THE OBJECTIVE MIND AND "SEARCH INCIDENT TO CITATION"*

ROBERT R. RIGG**

The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears.[1]

I. INTRODUCTION

Imagine picking up your kids, ages thirteen and fifteen, after soccer practice, getting on the freeway and heading home. A friend is with you and you are passing the time discussing work. Unbeknown to you, your driver's side taillight burns out as you pass through a rough part of town. A police officer, while on routine patrol, notices your vehicle. It is older, has multiple occupants, and is traveling in a "high crime" area. The officer decides to follow you and notices that the tail lamp is out. It also appears that the occupants in the rear seat are moving around and are juveniles. The officer decides to stop your car. The lights go on and you pull over. Expecting a routine stop? A few minutes out of your day? Produce your license and registration, take your ticket, and be on your way, right? Don't bet on it.

The officer's authority has been expanded in a series of decisions by the United States Supreme Court and may be expanded further. Most citizens would be astonished to know what the officer can do in this "routine" traffic stop. So, what does the Constitution permit an officer to do at this time?

The Supreme Court has held that an officer may stop a vehicle to "warn a driver about traffic violations" even if the officer's motivation for the stop is not purely for traffic enforcement purposes.[2] An officer may order the driver[3] as well as the passengers,[4] to exit the vehicle. The officer may place the driver in custody, even though not required to do so, and conduct a "search incident to a

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** Director Criminal Defense Program, Drake Law School Legal Clinic, Visiting Associate Professor of Law.

[1] Coolidge v. New Hampshire, 403 U.S. 443, 461-62 (1971).

[2] *See* Whren v. United States, 517 U.S. 806 (1996) (holding that probable cause to believe a traffic violation has occurred, even though the officer may have ulterior motives, permits police to stop a vehicle).

[3] *See* Pennsylvania v. Mimms, 434 U.S. 106 (1977) (holding an officer may order the driver to exit the vehicle for the officer's safety).

[4] *See* Maryland v. Wilson, 519 U.S. 408 (1997) (holding the danger to an officer during a traffic stop is greater when there are passengers in the vehicle).

custodial arrest."[5] If the officer does place the individual in custody, the officer may search the vehicle incident to the arrest.[6]

Returning to the story, the officer orders you out of the vehicle, along with your friend and children. He checks your license and registration. They are in proper order. The process takes fifteen minutes or so. The officer then issues a ticket for defective equipment, hands it to you, and tells you he has called for backup. The officer is going to search you, your friend, your children, and your car based on the citation he just issued. You look at him thinking he's crazy. He smiles and conducts the various searches, including a body cavity search of your person. After all, if there is probable cause to issue the citation, isn't there probable cause to conduct the searches just described?[7]

Far fetched? Not if you live in Iowa, or possibly anywhere in the United States, should the United States Supreme Court affirm the doctrine of search incident to citation pending before the Court.[8] The Court faces the question of whether the issuance of a traffic ticket or citation is the equivalent of an arrest for the purpose of conducting a search.

II. PRIMARY FUNCTION OF THE WARRANT CLAUSE

In *McDonald v. United States*[9] the Supreme Court enunciated the primary function of a search warrant:

> We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals . . . . And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative.[10]

This language expresses the policy implicit in the Fourth Amendment—the purpose of a search warrant is to protect the citizen from the unbridled discretion of

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[5] *See* Gustafson v. Florida, 414 U.S. 260, 265 (1973).

[6] *See* New York v. Belton, 453 U.S. 454 (1981) (holding an officer may search the passenger compartment if an individual has been placed under arrest as a search incident to arrest).

[7] *See Gustafson*, 414 U.S. at 265 ("It is sufficient that the officer had probable cause to arrest the petitioner that he lawfully effectuated the arrest . . . .").

[8] *See* Knowles v. Iowa, 569 N.W.2d 601 (Iowa 1997), *cert. granted*, 118 S. Ct. 1298 (1998).

[9] 335 U.S. 451 (1948).

[10] *Id.* at 455-56.

a police officer.[11]

Several years later, the Supreme Court announced the "cardinal principle" of the Fourth Amendment in *Katz v. United States*.[12] This principle, which the Court still claims to follow, is that "the [Fourth] Amendment requires adherence to judicial processes and searches 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 well-delineated exceptions."[13]

Over the years, the development of these "specifically established and well-delineated exceptions"[14] to the warrant requirement have eroded the preference for search warrants issued by an "objective mind." These exceptions make a warrant unnecessary. The underlying justification for the exceptions is that they are "reasonable searches" necessitated by the circumstances surrounding an investigation.[15] Among the exceptions are automobile searches[16] and searches con-

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[11] *See id.*

[12] 389 U.S. 347, 357 (1967) (quoting United States v. Jeffers, 342 U.S. 48, 51 (1967)). *Compare* William Greenhalgh & Mark Yost, *In Defense of the "Per Se" Rule: Justice Stewart's Struggle to Preserve the Fourth Amendment's Warrant Clause*, 31 AM. CRIM. L. REV. 1013 (1994), *with* Akhil Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757 (1994).

[13] *Id.* (citation omitted).

[14] *Id.*

[15] *See id.* n.19. *See* Carrol v. United States, 267 U.S. 132 (1924) (establishing the search of vehicles with probable cause but without a warrant as an exception). *See also* McDonald v. United States, 335 U.S. 451 (1948) (noting that fleeing or escaping individuals as well as the potential destruction of evidence may provide an exceptional circumstance, but suspicion that a numbers game was afoot did not prove to be an exceptional circumstance); Brinegar v. United States, 338 U.S. 160 (1949) (holding that prior information taken in conjunction with observed facts may allow a finding of probable cause). In *Brinegar*, the Court, relying on *Carroll v. United States*, found that a warrantless automobile search was constitutionally permissible. *See id.* at 178. The Court found:

> The troublesome line posed by the facts in the *Carroll* case and this case is one between mere suspicion and probable cause. The line necessarily must be drawn by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances. No problem of searching the home or any other place of privacy was presented either in *Carroll* or here. Both cases involve freedom to use public highways in swiftly moving vehicles for dealing in contraband, and to be unmolested by investigation and search in those movements . . . . This does not mean, as seems to be assumed, that every traveler along the public highways may be stopped and searched at the officers' whim, caprice, or mere suspicion.

