

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

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TOPIC:

LAW ENFORCEMENT OFFICERS MAY SEARCH A PARKED VEHICLE INCIDENT TO ARREST

By: Reece Trimmer, with certain grammatical flourishes and one insignificant paragraph by Ralph B. Strickland, Jr.

CASE:

Thornton v. United States, 541 U.S. ___, (03-5165, May 24, 2004)

WHAT THE CASE SAYS:

In *Thornton*, the United States Supreme Court approved a search-incident-to-arrest of a vehicle passenger compartment when the suspect had parked the car and was walking away from it before the officer's approach.

[Remember: The 1981 case of *New York v. Belton*, where the U.S. Supreme Court approved the search of a jacket in the back seat of a vehicle after the driver was lawfully arrested, saying that a search-incident-to-arrest of a vehicle occupant included a search of the entire passenger compartment and all containers therein (but not including the trunk).]

Here, in *Thornton*, Officer Nichols of the Norfolk (VA) Police Department became suspicious when a car appeared to slow down rather than drive next to Officer Nichol's police car. On checking the license plate, Officer Nichols discovered it was not issued to the Lincoln Town Car it was displayed on. Before Officer Nichols could stop the Lincoln, the driver (*Thornton*) pulled into a parking lot and got out of the car. When Officer Nichols pulled in behind the parked Lincoln, *Thornton* was walking away from this car. When Nichols asked for license and registration, he noticed *Thornton* was nervous, sweating, and rambling. *Thornton* denied having any weapon or drugs and consented to a "pat-down." Nichols felt a bulge in *Thornton*'s left front pocket and asked him again if he had drugs. *Thornton* admitted he did, pulling two baggies out of his pocket.

Officer Nichols then searched the car and found a pistol under the front seat. On appeal to the United States Supreme Court, *Thornton* argued that the vehicle search was illegal. The Court (Rehnquist), in a 7-2 decision, approved the search as properly within the *Belton* search-incident-to-arrest rule.

[Ralph here: I thought I might point out to you that the Supreme Court in *Thornton* did not settle the question of just how close the former occupant of the vehicle has to be to his car to allow a search incident-to-arrest. I note that Thornton did concede that he was in “close proximity, both temporally [he had been out of his car for only a short period of time] and spatially [physically close to the car].” As it turned out, the Supreme Court set neither a physical distance for a “Thornton search,” nor any particular timeframe. Those issues remain to be worked out at the lower court level. But here is the SR&S Team Advice on point:

If you actually see the suspect exit his vehicle and you approach him shortly thereafter, and if he is still where he could “lunge” to the car, then if you arrest him, you can search the passenger compartment of the car incident to that arrest. This would be true even if he were not the operator of the vehicle, but a mere passenger.

Okay. We’ve nailed it down. Somebody wake up Trimmer, and we’ll all go home.