d 763 (1980)). According to the court:

A peace officer may arrest a person without a warrant if, at the moment the arrest is made, he has probable cause to believe that a crime had been committed by the person to be arrested, or he has reasonable grounds to believe that a crime is being committed in his presence by the person to be arrested.

Id.

134. *Roose*, 759 P.2d at 481 (quoting *Neilson v. State*, 599 P.2d 1326, 1333 (1979), *cert. denied*, 444 U.S. 1079, 100 S.Ct. 1031, 62 L.Ed.2d 763 (1980)). The court in *Neilson* stated:

[T]he determination of probable cause to arrest without a warrant depends upon whether the facts and circumstances within the peace officer's knowledge and of which he has reasonably trustworthy information were sufficient to warrant a reasonably cautious or prudent man to believe that the person arrested had committed or is committing an offense.

Neilson, 599 P.2d at 1333.

135. *Roose*, 759 P.2d at 482.

136. *Id.* at 483.

137. *Houghton v. State*, 956 P.2d 363, 365 n.1 (Wyo. 1998), *rev'd*, *Wyoming v. Houghton*, 526 U.S. 295 (1999). The court stated:

[W]e are concerned that the officers apparently believed that they were able to search the passengers of the vehicle absent probable cause to believe the passengers were engaged in illegal activity or any indication that the passengers posed a danger to the police officers. Here, there was no testimony which established that the driver or the occupants may be armed, and no weapons observed within the vehicle. Indeed, it appears that all the occupants of the car were cooperative throughout the

ing the approaches used by other courts, we are persuaded that the 'notice' test affords the best balance between the legitimate interests of both the individual and law enforcement."¹³⁸

B. *The Case of Vasquez*

In *Vasquez*, the Wyoming Supreme Court held that Article 1, Section 4, of the Wyoming Constitution¹³⁹ requires a more protective standard against unreasonable search and seizure than the *Belton* rule and the United States Constitution.¹⁴⁰

The Wyoming Highway Patrol had received an anonymous call reporting a dangerous driver under the REDDI (Report Every Drunk

stop. Thus, we perceive no reasonable basis for the pat down search of the passengers.

Id.

138. *Id.* at 370. The court went on to state:

Under the 'notice' test, police officers may assume that all containers on the premises may be searched unless they know or should know that the containers belong to someone not contemplated in the warrant or amenable to search on the basis of probable cause. The practical parameters applied under a 'notice' approach are that police may search the visitor's belongings on the premises under a proper assumption that all personal property belongs to the resident if: 1. The visitor's personal items might serve as a plausible repository of the object of the search, unless the officer knows the property belongs to another; 2. If the officer knows the property belongs to the visitor, they may not rely on the authority conferred by the warrant unless; 3. Someone within the premises had the opportunity to conceal the contraband within the personal effects of the visitor immediately prior to the execution of the warrant.

Id.

139. WYO. CONST. art. I, § 4, provides in pertinent part:

Security against search and seizure. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized.

Id.

140. *Vasquez* 990 P.2d at 478. According to the court:

We hold that the motor vehicle search was incident to a lawful arrest and, therefore, permitted under the Fourth Amendment of the Federal Constitution, as held in *Belton*. Under an independent analysis of the search and seizure provision, Article 1, Section 4, of our state constitution, we hold that the officer lawfully searched the passenger compartment of *Vasquez's* vehicle because that search and seizure provision permits a vehicle search for weapons incident to an arrest when reasonable suspicion exists that a vehicle occupant is armed. We hold that the district court correctly denied *Vasquez's* various motions to suppress and affirm his conviction.

Id.

