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## Constitutional Law—Recent Developments in Wyoming’s Reasonableness Requirement Applied to the Search Incident to Arrest Exception; *Holman v. State*, 183 P.3d 368 (Wyo. 2008)

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## CASE NOTE

### CONSTITUTIONAL LAW—Recent Developments in Wyoming’s Reasonableness Requirement Applied to the Search Incident to Arrest Exception; *Holman v. State*, 183 P.3d 368 (Wyo. 2008).

Maryt L. Fredrickson\*

#### INTRODUCTION

On July 28, 2005, police officer Joseph Moody was sitting in his parked patrol car near the North Casper ball fields in Casper, Wyoming when a citizen approached and reported suspicious activity.<sup>1</sup> The citizen saw a man in a parked car watching children through a pair of binoculars, and the man kept moving his car when people noticed him.<sup>2</sup> Officer Moody initiated a traffic stop of the vehicle the citizen identified.<sup>3</sup> The single occupant explained he used a monocular to look for his two sons playing in an event in the ball fields.<sup>4</sup> Officer Moody requested the man’s driver’s license, registration, and proof of insurance.<sup>5</sup> The driver, Daniel Holman (“Holman”), provided a state-issued identification card instead of a driver’s license.<sup>6</sup>

Officer Moody learned from police dispatch that Holman’s driver’s license was suspended.<sup>7</sup> Another officer arrived at the scene, and the two officers arrested Holman for driving with a suspended license.<sup>8</sup> After placing Holman in the back of the patrol car, the two officers searched Holman’s vehicle and discovered a plastic bag containing a small amount of methamphetamine in the center console between the two front seats.<sup>9</sup>

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\* Candidate for J.D., University of Wyoming, 2010. I would like to thank the *Wyoming Law Review* Board for their assistance with this project. I would also like to thank Professor Eric Johnson for his valuable time and insights. I extend my most sincere gratitude to my partner, Alan Bartholomew, for his love and support throughout this project and always.

<sup>1</sup> *Holman v. State*, 183 P.3d 368, 370 (Wyo. 2008).

<sup>2</sup> *Id.* At Holman’s preliminary hearing, the officer described Holman’s behavior as “skittish.” Brief of Appellant at 8, *Holman*, 183 P.3d 368 (No. 06-140) (Aug. 2, 2006), 2006 WL 5953239.

<sup>3</sup> Brief of Appellant, *Holman*, *supra* note 2, at 3, 9. Officer Moody testified he initiated the stop to investigate whether the driver was a pedophile engaged in indecent exposure or masturbation in the park while watching children. *Id.* at 3.

<sup>4</sup> *Holman*, 183 P.3d at 370.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* Casper police regularly make arrests for driving under suspension as a general police practice. *Pierce v. State*, 171 P.3d 525, 527 n.2. (Wyo. 2007).

<sup>9</sup> *Holman*, 183 P.3d at 370–71.

The State charged Holman with third, or subsequent, possession of a controlled substance.<sup>10</sup> Holman moved to suppress the evidence of the drug charge, but the trial court denied his motion.<sup>11</sup> At the preliminary hearing, and again at the hearing for the motion to suppress, Officer Moody testified he searched Holman's vehicle "incident to arrest" because such searches were standard police procedure.<sup>12</sup> Holman pled guilty to the drug charge, but reserved his right to appeal the district court's denial of his motion to suppress.<sup>13</sup> On appeal, Holman argued the district court erred in denying his motion to suppress because the search of his vehicle was unreasonable, and therefore violated the Wyoming Constitution's search and seizure provision.<sup>14</sup> The Wyoming Supreme Court applied its unique "reasonable under all of the circumstances" test, and agreed with Holman—the warrantless search of Holman's vehicle was unreasonable and, thereby, unconstitutional.<sup>15</sup>

This case note examines the recent shift in Wyoming's reasonable under all of the circumstances approach as applied to the search incident to arrest exception for warrantless searches.<sup>16</sup> The background section of this note briefly addresses Wyoming's departure from Fourth Amendment precedent in all warrantless searches, but comprehensively reviews the small body of independent Wyoming case law applying the search incident to arrest exception leading up to the *Holman* decision.<sup>17</sup> Particular attention is given to *Holman*'s two companion cases: *Pierce v. State* and *Sam v. State*.<sup>18</sup> This note argues that *Holman* caps a triumvirate of cases that replaced the reasonable under all of the circumstances test with a requirement for reasonable grounds.<sup>19</sup> Furthermore, while the Wyoming Supreme Court failed to articulate in *Holman* which category of reasonable grounds applies to the search incident to arrest exception, this note determines reasonable suspicion is the only logical choice.<sup>20</sup> Finally, this note concludes the search incident to arrest analysis only considers circumstances that support a finding of reasonable suspicion, which

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<sup>10</sup> *Id.* at 371 (citing WYO. STAT. ANN. § 35-7-1031(c)(i) (LexisNexis 2007)).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 372.

<sup>13</sup> *Id.* at 370 (citing, mistakenly, WYO. R. CR. P. 11(e)). WYO. R. CR. P. 11(e) governs plea agreement procedures. Holman did not plead under WYO. R. CR. P. 11(e); he entered a conditional plea under WYO. R. CR. P. 11(a)(2). Brief of Appellant, *Holman*, *supra* note 2, at 2. WYO. R. CR. P. 11(a)(2) provides for the entry of a conditional plea with preservation of the right to appeal the denial of a pretrial motion.

<sup>14</sup> Brief of Appellant, *Holman*, *supra* note 2, at 11–12 (citing WYO. CONST. art. 1, § 4). Holman also argued the warrantless search violated the Wyoming Constitution and the Fourth Amendment because the officer lacked reasonable suspicion of criminal activity under the investigatory detention exception. *Id.* at 4–10.

<sup>15</sup> *Holman*, 183 P.3d 368.

<sup>16</sup> See *infra* notes 83–285 and accompanying text.

<sup>17</sup> See *infra* notes 53–132 and accompanying text.

<sup>18</sup> See *infra* notes 83–132 and accompanying text.

<sup>19</sup> See *infra* notes 188–94 and accompanying text.

<sup>20</sup> See *infra* notes 201–29 and accompanying text.

is far less than *all* of the circumstances, but nevertheless provides helpful guidance for law enforcement and practitioners.<sup>21</sup>

#### BACKGROUND

Both the United States Constitution and the Wyoming Constitution prohibit unreasonable searches and seizures.<sup>22</sup> Warrantless searches are per se unreasonable under both the Fourth Amendment and the Wyoming Constitution.<sup>23</sup> The United States Supreme Court has developed a set of exceptions that indicate whether a search is reasonable.<sup>24</sup> Federal Fourth Amendment cases treat these exceptions as bright-lines; if a factual scenario fits into one of the exceptions, then the warrantless search is reasonable.<sup>25</sup> The Wyoming Supreme Court recognizes and applies the same exceptions, but imposes an additional requirement.<sup>26</sup> All warrantless searches, regardless of the applicable exception, must meet the

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<sup>21</sup> See *infra* notes 230–85 and accompanying text.

<sup>22</sup> Compare 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.”), with WYO. CONST. art. 1, § 4 (“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 warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched or the person or thing to be seized.”).

<sup>23</sup> *E.g.*, *Fenton v. State*, 154 P.3d 974, 975 (Wyo. 2007) (“We have stated that under both constitutions, warrantless searches and seizures are per se unreasonable unless they are justified by probable cause and established exceptions.”) (citing *Morris v. State*, 908 P.2d 931, 935 (Wyo. 1995)); *U.S. v. Ross*, 456 U.S. 798, 825 (1982) (“[I]t is a cardinal principle that ‘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 and well-delineated exceptions.’”) (emphasis in original) (citations omitted).

<sup>24</sup> *Katz v. U.S.*, 389 U.S. 347, 357 (1967).

<sup>25</sup> *Vasquez v. State*, 990 P.2d 476, 482 (1999) (“The [United States] Supreme Court majority believed it was a reasonable construction of the Fourth Amendment to formulate bright-line rules.”) (citations omitted).

<sup>26</sup> *O’Boyle v. State*, 117 P.3d 401, 409 (Wyo. 2005). Some of the exceptions to the warrant requirement recognized in Wyoming include: search of an arrested suspect and the area within his control (search incident to arrest); search conducted while in pursuit of a fleeing suspect; search and seizure to prevent the imminent destruction of evidence; search and seizure of an automobile based upon probable cause (the automobile exception); search which results when an object is in plain view of officers in a place where they have a right to be (plain view doctrine); search which results from entering a dwelling to save life or property (emergency assistance exception); search of an impounded vehicle without probable cause (inventory search); weapons frisk of an arrestee’s companion without probable cause (automatic companion rule); search justified by reasonable suspicion arising from a stop to render aid (community caretaker function); and search justified by reasonable suspicion or probable cause during an investigatory detention (investigatory detention exception). *Speten v. State*, 185 P.3d 25, 28 (Wyo. 2008).

Wyoming Supreme Court's "reasonable under all of the circumstances" test or be found unconstitutional.<sup>27</sup>

### *Searches Incident to Arrest Under the Fourth Amendment*

Understanding Wyoming's divergence from federal search incident to arrest jurisprudence requires a basic understanding of the federal exception.<sup>28</sup> In *Weeks v. United States*, the United States Supreme Court recognized that some type of search incident to arrest has been permitted throughout Anglo-American history.<sup>29</sup> A search of an arrestee's person was customary in order to either confiscate weapons or confiscate evidence.<sup>30</sup> However, the scope of the search incident to arrest *beyond* the search of the person has been the subject of extensive dispute.<sup>31</sup> The United States Supreme Court established a bright-line rule in its 1969 decision, *Chimel v. United States*, defining the appropriate scope of searches incident to arrest.<sup>32</sup> In *Chimel*, the Court authorized searches incident to arrest in "the area within the arrestee's immediate control," which means the area in which the suspect could reach either weapons or evidence.<sup>33</sup> The *Chimel* Court supported this limited scope by reiterating the two fundamental reasons for allowing searches incident to arrest in the first place: to prevent the arrestee from destroying evidence or from reaching weapons.<sup>34</sup> Post-*Chimel* decisions left unsettled whether the interior of an automobile (the area within the arrestee's immediate control just prior to the arrest) remained in the permissible scope of a search incident to arrest.<sup>35</sup>

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<sup>27</sup> *O'Boyle*, 117 P.3d at 409.

<sup>28</sup> See generally Kenneth Decock & Erin Mercer, Comment, *Balancing the Scales of Justice: How Will Vasquez v. State Affect Vehicle Searches Incident to Arrest in Wyoming*, 1 WYO. L. REV. 139, 140–41 (2001) (exploring Wyoming's rejection of the bright-line approach of federal search incident to arrest jurisprudence).

<sup>29</sup> 232 U.S. 383, 392 (1914); see also *U.S. v. Robinson*, 414 U.S. 218, 224 (1973) (explaining the search incident to arrest exception has two prongs: (1) authorizing a search of an arrestee's person, and (2) authorizing a search of the area within the arrestee's immediate control).

<sup>30</sup> *Weeks*, 232 U.S. at 392.

<sup>31</sup> See generally Decock & Mercer, *supra* note 28, at 139–57 (exploring the history of searches incident to arrest in federal and Wyoming courts leading up to and including the Wyoming Supreme Court's seminal 1999 decision in *Vasquez*). The history of searches incident to arrest is also reviewed in *Chimel v. U.S.*, 395 U.S. 752 (1969), and *Robinson*, 414 U.S. at 224–26.

<sup>32</sup> 395 U.S. 752.

<sup>33</sup> *Id.* at 768.

<sup>34</sup> *Id.* See generally 3 WAYNE LAFAVE, SEARCH AND SEIZURE § 7.1(a) (3d ed. 1996) (evaluating *Chimel*).

<sup>35</sup> *N.Y. v. Belton*, 453 U.S. 454, 460 (1981) ("While the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant."). State courts reflected the same inconsistency. *Id.* at 459 n.1; see also 3 LAFAVE, *supra* note 34, § 7.1(a) (reviewing federal case law leading up to the *Belton* decision).