Id. at 176-77. In *Cooper v. California*, the Court held a warrantless search of an automobile seized after the defendant's arrest for narcotics charges was held to be reasonable even though the search took place approximately a week after the arrest. *See* Cooper v. California, 386 U.S. 58 (1967). In *Cooper*, the Court stated, "searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property." *Id.* at 59. In *Warden v. Hayden*, the Court said:

ducted incident to a lawful custodial arrest.[17] Currently, the Iowa Supreme Court has combined these two areas to form a new doctrine of "Search Incident to Citation."[18] The purpose of this Article is to explore the development, wisdom, and practical effect of this new doctrine in view of the policy behind the warrant requirement.

III. SEARCH INCIDENT TO CITATION

A. State v. Cook *and the Birth of the "Search Incident to Citation" Doctrine*

In *State v. Cook,*[19] the defendant was a passenger in an automobile and was issued a traffic citation for failing to wear a safety belt.[20] After the stop, neither the driver nor the passenger could produce identification.[21] The state trooper requested the driver to "come back to the patrol car."[22] The trooper called for a records check of the driver and learned that the driver was wanted on an outstanding warrant.[23] The trooper also learned that the driver did not have a valid driver's license.[24] After other officers arrived, the driver was placed under arrest and the officer's attention was directed to the driver.[25] The other officers advised the trooper that the driver was a member of a motorcycle gang known to traffic

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> The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others. Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape.

Warden v. Hayden, 387 U.S. 294, 298-99 (1967).

[16] *See* California v. Acevedo, 500 U.S. 565 (1991). *See also* Texas v. White, 423 U.S. 67 (1985); Cady v. Dombrowski, 413 U.S. 433 (1973); Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1927). *See generally* Wayne R. LaFave, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT 3, § 7.2 (3d ed. 1996).

[17] *See* Chimel v. California, 395 U.S. 752 (1969). *See also* Weeks v. United States, 232 U.S. 383, 392 (1914) (noting the "assertion of the 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."). *See generally* LaFave, *supra* note 16, § 5.1-5.5.

[18] *See* State v. Cook, 530 N.W.2d 728, 731 (Iowa 1995) ("The Iowa legislature has thus created a search incident to issuance of a citation exception to the search warrant requirement.").

[19] *See id.* at 728.

[20] *See id.* at 729. A safety belt violation is defined in Iowa Code §§ 321.445(2)-(3) (1997).

[21] *See id.* at 730.

[22] *Id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

in drugs and guns.[26] For his own safety, the trooper patted down the driver for weapons.[27] The trooper felt a "hard pack of some sort, rectangular shaped, approximately three to four inches long and a couple of inches wide in the chest pocket of the defendant's clothing."[28] The defendant told the officer it was pack of cigarettes.[29] The trooper was not convinced, so he reached into the defendant's pocket and removed a "pack of cigarettes."[30] As the trooper pulled out the cigarettes, a controlled substance fell out.[31] Subsequently, the defendant moved to suppress the evidence.[32] The State argued that the evidence was properly seized either incident to the issuance of a citation in accordance with Iowa Code section 805.1(4) or as a *Terry* pat-down.[33] The trial court held that the search was justified under an extension of the doctrine of "search incident to arrest" pursuant to Iowa Code section 805.1(4).[34]

The Iowa Supreme Court upheld the trial court's ruling.[35] The Court began its decision by restating the principle enunciated by the United States Supreme Court in *Katz*.[36] The court found that "[o]ne of the exceptions to the warrant requirement is a search incident to arrest."[37] It then noted that a "full search of the arrestee's person 'is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.'"[38] Therefore, a search incident to arrest is per se reasonable under the Fourth Amendment requiring no additional justification, even if the offense is only a minor traffic violation.[39]

The Iowa Supreme Court examined the Iowa legislature's extension of "this broad search incident to arrest exception."[40] In pertinent part, Iowa Code section 805.1(4) states: "The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise law-

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[26] *See id.*

[27] *See id.*

[28] *Id.*

[29] *See id.*

[30] *Id.* The court blankly accepts the trooper's explanation. *See id.* By the description given in the record, it would appear the trooper was describing a package of cigarettes, not a weapon or any item that could be used as a weapon. *See id.*

[31] *See id.*

[32] *See id.*

[33] *See id.*

[34] *See id.*

[35] *See id.* at 731.

[36] *See id.*

[37] *Id.* (citing Chimel v. California, 395 U.S. 752, 762-63 (1969); State v. Garcia, 461 N.W.2d 460, 462 (Iowa 1990)).

[38] *Id.* (citing United States v. Robinson, 414 U.S. 218, 235-36, (1973); State v. Peterson, 515 N.W.2d 23, 24-25 (Iowa 1994)).

[39] *See id.* (citing Gustafson v. Florida, 414 U.S. 260, 263-66 (1973); United States v. Robinson, 414 U.S. at 234-36; State v. Farrell, 242 N.W.2d 327, 329-30 (Iowa 1976)).

[40] *Id.*

ful search."[41] Therefore, Iowa Code section 805.1(4) "authorizes an officer to conduct a search, of the same scope as the constitution authorizes for a search incident to a custodial arrest, contemporaneously with the officer's issuance of a citation when that officer has probable cause to make a custodial arrest but chooses instead to issue a citation."[42] The Court did not provide further authority to justify this legislatively created doctrine of "a search incident to issuance of a citation exception to the search warrant requirement."[43]

B. *Legislatively Created Exceptions to the Warrant Requirement*

Cook immediately raises the question of whether a state legislature may create an exception to the Fourth Amendment prohibition against warrantless searches. Put simply, can a legislature carve out an additional niche to the Constitution? The Iowa Supreme Court seemed troubled by the issue, and clearly invited defense counsel to challenge the statute in a footnote to the decision.[44] The challenge took time to develop, as defense counsel prepared and filed motions to suppress over the next two years. As one can imagine, the law enforcement community used the decision to justify searches under the umbrella of this newly created doctrine of "search incident to citation."[45]

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[41] *Id.* (citing IOWA CODE § 801.5(4) (1995)).