Driver Immediately) system.¹⁴¹ A trooper located the suspect vehicle, a pickup truck, and based on his observations, stopped the vehicle.¹⁴² On approaching the vehicle, the officer noted that the driver, Mr. Vasquez, smelled strongly of alcohol.¹⁴³ Based on this and on the driving actions he observed, the officer performed field sobriety tests on Mr. Vasquez.¹⁴⁴ Mr. Vasquez was arrested for driving while under the influence of alcohol, handcuffed, and placed in the officer's patrol car.¹⁴⁵

Other officers who had arrived at the scene noticed empty casings for bullets in the bed and passenger compartment of the truck.¹⁴⁶ The officers removed two passengers from the truck and searched them and the truck for weapons.¹⁴⁷ During the search, a plastic bag containing cocaine was found in the fuse box.¹⁴⁸ The officer who opened the fuse box testified that he believed the fuse box was an ashtray large enough to contain a pistol.¹⁴⁹

On appeal, the Wyoming Supreme Court affirmed the district court's denial of various motions to suppress evidence that had been obtained in a motor vehicle search.¹⁵⁰ However, the court also took the opportunity to do what it was unable to do in *Houghton*—use a Wyoming constitutional analysis to ensure greater protection against unreasonable search and seizure than that provided by the Fourth Amendment.¹⁵¹ The court noted, subsequent to an extensive review of state case law and constitutional research, that its recent jurisprudence did not distinguish between the Fourth Amendment to the United States Constitution, and Article 1, Section 4, of the Wyoming Constitution, even though textual differences exist.¹⁵² The court cited the 1920 decision of *State v. Peterson*, where it decided that the affidavit requirement of the Wyoming Constitution strengthens the state provision because the affidavit creates a permanent record.¹⁵³ However, the court acknowledged that subsequent to *Peterson*, Wyoming all but abandoned independent constitutional

141. *Id.* at 479.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 478.

151. *Id.* at 489.

152. *Id.* at 483.

153. *Id.* (citing *State v. Peterson*, 194 P. 342, 346 (1920)).

analysis.¹⁵⁴ This abandonment, the court explained, was the result of federal expansion of individual protections under the Fourth Amendment.¹⁵⁵ The court asserted that recent United States Supreme Court decisions, particularly those like *Belton* that endorse broad authorization for searches by law enforcement, have re-opened the door for independent state analysis.¹⁵⁶

Relying on factors recommended in *Saldana v. State*, the *Vasquez* court first looked at the textual differences in the respective constitutions.¹⁵⁷ The court found that the Wyoming Constitution contains language and rights not provided for in the federal constitution, and thus the Wyoming Constitution should be controlling "whenever an individual believes a constitutionally guaranteed right has been violated."¹⁵⁸

The Wyoming Supreme Court recognized that the federal constitution defines the minimum protections for the national citizenry.¹⁵⁹ The court stated that independent state constitutional analysis might lead to holdings:

[W]hich parallel the United States Supreme Court; may provide greater protections than that Court, or may provide less, in which case the federal law would prevail; but whatever the result, a state constitutional analysis is required unless a party desires to have an issue decided solely under the Federal Constitution.¹⁶⁰

The court concluded by stating that it will only address these issues when presented with a "precise, analytically sound approach" advanced by the litigants for independent interpretation of the state constitution.¹⁶¹

The court decided that although the particular circumstances surrounding Mr. Vasquez's arrest did provide reasonable grounds for a search of his vehicle incident to arrest, it would not adopt the bright-line *Belton* rule regarding searches incident to arrest of the driver of a vehicle.¹⁶² The court also stated that a search incident to arrest of the driver of a vehicle must be "reasonable under all of the circumstances as de-

154. *Id.* at 484.

155. *Id.*

156. *Id.*

157. *Id.* (quoting *Saldana v. State*, 846 P.2d 604, 621-24 (Wyo. 1993)).

158. *Id.* at 485.

159. *Id.*

160. *Id.*

161. *Id.* at 484.

162. *Id.* at 488.

terminated by the judiciary, in light of the historical intent of our search and seizure provision."¹⁶³ "Reasonable" in this light appears to mean that there be an articulable evidentiary or safety concern present.¹⁶⁴ The question left unanswered is to what degree these concerns must be present.

C. *The Search for Evidence Incident to Arrest*

In *Vasquez*, the Wyoming Supreme Court rejected the *Belton* rule and reiterated the fact that the Wyoming Constitution provides more protection from unreasonable search and seizure than the federal constitution.¹⁶⁵ However, the court left open the question of when a warrantless search of a vehicle for evidence incident to lawful arrest is reasonable.¹⁶⁶ The court stated, "Article 1, Section 4 allows searches incident to arrest and can be said to allow automobile searches because arrestees had possession of it, and the arrest authorizes law enforcement to search it for evidence related to the crime."¹⁶⁷ But just when is it reasonable for an officer to believe that there is evidence present in the vehicle that is related to the crime?