Eleven years after *Chimel*, the Court created another bright-line rule in *New York v. Belton* to close the debate over the appropriate scope of vehicle searches incident to arrest.<sup>36</sup> In *Belton*, an officer initiated a traffic stop for a speeding violation and subsequently noticed an envelope on the floor of the vehicle labeled “Supergold,” which the officer associated with marijuana.<sup>37</sup> Based on this association, and an odor of marijuana emanating from the vehicle, the officer had probable cause to believe the vehicle’s occupants possessed marijuana.<sup>38</sup> The officer arrested the four occupants based on such probable cause and proceeded to search the interior of the vehicle incident to the arrests.<sup>39</sup> The officer discovered cocaine inside a jacket left inside the vehicle.<sup>40</sup> The Court addressed the issue of whether containers inside a vehicle, like the jacket, are within the proper scope of a vehicle search conducted incident to arrest.<sup>41</sup> The Court upheld the search of the vehicle’s interior, including the jacket pocket or any other closed container, as valid under the Fourth Amendment.<sup>42</sup> The lawful arrest, by itself, justified a broad search and outweighed any expectation of privacy.<sup>43</sup> The *Belton* Court further reasoned that law enforcement needs bright-line policies to apply in the field, because officers have limited time and expertise to analyze the individual circumstances confronted in each arrest.<sup>44</sup>

### *Searches Incident to Arrest Under the Wyoming Constitution*

Article 1, section 4 of the Wyoming Constitution prohibits unreasonable searches and seizures analogous to the Fourth Amendment.<sup>45</sup> In its early search

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<sup>36</sup> *Belton*, 453 U.S. at 460–61; *see also* Michigan v. Long, 463 U.S. 1032, 1050 n.14 (1983) (discussing the bright-line rule of *Belton*).

<sup>37</sup> *Belton*, 453 U.S. at 455–56. The officer knew from his experience that the term “Supergold” referred to marijuana. Brief of Petitioner at 2–3, *Belton*, 453 U.S. 454 (No. 80-328) (March 4, 1980), 1980 WL 339862.

<sup>38</sup> Brief of Respondent at 1, *Belton*, 453 U.S. 454 (No. 80-328) (April 3, 1981), 1981 WL 390386.

<sup>39</sup> *Belton*, 453 U.S. at 455–56. The envelope labeled “Supergold” did in fact contain marijuana, but the officer did not discover this fact until after completing the arrests. *Id.* at 456.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 459.

<sup>42</sup> *Id.* at 460–62.

<sup>43</sup> *Id.* at 461. The expectation of privacy became the touchstone of the Fourth Amendment in the mid-twentieth century. *Katz*, 389 U.S. at 360–62 (Harlan, J., concurring); *see also* Warden v. Hayden, 387 U.S. 294, 304–06 (1967) (analyzing the shift in federal search and seizure jurisprudence from the protection of property interests to the protection of privacy interests).

<sup>44</sup> *Belton*, 453 U.S. at 458 (discussing Wayne R. LaFave, “Case-By-Case Adjudication” Versus “Standardized Procedures”: *The Robinson Dilemma*, 1974 SUP. CT. REV. 127, 142 (1974)). *Contra* Wayne R. LaFave, *The Fourth Amendment In an Imperfect World: On Drawing ‘Bright Lines’ and ‘Good Faith’*, 43 U. PITT. L. REV. 307, 325–33 (1982) (criticizing the *Belton* decision and advocating against a bright line despite the needs of law enforcement).

<sup>45</sup> WYO. CONST. art. 1, § 4; *see supra* note 22.

and seizure decisions, the Wyoming Supreme Court relied on Federal Fourth Amendment cases and case law from other states to interpret Wyoming's search and seizure provision.<sup>46</sup> The development of Wyoming's search and seizure provision came to a halt in 1949, when the United States Supreme Court decided *Wolf v. Colorado*, which held states must, at a minimum, provide the protections of the Fourth Amendment.<sup>47</sup> In 1961, the United States Supreme Court went a step further when it declared, in *Mapp v. Ohio*, states must apply the exclusionary rule to evidence acquired in violation of the Fourth Amendment.<sup>48</sup> Accordingly, the Wyoming Supreme Court exclusively applied Fourth Amendment principles to search and seizure cases until the late twentieth century when many states returned to independent state constitutional interpretation.<sup>49</sup>

When *Belton* empowered law enforcement to conduct thorough vehicle searches per se, incident to arrest, including closed containers, many state courts turned away from the federal rule by recognizing greater protection under state constitutions.<sup>50</sup> In 1992, the Wyoming Supreme Court asked litigants to fully brief state constitutional arguments, using a "precise, analytically sound approach," to provide the court the opportunity to evaluate whether its state constitution afforded greater protections than the Fourth Amendment.<sup>51</sup> In *Vasquez v. State*, issued in 1999, a litigant finally presented the constitutional argument the court needed to rekindle its analysis of the Wyoming Constitution's search and seizure provision.<sup>52</sup>

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<sup>46</sup> *Vasquez v. State*, 990 P.2d 476, 483–84 (1999); see *State v. Petersen*, 194 P. 342 (Wyo. 1920); *State v. George*, 223 P. 683 (Wyo. 1924); *State v. Crump*, 246 P. 241 (Wyo. 1926).

<sup>47</sup> 338 U.S. 25 (1949). The Wyoming Supreme Court stated it abandoned independent state search and seizure jurisprudence earlier, in the 1920's and 1930's. *Vasquez*, 990 P.2d at 483–84.

<sup>48</sup> 367 U.S. 643 (1963). The exclusionary rule requires courts to deny admission of evidence acquired in violation of the Fourth Amendment in order to deter unreasonable searches. See generally 1 LAFAYE, *supra* note 34, § 1.1 (exploring the history and purpose of the exclusionary rule).

<sup>49</sup> *Vasquez*, 990 P.2d at 483–84. See generally, Robert B. Keiter, *An Essay on Wyoming Constitutional Interpretation*, 21 LAND & WATER L. REV. 527 (1989) (analyzing the rebirth of state constitutional interpretation and methods to facilitate state constitutional analysis).

<sup>50</sup> *Vasquez*, 990 P.2d at 482. *Mapp* required states to provide a minimum of Fourth Amendment protections, but did not prevent states from providing more protection under state constitutions. *Id.* at 484 (discussing *Mapp v. Ohio*, 367 U.S. 643, 654–55 (1961)); *O'Boyle*, 117 P.3d at 408. State court decisions rejecting *Belton* in favor of greater protection under state constitutions include: *State v. Hernandez*, 410 So.2d 1381, 1385 (La. 1982); *Commonwealth v. Toole*, 448 N.E.2d 1264, 1266–68 (Mass. 1983); *State v. Harnisch*, 931 P.2d 1359, 1365–66 (Nev. 1997); *State v. Pierce*, 642 A.2d 947, 960 (N.J. 1994); *State v. Rowell*, 188 P.3d 95, 101 (N.M. 2008); *People v. Blasitch*, 541 N.E.2d 40, 44–45 (N.Y. 1989); *State v. Gilberts*, 497 N.W.2d 93, 97 (N.Dak. 1993); *State v. Brown*, 588 N.E.2d 113, 114–15 (Ohio 1992); *Commonwealth v. White*, 669 A.2d 896, 902 (Pa. 1992); *State v. Bauder*, 924 A.2d 38, 47 (Vt. 2007); *State v. Stroud*, 720 P.2d 436, 440–41 (Wash. 1986).

<sup>51</sup> *Dworkin v. LFR, Inc.*, 839 P.2d 903, 909 (Wyo. 1992); *Saldana v. State*, 846 P.2d 604, 621–24 (Wyo. 1993) (Golden, J., concurring).

<sup>52</sup> *Vasquez*, 990 P.2d at 483–84.

*Vasquez v. State*

*Vasquez v. State* is the foundation for the Wyoming Supreme Court's modern search and seizure jurisprudence under the state constitution.<sup>53</sup> In *Vasquez*, officers arrested the appellant for driving while intoxicated.<sup>54</sup> The officers noticed empty ammunition shells in the bed of the appellant's truck, and subsequently searched the vehicle and its two passengers for any weapons posing a threat to the officers' or public safety.<sup>55</sup> In the fuse box, the officers discovered a plastic bag containing cocaine.<sup>56</sup> Under the Fourth Amendment, pursuant to *Belton*, the permissible scope of the warrantless vehicle search incident to arrest included opening the closed fuse box.<sup>57</sup> The appellant argued the Wyoming Constitution provides greater protection than the Fourth Amendment and presented a precise, analytically sound state constitutional argument.<sup>58</sup> The Wyoming Supreme Court partially agreed with the argument: it concluded Wyoming's search and seizure provision provides greater protections than its federal counterpart, but still upheld the warrantless search of the vehicle's fuse box.<sup>59</sup>

The Wyoming Supreme Court imposed, in *Vasquez*, a requirement that every warrantless search be "reasonable under all of the circumstances."<sup>60</sup> The court held a warrantless search conducted incident to arrest meets this reasonableness requirement if performed for one of two reasons: (1) to prevent the arrestee from reaching weapons posing a threat to officer safety, or (2) to prevent the arrestee from concealing or destroying evidence.<sup>61</sup> In *Vasquez*, both policy reasons were present.<sup>62</sup> First, the court held an arrest for suspected driving under the influence

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<sup>53</sup> See, e.g., *Vasquez*, 990 P.2d at 489; *Holman*, 183 P.3d at 371; *O'Boyle*, 117 P.3d at 409; *Almada v. State*, 994 P.2d 299, 308 (Wyo. 1999).

<sup>54</sup> *Vasquez*, 990 P.2d at 479.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 482; see *supra* notes 36–44 and accompanying text (reviewing the *Belton* holding).

<sup>58</sup> *Vasquez*, 990 P.2d at 484. *Vasquez* presented his argument by applying the six-factor analysis Justice Golden recommended to the practicing bar. *Id.* (referring to *Saldana*, 846 P.2d at 621–24 (Golden, J., concurring)).

<sup>59</sup> *Id.* at 489. The state constitution provides greater protection because all searches must be "reasonable under all of the circumstances," a requirement the Wyoming Supreme Court resurrected from its pre-*Mapp* decisions. *Id.* at 488–89 (citing the reasonableness standard from *State v. Kelly*, 268 P. 571 (Wyo. 1928) and *State v. Peterson*, 194 P. 342, 345 (Wyo. 1920)). Wyoming's search and seizure provision is also stronger than its federal counterpart because the state provision requires an affidavit, as opposed to merely an oath or affirmation. *Fertig v. State*, 146 P.3d 492, 497 (Wyo. 2006) (citing *Peterson*, 194 P. at 345).

<sup>60</sup> *Vasquez*, 990 P.2d at 489.

<sup>61</sup> *Id.*; see also *supra* notes 32–34 and accompanying text (reviewing the United States Supreme Court's similar policy based reasoning in *Chimel*).

<sup>62</sup> *Vasquez*, 990 P.2d at 488–489.

justified a search for evidence of intoxication.<sup>63</sup> Second, the ammunition shells in the bed of the truck raised an issue of officer safety because the vehicle's occupants might possess the gun matching the empty shells.<sup>64</sup>

### *Modern Cases Preceding the Holman Triumvirate*

The Wyoming Supreme Court predicted in *Vasquez* that a vehicle search incident to arrest would rarely fail its reasonable under all of the circumstances test.<sup>65</sup> In the seven years following *Vasquez*, only three Wyoming cases analyzed the search incident to arrest exception under the Wyoming Constitution.<sup>66</sup> True to the court's prediction, the court upheld all three searches as reasonable.<sup>67</sup> In the first case, *Andrews v. State*, the appellant placed his wallet on a counter next to him when the police informed him of his arrest for burglary.<sup>68</sup> The police searched the wallet incident to the arrest and discovered stolen coins and credit cards similar to items stolen in the burglary.<sup>69</sup> The State justified its search and subsequent seizure of the wallet under the search incident to arrest exception.<sup>70</sup> The Wyoming Supreme Court held the search reasonable under all of the circumstances because the wallet was in the area of the arrestee's immediate control at the time of arrest,

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<sup>63</sup> *Id.* at 488.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 489.