[42] *Id.*

[43] *Id.* The Court then examined the evidence that the State presented for the legality of the search. *Id.* at 731-32. The Court found that:

> the trooper's decision to issue the defendant a citation in lieu of a custodial arrest did not affect the trooper's right to conduct a search of the same scope as a search incident to arrest because a citation is equivalent to a custodial arrest for authority to search purposes under Iowa Code section 805.1(4).

Id. at 732.

[44] *See id.* at 731 n.2. (stating that the defendant did not raise the issue of the constitutionality of Iowa Code § 805.1(4) on appeal).

[45] *See* State v. Meyer, 543 N.W.2d 876 (Iowa 1996) (holding the search of the driver's compartment, after the driver had been cited for speeding, was permissible); State v. Adams, 554 N.W.2d 686 (Iowa 1996) (rejecting defendant's argument that the search after a minor shoplifting arrest required the officer to issue a citation rather than arrest him). In *State v. Fenton*, a district court associate judge found that Iowa Code Section 805.1(4) was unconstitutional. State v. Fenton, No. AGCR023225 (Story County, Iowa, Ruling on Defendant's Motion to Suppress, filed Aug. 14, 1996). In *State v. Rosenbaum*, a district judge concluded that Iowa Code section 805.1(4) was unconstitutional and rejected the contention that *United States v. Robinson*, *Gustafson v. Florida*, and *Whren v. United States* justified the conclusion that a search incident to citation was the equivalent of a search incident to a custodial arrest. *See* State v. Rosenbaum, No. FECR036970 (Marshall County, Iowa 1996, Ruling on Defendants Motion to Suppress, filed July 5, 1996). Instead, the district court relied on *Cupp v. Murphy*:

> [T]he Supreme Court held that when the police have probable cause to arrest, but do not arrest, a very limited search for evidence of a 'highly evanescent' nature is permitted to preserve the evidence. Significantly, the Court stated: "we do not hold that a full *Chimel* search would have been justified in this case without a formal arrest

IV. SEARCH INCIDENT TO ARREST

A. Chimel v. California *and the Creation of the "Search Incident to Arrest" Exception to the Warrant Clause*

In *Cook,* the Iowa Supreme Court relied on *Chimel v. California*[46] to justify the conclusion that a citation is the equivalent of a full custodial arrest.[47] *Chimel* is a cornerstone decision that defined the doctrine of a search incident to lawful arrest.[48] A brief review of *Chimel* assists in understanding search incident to arrest but does not support the Iowa Supreme Court's conclusion that the issuance of a citation is equivalent to a custodial arrest.

In *Chimel,* a warrant for the defendant's arrest was issued charging the defendant with the burglary of a coin shop.[49] The officers decided to execute the warrant at the defendant's home.[50] After handing the defendant a copy of the warrant, the officers asked if they could "look around."[51] The defendant objected and, despite this objection, the officers proceeded to search the defendant's house.[52] The search of the home included the attic, the garage, a small workshop, a sewing room, and the master bedroom, where the officers searched the contents of various drawers.[53] Incriminating evidence was ultimately found and introduced at the defendant's trial.[54]

The United States Supreme Court reversed the conviction, finding that although "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 effect his escape" after a valid arrest, it is not reasonable to search an entire residence.[55] The Court based its decision on concern for officer safety.[56] The Court held that it would be "entirely reasonable for an arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction."[57] Thus, a search of the arrestee's person and any area "within his immediate control" is justified under this doctrine.[58]

The Court noted there is "no comparable justification . . . for routinely

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and without a warrant."

State v. Rosenbaum (Ruling on Defendants Motion to Suppress, p.12 (quoting Cupp v. Murphy, 412 U.S. 291, 296 (1973) (citations omitted)).

[46] 395 U.S. 752 (1969).

[47] *See* State v. Cook, 530 N.W.2d 728, 731 (Iowa 1995).

[48] *See* Chimel v. California, 395 U.S. at 752.

[49] *See id.* at 753.

[50] *See id.*

[51] *Id.*

[52] *See id.* at 753-54.

[53] *See id.* at 754.

[54] *See id.*

[55] *Id.* at 762-63.

[56] *See id.* at 763.

[57] *Id.*

[58] *See id.*

searching any room other than that in which an arrest occurs . . . ."[59] Once again, the Court professed strict allegiance to the Fourth Amendment requirement of a warrant established in *Katz* maintaining that " 'adherence to judicial processes' mandated by the Fourth Amendment requires no less."[60]

B. *Refinements in the Search Incident to Arrest Exception*

After *Chimel*, two cases confronted the United States Supreme Court involving custodial searches of individuals, this time after being arrested for minor traffic offenses. The Iowa Supreme Court cited both of these cases in *State v. Cook*.[61]

1. *United States v. Robinson*

In *United States v. Robinson*,[62] the officer stopped defendant Robinson because the officer had reason to believe Robinson was operating a motor vehicle while his license was revoked.[63] The officer stopped the car and eventually placed Robinson under full custodial arrest[64] as required by departmental policy.[65] After arresting Robinson, the officer searched him and found a controlled substance in a crumpled cigarette package.[66] The defendant's attorneys argued that the search was unreasonable because it went beyond a protective weapons search.[67] Robinson's attorneys further argued that the Court should accept a case-by-case analysis in order to determine if a full custodial search is reasonable after an arrest for a minor traffic offense.[68]

The Court rejected this analysis, stating that it did not believe prior case law or history required such a case-by-case adjudication.[69] Instead, the Court found that,

> [a] police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search.[70]

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[59] *Id.*

[60] *Id.*

[61] *See* State v. Cook, 530 N.W.2d 728, 731 (Iowa 1995).

[62] 414 U.S. 218 (1973).

[63] *See id.* at 220.

[64] *See id.*

[65] *See id.* at 221.

[66] *See id.* at 221-23. The officer opened the cigarette pack and found 14 gelatin capsules of white powder, believed to be heroin. *See id.* at 223.

