

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

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TOPIC:

A LOOK BACK AT THE ORIGINAL SEARCH-INCIDENT-TO- ARREST CASE, WHICH, BY THE WAY, JUST HAPPENS TO BE THE THIRD INSTALLMENT IN MY SERIES OF “GREAT QUOTES” CASES

THE THIRD “GREAT QUOTES” CASE:

Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

By Mr. “Of Counsel” Himself, Ralph B. Strickland, Jr. Though Unassisted On This Occasion by the Napping Reece Trimmer, I Was At Least Encouraged by Kevin Smith.

FOREWARD:

With absolutely no apologies to Saddam Hussein, this is the “mother” of all **search-incident-to-arrest cases**. It is an **officer survival case in that one rationale given for such a search is to protect the arresting officer**. It applies to all such searches that *do not* result from the arrest of a subject from the passenger compartment of a motor vehicle. Those searches are covered by *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), a case for discussion at a later date. Promise.

THE FACTS:

It is September 13, 1965. It is late in the afternoon. It is with an arrest warrant for burglary of a coin shop that law enforcement officers arrive at Ted Chimel's house. [In NC that would be the B & E of a coin shop, burglaries requiring dwelling houses or sleeping apartments here. But, as usual, I digress.] It is with some trepidation that Mrs. Chimel allows them entry into the home. It is in silence for 10 or 15 minutes that they await the return of the man of the house. It is with some surprise to Ted that when he finally enters the house, he is placed under arrest. It is with great expectations that the officers ask him if they can just “look around.”

Well, then and there... Kowabunga, Clarabell! The officers' luck fails them! Ted objects! But the officers decide to search the house anyway, “on the basis of the lawful arrest.” And they have no search warrant! Holy Screw Up, Batman! They proceed to search without Mrs. Chimel's consent but with her assistance. They search for about an hour. They recover numerous items taken during the burglary. These items are used in Ted's criminal trial in California and he is convicted of burglary based on the evidence.

THE LAW:

Now, don't ask us how this case made it to "The Show," but the United States Supreme Court ultimately heard Chimel's appeal. His conviction was reversed. Yes, the officers failed to conduct a valid search-incident-to-the-arrest of Ted Chimel.

The Supreme Court's decisions regarding the search-incident-to-arrest rule have changed over time, first favoring law enforcement, and then favoring "the people." So, the Court made a decision to firmly establish the authority of police searches in these arrest situations by stating this series of "Great Quotes" from the *Chimel* case:

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or affect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated.

In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested.

There is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control" -- construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Certainly, these quotes are those with which each law enforcement officer should be intimately acquainted. It is always in your best interests to especially know the cases and quotes that focus on *officer survival* and clearly state the law you may apply *to protect yourself*.

THE CATCH, AND WHAT FIRST LINE SUPERVISORS MUST KNOW:

The North Carolina appellate courts have, with the one exception that follows, adopted the Chimel rule on search incident to arrest. As Bob Farb states in his excellent text *Arrest, Search and Investigation in North Carolina*, Second Edition, 1992 [Third Edition forthcoming soon]:

...The North Carolina Court of Appeals has ruled (contrary to prevailing federal case law) that officers do not have the authority to search incident to arrest a large, locked suitcase that a person is carrying when arrested. Thus, at least as to such a suitcase, officers must obtain a search warrant to search it - assuming there is probable cause to search.

The case is *State v. Thomas*, 81 N.C.App. 200, 343 S.E.2d 588, disc. rev. denied, 318 N.C. 287, 347 S.E.2d 469 (1986). It clearly limits your authority during a search-incident-to-arrest. Of course, *Thomas*, as *Chimel*, does not apply to a vehicle search-incident-to-arrest.

WHAT FIRST LINE SUPERVISORS SHOULD ALSO KNOW - THE CHIMEL SEARCH-INCIDENT-TO-ARREST RULES:

If you arrest a person anywhere **other than** from the passenger compartment of an automobile you may:

1. Search that person for weapons and evidence of crime simply because you have arrested him. You need not have probable cause to believe that a weapon or any evidence is on or near him (though, of course, you do need probable cause or a warrant for the arrest.)

2. You may then handcuff your prisoner, and **prior to moving him from the location of the arrest**, you may search the area under the “immediate control” of the arrestee. This is his *lunge* area. This *lunge* area will be determined on a case-by-case basis and younger, more agile and fleet of foot arrestees will have a greater *lunge* area than older, less agile arrestees. When you search the *lunge* area you will be searching for weapons and evidence, just as when you searched his person.

3. During the search of the area and objects under the immediate control of your arrestee you may search all open and closed containers in that area. But you may not open a ***locked*** container without consent, a real emergency, or a search warrant.

We present great quotes cases in order that you memorize certain language that will prove invaluable to you during your law enforcement career. And no quotes are more relevant or important to you than those that clearly state the extent of your authority to enforce the law while protecting yourself. It is impossible to protect the people you are called to serve if you do not protect yourself as well. The good folks at **Smith, Rodgers & Strickland, Staring Reece Trimmer On the Couch**, want the best for you as you execute the duties of your office. It maybe trite to say this, but no less true because of that, so we will offer it: **Let’s be careful out there. And may God bless you for what you do for all of us.**