The majority of the states that have limited *Belton* have adopted a two-part test for deciding when an officer may search a vehicle for evidence related to the crime.¹⁶⁸ Under this test, an officer may search a vehicle for evidence, incident to arrest of the driver, only where one of two conditions are present: (1) the nature of the crime itself leads the officer to have probable cause to believe that there may be evidence in the vehicle;¹⁶⁹ or, (2) the search of the person arrested reveals evidence of a second crime and this evidence establishes probable cause to believe that further evidence of this second crime will be found within the vehicle.¹⁷⁰ With respect to the first condition, a search is justified because of

163. *Id.* at 489.

164. *Id.*

165. *Id.* ("[*B*]elton's national citizenry rationale does not apply in Wyoming.").

166. *Id.*

167. *Id.* at 488 (quoting *Wiggin v. State*, 206 P. 373, 376).

168. These states include Oregon, Massachusetts, Ohio, New York, Louisiana, and New Jersey.

169. *People v. Blasich*, 73 N.Y.2d 673, 678 (N.Y. 1989) ("[W]here police have validly arrested an occupant of an automobile, and they have reason to believe that the car may contain evidence related to the crime for which the occupant was arrested . . . they may contemporaneously search the passenger compartment.").

170. *Commonwealth v. Toole*, 448 N.E.2d 1264, 1268 (Mass. 1983). An empty holster and ammunition found on the defendant created probable cause to believe that there was a gun in the cab. *Id.* See also *State v. Pierce*, 136 N.J. 184 (N.J. 1994); *People v. Blasich*, 73 N.Y.2d 673 (N.Y. 1989); *State v. Hernandez*, 410 So.2d 1381 (La. 1982); *State v. Kirsch*, 686 P.2d 446 (Ore. App. 1984); *State v. Brown*, 588 N.E.2d 113 (Ohio 1992).

the need to preserve evidence of the crime committed; evidence that is likely to be present in the vehicle is "within the immediate control" of the driver.¹⁷¹ The second condition is not rooted in the search incident to arrest exception, but rather on the automobile exception to the "warrant requirement."¹⁷² Here, the discovery of evidence of a separate crime on the arrested subject's person establishes probable cause to believe that further evidence will be found in the vehicle; thus, the automobile exception allows for a search of the entire vehicle for contraband.¹⁷³

Although the Wyoming Supreme Court rejected the *Belton* rule in *Vasquez*, the court did not adopt a test to be used to determine when an officer may search a vehicle for evidence or weapons incident to arrest.¹⁷⁴ The court stated that its holding "eschews a bright-line rule and maintains a standard that requires a search be reasonable under all circumstances. . . ."¹⁷⁵ The court offered assurance that its rejection of a bright-line rule was not intended to put an unreasonable burden on an officer, noting, "[i]t will not be common that a search of an automobile incident to arrest will violate [the] provision."¹⁷⁶

Wyoming's adoption of a requirement that probable cause exist prior to a search of a vehicle for evidence incident to arrest would ensure that a search is reasonable and would be consistent with Wyoming constitutional interpretations. The Wyoming cases of *Brown* and *Jessee* support this position.¹⁷⁷ In *Brown*, the Wyoming Supreme Court stated that an officer may not use an "arrest on a minor charge as a means to engage in an overbroad search [incident to arrest in an effort] to uncover evidence of an unrelated offense."¹⁷⁸ Where there is no probable cause to believe that evidence of a crime for which a driver is arrested may be found in the vehicle, a search of the vehicle would be "overbroad" and violate the rule set forth in *Brown*. In addition, the court in *Jessee* determined that in order to establish if a search was reasonable, a court "must probe the scope of the particular intrusion, the manner in which it is carried on, the justification for its initiation, and the place in which it is

171. See *Toole*, 448 N.E.2d 1264, 1268 (Mass. 1983); *Pierce*, 136 N.J. 184 (N.J. 1994); *Blasich*, 73 N.Y.2d 673 (N.Y. 1989); *Hernandez*, 410 So.2d 1381 (La. 1982); *Kirsch*, 686 P.2d 446 (Ore. App. 1984); *Brown*, 588 N.E.2d 113 (Ohio 1992).

