

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

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**TOPIC:** SEARCHING THE PASSENGER COMPARTMENT OF A VEHICLE BASED ON THE SEARCH-INCIDENT-TO-ARREST OF AN OCCUPANT OF THAT VEHICLE

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**THE CASE:**

*New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981).

**JUST A BIT OF FANTASY:**

Long ago in a galaxy far away the highest appellate court in that particular space-time warp rendered a legal opinion supporting law enforcement efforts among the vast stellar wastelands. Simply put, whenever the federation police had reasonable suspicion to stop a star cruiser, they constitutionally could do so. If the federation police had probable cause to arrest an occupant of that private star cruiser, (and not a common-carrier spaceship), whether the arrestee was the pilot or just a passenger, the federation police could search the passenger compartment of the star cruiser and all containers therein, open or closed. Sounds like fiction, doesn't it. Well it is. But ...

**A BITE OF HISTORY:**

**Facts:** In 1978 a state trooper in an unmarked patrol car on a state highway way up Noath (the way I was taught to say it) was passed by another automobile with four occupants that was flat-out speeding. Zoom! The trooper proceeded to stop them. Alas and alack, no one was the owner or even related to the owner. The trooper smelled burnt marijuana, and he saw in plain-view on the floor of the car an envelope marked "Supergold" which he associated with marijuana use. He arrested all four for the possession of marijuana, *Mirandized* them, removed them from the vehicle, searched them, and finally searched the passenger area of the car itself. There he found a jacket belonging to Roger Belton. Upon unzipping one of the pockets, the trooper discovered cocaine and arrested Belton for possession of that illegal substance. Belton was a "mere" occupant, a passenger, and not the driver or operator of the vehicle.

**THE LAW, PART ONE:**

It has long been held that upon arrest of a person you may search him to remove any weapons that he might seek to use in order to resist arrest or effect an escape, and to prevent the concealment or destruction of evidence. Now this right to search is not based on probable cause to believe you will find a

weapon or evidence, but simply because you had probable cause to make the arrest.

It is also the rule that you may search the area within your arrestee's "immediate control" - his **lunge area**. While this was always pretty well understood when the search incident to arrest occurred in places other than a motor vehicle, there was much disagreement in the lower courts about the area within an arrestee's "immediate control" when, as an occupant of the passenger area of an automobile, he was arrested.

## THE LAW, PART TWO:

To solve this problem, the Supreme Court in 1981 pronounced a very simple rule for search incident to arrest of an occupant of the passenger area of an automobile, a rule adopted for use in North Carolina by you.

Here's the very simple rule in a direct quote from the U.S. Supreme Court:

**“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, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach. Such a container may, of course, be searched whether it is open or closed, since the jurisdiction 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.”**

## THE LAW, PART THREE

**AN ADDED BONUS:** Although the U.S. Supreme Court did not address locked containers in *Belton*, our Court of Appeals has since done just that. In *State v. Massenburg*, 66 N.C.App.127, 310 S.E.2d 619 (1984) the North Carolina Court of Appeals authorized law enforcement officers in this state to open a **locked** container in the passenger area of an automobile during a search incident to the arrest of an occupant of that area. Of course, it is the opinion of **SR&S** that if you come upon a **locked container** for which you cannot obtain the keys or combination thereto, **you should not force open such container**. If you wish to force it open, we suggest you obtain a search warrant to do so. And if you think cracking open a closed container without a search warrant in this situation is a good idea, just ask Reece Trimmer, The Elder!

## THE LAW, PART FOUR:

It has come to the attention of **SR&S** that there are two current issues concerning this rule that have not been resolved by the appellate courts of North Carolina. These are fairly easy to appreciate and the solution is reasonable from a common sense point-of-view.

First, suppose you make a valid stop of a hatchback motor vehicle, and arrest an occupant of that vehicle. Good for you. But, can you search the **hatchback** area incident to arrest? We believe that the better reasoned opinion is: yes, you may. There are numerous appellate cases, admittedly from other jurisdictions, upholding the search of the hatchback area of the vehicle under the *Belton* rule. The logic supporting the holdings in those cases appears to us as the better reasoned, common sense approach to the problem. Often, that space is reachable without exiting the vehicle. That area, and containers therein, are within the arrestee's reach. For your protection, we believe that you may search it and containers located there.

Secondly, what if you make a valid stop of a vehicle where the rear seats fold down to allow access **not to a hatchback area, but to the trunk**? We are of the opinion that this area may **NOT** be searched under the *Belton* rule. Generally speaking, the space beyond the fold down seats (especially when they are in an

upright position) is not normally a space reachable without getting out of the vehicle, going to the rear of the vehicle and opening the trunk. This gives you more time to react to protect yourself and the public.

## **WHAT FIRST LINE SUPERVISORS SHOULD KNOW**

1. Advise your squad members that upon the arrest of the occupant of the passenger area of an automobile they may search that person for weapons and evidence of a crime.
2. During their search of the passenger area they may search all containers therein, including open, closed or locked containers. Advise them they should generally not force open such locked container without a search warrant.
3. If the vehicle is a hatchback, you should advise them that a search of the hatchback area under the Belton rule would probably be constitutional and reasonable. You may always check with your District Attorney's Office.
4. If the vehicle has a trunk accessible from inside the vehicle by fold down rear seats, you should advise your squad that a search under the Belton rule would probably be unconstitutional. Tell them not to do it.

## **A POST SCRIPT**

Did you notice that my old pal Reece Trimmer has joined SR&S this month as a guest columnist, commentator, advisor and utility infielder? He has great hands up the middle and hits for average. If you are not a baseball fan, please ignore the previous sentence. Otherwise it tends to make him appear somewhat *stranger* than he is.

We're all pleased as punch to welcome him aboard and you may find him on the SR&S homepage on the toolbar under the heading, and I'm not kidding about this, "Reece Trimmer." Just double click on his name and you'll read his first commentary and see his picture! Do not fail to note the famous "bow tie". **No one is ever the worse for reading Reece and following his advice. Do it.**

Reece: Kevin, Greg and I welcome you to our site. You make us proud. You are a blessed friend to each of us and we offer you this approbation, "Thanks, big guy! You're the greatest!"  
Ralph

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