<sup>66</sup> *Clark v. State*, 138 P.3d 677, 682–83 (Wyo. 2006); *Cotton v. State*, 119 P.3d 931, 936 (Wyo. 2005); *Andrews v. State*, 40 P.3d 708, 715 (Wyo. 2002). The sparse existence of case law in this area is due to the failure of defendants to properly raise state constitutional challenges using the “precise, analytically sound approach” required by the Wyoming Supreme Court. See *Dworkin*, 839 P.2d at 909; *Fertig*, 146 P.3d at 492–501. The Wyoming Supreme Court dismisses state constitutional claims and decides search and seizure cases under the Fourth Amendment if the appellant fails to raise the state constitutional challenge sufficiently at the trial and appellate levels. *E.g.*, *LaPlant v. State*, 148 P.3d 4, 7 (Wyo. 2006) (dismissing the state constitutional claim for failure to raise the issue to the trial court); *Bailey v. State*, 12 P.3d 173, 177–78 (Wyo. 2000) (dismissing the state constitutional claim on appeal for failing to raise the Wyoming Constitution in the motion to suppress). One method of meeting this “precise, analytically sound” requirement uses the six-factor analysis recommended in Justice Golden's concurring opinion in *Saldana*, 846 P.2d at 621–24 (Golden, J., concurring). Another method uses the three part analysis recommended in *Dworkin*. *Lovato v. State*, 901 P.2d 408, 413 (Wyo. 1995) (explaining *Dworkin* and *Saldana* each demonstrate an acceptable constitutional argument).

<sup>67</sup> *Clark*, 138 P.3d at 682–83 (upholding the warrantless search under the officer safety prong of the search incident to arrest exception); *Cotton*, 119 P.3d at 936 (upholding the warrantless search under the officer safety prong of the search incident to arrest exception); *Andrews*, 40 P.3d at 715 (upholding the warrantless search under the evidentiary prong of the search incident to arrest exception).

<sup>68</sup> 40 P.3d at 715.

<sup>69</sup> *Id.* at 711.

<sup>70</sup> *Id.* at 712. When a defendant objects to evidence obtained without a warrant, the State bears the burden to prove an exception justified the search and seizure. *Mickelson v. State*, 906 P.2d 1020, 1022 (Wyo. 1995); *accord* *Fenton v. State*, 154 P.3d 974, 975–76 (Wyo. 2007); *Pena v. State*, 98 P.3d 857, 870 (Wyo. 2007).

and the wallet likely contained evidence of the burglary for which the defendant was arrested.<sup>71</sup>

The Wyoming Supreme Court analyzed a search incident to arrest under the Wyoming Constitution for the second time in *Cotton v. State*.<sup>72</sup> In *Cotton*, the officers arrested the appellant for driving with a suspended license, and the appellant asked the passenger in his vehicle to retrieve a shirt from the vehicle and take the shirt home.<sup>73</sup> The officers retrieved the shirt from the vehicle and searched it before surrendering the item to the passenger, in order to confirm neither the vehicle nor the shirt contained a weapon the passenger could use against the officers.<sup>74</sup> The officers discovered cocaine in the shirt's pocket.<sup>75</sup> The State raised the search incident to arrest exception to justify the search of the shirt and the inside of the vehicle.<sup>76</sup> The Wyoming Supreme Court upheld the scope of the search as reasonable under all of the circumstances because the search addressed officer safety concerns.<sup>77</sup>

The Wyoming Supreme Court analyzed a search conducted incident to arrest under the Wyoming Constitution for the third time in *Clark v. State*.<sup>78</sup> In *Clark*, the officers arrested the appellant for driving with a suspended license.<sup>79</sup> The officers searched the driver's area of the interior of the vehicle incident to the arrest and discovered marijuana inside a box sealed with duct tape.<sup>80</sup> The Wyoming Supreme Court upheld the scope of the search as reasonable under all of the circumstances because the presence of an intoxicated passenger raised officer safety concerns.<sup>81</sup> The court further concluded officer safety concerns existed because someone inside the vehicle covered up the box after the officer noticed it at the beginning of the traffic stop.<sup>82</sup>

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<sup>71</sup> *Andrews*, 40 P.3d at 715. The arrestee was suspected of stealing coins and cash. *Id.*

<sup>72</sup> 119 P.3d at 936.

<sup>73</sup> *Id.* at 932, 936.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 932.

<sup>77</sup> *Cotton*, 119 P.3d at 935–36. The Wyoming Supreme Court later re-characterized its *Cotton* holding as illustrating the automatic companion rule. *Speten*, 185 P.3d at 32. The automatic companion rule permits a warrantless pat-down search of an arrestee's companion without reasonable suspicion or probable cause to affirm officer safety. *Id.*

<sup>78</sup> 138 P.3d 677, 682–83 (Wyo. 2006).

<sup>79</sup> *Id.* at 679, 682.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 682.

<sup>82</sup> *Id.*

*The First Two Cases in the Holman Triumvirate: Pierce v. State and Sam v. State*

The Wyoming Supreme Court invalidated a vehicle search incident to arrest for the first time under its reasonable under all of the circumstances approach in the landmark case of *Pierce v. State*.<sup>83</sup> In *Pierce*, a police officer approached a car illegally parked in a city park.<sup>84</sup> The officer asked to see the driver's license of the vehicle's sole occupant, Roy Pierce ("Pierce"), and his proof of insurance.<sup>85</sup> Pierce provided a Montana license and told the officer the license was suspended and he did not maintain insurance on the vehicle.<sup>86</sup> Police dispatch confirmed the suspension of Pierce's license.<sup>87</sup> Another officer arrived at the scene, and the two officers arrested Pierce for driving under suspension and failing to maintain liability insurance.<sup>88</sup>

After placing Pierce in the back of the patrol car, the two officers searched the driver's area of the vehicle's interior.<sup>89</sup> One of the officers discovered syringes and a vial of liquid methamphetamine in a partially open bag on the floor behind the driver's seat.<sup>90</sup> The officer then searched other containers in the vehicle and found more drug paraphernalia, a list of names and phone numbers of individuals involved in the drug trade, and a recipe for cooking methamphetamine.<sup>91</sup> The State charged Pierce with three drug-related offenses, and Pierce moved to suppress the evidence on the grounds the search violated the search and seizure provisions of both the United States and Wyoming Constitutions.<sup>92</sup> The trial court denied Pierce's motion, and Pierce entered a conditional guilty plea reserving his right to appeal.<sup>93</sup>

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<sup>83</sup> 171 P.3d 525 (Wyo. 2007).

<sup>84</sup> *Id.* at 527. The park is closed from midnight to 6 a.m.; this stop occurred just after 5 a.m. *Id.* at 527 n.1.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 527–28.

<sup>88</sup> *Pierce*, 171 P.3d at 528. The arresting officer testified that arrests for driving under suspension are a common police practice in Casper. *Id.* at 528 n.2.

<sup>89</sup> *Id.* at 528.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 528–29. The State charged Pierce with three crimes: (1) third, or subsequent possession of powder or crystalline methamphetamine; (2) third, or subsequent, possession of liquid methamphetamine; and (3) possession of more than .3 grams of methamphetamine. WYO. STAT. ANN. § 35-7-1031(c)(i)–(ii), (9) (LexisNexis 2007).

<sup>93</sup> *Pierce*, 171 P.3d at 529.

On appeal, Pierce argued the district court erred in denying his motion to suppress because the search of his vehicle was unreasonable, and therefore violated the Wyoming Constitution's search and seizure provision.<sup>94</sup> The State raised the search incident to arrest exception.<sup>95</sup> The State argued the search was reasonable because the scope of the search was limited to the area within the driver's immediate control just prior to the arrest.<sup>96</sup> Chief Justice Voigt issued the opinion of a divided court and held the vehicle search unreasonable and, therefore, unconstitutional.<sup>97</sup> The court recited the two policies that justify searches incident to arrest—to prevent the arrestee from concealing or destroying evidence, or to prevent the arrestee from reaching weapons.<sup>98</sup> Next, the opinion listed eleven factors that indicated the absence of either policy in the circumstances presented.<sup>99</sup> The court then distinguished *Pierce* from the small body of case law, which unflinchingly upheld warrantless searches, applying the search incident to arrest exception under the Wyoming Constitution.<sup>100</sup>

Justices Hill and Burke each issued dissenting opinions.<sup>101</sup> Justice Burke criticized the court for not affording officer safety concerns appropriate weight as a factor in its reasonableness analysis.<sup>102</sup> Every arrest presents officer safety concerns according to Justice Burke, and therefore, all searches conducted incident to arrest are justified.<sup>103</sup> Justice Burke found the search reasonable and consistent with Wyoming precedent because the search's scope was limited to the area within the driver's immediate control just prior to the arrest.<sup>104</sup> Justice Burke further

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<sup>94</sup> *Id.* at 530 (citing WYO. CONST. art. 1, § 4).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Pierce*, 171 P.3d at 531.

<sup>99</sup> *Id.* at 531–32. The court considered eleven factors: (1) the apparent influence of alcohol or drugs on the arrestee; (2) the likelihood the vehicle contained evidence of any crime; (3) the pat-down search uncovered no evidence; (4) the State did not attempt to justify the search for evidentiary reasons in its appellate brief; (5) the apparent presence of weapons in the vehicle, on the person, or likely presence due to the nature of the crime; (6) the ratio of vehicle passengers to officers; (7) the isolation of the handcuffed arrestee in the back of the patrol car; (8) any suspicious or furtive behavior by the arrestee; (9) the inherent dangerousness of the setting of the arrest including time of day and location; (10) the interaction with the arrestee including information regarding past criminal history; and (11) the cooperation of the arrestee during the arrest. *Id.* The *Pierce* court indicated the questionable significance of the eleven factors when it said, “[t]hat is not to say, of course, that *any* of these considerations might not be viewed differently if it were to arise in the context of different facts.” *Id.* at 532 (emphasis in original).

<sup>100</sup> *Id.* at 532–35 (discussing *Clark*, 138 P.3d 677; *Cotton*, 119 P.3d 931; and *Andrews*, 40 P.3d 708). *Clark* and *Cotton* reappear in *Holman*. *Holman*, 183 P.3d at 373.

<sup>101</sup> *Pierce*, 171 P.3d at 536–38, 539.

<sup>102</sup> *Id.* at 536–38 (Burke, J., dissenting).

<sup>103</sup> *Id.* at 537 (Burke, J., dissenting) (citing *Wash. v. Chrisman*, 455 U.S. 1, 7 (1982); *Mich. v. DeFillippo*, 443 U.S. 31, 35 (1979); *Chimel v. Cal.*, 395 U.S. 752, 762–63 (1969)).

<sup>104</sup> *Id.* (Burke, J., dissenting).

criticized the court for undermining standard law enforcement policy permitting searches incident to arrest.<sup>105</sup> The court expects officers in the field to determine when a vehicle search is reasonable, and Justice Burke accused the majority of failing to provide law enforcement with sufficient guidance to make such a legal distinction.<sup>106</sup> Justice Hill's brief dissent concurred with Justice Burke's opinion, and added a conclusory statement that the court misapplied *Vasquez*.<sup>107</sup>

Only four months after issuing *Pierce v. State*, the Wyoming Supreme Court, once again divided, reversed itself by finding a vehicle search reasonable in *Sam v. State*.<sup>108</sup> In this case, the balance of the court was inverted—Justice Hill wrote the majority opinion, joined by Justices Burke and Kite.<sup>109</sup> Chief Justice Voigt and Justice Golden dissented.<sup>110</sup> The story of Sam's arrest and vehicle search began when police in Cody, Wyoming received a complaint that Steven Ace Sam ("Sam") violated a protective order by calling and following a woman and her daughter.<sup>111</sup> The officer requested an arrest warrant, but before the warrant arrived, the officer observed Sam repeatedly drive past the Crisis Intervention Center where the woman and her daughter went for help.<sup>112</sup> The officer stopped Sam, who drove with a passenger, and arrested Sam for violating the protection order and driving with a suspended license.<sup>113</sup> In the pat-down search of Sam, the officer discovered two large bundles of cash in Sam's pockets.<sup>114</sup> After placing Sam in the back of his patrol car, the officer searched the interior of Sam's vehicle incident to the arrest.<sup>115</sup>

The search of the vehicle did not produce any evidence of the two crimes for which Sam was arrested, but the search did uncover drug paraphernalia, methamphetamine, and cocaine.<sup>116</sup> The State charged Sam with possession

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<sup>105</sup> *Id.* (Burke, J., dissenting).

<sup>106</sup> *Pierce*, 171 P.3d at 537 (Burke, J., dissenting).

<sup>107</sup> *Id.* at 538 (Hill, J., dissenting); compare *supra* notes 53–64 and accompanying text (reviewing *Vasquez*), with *infra* notes 161–66 and accompanying text (articulating a similar interpretation of *Vasquez* that appeared in Justice Burke's dissenting opinion in *Holman*).