172. *Pierce*, 136 N.J. 184, 204 (N.J. 1994).

173. *Neilson v. State*, 599 P.2d 1326, 1330 (Wyo. 1979).

174. *Vasquez v. State*, 990 P.2d 476, 478 (Wyo. 1999).

175. *Id.* at 489.

176. *Id.*

177. *Brown v. State*, 738 P.2d 1092 (Wyo. 1987); *Jessee v. State*, 640 P.2d 56 (Wyo. 1982).

178. *Brown*, 738 P.2d at 1097.

conducted.”¹⁷⁹ In vehicle searches, the critical issue is the justification for initiating a search. Where there is no probable cause to believe that there is evidence of the crime committed present in the vehicle, there is no justification for the search.

In addition, a requirement that, prior to a search, probable cause be established through the discovery of evidence on the driver that evidence of a separate offense may be found in the vehicle would be consistent with past Wyoming Supreme Court decisions. As early as 1920, Wyoming recognized the authority to search a subject lawfully arrested and to seize evidence located on that subject’s “person or [in their] possession.”¹⁸⁰ It is also well established that where probable cause exists to believe that a vehicle contains contraband, the entire vehicle may be searched.¹⁸¹ Thus, when an officer discovers evidence of a separate crime as a result of the search of a driver incident to lawful arrest, probable cause to believe further evidence of this separate crime may be found in the vehicle is established.¹⁸² At this time the officer realizes the authority to search any place within the vehicle where evidence of the crime may be concealed, including the trunk area.¹⁸³ However, absent such discovery, the officer has no reason to believe that contraband or evidence of a crime may be found within the vehicle. The fact that the driver has been arrested or may have previously been convicted or involved in a crime does not, on its own, establish probable cause that there may be evidence in the vehicle, nor should it justify a lowering of the constitutional standard of what is a reasonable search. There is no authority or state constitutional analysis that authorizes the search of a vehicle without probable cause. Although *Belton* proposes such a rule as a matter of federal constitutional law, it is impossible to determine why probable cause to search a vehicle must exist prior to an arrest, but not after.

Thus, it is a reasonable interpretation of the Wyoming Constitution to require that probable cause exist prior to a search of a vehicle for

179. *Jessee*, 640 P.2d at 61 (citing *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

180. *Wiggin v. State*, 206 P. 373, 376 (Wyo. 1922). According to the court:

[A]n officer has the right to search the party arrested and take from his person and from his possession property reasonably believed to be connected with the crime, and the fruits, means, or evidences thereof, and he may take and hold them to be disposed of as the court directs.

Id.

181. *State v. Kelly*, 268 P. 571, 572 (Wyo. 1928); *State v. Young*, 281 P. 17, 20 (Wyo. 1929).

182. *Kelly*, 268 P. at 572; *Young*, 281 P. at 20.

183. *Kelly*, 268 P. at 572; *Young*, 281 P. at 20.

evidence incident to arrest of the driver. Probable cause may be established by the nature of the crime for which the operator of a vehicle is arrested, or through the discovery of evidence on the person of the operator.

D. Safety Concerns: Where do We Draw the Line?

Wyoming recognizes officer safety as a paramount concern when balancing the rights of citizens against the need for law enforcement.¹⁸⁴ The Wyoming court discussed the concern for officer safety in *Perry v. State*.¹⁸⁵ In *Perry*, the defendant claimed that the officer “lacked *reasonable suspicion* of Perry’s involvement in criminal activity prior to initiating a Terry stop.”¹⁸⁶ Even though a Terry frisk is not technically a search incident to arrest, the court’s validation of the frisk, as well the application of the “automatic companion rule,”¹⁸⁷ dramatizes the fact that Wyoming does not expect officers to perform their duties in an environment of unnecessary danger.¹⁸⁸