[67] *See id.* at 234-35.

[68] *See id.*

[69] *See id.* at 235. *See also* LaFave, *supra* note 16, § 5.2(B). "Thus, as Justice Rehnquist acknowledged in *Robinson*, '[v]irtually all of the statements of this Court affirming the existence of an unqualified authority to search incident to a lawful arrest are dicta.' " *Id.* at 268 (quoting United States v. Robinson, 414 U.S. 218, 230 (1973)).

[70] *Id.*

Acknowledging that the authority to search the person incident to a lawful custodial arrest is based on the need to disarm and to discover evidence, the Court did not believe that such a determination should depend on what "a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect."[71] Instead, no additional justification is required when there is a custodial arrest of a suspect based on probable cause.[72] Thus, a search incident to arrest is also a reasonable intrusion under the Fourth Amendment.[73]

2. *Gustafson v. Florida*

On the same day *Robinson* was decided, the United States Supreme Court handed down its decision in *Gustafson v. Florida*.[74] Gustafson, like the defendant in *Robinson*, was arrested for a driver's license violation.[75] Unlike the defendant in *Robinson*, the officer was not required to place Gustafson under a full custodial arrest by police regulations.[76] Once probable cause to arrest Gustafson was established and Gustafson was in custody, the court concluded that the doctrine of search incident to a lawful arrest allowed for a complete search of the defendant.[77]

The Court found that the concept of a search incident to the arrest rested on the need to disarm the suspect and preserve evidence.[78] The Court's rationale justifying the search, however, is unsupported by the record in the case. The Court did not seem to care that there is no evidence to preserve in a driving-without-a-license case. Also, there was no testimony that the officer thought that the defendant was armed or dangerous. In fact, the opposite was the case.[79]

If the facts surrounding the stop are not relevant, then the rationale given for the search, officer safety and evidence preservation, would dictate that a search incident to citation is constitutionally reasonable and therefore permissible.

In both *Robinson* and *Gustafson*, the Court's decision appears to turn on the fact that both defendants were placed under "lawful custodial arrest."[80] The decisions left open the question of whether an officer who issues a citation rather than executes a "full custodial arrest" is permitted to conduct a search of the driver, passengers, and the vehicle.

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[71] *Id.*

[72] *See id.*

[73] *See id.*

[74] *See* Gustafson v. Florida, 414 U.S. 260 (1973). The opinions in *Robinson* and *Gustafson* were both handed down on December 11, 1973.

[75] *See id.* at 262. Gustafson was placed under arrest for driving without being in possession of an operator's license. *See id.*

[76] *See id.* at 265.

[77] *See id.* at 266.

[78] *See id.* at 264 (citing United States v. Robinson, 414 U.S. 218, 234).

[79] *See id.* at 266.

[80] *See* United States v. Robinson, 414 U.S. at 225-26; *Gustafson*, 414 U.S. at 265-66.

Is handing a citizen a piece of paper in the form of a citation the same as placing the person in custody? The logical answer is no. In the first instance, the governmental intrusion is minimal and the detention is short-lived. In the second instance, however, a person is handcuffed, physically taken to a jail or holding center, and required to post bond and make a court appearance. Where the police detain one for a traffic infraction, the process of being arrested involves the greatest intrusion into a citizen's privacy in the continuum of invasiveness. Yet Iowa has found that the act of issuing a traffic ticket is the equivalent of "full custody" for the purpose of a search.

V. IOWA ADDRESSES THE FOURTH AMENDMENT CHALLENGE

A. State v. Doran — *Iowa's Response to the Challenge*

The issue left open in *Robinson* and *Gustafson* regarding whether the issuance of a traffic citation alone justifies a full custodial search was addressed by the Iowa Supreme Court in *State v. Doran*.[81] The Iowa court concluded that the doctrine of "search incident to arrest" analysis could justify a full custodial search incident to a citation.[82]

Doran was stopped by a police officer for not having headlights or taillights on his motorcycle.[83] As the officer approached the defendant, he observed an illegally sheathed knife on Doran's person.[84] The officer seized the knife and ran a check on the motorcycle's registration, which revealed that Doran did not own the motorcycle.[85] The officer then searched the motorcycle and Doran and found a cellophane cigarette package.[86] The package contained marijuana and was discovered in the pocket of Doran's leather chaps.[87] The officer arrested Doran for possession of a controlled substance.[88] Doran was ultimately found guilty and fined $350.00.[89]

Doran appealed his conviction claiming that the application of Iowa Code section 805.1(4)[90] violated his right against unreasonable and warrantless searches

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[81] 563 N.W.2d 620 (Iowa 1997).

[82] *See id.* at 623.

[83] *See id.* at 621.

[84] *See id.*

[85] *See id.*

[86] *See id.*

[87] *See id.*

[88] *See id.*

[89] *See id.* at 622.

[90] IOWA CODE § 805.1(4) (1997) states:

> [t]he issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of R. Cr. P. section 27, subsection 2, paragraph 'a', Ia. Ct. Rules, 3d. ed.

Id.

protected by the Fourth Amendment to the United States Constitution and the Iowa Constitution.[91]

Before addressing the Fourth Amendment claim, the Court addressed Doran's complaint that the officer did not effect an arrest based on the initial traffic violation, nor did the officer issue a citation for the violation until after the arrest for the drug charges.[92] The Court found that the doctrine of search incident to citation did not require an arrest or citation contemporaneous with the grounds for the arrest.[93] The Court had previously adopted the "could have" test.[94] That test eliminates the Court's inquiry into the officer's motives as long as there are objective grounds to make the arrest and it is legally permitted.[95] The Court then moved to Doran's argument regarding the constitutionality of "search incident to citation."

The Iowa Supreme Court noted from the outset that "[o]ne who makes a constitutional challenge to a statute bears a heavy burden. That person must establish the statute's invalidity beyond a reasonable doubt."[96] Although a correct statement of law, the Court's assertion of the burden does little to generate support for its conclusion that "search incident to citation" is constitutionally permissible. The majority opinion again started with *Chimel v. California*:[97]

> 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 effect his escape. Otherwise the officer's safety might well be endangered, and the arrest itself frustrated.[98]

It is noteworthy that Doran was carrying an illegal weapon[99] and could have been arrested and searched incident to the arrest without triggering the discus-

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[91] U.S. CONST. amend. IV. ("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."); IOWA CONST. art. I, § 8.

