

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
THE SUPREME COURT  
OF THE  
UNITED STATES

LIBRARY  
SUPREME COURT, U.S.  
WASHINGTON, D.C. 20543

CAPTION: ALABAMA, Petitioner v. VENESSA ROSE WHITE

CASE NO: 89-789

PLACE: Washington, D.C.

DATE: April 17, 1990

PAGES: 1 thru 46

ALDERSON REPORTING COMPANY

1111 14TH STREET, N.W.

WASHINGTON, D.C. 20005-5650

202 289-2260

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPREME COURT OF THE UNITED STATES

-----x  
ALABAMA, :  
Petitioner :  
v. : No. 89-789  
VANESSA ROSE WHITE :  
-----x

Washington, D.C.  
Tuesday, April 17, 1990

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:14 a.m.

APPEARANCES:

JOSEPH G. L. MARSTON, III, ESQ., Assistant Attorney General of Alabama, Montgomery, Alabama; on behalf of the Petitioner.  
DAVID B. BYRNE, JR., ESQ., Montgomery, Alabama; appointed by this Court on behalf of the Respondent.

C O N T E N T S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ORAL ARGUMENT OF

PAGE

JOSEPH G. L. MARSTON, III, ESQ.

On behalf of the Petitioner

3

DAVID B. BYRNE, JR., ESQ.

On behalf of the Respondent

27



1 cause.

2 MR. MARSTON: Yes, sir. That was my next point.

3 QUESTION: And -- and this case is -- you say  
4 reasonable suspicion?

5 MR. MARSTON: Reasonable suspicion. Yes, sir.

6 Gates involved a cross-country trip. This  
7 involved a cross-town trip. Gates involved the search of  
8 a home, probable cause. This involved the stopping of an  
9 automobile under reasonable suspicion.

10 QUESTION: And Gates involved activities which on  
11 their face looked sneaky and underhanded. I mean, as soon  
12 as you saw the activities that -- that had been noticed to  
13 the police, you said, gee, this is a very strange kind of  
14 activity going on. It looks like there's something afoot.

15 Whereas one wouldn't think there was anything  
16 afoot in this case. It's just like saying, you know, if  
17 you go out there you will see somebody walking down the  
18 street. And the cop goes out and says, ah-hah, there is  
19 somebody walking down the street. There is something afoot  
20 here.

21 That was not Gates. Gates was a very complicated  
22 system of people driving cars back and coming back by plane.  
23 And you says, gee, why are they doing that? It must be  
24 some, you know, something under it.

25 Isn't that a big difference between Gates and this

1 case? There was no indication here, no reason to suspect  
2 anything.

3 MR. MARSTON: Justice Scalia, I -- first of all,  
4 I would disagree with you. I think the facts in Gates were  
5 that -- that Mr. Gates -- of course, first of all you have  
6 the anonymous tip that predicted this. Mr. Gates flew down  
7 to Florida. He met an unidentified woman, who turned out  
8 to be Mrs. Gates, and they drove back to Illinois. And  
9 that's what the officer saw.

10 And that, you know -- yes, it's unusual, but there  
11 is nothing criminal about it. It could have been the wife  
12 was sick. I mean, you know, it's not -- there was nothing  
13 there that if you take away the anonymous tip that isn't --  
14 is even -- is indicative of criminal activity at all.

15 And that's true here. If you take away the  
16 anonymous tip, you have perfectly normal activity. I mean,  
17 that can't be disputed.

18 But I think the facts in Gates come up the same  
19 thing. Take away the anonymous tip and you have, perhaps  
20 unusual activity, but not anything criminal, not anything  
21 suspicious. If -- if in Gates you took away the anonymous  
22 letter and you -- you cite those facts, I don't think any  
23 police officer would be justified in taking any action on  
24 what they saw.

25 We would point out, of course, both cases involve

1 anonymous tips. Both related to specific persons; both  
2 predicted the presence of drugs in an automobile. Now, and  
3 Gates --

4 QUESTION: You say -- you say this related to a  
5 specific purpose -- person?

6 MR. MARSTON: Person.

7 QUESTION: How did the officer at the time know  
8 this was a specific person?

9 MR. MARSTON: Well, they did not get the  
10 identification of Ms. White before they stopped the car.  
11 However --

12 QUESTION: Well, then, how can you possibly rely  
13 on the identification as a justification for stopping the  
14 car?

15 MR. MARSTON: No, sir, I'm not suggesting that  
16 they -- the fact that they knew, because they didn't. But  
17 the anonymous tipster had said Vanessa Rose White will come  
18 out of apartment 235-C, Lynwood Terrace Apartments, get in  
19 a brown station wagon.

20 QUESTION: But they didn't know she came out of  
21 235-C and they did know she was -- whatever her name was.

22 MR. MARSTON: They saw her come out of building  
23 235.

24 QUESTION: They saw a woman come out of that  
25 particular building.

1 MR. MARSTON: And get into a brown station wagon  
2 with a broken right tail light.

3 QUESTION: Yeah.

4 MR. MARSTON: And then proceed to the Doby Motel.

5 QUESTION: She was --

6 MR. MARSTON: They stopped her just short of the  
7 Doby Motel.

8 QUESTION: She was supposed to be carrying a brown  
9 brief case and she wasn't.

10 MR. MARSTON: She was supposed to be -- no -- yes,  
11 sir, she was, but they didn't see it until they got the car  
12 stopped.

13 QUESTION: Well, she wasn't carrying it when she  
14 got in the car. She just --

15 MR. MARSTON: No.

16 QUESTION: It was just in the car before she got  
17 in it.

18 MR. MARSTON: Yes, but the tipster didn't say  
19 she'd be carrying it. She said -- he said, she would have  
20 it in the car. Now, she could have been carrying it, but  
21 she -- they, in fact, did not see her carrying anything  
22 getting in the car.