184. *Roose v. State*, 759 P.2d 478, 482 (Wyo. 1988) (citing *Chimel v. California*, 395 U.S. 752 (1969)) (“When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated.”). *See also Brown v. State*, 944 P.2d 1168, 1172 (Wyo. 1997) (quoting *Mickelson v. State*, 906 P.2d 1020, 1023 (Wyo. 1995)) (“Nothing written here should be cited for the proposition that proper regard for officer safety might run police officers afoul of an arrestee’s constitutional rights. The concerns for not be required officer safety articulated by *Terry v. Ohio*, 392 U.S. 1, (1968) have only increased exponentially over the years.”). *See also Putnam v. State*, 995 P.2d 632, 638 (Wyo. 2000) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)) (“Since police officers should to take unnecessary risks in performing their duties, they are ‘authorized to take such steps as [are] reasonably necessary to protect their personal safety and maintain the status quo during the course of [a Terry] stop.’ ”). *See also Perry v. State*, 927 P.2d 1158, 1163-64 (Wyo. 1996); *Collins v. State*, 854 P.2d 688, 691 (Wyo. 1993).

185. 927 P.2d 1158 (Wyo. 1996).

186. *Id.* at 1162 (“The argument fails on its face as the officer had probable cause to arrest Perry prior to contact (Emphasis added).”).

187. *Id.* at 1163 (“As adopted in the United States Courts of Appeals for the Second, Fourth, Fifth, Seventh, and Ninth Circuits, the ‘automatic companion’ rule affords an officer the right to frisk companions of an arrestee for the possible concealment of weapons.”).

188. *Id.* at 1164 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). In *Terry*, the Supreme Court of the United States forcefully relied upon the necessity to preserve officer safety in potentially explosive situations:

In addition [to the government’s interest in investigating crime], there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. (emphasis supplied).

The 'reasonable suspicion' standard is used to determine whether a search for weapons is constitutionally reasonable.¹⁸⁹ The pat-down search of a person for weapons is deemed reasonable under *Terry* because such a search is less intrusive and the need to ensure officer safety outweighs the right to privacy.¹⁹⁰ A search of a vehicle for officer or public safety is reasonable because the lessened expectations of privacy in a vehicle are again outweighed by the desire to ensure the safety of both officers and the public.¹⁹¹ Wyoming courts "afford considerable deference to the observations and conclusions of the police, reasoning that an experienced officer can infer criminal activity from conduct that seems innocuous to a lay observer."¹⁹² However, the courts do not simply write what could be considered a blank warrant in these instances.¹⁹³ Reasonable factors to initiate a search are still necessary to protect the rights of the individual.

Policies regarding a search for safety purposes, incident to lawful arrest, create the need for a lesser standard of reasonableness, a stan-

Id.

189. See *Perry*, 927 P.2d at 1163 (citing *Collins v. State*, 854 P.2d 688, 691-92 (Wyo. 1993)). Probable cause is the standard applied to the arrest determination, while reasonable suspicion is the standard for a weapons search.

190. *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

191. *Vasquez v. State*, 990 P.2d 476, 488-89 (Wyo. 1999). According to the court:

It was not until 1979 that this Court recognized the federal rationale that the inherent mobility of automobiles as well as a diminished expectation of privacy involved in the use and regulation of automobiles allowed disparate treatment of automobiles as compared to other property. *Neilson v. State*, 599 P.2d 1326, 1330-31 (Wyo. 1979). . . . In this particular case, we believe that the arrest justified a search of the passenger compartment of the vehicle and all containers in it, open or closed, locked or unlocked, for evidence related to the crime and for weapons or contraband which presented an officer or a public safety concern.

Id.

192. Audrey Benison et al., *Twenty-Eighth Annual Review Of Criminal Procedure: Warrantless Searches And Seizures*, 87 GEO. L.J. 1124, n.120 (May 1999).

193. *Roose v. State*, 759 P.2d 478, 481 (Wyo. 1988) (quoting *Neilson v. State*, 599 P.2d 1326, 1333 (1979)). In *Neilson*, the court stated:

[T]he determination of probable cause to arrest without a warrant depends upon whether the facts and circumstances within the peace officer's knowledge and of which he has reasonably trustworthy information were sufficient to warrant a reasonably cautious or prudent man to believe that the person arrested had committed or is committing an offense.