[92] *See* State v. Doran, 563 N.W.2d 620, 622-23 (Iowa 1997).

[93] *See id.*

[94] *See id.* at 622 (quoting State v. Meyer, 543 N.W.2d 876, 879 (Iowa 1996)). "A search incident to lawful arrest is legal even if the arresting officer had an ulterior motive for the arrest or had no independent probable cause to conduct the search." State v. Garcia, 461 N.W.2d 460, 463 (Iowa 1990). We have adopted an objective or "could" assessment of the arresting officer's conduct in making the arrest 'so long as the officer is legally permitted and objectively authorized to do so, an arrest is constitutional.' " State v. Hofmann, 537 N.W.2d 767, 770 (Iowa 1995).

[95] *See id.* at 623.

[96] *Id.*

[97] 395 U.S. 752 (1969).

[98] State v. Doran, 563 N.W.2d at 623 (citing Chimel v. California, 395 U.S. 752, 762-63 (1969)).

[99] *See id.* at 621.

sion of "search incident to citation."[100] The State made no attempt to argue that probable cause or some other exception justified the search.[101] Nor did the state argue that officer safety justified the search, as it did in *Terry v. Ohio*.[102] The decision in *Terry* justifies a pat down for weapons that may have led to the discovery of the marijuana.[103]

The Iowa decision cited as supporting authority a concurring opinion in *Sibron v. New York*[104] to conclude that the officers' failure to contemporaneously arrest or cite the defendant did not render the search invalid.[105] The decision, however, does not support the conclusion that a citation is the equivalent of a full custodial arrest. The Court does not explain why the issuance of a citation is the equivalent of an arrest. In fact, the decision in *Sibron* undercuts the Iowa court's premise that a legislature may expand search and seizure law.

Sibron addressed the limitations on a state when enacting a statute authorizing a search. In considering a New York statute that allowed officers to stop individuals, demand identification, and search for weapons, the United States Supreme Court stated:

> New York is, of course, free to develop its own law of search and seizure to meet the needs of law enforcement, (cite omitted) and in the process it may call the standards it employs by any names it may choose. It may not, however, authorize police conduct which trenches upon the Fourth Amendment rights, regardless of the labels which it attaches to such conduct. The

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[100] *See id.*

[101] *See id.* at 622. The State's argument conceded that the challenged search of the defendant's person must be upheld, if at all, under the search incident to arrest doctrine as extended to citations in lieu of arrest under section 805.1(4). *See id.*

[102] 392 U.S. 1 (1968).

[103] The majority seems to use the rationale for a pat down search for weapons as enunciated in *Terry v. Ohio*. *See id.* at 24. *Terry* allows for a permissible frisk incident to an investigative stop without probable cause to arrest. *See id.* The standard for reviewing a search is whether the officer has reasonable suspicion to believe an individual may be armed. *See id.* at 21. *See also* Minnesota v. Dickerson, 508 U.S. 366 (1993). Police may seize contraband detected by sense of touch as long as the search stays within the bounds of *Terry*. *See id.* at 374. The basis of the search is for weapons not a search for evidence of a crime. *See id.* at 373. If the search goes beyond a protective search for weapons, it is no longer valid. *See id.*

[104] 392 U.S. 40 (1968).

[105] *See* State v. Doran, 563 N.W.2d 620, 622 (Iowa 1997) (quoting Sibron v. New York, 392 U.S. 40, 77 (1968) (Harlan, J., concurring)).

> Of course, the fruits of a search may not be used to justify an arrest to which it is incident, but this means only that probable cause to arrest must precede the search. If the prosecution shows probable cause to arrest prior to a search to a man's person, it has met it total burden. There is no case in which a defendant may validly say, 'Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards.

Id. at 622.

> question in this Court upon review of a state-approved search or seizure 'is not whether the search [or seizure] was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment. Just as a search authorized by state law may be an unreasonable one under that amendment, so may a search not expressly authorized by state law be justified as a constitutionally reasonable one.'[106]

In a dissenting opinion filed in *Doran*, Justice Neuman, echoing *Sibron*, concluded that "subjecting every traffic violator to a full search on the ground the officer *could* subject the individual to full arrest is not, in my view, reasonable under *Robinson* or *Chimel*."[107]

The analysis in *Sibron* should have guided the Iowa Supreme Court to the same conclusion as Justice Neuman reached: "An otherwise lawful search" contemplated by the Iowa statute must be reasonable under the Fourth Amendment.[108] The majority, however, rejected Justice Neuman's analysis.[109]

B. State v. Knowles — *The Logic of Applying Search Incident to Arrest Doctrine to Citation Cases*

The logic of *Cook* and *Doran* is that a citation is the equivalent of a custodial arrest, and therefore, the officer may execute a full search of the person incident to the citation.[110] The scope of the search presumably has little, if any, limitations. The facts of *Doran* may have driven the Iowa Supreme Court to conclude that the search was justified, but a strong dissenting opinion left the majority's rationale in doubt.[111] Most courts would look with little compassion on an individual armed with a knife sheathed on his person. Therefore, the question remained—would the issuance of a traffic citation alone justify a full custodial search or would the dissent in *Doran* capture the majority? The answer came in short order.

In *State v. Knowles*,[112] the defendant was stopped for speeding.[113] No other grounds for a search existed.[114] As a result of the citation, the officer decided to

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[106] *Sibron*, 392 U.S. at 60-61 (citations omitted). "[T]he question here is not whether the search was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment. Just as a search authorized by state law may be an unreasonable one under that amendment, so may a search not expressly authorized by state law be justified as a constitutionally reasonable one." Cooper v. California, 386 U.S. 58, 61 (1967).

[107] State v. Doran, 563 N.W.2d 620, 624 (Iowa 1997) (Neuman, J., dissenting) (emphasis in original).