<sup>108</sup> 177 P.3d 1173 (Wyo. 2008).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 1178–80 (Voigt, C.J., dissenting).

<sup>111</sup> *Id.* at 1175. Sam lived with the victim and her daughter for several years preceding the dissolution of the relationship and subsequent domestic violence protective order. *Id.* Sam allegedly violated the protective order by telephone harassment several times in the days preceding the arrest. *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Sam*, 177 P.3d at 1175.

<sup>114</sup> Brief of Appellee at 5, *Sam*, 177 P.3d 1173 (No. 07-57) (May 14, 2007), 2007 WL 5187033. Sam justified the large sum of money by alleging he just sold a car. Brief of Appellant at 4–5, *Sam*, 177 P.3d 1173 (No. 07-57) (Mar. 26, 2007), 2006 WL 5953239.

<sup>115</sup> Brief of Appellee, *Sam*, *supra* note 114, at 5.

<sup>116</sup> *Sam*, 177 P.3d at 1175–76.

of a controlled substance with intent to deliver.<sup>117</sup> Sam moved to suppress the evidence of the drug charges, and the trial court denied his motion.<sup>118</sup> Sam made a conditional guilty plea reserving his right to challenge the constitutionality of the search of his vehicle.<sup>119</sup> A divided Wyoming Supreme Court upheld the district court's decision denying Sam's motion to suppress.<sup>120</sup>

Writing for the majority, Justice Hill stated four situations remove a case from the reasonable under all of the circumstances analysis: (1) to search for weapons or contraband that pose a risk to officer or public safety; (2) when the presence of a passenger in the car poses a threat to officer or public safety; (3) the need to secure an arrestee's automobile; and (4) to search for evidence related to the crime that justified the arrest.<sup>121</sup> The court focused on the evidentiary prong of its *Vasquez* holding; the arresting officer in *Vasquez* was justified to search for evidence of intoxication because Vasquez was arrested for drunk driving.<sup>122</sup> Reasoning by analogy, the court held an arrest for violating a protection order justified a vehicle search incident to arrest to find evidence relating to that crime.<sup>123</sup> A review of the record indicated the arresting officer searched the vehicle for evidence related to the crime of violating a protection order: potential evidentiary items included the cell phone Sam used to make harassing telephone calls and documents that might indicate Sam's intentions toward the individuals protected by the order.<sup>124</sup> The court thereby found the warrantless vehicle search reasonable because the search met the evidentiary prong of the reasonable under all of the circumstances test.<sup>125</sup>

Chief Justice Voigt's dissent accused the court of misapplying *Vasquez*.<sup>126</sup> According to Chief Justice Voigt, the four exceptions to *Vasquez* cited by the court are not exceptions at all, but merely factors to consider when evaluating whether a search meets the reasonable under all of the circumstances test.<sup>127</sup> Chief Justice Voigt expressed concern that the court established a bright-line rule authorizing a vehicle search incident to arrest per se, thereby nullifying the court's reasonable

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<sup>117</sup> *Id.* at 1174.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 1173.

<sup>121</sup> *Sam*, 177 P.3d at 1177.

<sup>122</sup> *Id.* at 1178. In *Vasquez*, the court also justified the warrantless vehicle search for officer safety concerns evident by empty shell casings in the vehicle and the presence of additional passengers. *Vasquez*, 990 P.2d at 489; *see supra* notes 53–64 and accompanying text (reviewing *Vasquez*).

<sup>123</sup> *Sam*, 177 P. 3d at 1178.

<sup>124</sup> *Id.* at 1177.

<sup>125</sup> *Id.* at 1178.

<sup>126</sup> *Id.* at 1179 (Voigt, C.J., dissenting).

<sup>127</sup> *Id.* (Voigt, C.J., dissenting).

under all of the circumstances test.<sup>128</sup> Chief Justice Voigt agreed with the court that officer safety or evidentiary concerns justify vehicle searches incident to arrest, but found neither justification supported by the facts of the case at bar.<sup>129</sup>

Chief Justice Voigt suggested either probable cause or reasonable suspicion that the vehicle contains weapons or evidence of the alleged crime is required to justify a warrantless vehicle search incident to arrest.<sup>130</sup> The arresting officer testified at trial that he searched the vehicle incident to arrest—without asserting any level of suspicion to justify the search.<sup>131</sup> The State did not enunciate what evidence the officer searched for until the State filed its appellate brief, and Chief Justice Voigt found this post-hoc justification for a search inadequate to meet Wyoming's reasonable under all of the circumstances requirement.<sup>132</sup>

*Pierce* and *Sam* demonstrate a clear split in the Wyoming Supreme Court regarding warrantless vehicle searches conducted under the search incident to arrest exception.<sup>133</sup> Justice Kite was the swing Justice in each opinion.<sup>134</sup> With the seemingly inapposite opinions from *Sam* and *Pierce* as the backdrop, the Wyoming Supreme Court issued its third opinion in seven months concerning warrantless vehicle searches incident to arrest in *Holman*.<sup>135</sup>

#### PRINCIPAL CASE

*Holman* asked the Wyoming Supreme Court to find the warrantless search of his vehicle unreasonable, and thereby unconstitutional, and reverse the trial court's denial of his motion to suppress evidence.<sup>136</sup> *Holman* argued the search of his vehicle was unreasonable because the vehicle did not contain any evidence of the crime for which he was arrested, and nothing in the record indicated the

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<sup>128</sup> *Sam*, 177 P.3d at 1179 (Voigt, C.J., dissenting) (“Most troubling to me is the idea that the arresting officer may always search the vehicle for evidence of the crime for which the driver was arrested. If that is the rule, then *Vasquez* has no meaning, and the vehicle may always be searched, because an arrested driver has always been arrested for the alleged commission of some crime.”).

<sup>129</sup> *Id.* at 1179–80 (Voigt, C.J., dissenting).

<sup>130</sup> *Id.* at 1179 (Voigt, C.J., dissenting).

<sup>131</sup> *Id.* (Voigt, C.J., dissenting).

<sup>132</sup> *Id.* (Voigt, C.J., dissenting) (“Subsequent speculation does not make a search reasonable under all of the circumstances.”).

<sup>133</sup> Compare *supra* notes 83–107 and accompanying text (*Pierce* majority comprised of Chief Justice Voigt, and Justices Golden and Kite), with *supra* notes 108–32 and accompanying text (*Sam* majority comprised of Justices Hill, Burke, and Kite).

<sup>134</sup> See *supra* note 133.

<sup>135</sup> Compare *Pierce*, 171 P.3d at 525 (issued November 15, 2007), and *Sam*, 177 P.3d at 1173 (issued March 16, 2008), and *Holman*, 183 P.3d at 368 (issued two months later on May 14, 2008).

<sup>136</sup> *Holman v. State*, 183 P.3d 368, 371 (Wyo. 2008).

presence of any officer safety issues.<sup>137</sup> The State countered with five factors supporting its conclusion that the search was reasonable under the search incident to arrest exception: (1) the search addressed officer and public safety concerns; (2) the officers needed to preserve evidence; (3) the search was limited in scope; (4) automobile drivers have diminished expectations of privacy; and (5) the officers needed to secure the vehicle.<sup>138</sup>

### *Majority Opinion*

Chief Justice Voigt wrote the majority opinion, joined by Justices Golden, Kite, and Hill.<sup>139</sup> The court focused on the arresting officer's testimony that he searched Holman's vehicle incident to arrest as a matter of standard police procedure, without articulating facts raising officer safety or evidentiary concerns.<sup>140</sup> The court held an unadorned per se policy of searching vehicles incident to any arrest might satisfy the Fourth Amendment, but does not satisfy Wyoming's heightened constitutional protections requiring its "reasonable under all of the circumstances" analysis.<sup>141</sup> The court narrowed the issue to whether two exceptions applied to justify the search at bar: (1) the search incident to arrest exception, and (2) the search of an automobile upon probable cause exception.<sup>142</sup>

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<sup>137</sup> *Id.* at 373. Holman also argued the search was not justified by reasonable suspicion as an investigatory stop. See Brief of Appellant, *Holman*, *supra* note 2, at 4–10. One of the issues reviewed in investigatory stops is whether the initial stop was justified by reasonable suspicion. *Brown v. State*, 944 P.2d 1168, 1171 (Wyo. 1997). Holman argued the facts of the case were inadequate to give rise to a reasonable suspicion of criminal activity when the officer initiated the stop because there is nothing criminal about sitting in a car, using a monocular, or moving a car occasionally. Brief of Appellant, *Holman*, *supra* note 2, at 4–10. The State countered that Holman's furtive behavior supported the existence of a reasonable suspicion that Holman engaged in indecent exposure or masturbation while watching children. Brief of Appellee at 9–14, *Holman*, 183 P.3d 368 (No. 06-140) (Dec. 14, 2006), 2006 WL 5953240. The *Holman* court did not address these arguments in its opinion. See *Holman*, 183 P.3d 368.

<sup>138</sup> Brief of Appellee, *Holman*, *supra* note 137, at 17.

<sup>139</sup> See *Holman*, 183 P.3d 368.

<sup>140</sup> *Id.* at 372. The officer stated this simple justification for the warrantless vehicle search twice. *Id.* At the preliminary hearing, the officer stated he searched the vehicle incident to arrest because "[t]hat's what I always do." *Id.* At the hearing on the motion to suppress, the officer told defense counsel "[o]nce he's arrested, I'm going to search the vehicle regardless of whether we're going to leave it parked there or move it to a different spot to be parked or tow it. . . . It doesn't matter. I'm going to search the vehicle." *Id.*

<sup>141</sup> *Id.* at 372–73. A lawful arrest justifies a thorough search incident to that arrest in Fourth Amendment jurisprudence. *Michigan v. Long*, 463 U.S. 1032, 1050 n.14 (1983) ("[T]he 'bright line' that we drew in *Belton* clearly authorizes [an unlimited] search whenever officers effect a custodial arrest."); see *supra* notes 36–44 and accompanying text (reviewing *Belton*).

<sup>142</sup> *Holman*, 183 P.3d at 373. The State never raised the automobile exception. Brief of Appellant, *Holman*, *supra* note 2, at i, 15–29; see *infra* notes 217–26 and accompanying text (demonstrating the court's sua sponte discussion of the automobile exception is the strongest fact supporting the imposition of reasonable suspicion onto the search incident to arrest exception).

The court reiterated the rule of the automobile exception: a warrantless search of an automobile is permissible if probable cause exists to believe the vehicle contains weapons or contraband.<sup>143</sup> The court then compared the facts of the present case to the facts of *Vasquez* and *Pierce*.<sup>144</sup> The court re-characterized its *Vasquez* decision as discussing the automobile exception; the automobile exception applied because the probable cause necessary to justify an arrest for drunk driving equated to the same probable cause justifying a search of the vehicle for intoxicants related to that crime.<sup>145</sup> In *Pierce*, the automobile exception did not apply because of the improbability that evidence relating to the crime for which *Pierce* was arrested (driving under suspension) remained in the vehicle.<sup>146</sup> The court held that, analogous to *Pierce*, the automobile exception did not apply to the present facts because there was no likelihood, and thereby no probable cause, that evidence relating to the crime for which *Holman* was arrested (driving under suspension) would be found in the vehicle.<sup>147</sup>

The court began its discussion of the search incident to arrest exception by reciting the two policies that justify searches incident to arrest—to ensure officer safety where circumstances indicate the arrestee may have weapons, and to prevent the destruction or concealment of evidence.<sup>148</sup> Next, the court distinguished the facts of the case from the facts of *Vasquez*, *Cotton*, and *Clark* and concluded no facts in the present case raised officer safety concerns.<sup>149</sup> The court recited, but did not explicitly apply, eight of the eleven factors supporting its holding in *Pierce* that found a vehicle search incident to arrest unreasonable.<sup>150</sup> The court concluded that, analogous to *Pierce*, the record presented no objective facts to find

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<sup>143</sup> *Holman*, 183 P.3d at 374–75.

<sup>144</sup> *Id.* at 375–76.

<sup>145</sup> *Id.* at 375; *see supra* notes 53–64 and accompanying text (reviewing *Vasquez*, which analyzed the search incident to arrest exception).