Neilson, 599 P.2d at 1333.

dard of reasonable suspicion.¹⁹⁴ This is because when dealing with officer and public safety issues, the courts are attempting to balance the personal interest in privacy regarding one's possessions and the government's interest (or the personal interest) of protecting the lives of officers and the citizens of Wyoming. Illustrating this concept is the Wyoming Supreme Court's statement in *Vasquez* that "it would seem their arrest created the need for the officers to secure the vehicle if left on the roadside."¹⁹⁵ Other cases supporting this view include *United States v. Hensley*,¹⁹⁶ *New York v. Quarles*,¹⁹⁷ *Smith v. Thornburg*,¹⁹⁸ *United States v. Wilson*,¹⁹⁹ and *United States v. Mayes*.²⁰⁰ Thus, searches incident to

194. *Smith v. Thornburg*, 136 F.3d 1070, 1084-85 (6th Cir. 1998) (citing *Cady v. Dombrowski*, 413 U.S. 433 (1973)) ("[U]nder the community care taking function . . . [d]efendants were entitled to enter Plaintiff's vehicle, without a warrant, in order to protect themselves and the public from the danger created by the manner in which Plaintiff's vehicle was left unattended. . . .").

195. *Vasquez*, 990 P.2d at 489.

196. 469 U.S. 221, 228 (1984). According to the Court:

Restraining police action until after probable cause is obtained would not only hinder the investigation, but might also enable the suspect to flee in the interim and to remain at large. Particularly in the context of felonies or crimes involving a threat to public safety, it is in the public interest that the crime be solved and the suspect detained as promptly as possible. The law enforcement interests at stake in these circumstances outweigh the individual's interest to be free of a stop and detention that is no more extensive than permissible in the investigation of imminent or ongoing crimes.

Id.

197. 467 U.S. 649, 651 (1984) ("We conclude that under the circumstances involved in this case, overriding considerations of public safety justify the officer's failure to provide *Miranda* warnings before he asked questions devoted to locating the abandoned weapon.").

198. 136 F.3d at 1084-85 (6th Cir. 1998).

199. 2 F.3d 226, 223 (1993). According to the court:

When Officer Gajevic returned to the car, he too saw the weapons in plain view and took possession of them at that point. Additionally, the firearms could have been properly removed from the car, as a public safety measure, to prevent intruders from making off with them if the car were to be secured and left in the alley.

Id.

200. 982 F.2d 319, 321 (1992). The court stated:

In the interest of public safety, police must often play a caretaking role. Mays' car was parked in a public lot and a crowd had gathered at the site of the arrest. The experienced police officers at the scene later testified that there was a high likelihood that additional drugs and/or firearms would be in Mays' vehicle. The police made an informed and reasonable decision to search the car and exercise their custodial duty immediately under the circumstances. It was entirely appropriate and reasonable for the police to conduct an inventory search of the car to ensure that any dangerous instrumentalities did not fall into another person's hands. (citation omitted).

Id.

lawful arrest, premised on officer or public safety issues, should require a reasonable suspicion standard.

VI. CONCLUSION

The Wyoming Supreme Court has recognized “the almost universal doctrine that has been so frequently announced in American jurisprudence, that ‘It is better that a hundred guilty men should escape than one innocent man should suffer.’”²⁰¹ The court can ensure the continuance of this “universal doctrine” by holding that a search of a vehicle, incident to the lawful arrest of the operator, requires a probable cause standard when a search is conducted for evidentiary purposes, and a reasonable suspicion standard when a search is conducted in response to officer or public safety concerns. Only in those circumstances where the nature of the crime for which the operator was arrested, or evidence of a crime discovered on the person of the operator, establishes probable cause to believe there is further evidence of the crime within the vehicle should a warrantless search for evidence be condoned. Where safety is an issue, the interest of the government is stronger than it is in searches strictly for evidentiary purposes. Here the lives of the law enforcement officers and citizens are at risk. This requires that more weight be placed on the governmental interests and that searches be examined on a reasonable suspicion standard. These standards together set a fair and balanced rule for officers to follow, and ensure the privacy of the individual without compromising the safety of the officers and citizens of Wyoming.

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201. State v. Peterson, 194 P. 342, 349 (Wyo. 1920).