[108] *See id.*

[109] *See id.*

[110] *See Doran*, 563 N.W.2d at 622-23; State v. Cook, 530 N.W.2d 728 (Iowa 1995).

[111] *See Doran*, 563 N.W.2d at 623 (Neuman, J., dissenting).

[112] 569 N.W.2d 601 (Iowa 1997).

[113] *See id.* at 602.

[114] *See id.* In fact, the opinion stated that "[t]here were no circumstances indicating that evidence of crime existed on his person or in his automobile." *Id.*

conduct a search of the defendant's person and vehicle.[115] During the search, the officer discovered marijuana.[116] The defendant was subsequently convicted of possession of a controlled substance.[117]

The Iowa Supreme Court again held that the search was lawful as conducted incident to a citation.[118] Knowles first claimed that the search incident to arrest exception is triggered only when there is in fact a "custodial arrest."[119] Knowles further argued that the court's holding in *Doran*, "that the constitutional basis for the 'search incident to an arrest' exception is satisfied by the presence of grounds for arrest rather than the making of a custodial arrest," was incorrect.[120] The Court rejected the argument. Instead, the Court found that Knowles' contention was "belied by those decisions that hold that the timing of the arrest need not precede the [actual] search."[121] Moreover, the Court noted that "when the search produces an independent ground for an arrest on a more serious charge, the foregoing of an arrest for the traffic violation does not defeat the authority to search."[122] Thus, the Court upheld the *Doran* decision.[123]

Justice Neuman's dissent, joined by three other justices, remained as adamant.[124]

VI. THE EFFECT OF THE SEARCH INCIDENT TO CITATION DOCTRINE

A quick review of the Iowa statutes places the *Doran* decision in context. Since a citation is equivalent to an arrest, citizens may be subjected to full custodial search whenever they have been cited for any of the following: head lamp or rear lamp violations;[125] illumination of rear registration plate violations;[126] im-

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[115] *See id.* The court noted that the decision to search was "based solely on [the officer's] perceived authority to search conferred by Iowa Code section 805.1(4)." *Id.*

[116] *See id.*

[117] *See id.*

[118] *See id.*

[119] *See id.*

[120] *Id.*

[121] *Id.* (citing State v. Peterson, 515 N.W.2d 23, 25 (Iowa 1994); State v. Beatty, 305 N.W.2d 496, 498 (Iowa 1981)).

[122] *Id.* (citing People v. Rossi, 430 N.E.2d 233, 236 (Ill. App. Ct. 1981).

[123] *See id.* The Court stated that the following public policy reasons justify the decision:

> When an officer has a legal basis to make a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety.

Id. at 602-03.

[124] *See id.* at 603 (Neuman, J., dissenting) (noting the same reasons to dissent existed in this case as in *Doran*).

[125] *See* IOWA CODE §§ 321.385, 321.387 (1997).

[126] *See* IOWA CODE § 321.388 (1997).

proper reflectors;[127] broken signal lamps;[128] failure to have a light on a bicycle;[129] brake violations;[130] horn violations;[131] muffler violations;[132] windshield violations;[133] windshield wiper violations;[134] seatbelt violations;[135] violations regarding tires including tread violations;[136] equipment violations for mirrors;[137] coasting;[138] littering;[139] crossing a fire hose;[140] improper stopping, standing, or parking;[141] obstructing a driver's view;[142] improper stop-entering a cross walk;[143] improper stop-railroad crossing;[144] failure to obey a traffic control device;[145] reckless driving;[146] drag racing;[147] open containers containing alcoholic beverages;[148] speeding;[149] improper passing;[150] following too closely;[151] improper turns;[152] failure to yield right of way;[153] jay walking;[154] and hitchhiking.[155] This list is by no means exhaustive but is presented to illustrate the range of possible violations that now give officers the authority to conduct a full custodial search.

In *Johnson v. United States* the Supreme Court held:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive

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[127] *See* IOWA CODE §§ 321.389-321.391 (1997).
[128] *See* IOWA CODE § 321.404 (1997).
[129] *See* IOWA CODE § 321.397 (1997).
[130] *See* IOWA CODE § 321.430 (1997).
[131] *See* IOWA CODE § 321.432 (1997).
[132] *See* IOWA CODE § 321.436 (1997).
[133] *See* IOWA CODE § 321.438 (1997).
[134] *See* IOWA CODE § 321.439 (1997).
[135] *See* IOWA CODE § 321.445 (1997).
[136] *See* IOWA CODE § 321.440 (1997).
[137] *See* IOWA CODE § 321.437 (1997).
[138] *See* IOWA CODE § 321.365 (1997).
[139] *See* IOWA CODE § 321.369 (1997).
[140] *See* IOWA CODE § 321.368 (1997).
[141] *See* IOWA CODE § 321.358 (1997).
[142] *See* IOWA CODE § 321.363 (1997).
[143] *See* IOWA CODE § 321.353 (1997).
[144] *See* IOWA CODE § 321.342 (1997).
[145] *See* IOWA CODE § 321.256 (1997).
[146] *See* IOWA CODE § 321.277 (1997).
[147] *See* IOWA CODE § 321.278 (1997).
[148] *See* IOWA CODE § 321.284 (1997).
[149] *See* IOWA CODE § 321.285 (1997).
[150] *See* IOWA CODE § 321.304 (1997).
[151] *See* IOWA CODE § 321.307 (1997).
[152] *See* IOWA CODE § 321.311 (1997).
[153] *See* IOWA CODE §§ 321.319-321.324A (1997).
[154] *See* IOWA CODE § 321.328 (1997).
[155] *See* IOWA CODE § 321.331 (1997).

> enterprise of ferreting out crime (footnote omitted). Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers . . . . When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.[156]

The practical effect of a search incident to citation reduces the concerns of the court to meaningless verbiage. If an officer may conduct a full custodial search based only on the issuance of a traffic ticket, the privacy guaranteed by the Fourth Amendment depends on an officer's mood, suspicion, and penchant for ferreting out suspected illegal activity.[157] There is no review, no recourse, and no "objective mind" between the citizen and the officer.[158] If there is any doubt re-

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[156] Johnson v. United States, 333 U.S. 10, 13-14 (1948).

