



Search Incident to Lawful Arrest

COUNTY LAW UPDATE

by Michael Rainwater 10/16/06

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

Chimel Facts: Police officers arrived at Ted Chimel's house with an arrest warrant charging him with burglary. Mrs. Chimel allowed entry into the home, and all awaited the return of Mr. Chimel. When Ted entered the house he was placed under arrest, and the officers asked him if they could look around. He objected, but the officers decided to search the house based on his arrest. They searched the three-bedroom house with Mrs. Chimel's assistance (but without her consent) and recovered numerous items taken during the burglary. Ted was convicted in the California trial court on the basis of the introduction at trial into evidence those items seized at his home. The case finally found its way to the United States Supreme Court where the conviction was reversed: the officers did not conduct a valid search incident to the arrest of Ted Chimel.

Law History: In its analysis, the Supreme Court noted that as early as 1914 it had authorized the warrantless search of a person based upon his lawful arrest. In 1925, it extended this search to items under the control of the arrestee. A few months after that, the Court further extended the search to the site where the arrest took place. The problem, since 1925, was the federal appellate courts' interpretation of the search incident to arrest rule. The scope of that rule grew broader and narrower as the pendulum of rights of the police versus the accused citizen swung from side to side through Supreme Court decisions. So, the Court made a decision, in Chimel, to firmly establish the authority of police searches in these arrest situations.

Conclusion: So, if you arrest a person, you may search that person for weapons and evidence on his person and you may search the area under the "immediate control" of the arrestee – the lunge area – prior to moving him from the location of the arrest.