<sup>146</sup> *Holman*, 183 P.3d at 375 (quoting *Pierce*, 171 P.3d at 531). The *Pierce* court never addressed the automobile exception. *Pierce*, 171 P.3d at 529 (“We are concerned in the instant appeal with the applicability of the search-incident-to-arrest exception.”); *see supra* notes 83–107 and accompanying text (reviewing *Pierce*).

<sup>147</sup> *Holman*, 183 P.3d at 374–76.

<sup>148</sup> *Id.* at 373.

<sup>149</sup> *Id.* at 373–74; *see Pierce*, 171 P.3d at 532–35 (distinguishing *Pierce* from the small body of precedent applying Wyoming’s unique search incident to arrest exception).

<sup>150</sup> *Holman*, 183 P.3d at 374. The court considered these factors: (1) the apparent influence of alcohol or drugs on the arrestee; (2) the apparent presence of weapons in the vehicle, on the person, or likely presence due to the violent nature of the crime; (3) the ratio of vehicle passengers to officers; (4) the isolation of the handcuffed arrestee in the back of the patrol car; (5) any suspicious or furtive behavior by the arrestee; (6) the inherent dangerousness of the setting of the arrest including time of day and location; (7) the interaction with the arrestee including information regarding past criminal history; (8) the cooperation of the arrestee during the arrest. *Id.*; *see infra* notes 230–85 and accompanying text (analyzing the *Pierce* and *Holman* factors).

either officer safety or other exigent circumstances justified the search of Holman's vehicle incident to his arrest.<sup>151</sup>

The court expressly rejected three factors the State argued weighed in favor of finding the warrantless vehicle search reasonable.<sup>152</sup> First, the court found the limited scope of the vehicle search immaterial.<sup>153</sup> According to the court, if probable cause existed to support the vehicle search, then the automobile exception applied and the search could have encompassed any part of the vehicle and its contents.<sup>154</sup> Second, the court recognized a diminished expectation of privacy in automobiles, but held the search invaded Holman's remaining privacy interest because the officers lacked probable cause and no evidence of officer safety concerns existed.<sup>155</sup> Third, the court was not persuaded by a need to secure the vehicle.<sup>156</sup> The court agreed the police should not abandon a car containing weapons or contraband in a city park, and if the police had probable cause to believe the vehicle contained such items, then a warrantless vehicle search would be reasonable under the automobile exception.<sup>157</sup>

### *Concurring Opinion*

Justice Hill wrote a short concurrence to distinguish the present case from *Pierce* and *Sam*.<sup>158</sup> After carefully reiterating the standard of review and the need for ad hoc review in search and seizure cases, Justice Hill held the circumstances of this case inadequate to satisfy the court's reasonableness requirement.<sup>159</sup> Justice Hill stated a stop, search, and seizure based on a mere hunch is unreasonable and, therefore, unconstitutional.<sup>160</sup>

### *Dissenting Opinion*

In the dissenting opinion, Justice Burke found the majority in the present case and its companion case, *Pierce*, inconsistent with Wyoming precedent,

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<sup>151</sup> *Holman*, 183 P.3d at 374.

<sup>152</sup> *Id.* at 376–77.

<sup>153</sup> *Id.* at 376 (“The limited nature of the scope of the search in this case does not justify the otherwise impermissible search.”).

<sup>154</sup> *Id.* (citing *Vassar v. State*, 99 P.3d 987, 986 (Wyo. 2004)).

<sup>155</sup> *Id.*

<sup>156</sup> *Holman*, 183 P.3d at 376–77.

<sup>157</sup> *Id.* at 377.

<sup>158</sup> *Id.* (Hill, J., concurring).

<sup>159</sup> *Id.* (Hill, J., concurring). The standard of review is two-fold: the reviewing court will not disturb factual findings unless clearly erroneous, and the issue of law (whether an unreasonable search and seizure occurred and thereby violated the Wyoming Constitution) is reviewed de novo. *Id.* at 377 (Hill, J., concurring).

<sup>160</sup> *Id.* (Hill, J., concurring).

which authorizes a limited search of the area in the arrestee's immediate control incident to any arrest.<sup>161</sup> Justice Burke began by reviewing the foundation for the reasonable under all of the circumstances approach established in *Vasquez*.<sup>162</sup> According to Justice Burke, while *Vasquez* established a broad rule that all searches must be reasonable, the *Vasquez* holding was actually quite narrow because it only determined whether the scope of the search incident to arrest exception included closed or locked containers inside a vehicle.<sup>163</sup> Wyoming joined a minority of states that re-evaluated state constitutional provisions and eschewed *Belton* by holding vehicle searches incident to arrest do not per se permit opening containers.<sup>164</sup> Justice Burke explained that in *Vasquez*, the court determined the permissibility of *thorough* vehicle searches.<sup>165</sup> According to Justice Burke, the narrow *Vasquez* rule did not apply to the present case because the disputed search was *limited* to the area in the arrestee's immediate control.<sup>166</sup>

Justice Burke accused the court of muddling three exceptions to the warrant requirement: the automobile exception, the search incident to arrest exception, and the investigatory detention exception.<sup>167</sup> According to Justice Burke, the automobile exception (search and/or seizure of an automobile upon probable cause) explicitly requires probable cause.<sup>168</sup> By contrast, Justice Burke stated the search incident to arrest exception (search of an arrested suspect and the area within his control) does not explicitly require any justification beyond the arrest itself.<sup>169</sup> Justice Burke argued a lawful arrest supported by probable cause provides the same probable cause to uphold a search incident to that arrest.<sup>170</sup> Justice Burke also claimed the court misapplied the standard of reasonable suspicion which, he claimed, is a level of suspicion relevant only to the investigatory detention exception.<sup>171</sup>

Justice Burke further criticized the court for finding the crime for which the appellant was arrested a significant factor in its reasonableness analysis.<sup>172</sup> If the

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<sup>161</sup> *Holman*, 183 P.3d at 378 (Burke, J., dissenting).

<sup>162</sup> *Id.* (Burke, J., dissenting).

<sup>163</sup> *Id.* (Burke, J., dissenting) (discussing *Vasquez*, 990 P.2d at 488–89).

<sup>164</sup> *Id.* (Burke, J., dissenting).

<sup>165</sup> *Id.* (Burke, J., dissenting).

<sup>166</sup> *Holman*, 183 P.3d at 378 (Burke, J., dissenting). Justice Burke stated the *Vasquez* holding was appropriately applied in *Clark*, when the Wyoming Supreme Court upheld a warrantless vehicle search, including the opening of a sealed box, due to officer safety concerns. *Id.* (discussing *Clark v. State*, 138 P.3d 677 (Wyo. 2006)).

<sup>167</sup> *Id.* at 379–82 (Burke, J., dissenting).

<sup>168</sup> *Id.* at 379 (Burke, J., dissenting) (citing *Vassar*, 99 P.3d at 996).

<sup>169</sup> *Id.* (Burke, J., dissenting).

<sup>170</sup> *Id.* (Burke, J., dissenting).

<sup>171</sup> *Holman*, 183 P.3d at 382 (Burke, J., dissenting).

<sup>172</sup> *Id.* at 380 (Burke, J., dissenting).

nature of the crime indicates whether officer safety concerns exist, then, according to Justice Burke, the court failed to inform law enforcement which crimes and related arrests are inherently dangerous.<sup>173</sup> Justice Burke advised the court to follow federal precedent which treats every arrest as dangerous.<sup>174</sup>

#### ANALYSIS

The Wyoming Supreme Court stepped away from its search incident to arrest precedent in *Pierce*, and confirmed its new direction in *Holman*.<sup>175</sup> Regrettably, throughout the *Holman* triumvirate, the court failed to synthesize its new direction into a distinct set of rules for legal practitioners and law enforcement to apply.<sup>176</sup> The analysis section of this case note determines that in the search incident to arrest exception, the court defines “reasonable under all of the circumstances” as reasonable grounds.<sup>177</sup> The appropriate standard to be applied is reasonable suspicion.<sup>178</sup> The factors the Wyoming Supreme Court analyzes in search incident to arrest cases support this theory and provide practical guidance for law enforcement and practitioners.<sup>179</sup> These factors incidentally demonstrate continuity in Wyoming’s search incident to arrest cases, and reconcile the anomalous case in the *Holman* triumvirate, *Sam*, with its companions.<sup>180</sup>

As a preliminary matter, a fundamental error in the court’s opinion needs clarification.<sup>181</sup> The court stated no search was permissible incident to arrest.<sup>182</sup> At a minimum, a limited pat-down search of the arrestee’s person for weapons or evidence was permitted: it was a factor considered by the court in its analysis.<sup>183</sup>

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<sup>173</sup> *Id.* (Burke, J., dissenting).

<sup>174</sup> *Id.* at 380–81 (Burke, J., dissenting) (citing *Wash. v. Chrisman*, 455 U.S. 1, 7 (1982)).

<sup>175</sup> Compare *supra* notes 53–82 and accompanying text (reviewing search incident to arrest decisions on independent state grounds preceding *Pierce* which unfailingly upheld warrantless vehicle searches), with *supra* notes 83–171 and accompanying text (reviewing the triumvirate of *Pierce*, *Sam*, and *Holman*).

<sup>176</sup> See *infra* notes 181–94 and accompanying text.

<sup>177</sup> See *infra* notes 188–94 and accompanying text.

<sup>178</sup> See *infra* notes 201–29 and accompanying text.

<sup>179</sup> See *infra* notes 230–85 and accompanying text.

<sup>180</sup> See *infra* notes 250–85 and accompanying text.

<sup>181</sup> *Holman*, 183 P.3d at 380 (Burke, J., dissenting) (“Fundamentally, [the court] fails to acknowledge the distinction between the authority to conduct a search incident to arrest, and the proper scope of that search.”).

<sup>182</sup> *Id.* at 376 (“The limited nature of the scope of the search in this case does not justify the otherwise impermissible search.”).

<sup>183</sup> *Id.* at 374 (“The . . . ‘pat down’ search of the appellant’s person did not uncover anything of evidentiary value.”).

Furthermore, the permissible search of an arrestee's person is the well-recognized foundation of the search incident to arrest exception.<sup>184</sup> The *scope* of a search made incident to arrest—beyond the person, to the interior of a vehicle—is the focus of the *Holman* opinion.<sup>185</sup> Every case in Wyoming's small body of case law interpreting its search incident to arrest exception focuses on the scope of the search.<sup>186</sup> The *Holman* court made a careless error in *Holman* by failing to distinguish between the permissible search of a person incident to arrest and the extension of that search to the interior of a vehicle.<sup>187</sup>

In the *Holman* triumvirate of cases, the Wyoming Supreme Court replaced its vague "reasonable under all of the circumstances" requirement with a "reasonable basis" standard.<sup>188</sup> A vehicle search incident to arrest is unconstitutional unless a reasonable basis—either probable cause or reasonable suspicion—suggests the vehicle contains weapons or evidence.<sup>189</sup> In the first case of the triumvirate, *Pierce*, Chief Justice Voigt stated "we must be able to find a *reasonable basis*, articulable from the totality of the circumstances in each case, to justify a search."<sup>190</sup> In the second case, *Sam*, Chief Justice Voigt dissented because "[t]he officer did not claim to have *probable cause* to search the vehicle, nor did he claim to have *reasonable*

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<sup>184</sup> *Weeks v. U.S.*, 232 U.S. 383, 392 (1914); *Chimel v. Cal.*, 395 U.S. 752, 762–63 (1969); *U.S. v. Robinson*, 414 U.S. 218, 224 (1973). See generally 1 LAFAYETTE, *supra* note 34, § 1.1(a)–(c) (discussing the history of the Fourth Amendment).

<sup>185</sup> See WILLIAM W. GREENHALGH, *THE FOURTH AMENDMENT HANDBOOK* 13 (2003). There are two issues under each exception to the warrant requirement: (1) identifying the predicate for the search, and (2) defining the permissible scope of that search. *Id.* The predicate under the search incident to arrest exception is the occurrence of a lawful arrest. *Id.* The most common dispute in search incident cases is the second issue—defining the permissible scope of the search. *Id.*; see also *Robinson*, 414 U.S. at 224 (explaining the search incident to arrest exception involves two searches: the search of the person and the search within the area of the arrestee's immediate control).