[157] *See generally* Terry v. Ohio, 392 U.S. 1, 14-15 n.11 (1968).

> The President's Commission on Law Enforcement and Administration of Justice found that "[i]n many communities, field interrogations are a major source of friction between the police and minority groups." It was reported that the friction caused by "[m]isuse of field interrogations" increases "as more police departments adopt 'aggressive patrol' in which officers are encouraged routinely to stop and question persons on the street who are unknown to them, who are suspicious, or whose purpose for being abroad is not readily evident." While the frequency with which "frisking" forms a part of field interrogation practice varies tremendously with the locale, the objective of the interrogation, and the particular officer, it cannot help but be a severely exacerbating factor in police-community tensions. This is particularly true in situations where the "stop and frisk" of youths or minority group members is "motivated by the officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets."

Id. (citations omitted). *See also* State v. Becker, 458 N.W.2d 604, 606 (Iowa 1990) (citations omitted).

> The trooper testified at trial that he frequently asks occupants of vehicles to get out of the vehicle for his own safety. He also explained that he does so for the purpose of (1) identifying the occupants of the vehicle to determine whether there are any outstanding warrants for their arrest; (2) seeing if any beer cans, drug paraphernalia, or other instrumentalities of criminal conduct fall out; and, in some instances, (3) conducting a search for weapons. The trooper testified that he has done this for over ten years in approximately forty percent of his stops. He explained that his decision to ask occupants to get out of a car during a traffic stop depends on several factors, including the age, sex, and number of occupants in the vehicle; their manner of dress; and their physical appearance. Trooper Hollander indicated in his testimony that his determination on how to proceed in these situations is based upon "what he feels is right" and upon "gut instinct."

Id.

[158] *See* Wong Sun v. United States, 371 U.S. 471, 481-82 (1964) ("The arrest warrant procedure serves to insure that the deliberate, impartial judgment of a judicial officer will

garding the zeal with which officers will apply this doctrine, one simply needs to view the trial court dockets in Iowa. Two Iowa District Court cases illustrate the point.

In *State v. Dameron,*[159] a Des Moines police officer stopped the defendant and cited her for failure to wear a seat belt.[160] The officer suspected Ms. Dameron of concealing contraband in her mouth and began to choke her until she expectorated the material.[161] In *State v. Avant*, after stopping the defendant for a traffic citation, Ms. Avant's vagina was probed to determine if she had a weapon.[162] These cases illustrate the breadth of the search an officer may conduct on citizens who fail to buckle up.

VII. THE SEARCH INCIDENT TO CITATION DOCTRINE SHOULD NOT BE ALLOWED TO STAND

If the purpose of the Fourth Amendment is to place an objective mind between the officers decision to search and the citizen, the doctrine of search incident to citation clearly frustrates this goal. If a warrantless search is allowed only when it is imperative, then a search incident to citation presents no urgency that cannot be justified by a *Terry* pat down or other exigencies previously developed by the Court. Search incident to citation allows unbridled discretion, encourages already selectively enforced traffic laws to be used as pretexts[163] to

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be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause."). *See* Beck v. Ohio, 379 U.S. 89, 96 (1964); McDonald v. United States, 335 U.S. 451, 455-56 (1948).

[159] Polk Co. Crim. No. 110153 (Iowa 1997).

[160] *See id.*

[161] *See id.*

[162] *See* State v. Avant, Polk Co. Crim. No. SMAC-200300 (Iowa 1997) (cited in State v. Dameron, Polk Co. Crim. No. 110153, Transcript of a Motion to Suppress p.14 May 27, 1997).

[163] *See* Craig Glantz, *Could this be the End of Fourth Amendment Protections for Motorists?*, 87 J. CRIM. L. & CRIMINOLOGY 864 (1997). "Police officers have been aware of the utility of using minor traffic infractions as pretexts for the investigation of other suspected crimes even before the Court's decision in *Whren.*" *Id.* at 883 (discussing Whren v. United States, 517 U.S. 806 (1996)). The following police officers' statements expose the difficulty:

> You can always get a guy legitimately on a traffic violation if you tail him for a while, and then a search can be made.
>
> You don't have to follow a driver very long before he will move to the other side of the yellow line and then you and arrest and search him for driving on the wrong side of the highway.
>
> In the event that we see a suspicious automobile or occupant and wish to search the person or the car, or both, we will usually follow the vehicle until the driver makes a technical violation of a traffic law. Then we have means of making a legitimate search.

Id. (quoting LAWRENCE P. TIFFANY et al., DETECTION OF CRIME 131 (1967)).

search minorities,[164] and uses searches as a device to punish those suspected of criminal activity rather than seize contraband or protect officer safety.

Inconvenience to officers has never been a driving policy consideration for the Court in rendering decisions regarding the Fourth Amendment.[165] Today's technology has equipped police with computerized record searches, instantaneous contact with their superiors and other officers, faxes, cell phones, and other devices that allow for immediate communication with prosecutors and judges. In view of these communication and information technologies, it is inconsistent for courts to allow additional intrusions by officers into the privacy of citizens who are merely suspected of criminal activity.[166] Courts should be skeptical of police and prosecution arguments claiming "necessity" to justify another exigency. If the Court truly wishes to encourage officers to get a search warrant, it must say as much.

The question a police officer must answer before conducting a search has turned from, "do I need a search warrant?" to "why get one?" If the doctrine of search incident to citation is allowed to become constitutionally entrenched the answer will be clear: Do not bother with a search warrant. Why subject the search to review and justify the reasonableness of the intrusion? Simply write the ticket and conduct the search. The issuance of the ticket will give rise to probable cause to conduct a full custodial search of the person. The relentless analysis of *Robinson*[167] and *Gustafson*[168] will not be tempered by an inquiry into the searches' reasonableness, nor will there be a need to take the offender into custody to conduct the search. The search will be upheld based on a traffic infraction, not on a decision to arrest for the infraction.