<sup>186</sup> See *supra* notes 53–132 and accompanying text (reviewing the small body of case law applying the search incident to arrest exception under the Wyoming Constitution). In *Andrews*, the court determined whether a wallet on a counter next to the arrestee lay within the permissible scope of a search. *Andrews v. State*, 40 P.3d 708, 715 (Wyo. 2002). In *Cotton*, the court considered whether the permissible scope of a search incident to arrest included the pocket of a shirt inside a vehicle. *Cotton v. State*, 119 P.3d 931, 933 (Wyo. 2005). In *Clark*, the court investigated whether the scope of a search incident to arrest included a sealed box behind the driver's seat inside the vehicle. *Clark v. State*, 138 P.3d 677, 680 (Wyo. 2006). The *Pierce* opinion clearly articulated the issue as whether extending the scope of a search incident to arrest to the interior of a vehicle violated the state constitution. *Pierce v. State*, 117 P.3d 525, 529 (Wyo. 2007). The *Sam* court also articulated the difference between the search of the person incident to arrest and the extension of that search to the interior of a vehicle. *Sam v. State*, 177 P.3d 1173, 1178 (Wyo. 2008).

<sup>187</sup> *Holman*, 183 P.3d at 380 (Burke, J., dissenting); see also GREENHALGH, *supra* note 185, at 13 (explaining the common dispute in search incident to arrest cases concerns the scope of the search beyond the arrestee's person).

<sup>188</sup> See *infra* notes 189–229 and accompanying text.

<sup>189</sup> See *infra* notes 190–198 and accompanying text.

<sup>190</sup> *Pierce*, 171 P.3d at 532 (emphasis added).

*suspicion* of anything when he searched it.”<sup>191</sup> Writing for the majority again in *Holman*, Chief Justice Voigt remained silent on whether any level of reasonable grounds were required to justify the warrantless vehicle search.<sup>192</sup> Justice Burke filled that silence by criticizing the *Holman* court for imposing both reasonable suspicion and probable cause onto the search incident to arrest exception.<sup>193</sup>

The court never specified which level of suspicion is required.<sup>194</sup> The Wyoming Supreme Court defines reasonable suspicion as “‘a particularized and objective basis’ for suspecting the particular person stopped of criminal activity.”<sup>195</sup> The court recognizes the higher standard of probable cause “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.”<sup>196</sup> Reasonable suspicion is the less demanding standard; it requires more than a mere suspicion or hunch but requires less than probable cause.<sup>197</sup> Reasonable suspicion is the only logical level of suspicion to apply to the search incident to arrest exception.<sup>198</sup>

As a threshold matter, it is helpful to recall the Wyoming Supreme Court recognizes two categories inside the search incident to arrest exception—the evidentiary prong and the officer safety prong.<sup>199</sup> The level of suspicion required

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<sup>191</sup> *Sam*, 177 P.3d at 1179 (Voigt, C.J., dissenting) (emphasis added).

<sup>192</sup> *Holman*, 183 P.3d 368.

<sup>193</sup> *Id.* at 380 (Burke, J., dissenting) (“[The court] borrows the probable cause requirement from automobile searches, and the reasonable suspicion requirement from investigatory detention cases, and imposes them as new requirements for searches incident to arrest.”).

<sup>194</sup> See *supra* notes 188–93 and accompanying text (explaining that *either* reasonable suspicion or probable cause must justify a warrantless search).

<sup>195</sup> *Speten v. State*, 185 P.3d 25, 28 (Wyo. 2008) (citing *Damato v. State*, 64 P.3d 700, 707 (Wyo. 2003)).

<sup>196</sup> *Id.* The two concepts of probable cause and reasonable suspicion are objective standards unavailable as a neat set of legal rules; the standards take into account the ordinary human experience, and require fact specific inquiries in each context in which the standards are applied. 68 AM. JUR. 2D *Searches and Seizures* § 122 (2000). Compare BLACK’S LAW DICTIONARY 1007 (8th ed. 2005) (“[P]robable cause: a reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.”), with BLACK’S LAW DICTIONARY 1212 (“[R]easonable suspicion: a particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity.”).

<sup>197</sup> *Damato*, 64 P.3d at 707 (quoting *U.S. v. Wood*, 106 F.3d 942 (10th Cir. 1997)); see also 68 AM. JUR. 2D, *supra* note 196, § 88 (explaining the lesser standard of reasonable suspicion is a minimal level of justification and requires only a fair probability contraband or evidence will be found).

<sup>198</sup> See *infra* notes 201–29 and accompanying text. *Contra* Decock & Mercer, *supra* note 28, at 164–66 (advocating for the adoption of probable cause to the evidentiary prong of Wyoming’s search incident to arrest exception).

<sup>199</sup> *Vasquez*, 990 P.2d at 489 (citations omitted). In the evidentiary prong, the court further recognizes two subcategories—gathering evidence or preventing the destruction of evidence. *Id.*

under each prong is reasonable suspicion, but the reasoning for this prerequisite differs under each prong; each is thereby analyzed separately.<sup>200</sup>

### *Reasonable Suspicion Under the Officer Safety Prong*

The reasonable basis to justify a warrantless vehicle search under the officer safety prong is reasonable suspicion.<sup>201</sup> Justice Burke correctly stated in his *Holman* dissent the court imported reasonable suspicion from its investigatory detention jurisprudence.<sup>202</sup> The court's import, however, was not inappropriate because officer safety is the common denominator for searches in both search incident to arrest and investigatory detention cases.<sup>203</sup> Moreover, Wyoming recognizes that law enforcement faces serious safety risks in the line of duty.<sup>204</sup>

Officer safety concerns were addressed by the United States Supreme Court in *Terry v. Ohio*—the foundation of the investigatory detention exception in Federal Fourth Amendment jurisprudence.<sup>205</sup> The *Terry* Court stated it would be unreasonable to force law enforcement to take unnecessary safety risks when an officer suspects a person in close proximity possesses a weapon; therefore, pat-down searches, while invasive of citizens' protected privacy interests, are permissible during investigatory detentions.<sup>206</sup> The Court adopted reasonable suspicion as the basis to justify searches conducted in the interest of officer safety.<sup>207</sup> The *Terry*

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<sup>200</sup> See *infra* notes 201–16 and accompanying text (discussing the officer safety prong), and *infra* notes 217–29 and accompanying text (discussing the evidentiary prong).

<sup>201</sup> *O'Boyle v. State*, 117 P.3d 401, 409 (Wyo. 2005) (discussing *Vasquez*, 990 P.2d at 489). The *Pierce* majority cited the same conclusion from *O'Boyle*. *Pierce*, 171 P.3d at 531.

<sup>202</sup> *Holman*, 183 P.3d at 381–82 (Burke, J., dissenting).

<sup>203</sup> *Speten*, 185 P.3d at 32 n.6, 33 (Wyo. 2008). Officer safety concerns based on less than probable cause also appear in the automatic companion rule. *Id.* at 31 (citing *Cotton*, 119 P.3d 931, 936).

<sup>204</sup> *Brown v. State*, 944 P.2d 1168, 1172 (Wyo. 1997) (quoting *Mickelson v. State*, 906 P.2d 1020, 1023 (Wyo. 1995)).

<sup>205</sup> *Terry v. Ohio*, 392 U.S. 1, 23–24 (1968). The *Terry* decision is a seminal case for multiple issues, not just the investigatory detention exception, and has been subject to extensive commentary. See generally Michael Mello, *Stop: Terry v. Ohio Step-by-Step, as an Illustration of Fourth Amendment Analysis (or, What Did Detective Martin McFadden Know, and When Did He Know It?)*, 44 No. 4 CRIM. L. BULL. 5 (2008) (discussing issues of reasonable suspicion, seizures, frisks, and race in the 1968 decision); Gregory Howard Williams, *The Supreme Court and Broken Promises: The Gradual but Continual Erosion of Terry v. Ohio*, 34 How. L.J. 567, 570–76 (1991) (reviewing issues of the reasonable suspicion standard, police power, and individual privacy rights in *Terry*).

<sup>206</sup> *Terry*, 392 U.S. at 23–24.

<sup>207</sup> *Id.* at 27 (“The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.”). While this standard bears striking similarities to the definition of probable

Court supported its holding by citing alarming national statistics regarding officer fatalities and injuries suffered by concealed weapons.<sup>208</sup> In *Michigan v. Long*, the Court extended the permissive pat-down search to the interior of automobiles during investigatory detentions so long as the officer has reasonable suspicion the suspect poses a threat, because vehicles may contain weapons easily accessible to suspects.<sup>209</sup> The same principle of preserving officer safety further authorizes the limited protective sweep inside homes during in-home arrests as long as officers have a reasonable suspicion that armed individuals exist inside the home during the arrest.<sup>210</sup>

The Wyoming Supreme Court recognizes that officer safety risks escalated exponentially in the years since *Terry*, and accepts that police officers may reasonably invade citizens' privacy interests to effectuate officer safety.<sup>211</sup> The Wyoming Supreme Court suggested reasonable suspicion justified limited searches in the interest of officer safety in *O'Boyle v. State*—the foundation of the investigatory detention exception in Wyoming's contemporary search and seizure jurisprudence.<sup>212</sup> The *O'Boyle* decision, issued in 2005, is one of the earliest decisions applying Wyoming's reasonable under all of the circumstances test.<sup>213</sup> In reviewing the reasonable under all of the circumstances test, the *O'Boyle* court concluded the *Vasquez* search met the test because the officers had a reasonable

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cause, commentators and courts concede *Terry* imposed the lower standard of reasonable suspicion to justify limited pat-down searches for weapons in the interest of officer safety. 4 LAFAVE, *supra* note 34, § 9.5(a); see also John Q. Barrett, *Deciding the Stop and Frisk Cases: A Look Inside the Supreme Court's Conference*, 72 ST. JOHN'S L. REV. 749, 784–93, 794, *passim* (1998) (detailing the shift from probable cause at *Terry*'s conference discussions to the sliding scale of reasonable suspicion in the final opinion).

<sup>208</sup> *Terry*, 392 U.S. at 27.

<sup>209</sup> 463 U.S. 1032, 1049–50 (1983).

<sup>210</sup> *Marilyn v. Buie*, 494 U.S. 325, 334 (1990). A limited search inside closets and spaces immediately adjoining the area where the arrest occurs is per se permissible, but searches beyond that area require reasonable suspicion. *Id.*

<sup>211</sup> *Mickelson*, 906 P.2d at 1023; see also *Putnam v. State*, 995 P.2d 632, 637–38 (Wyo. 2000) (finding the lateness of the hour, the history of burglaries in the area, and the nature of the suspected crime of auto burglary created reasonable suspicion pursuant to *Terry* and justified the pat-down search of a suspect during an investigatory detention in the interest of officer safety).

<sup>212</sup> 117 P.3d 401, 409 (Wyo. 2005).

<sup>213</sup> *Id.* (“Since *Vasquez*, we have not had the opportunity to consider a search and seizure claim brought under article 1, § 4 . . . [because], the issue was not raised at all, or the party raising the issue failed to provide cogent argument or properly present the question in the trial court, or we simply declined to address the state constitutional claim and decided the case on other grounds.”). The other early case applying the test was *Almada v. State*, 994 P.2d 299 (Wyo. 1999) (applying the reasonable under all of the circumstances test to wiretap evidence). See generally Mervin Mecklenberg, Comment, *Fixing O'Boyle v. State—Traffic Detentions Under Wyoming's Emerging Search-and-Seizure Standard*, 7 WYO. L. REV. 69 (2007) (reviewing Wyoming's application of its young reasonable under all of the circumstances test to the investigatory detention disputed in *O'Boyle*).

suspicion one of the vehicle's occupants was armed.<sup>214</sup> In *Pierce*, the first case of the *Holman* triumvirate, the court also recognized this conclusion regarding *Vasquez* and the officer safety prong: the officers in *Vasquez* had a reasonable suspicion the vehicle's occupants were armed and therefore the search in *Vasquez* satisfied the test.<sup>215</sup> Clearly, reasonable suspicion satisfies the officer safety prong of the search incident to arrest exception.<sup>216</sup>

### *Reasonable Suspicion Under the Evidentiary Prong*

The reasonable basis to justify a warrantless vehicle search under the evidentiary prong of the exception is also reasonable suspicion: applying the greater standard of probable cause triggers the automobile exception.<sup>217</sup> The *Holman* court raised the automobile exception on its own accord—the State and the appellant only discussed the search incident to arrest and investigatory detention exceptions.<sup>218</sup> The automobile exception justifies a warrantless search of an automobile if probable cause exists that the vehicle contains weapons or contraband.<sup>219</sup> This exception is supported by the inherent mobility of the vehicle and the diminished expectation of privacy in the use and regulation of the vehicle.<sup>220</sup> The *Holman* court went out of its way to explain that if an officer had probable cause to believe the vehicle contained weapons or contraband, the State may raise the automobile exception, and thereby leave the search incident to arrest exception superfluous.<sup>221</sup>

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<sup>214</sup> *O'Boyle*, 117 P.3d at 409 (“In *Vasquez* . . . [the search] was reasonable under all the circumstances in that law enforcement had a reasonable suspicion that one of the occupants was armed.”) (emphasis in original).

<sup>215</sup> *Pierce*, 171 P.3d at 531 (reviewing *Vasquez* and *O'Boyle*). The court recently emphasized that officer safety is not its own independent exception nor do officer safety concerns create an automatic right to search a suspect; the search must occur in conjunction with a lawful arrest in the search incident to arrest exception, or in conjunction with an investigatory detention that is supported by reasonable suspicion. *Speten*, 185 P.3d at 33.

<sup>216</sup> See *supra* notes 201–15 and accompanying text.

<sup>217</sup> See *Holman*, 183 P.3d at 376.

<sup>218</sup> Brief of Appellant, *Holman*, *supra* note 2, at 4–14; Brief of Appellee, *Holman*, *supra* note 137, at 8–29.

<sup>219</sup> *E.g.*, *McKenney v. State*, 165 P.3d 96, 99 (Wyo. 2007). This exception emerged in Fourth Amendment jurisprudence in *Carroll v. U.S.*, 267 U.S. 132, 149 (1925). Wyoming recognizes the same exception under its state constitution. *Speten*, 185 P.3d 30 (listing the automobile exception as one of the commonly recognized exceptions to the warrant requirement); *Nielson v. State*, 599 P.2d 1326, 1330 (Wyo. 1979) (exploring the development of the automobile exception); *State v. Kelly*, 268 P. 571, 572 (Wyo. 1928) (“[T]he court should in all cases be satisfied, before permitting the use of such evidence, that the searching officer had in fact probable cause for his search.”).

<sup>220</sup> *Nielson*, 599 P.2d at 1330–34. Vehicles may move out of the area or jurisdiction before an official warrant issues, thereby making the warrant requirement impractical. *Id.* (discussing *Carroll*, 267 U.S. at 153–56). Wyoming also recognizes the diminished expectation of privacy articulated in federal precedent. *Id.*

<sup>221</sup> *Holman*, 183 P.3d at 374–77. Where an arrest involves an automobile, either the automobile exception or the search incident to arrest exception might trigger. *Id.* at 379 (Burke, J., dissenting)

The dissenting opinion in *Sam* further supports a requirement of reasonable suspicion.<sup>222</sup> Chief Justice Voigt (who wrote for the court in *Holman* and *Pierce*) criticized the officer in *Sam* several times for not having a reasonable suspicion the vehicle contained evidence.<sup>223</sup> By focusing on the officer's lack of reasonable suspicion with respect to evidence in the vehicle, as opposed to the lack of probable cause, Chief Justice Voigt clearly indicated reasonable suspicion meets the evidentiary prong of the court's reasonable under all of the circumstance requirement.<sup>224</sup> Furthermore, as in the *Holman* opinion, Chief Justice Voigt distinguished the automobile exception, which requires probable cause, from the search incident to arrest exception.<sup>225</sup> As stated above, where probable cause exists that the vehicle contains weapons or contraband, the automobile exception justifies a warrantless search of the vehicle, and the search incident to arrest exception is rendered superfluous.<sup>226</sup>

One final point supporting the import of reasonable suspicion to the evidentiary prong of the search incident to arrest exception is Justice Hill's concurring opinion in *Holman*.<sup>227</sup> Justice Hill used the language of the reasonable suspicion standard when he found the search of Holman's vehicle "prompted more by suspicions or hunches than by concrete fact."<sup>228</sup> Reasonable suspicion requires only something more than hunches or inchoate suspicions, and Justice Hill, by his choice of language, explicitly requires the same.<sup>229</sup>

#### *Reasonable Under Some of the Circumstances*

The Wyoming Supreme Court only takes into account factors supporting a finding of reasonable suspicion under either prong (officer safety or evidentiary) of the search incident to arrest exception.<sup>230</sup> Factors supporting probable cause are excluded from a search incident to arrest analysis.<sup>231</sup> In its first decision in

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("These are separate and distinct exceptions to the prohibition against warrantless searches, and the two should not be confused."). Practitioners should distinguish between exceptions justifying warrantless searches because the Wyoming Supreme Court recently admonished counsel for presenting confusing arguments. *Speten*, 185 P.3d at 32–33, n.6.

<sup>222</sup> See *Sam*, 177 P.3d at 1179 (Voigt, C.J., dissenting).

<sup>223</sup> *Id.* (Voigt, C.J., dissenting).

<sup>224</sup> *Id.* (Voigt, C.J., dissenting).

<sup>225</sup> *Id.* (Voigt, C.J., dissenting).

<sup>226</sup> See *supra* notes 143–47, 154–57, 219–21 and accompanying text (reviewing the automobile exception).

<sup>227</sup> See *Holman*, 183 P.3d at 378 (Hill, J., concurring).

<sup>228</sup> *Id.* (Hill, J., concurring).

<sup>229</sup> See *supra* notes 195–98 and accompanying text (analyzing the definition of reasonable suspicion).

<sup>230</sup> See *infra* notes 235–85 and accompanying text.

<sup>231</sup> See *infra* notes 235–49 and accompanying text.

the triumvirate, *Pierce*, the court listed eleven factors, eight of which the court repeated in its *Holman* opinion.<sup>232</sup> The *Holman* court also rejected several factors as irrelevant to the search incident to arrest exception.<sup>233</sup> The *Holman* decision modifies Wyoming's semantically inaccurate "reasonable under *all* of the circumstances" test, and suggests the development of a factor test.<sup>234</sup>

At least three circumstances are not considered in the reasonable under all of the circumstances test applied to the search incident to arrest exception: the expectation of privacy in an automobile, the limited scope of a search to the driver's area of a vehicle's interior, and the need to secure a vehicle.<sup>235</sup> The State in *Holman* presented all three of these factors to support its conclusion the search was reasonable under all of the circumstances.<sup>236</sup> The court plainly dismissed all three factors.<sup>237</sup> This is remarkable because the Wyoming Supreme Court in *Vasquez* included two of these factors in its search incident to arrest analysis: the diminished expectation of privacy and the need to secure a vehicle abandoned after an arrest.<sup>238</sup>

The *Holman* court's discussion of the need to secure the abandoned vehicle strongly supports the import of reasonable suspicion to the search incident to arrest exception.<sup>239</sup> Responsible law enforcement cannot abandon an automobile in a public place, like the park in *Holman*, with drugs plainly visible on the center console.<sup>240</sup> However, if the officers knew drugs were in the car, the officers would have probable cause.<sup>241</sup> As stated above, once probable cause exists, the automobile exception applies instead of the search incident to arrest exception.<sup>242</sup>

The same reasoning applies to the factor of the diminished expectation of privacy.<sup>243</sup> It is well held that the expectation of privacy applies to the automobile

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<sup>232</sup> Compare *Pierce*, 171 P.3d at 531–32 (listing eleven factors the court found relevant), with *Holman*, 183 P.3d at 374 (repeating eight of the eleven factors from *Pierce*).

<sup>233</sup> *Holman*, 183 P.3d at 376–77.

<sup>234</sup> See *infra* notes 230–85 and accompanying text (analyzing factors considered in search incident to arrest cases). See generally MICHAEL R. SMITH, ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING 285–309 (2008) (exploring the psychological need for order that leads legal practitioners to develop factor tests and how such tests can be used effectively in persuasive writing).

<sup>235</sup> *Holman*, 183 P.3d at 376–77.

<sup>236</sup> Brief of Appellee, *Holman*, *supra* note 137, at 17–24.

<sup>237</sup> *Holman*, 183 P.3d at 376.

<sup>238</sup> *Vasquez*, 990 P.2d at 489.

<sup>239</sup> See *Holman*, 183 P.3d at 377.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*; see *supra* notes 217–26 and accompanying text.

<sup>243</sup> See *Holman*, 183 P.3d at 376.

exception.<sup>244</sup> The import of this factor is inappropriate to the search incident to arrest analysis because Wyoming recognizes some privacy interests in vehicles.<sup>245</sup> Furthermore, the diminished expectation of privacy is criticized for affording too many invasions of Fourth Amendment rights.<sup>246</sup> The Wyoming Constitution affords greater protection than the Fourth Amendment, so it makes sense to exile the diminished expectation of privacy to the exception in which it was born, thereby protecting the recognized privacy interests in automobiles.<sup>247</sup>

The other factor the *Holman* court dismissed was the limited scope of the search to the driver's area of the vehicle.<sup>248</sup> The *Holman* court reasoned that the limited scope of a search fails to resolve whether the search was justified in the first place, and is therefore an immaterial factor at this point in the analysis: determining whether a warrantless vehicle search is in the permissible scope of a search incident to arrest.<sup>249</sup>

### *Some of the Circumstances*

When evaluating the search incident to arrest exception, the Wyoming Supreme Court only considers factors supporting reasonable suspicion to meet its reasonable under all of the circumstances test.<sup>250</sup> The court considers at least these factors: (1) the nature of the crime; (2) facts arising out of the arrest; (3) apparent intoxication of the suspect; (4) the ratio of suspects to officers; (5) the physical ability of the suspect to reach weapons or evidence; (6) the suspect's behavior during the encounter and arrest; and (7) the time of day and location of the arrest.<sup>251</sup> This factor test provides continuity through Wyoming's small

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<sup>244</sup> See generally 3 WAYNE LAFAYE, *supra* note 34, § 7.2(b) (explaining the development and difficulties of the expectation of privacy in the automobile exception).

<sup>245</sup> *Holman*, 183 P.3d at 376 (quoting 1 JOHN WESLEY HALL, JR., SEARCH AND SEIZURE § 18.4 (3d ed. 2000)).

<sup>246</sup> See, e.g., Lewis R. Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 AM. CRIM. L. REV. 557, 569–72 (1982) (offering a four-part criticism of the diminished expectation of privacy doctrine which subverts the practical application of the Fourth Amendment); Vivian D. Wilson, *The Warrantless Automobile Search: Exception Without Justification*, 32 HASTINGS L.J. 127, 158 (1980) (criticizing the diminished expectation of privacy doctrine as unrealistic in light of the pragmatic storage use characteristics of automobiles and advocating for increased warrant requirements to protect individual privacy interests).

<sup>247</sup> Cf. *O'Boyle*, 117 P.3d at 411 (“While we acknowledge the importance of drug interdiction, we are deeply concerned by the resulting intrusion upon the privacy rights of Wyoming citizens.”).

<sup>248</sup> *Holman*, 183 P.3d at 376.

<sup>249</sup> *Id.*; see *supra* notes 181–87 (explaining the *Holman* decision applies to the *scope* of a search incident to arrest despite the court's careless statement that no search was permissible).

<sup>250</sup> See *infra* notes 250–85 and accompanying text.