Requiring an officer to place a citizen in custody prior to triggering the search incident to arrest exception will, at a minimum, make officers consider their ac-

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[164] Glantz, *supra* note 163, at 887 n.213 (citing David A. Harris, *"Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops,* 87 J. CRIM. L. & CRIMINOLOGY 544 (1997)).

[165] *See* McDonald v. Douglas, 335 U.S. 451, 455 (1948). "No reason, except inconvenience of the officers and delay in preparing papers and getting before a magistrate, appears for the failure to seek a search warrant. But those reasons are no justification for by-passing the constitutional requirement." *Id.* (citing Johnson v. United States, 333 U.S. 10, 15 (1948)).

[166] *See* Coolidge v. New Hampshire, 403 U.S. 443 (1971).

> The word " 'automobile" is not a talisman in whose presence the Fourth Amendment fades away and disappears. And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll v. United States*—no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile. In short, by no possible stretch of the legal can this be made into a case where "it is not practicable to secure a warrant."

Id. at 461-62.

[167] United States v. Robinson, 414 U.S. 218 (1973).

[168] Gustafson v. Florida, 414 U.S. 260 (1973).

tions before ordering the driver and passengers out of the vehicle for a full custodial search. Although there is no objective mind reviewing the application for a search warrant prior to the search, there is at least a buffer of inconvenience for the officer and the possibility of judicial review of the officer's conduct. The question the officer must answer will become, "do I need a search warrant?" or "do I arrest for a traffic citation?" This is the proper focus for the officer and the courts.

The preceding analysis is a more mindful approach to the Fourth Amendment. Requiring the officer to justify the additional intrusions of a person's privacy, aside from the embarrassment and inconvenience of being stopped and issued a citation, is consistent with the policy proclaimed in *Katz*.[169]

There is no question that officers may stop motor vehicles that violate a state statute or municipal ordinance, and issue a citation for the infraction. Nor is it unreasonable for an officer, with a specific and articulate reason, to pat down a person who may be armed or conduct searches under some other exigency triggered by the specific facts of a case. It is a vastly different proposition to allow the officer to strip search the driver based on a citation, unless other facts present themselves that necessitate the intrusion. The issuance of a citation is not the same as a custodial arrest, and to hold otherwise not only defies common sense, but also eviscerates the protection envisioned by the Fourth Amendment.

VIII. CONCLUSION

In 1949 Justice Jackson warned of the diminution of the status of Fourth Amendment rights:

> We cannot give some constitutional rights a preferred position without relegating others to a deferred position; we can established no firsts without thereby establishing seconds. Indications are not wanting that Fourth Amendment freedoms are tacitly marked as secondary rights, to be relegated to a deferred position.[170]

He continued:

> Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police.
>
> But the right to be secure against searches and seizures is one of the most difficult to protect. Since the officers are themselves the chief invaders, there is no enforcement outside of court.
>
> Only occasional and more flagrant abuses come to the attention of the courts, and then only those where the search and seizure yields incriminat-

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[169] Katz v. United States, 389 U.S. 347 (1967).

[170] Brinegar v. United States, 338 U.S. 160, 180 (1948) (Jackson J., dissenting).

> ing evidence and the defendant is at least sufficiently compromised to be indicted. If the officers raid a home, an office, or stop and search an automobile but find nothing incriminating, this invasion of the personal liberty of the innocent too often finds no practical redress. There may be, and I am convinced that there are, many unlawful searches of homes and automobiles of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing, and about which we courts do nothing, and about which we never hear.[171]

Continuing:

> We must remember that the extent of any privilege of search and seizure without warrant which we sustain, the officers interpret and apply themselves and will push to the limit.[172]

Jackson went on to describe a search:

> But an illegal search and seizure usually is a single incident,perpetrated by surprise, conducted in haste, kept purposely beyond the court's supervision and limited only by the judgment and moderation of officers whose own interests and records are often at stake in the search. There is no opportunity for injunction or appeal to disinterested intervention. The citizen's choice is quietly to submit to whatever the officers undertake or to resist at risk of arrest or immediate violence.[173]

Jackson's concerns are as relevant today as they were when he wrote them. The use of "officer safety" and evidence preservation have become the political battle cry for those who have declared a war on crime. The first casualty, however, is the Fourth Amendment. Even when no evidence supports those concerns we have gone on blindly using those phrases to encroach further and further on Fourth Amendment protections.[174] The exceptions to the warrant requirement have become so numerous that one can easily conclude there is no warrant requirement and an "automobile *is* a talisman in whose presence the Fourth Amendment fades away and disappears."[175]

The doctrine of search incident to citation will truly relegate the Fourth Amendment protections to a non-concern for police, prosecutors, and, most regretfully, the courts.

IX. UPDATES

Knowles v. Iowa[176] was decided on December 8, 1998. The Court focused on the two primary rationales for the search incident to arrest exception. The first is

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[171] *Id. See also* State v. Avant, Polk Co. Crim. No. SMAC-200300 (Iowa 1997); State v. Dameron, Polk Co. Crim. No. 110153 (Iowa 1997).

[172] *Brinear*, 338 U.S. at 182.

[173] *Id.*

[174] *See* Gustafson v. Florida, 414 U.S. 260, 265 (1973).

[175] Coolidge v. New Hampshire, 403 U.S. 443, 461-62 (1971) (emphasis added).

[176] ____ U.S. ____, 119 S. Ct. 484 (1998).

the need to disarm the suspect, and the second is evidence preservation.[177] Chief Justice Rehnquist found the concern for officer safety did not warrant a "full field-type search" where a traffic citation is issued.[178] As for evidence preservation, after the traffic citation had been issued for speeding, all the evidence needed had been collected.[179] The Court declined to extend the bright-line rule expressed in *Robinson*.[180] The *Knowles* case is an example of the lengths to which law enforcement will go to justify the search of individuals who they suspect may be involved in criminal activity. The pressure on courts to condone these efforts will continue. However, *Knowles* did establish a boundary to this pressure and the Court's decision was unaminous.[181]

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[177] *See* id. at 487.

[178] *See* id. at 488.

[179] *See* id.

[180] 414 U.S. 218 (1973).

[181] *See* Knowles v. Iowa, 119 S. Ct. 484, 486 (1998).