<sup>251</sup> See *infra* notes 253–85 and accompanying text (evaluating each factor briefly). The *Holman* and *Pierce* courts also considered the point at which the State articulated circumstances that justify the warrantless vehicle search. *Pierce*, 171 P.3d at 531; *Holman*, 183 P.3d at 374. This factor is

body of search incident to arrest cases; reconciles the *Sam* decision with its companions, *Pierce* and *Holman*; and provides some guidance to law enforcement and practitioners in search incident to arrest cases.<sup>252</sup>

The first factor is the relationship between the nature of the offense and the likelihood of danger or evidentiary concerns.<sup>253</sup> The nature of the crime has been relevant to establishing reasonable suspicion since *Terry v. Ohio*.<sup>254</sup> In *Terry*, the United States Supreme Court found the nature of the suspected crime (a robbery) a relevant factor in establishing reasonable suspicion the appellant was armed, because robbery often involves the use of weapons.<sup>255</sup> The Wyoming Supreme Court similarly considered the nature of the offense in *Vasquez*: an arrest for driving while intoxicated supports a level of suspicion that the vehicle contains evidence of intoxication.<sup>256</sup> Likewise, in *Andrews*, the suspect could easily conceal in his wallet the coins and credit cards stolen in the alleged burglary.<sup>257</sup> This factor weighed in favor of finding reasonable suspicion in *Sam* because the suspect violated a domestic violence protective order concurrent to his arrest; this factor helps resolve *Sam's* incongruous position in the *Holman* triumvirate.<sup>258</sup> By contrast, this factor weighed against a finding of reasonable suspicion in *Holman* because, as *Holman* suggested in his appellate brief, there is nothing criminal or suspicious about sitting in a car watching ball games.<sup>259</sup> The holdings of *Holman* and *Pierce* make clear that an arrest for driving under suspension does not, by itself, justify a warrantless search incident to arrest.<sup>260</sup>

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merely a procedural matter: the court dismisses issues raised for the first time in the appellate court. *Duke v. State*, 99 P.3d 928, 959 (Wyo. 2004). Furthermore, law enforcement actions must be objectively justified at the search's inception. *Mickelson v. State*, 886 P.2d 247, 250 (Wyo. 1994), *aff'd* 906 P.2d 1020, 1025 (Wyo. 1995) (holding an officer entering a building without a warrant must have developed reasonable suspicion prior to entering according to statute); *Wilson v. State*, 874 P.2d 215, 225 (Wyo. 1994) (holding reasonable suspicion of criminal behavior must exist prior to initiating an investigatory stop).

<sup>252</sup> See *infra* notes 253–85 and accompanying text.

<sup>253</sup> *Pierce*, 171 P.3d at 531. This factor is enumerated in *Pierce*, but does not appear in *Holman*. Compare *id.*, with *Holman*, 183 P.3d at 374. Justice Burke nevertheless accused the *Holman* court of inappropriately applying this factor. *Holman*, 183 P.3d at 380 (Burke, J., dissenting).

<sup>254</sup> 392 U.S. 1, 28 (1968).

<sup>255</sup> *Id.* at 27–28.

<sup>256</sup> *Vasquez v. State*, 990 P.2d 476, 489 (Wyo. 1999); *Sam v. State*, 177 P.3d 1173, 1178 (discussing *Vasquez*).

<sup>257</sup> *Andrews*, 40 P.3d at 715.

<sup>258</sup> *Sam*, 177 P.3d at 1178 (acknowledging the officer searched the arrestee's vehicle for a cell phone, writings, and instrumentalities that might evidence *Sam's* intentions towards, or be used to hurt, the protected individuals).

<sup>259</sup> Brief of Appellant, *Holman*, *supra* note 2, at 10.

<sup>260</sup> See *Pierce*, 171 P.3d at 531; *Holman*, 183 P.3d at 377.

Reasonable suspicion of officer safety or evidentiary matters can also arise from facts discovered during the course of the arrest.<sup>261</sup> One source of facts discovered during the arrest arises from the search of the person, which is per se permissible incident to an arrest.<sup>262</sup> The court considers whether the pat-down search of an arrestee reveals evidence of any crime.<sup>263</sup> This factor appeared in *Sam*, although not discussed in the opinion, and helps to reconcile the three cases of the *Holman* triumvirate: the officer in *Sam* found large rolls of cash in the arrestee's pockets during the pat-down search incident to arrest.<sup>264</sup>

Apparent intoxication is another factor the Wyoming Supreme Court considers to determine whether reasonable suspicion exists under the officer safety prong to support a search incident to arrest.<sup>265</sup> In *Michigan v. Long*, the United States Supreme Court considered the appellants' apparent intoxication to support a finding of reasonable suspicion during an investigatory stop.<sup>266</sup> Wyoming similarly recognized, in *Clark v. State*, the influence of alcohol on a suspect raises officer safety concerns.<sup>267</sup> Notably, evidence of intoxication is absent from the facts of *Pierce* and *Holman*.<sup>268</sup>

The ratio of officers to suspects at the time of arrest is another factor supporting a finding of reasonable suspicion under the officer safety prong of the search incident to arrest exception.<sup>269</sup> The presence of other vehicle passengers in the presence of a single officer presents officer safety concerns because the suspects outnumber the officer.<sup>270</sup> This factor bears relevance under Fourth Amendment jurisprudence in determining whether a suspect can potentially reach weapons

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<sup>261</sup> *Pierce*, 171 P.3d at 531; *Holman*, 183 P.3d at 374.

<sup>262</sup> See *supra* notes 29–30, 184 (searching the person is the foundation of the search incident to arrest exception).

<sup>263</sup> *Pierce*, 171 P.3d at 531 (“The officer’s pat-down search of the appellant’s person did not reveal anything of evidentiary value.”). This court only lists this factor in *Pierce*. Compare *id.*, with *Holman*, 183 P.3d at 374.

<sup>264</sup> Brief of Appellee, *Sam*, *supra* note 114, at 5; Brief of Appellant, *Sam*, *supra* note 114, at 4–5; see *Sam*, 171 P.3d at 1174–76, 1178 (stating the facts of the case).

<sup>265</sup> *Holman*, 183 P.3d at 374; *Pierce*, 171 P.3d at 531; *Clark*, 138 P.3d at 679, 682 (detecting the odor of alcohol while standing outside the vehicle raised officer safety concerns); see *Fender v. State*, 74 P.3d 1220, 1228 n.4 (Wyo. 2003) (citations omitted) (*dicta*).

<sup>266</sup> 463 U.S. 1032, 1050 (1983).

<sup>267</sup> 138 P.3d at 679, 682.

<sup>268</sup> *Holman*, 183 P.3d at 372–74; *Pierce*, 171 P.3d at 527–32.

<sup>269</sup> *Holman*, 183 P.3d at 374; *Pierce*, 171 P.3d at 531.

<sup>270</sup> *Fender*, 74 P.3d at 1226–27 (citing *Maryland v. Wilson*, 519 U.S. 408, 413–15 (1997)). *Fender* presents a comprehensive discussion of the relationship between additional passengers and officer safety concerns under the Fourth Amendment. *Id.*; see also 3 LAFAYETTE, *supra* note 34, § 7.1(b) (4) (discussing the extent of control police have over the scene of arrest when outnumbered by suspects).

or evidence.<sup>271</sup> The Wyoming Supreme Court similarly recognized the officer to defendant ratio in the search incident to arrest exception in *Cotton v. State*: the presence of another passenger raised an officer safety concern that justified a search of the vehicle's interior and the pockets of a particular shirt.<sup>272</sup> The presence of a passenger also appeared in *Clark*.<sup>273</sup> This factor appeared in *Sam*, although not discussed, and helps reconcile the case with the rest of the triumvirate: the car in *Sam* contained an additional passenger during the arrest.<sup>274</sup>

Another factor the court considers when evaluating whether reasonable suspicion supports either the evidentiary or officer safety prong of the search incident to arrest exception is the handcuffing and isolation of the defendant in the back of a patrol car during the search.<sup>275</sup> Once an arrestee is taken into custody, the two justifications for a search incident to arrest—preventing the arrestee from reaching weapons or evidence—cannot be met because the arrestee cannot physically reach anything.<sup>276</sup>

The court also considers special information the officer knows about the suspect before the encounter, and the suspect's demeanor during the encounter.<sup>277</sup> In *Vasquez*, the suspect demonstrated an agitated demeanor throughout the traffic stop.<sup>278</sup> In *Clark*, one of the suspects acted suspiciously by disappearing from view and concealing a container during the traffic stop.<sup>279</sup> Special information includes information the officer knows about the suspect from prior criminal charges or activity, as in *Clark*: the officer recognized one of the vehicle's occupants from a former drug charge.<sup>280</sup> This is another factor appearing in *Sam* that helps reconcile the case with the rest of the *Holman* triumvirate: prior to the arrest, the officer received special information that Sam violated a protective order for several days,

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<sup>271</sup> 3 LAFAVE, *supra* note 34, § 7.1(b)(4).

<sup>272</sup> *Cotton*, 119 P.3d at 935–36; *Clark*, 138 P.3d at 682; *Vasquez*, 990 P.2d at 489.

<sup>273</sup> *Clark*, 138 P.3d at 679, 682.

<sup>274</sup> *Sam*, 171 P.3d at 1175.

<sup>275</sup> *Holman*, 183 P.3d at 374; *Pierce*, 171 P.3d at 531.

<sup>276</sup> *Belton v. U.S.*, 453 U.S. 454, 466 (1981) (Brennan, J. dissenting); *see also* 3 LAFAVE, *supra* note 34, § 7.1(b) (defining the area in an arrestee's "immediate control" by the ability to reach weapons or evidence). Wyoming recognizes that a handcuffed suspect still presents some officer safety concerns. *Fender*, 74 P.3d at 1129 n.5 (discussing the ability of handcuffed suspects to harm officers). Suspects also present officer safety concerns even inside the patrol car. *Mackrill v. State*, 100 P.3d 361, 369–70 (Wyo. 2004) (citations omitted).

<sup>277</sup> *Holman*, 183 P.3d at 374; *Pierce*, 171 P.3d at 531.

<sup>278</sup> *Vasquez*, 990 P.2d at 479.

<sup>279</sup> *Clark*, 138 P.3d at 682; *see also* 68 AM. JUR. 2D, *supra* note 196, § 118 (discussing furtive activities by defendants including hiding items as the officer approaches).

<sup>280</sup> *Clark*, 138 P.3d at 682; *see also* 68 AM. JUR. 2D, *supra* note 196, § 119 (discussing the significance of the officer's knowledge of the defendant and other suspicious information).

and just minutes before, his stop and arrest.<sup>281</sup> By contrast, in *Pierce* and *Holman*, the officers had no special information about the suspects, who behaved normally throughout the encounter.<sup>282</sup>

The time of day and the location of the arrest can support a finding of reasonable suspicion under the officer safety prong of the search incident to arrest exception.<sup>283</sup> Arrests taking place at night or in high crime areas support a reasonable suspicion of officer safety concerns.<sup>284</sup> This factor weighed against a finding of reasonable suspicion in *Holman* because the arrest occurred during daylight hours near a public park in the presence of hundreds of people.<sup>285</sup>

### CONCLUSION

The Wyoming Supreme Court's decision in *Holman* indicates that under the search incident to arrest exception, the reasonable under all of the circumstances test is satisfied if reasonable grounds indicate the vehicle contains weapons or evidence.<sup>286</sup> The correct standard of reasonable grounds to apply is reasonable suspicion.<sup>287</sup> Furthermore, *Holman* modified the reasonable under *all* of the circumstances test by only including some factors in its search incident to arrest analysis.<sup>288</sup> The only circumstances considered are those that support a finding of reasonable suspicion that the vehicle contains weapons or contraband.<sup>289</sup> Factors supporting probable cause are explicitly excluded from the analysis.<sup>290</sup> These factors stabilize Wyoming's search incident to arrest jurisprudence by demonstrating continuity in this area of case law and provide helpful guidance to law enforcement and practitioners.<sup>291</sup>

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<sup>281</sup> *Sam*, 171 P.3d at 1178 (discussing Sam's pattern of violating the protective order for days before his arrest).

<sup>282</sup> *Holman*, 183 P.3d at 374; *Pierce*, 171 P.3d at 531.

<sup>283</sup> *Holman*, 183 P.3d at 374; *Pierce*, 171 P.3d at 531.

<sup>284</sup> *Putnam v. State*, 995 P.2d 632, 638 (Wyo. 2000) (holding the time of day and a history of crime in the area presented officer safety concerns); *see also* 68 AM. JUR. 2D, *supra* note 196, § 119 (courts consider the general area or neighborhood when evaluating searches incident to arrest).

<sup>285</sup> *Holman*, 183 P.3d at 374; Brief of the Appellant, *Holman*, *supra* note 2, at 2.

<sup>286</sup> *See supra* notes 188–94 and accompanying text (reviewing the reasonable basis requirement).

<sup>287</sup> *See supra* notes 201–29 and accompanying text (advocating for reasonable suspicion as the logical standard).

<sup>288</sup> *See supra* notes 230–85 and accompanying text (reviewing the factors the court finds irrelevant).

<sup>289</sup> *See supra* notes 250–85 and accompanying text (evaluating factors supporting a finding of reasonable suspicion).

<sup>290</sup> *See supra* notes 235–49 and accompanying text (evaluating abrogated factors).

<sup>291</sup> *See supra* notes 250–85 and accompanying text (noting the role of factors throughout the small body of law).