23 QUESTION: I -- I -- does it say that she would  
24 have it in the car? Was that what the tipster said?

25 MR. MARSTON: The tipster said she would be --

1 she would go to the Doby Motel and be carrying a brown brief  
2 case. I do not believe that -- I don't understand that to  
3 mean she would carrying it out of the house but rather that  
4 it would be in the car. Because that -- that's what he  
5 said. And it was, of course, in fact in the car but they  
6 couldn't see that, and it was seen after the car was  
7 stopped. But they couldn't see that until the car was  
8 stopped.

9 QUESTION: Well, the record shows they didn't even  
10 ask for her name until after she was out of the car and a  
11 search commenced. Isn't that correct?

12 MR. MARSTON: Yes, sir. They did not ask her  
13 name. Of course, again, that would be after the car was  
14 stopped.

15 QUESTION: Well, but then --

16 MR. MARSTON: And it's the stopping of the car --

17 QUESTION: -- but then -- the -- the name just  
18 doesn't help you at all in this case.

19 MR. MARSTON: No, sir. I don't -- I don't contend  
20 that at all. What identified this person as the person the  
21 tipster referred to was the fact she came out of that  
22 apartment building, got in this car and drove to Doby's  
23 Motel. It was all those -- those factors.

24 QUESTION: Did the tipster also say that she would  
25 do that at a particular time of day?

1 MR. MARSTON: He said now. I mean, it was -- it  
2 was immediate, and they went right out there and here she  
3 came. So, we had time, place, vehicle and destination.

4 QUESTION: I thought the stop was made before  
5 arrival at the motel.

6 MR. MARSTON: Yes.

7 QUESTION: So, we don't know if the destination  
8 was the motel.

9 MR. MARSTON: No, ma'am, but she's -- it was just  
10 short of the motel. There are two driveways between --  
11 well, she was stopped at one driveway. There's another  
12 driveway. The next one is the motel. So, it was right at  
13 Doby's Motel.

14 QUESTION: But not at the motel?

15 MR. MARSTON: Not at -- no, no, ma'am. They  
16 stopped --

17 QUESTION: So, you don't have that factor to rely  
18 on.

19 MR. MARSTON: That she got to the motel? No.  
20 But we do have the factor that she was headed to the motel,  
21 in the right direction. And when they stopped her, she was  
22 in position to be going toward the motel.

23 QUESTION: What do you think the test is for  
24 reliability of anonymous tips?

25 MR. MARSTON: I would suggest that -- that -- that

1 there should be any -- any strict test, but rather should  
2 be if the tip verified. If the factors are verified to  
3 indicate -- enough to indicate --

4 QUESTION: Well, how many of the factors and what  
5 factors?

6 MR. MARSTON: Well, see, that is going to depend  
7 on the situation. It's going to be very difficult to  
8 formulate a precise rule that'll work in every case.

9 But I would suggest that what -- what the Court  
10 should look for is whether or not enough was identified,  
11 enough was verified to say this tipster knew this woman and  
12 -- or this person -- and knew enough in this case to say  
13 what her itinerary was that afternoon.

14 Now, the reason for that is -- there are many  
15 reasons for it, but one is that that -- if we had a false  
16 tip, that would limit the number of suspects when they go  
17 out to investigate who turned a false tip. So -- so I would  
18 say that -- that if enough details are verified to say this  
19 tipster knew this person and knew enough about a situation  
20 so that we know, yes, this is the person they're talking  
21 about.

22 QUESTION: Does it make any difference in your  
23 view if it's a potentially dangerous crime? For instance,  
24 an anonymous tip that somebody in an airport or airplane is  
25 carrying a bomb that's going to be detonated. How much is

1 required there? And is more required for a drug stop?

2 MR. MARSTON: Justice O'Connor, I would suggest,  
3 as we have in brief, that basically the requirements should  
4 be the same except that in the case of a bomb or something  
5 you've got exigency. And that justifies excusing the -- the  
6 verification which is, of course, is wide of this case. But  
7 the point is everyone agrees that if these officers had  
8 gotten a bomb tip and said, you know, Vanessa -- there's a  
9 bomb in Vanessa Rose White's car, such and such --  
10 everything else -- if they had gone right out there and  
11 searched the car, that would have been fine. And that --  
12 and it would have been, because the exigency would excuse  
13 the verification.

14 But normally that would be required. Again,  
15 everybody seems to agree on that.

16 QUESTION: Suppose the anonymous tipster says that  
17 -- that Vanessa White is going to leave the building at a  
18 certain time, she's going to be wearing a certain --  
19 describes her clothes in exact detail, describes the car in  
20 exact detail and -- is that -- is that just generally  
21 enough?

22 MR. MARSTON: Describes her clothes and the car  
23 in exact detail?

24 QUESTION: Yeah.

25 MR. MARSTON: That would be enough to say that

1 whoever it is knows this person.

2 QUESTION: Oh, yeah, knows the person.

3 MR. MARSTON: Okay. Now --

4 QUESTION: But don't you have to have some basis  
5 for thinking that the person knows what is in the bag?

6 MR. MARSTON: Well, again, we don't engage it in  
7 the same thing.

8 QUESTION: All -- all -- all --

9 MR. MARSTON: See --

10 QUESTION: -- anybody could know that this person  
11 is going to be driving down the street to a hotel, but have  
12 no basis whatsoever for believing there is something in her  
13 handbag.

14 MR. MARSTON: Justice White, I don't think anybody  
15 would know. That's what the court of criminal appeals said.  
16 That this is generally known to the public. But I don't  
17 think the public is privy to an ordinary citizen's everyday  
18 moving from a house to a hotel.

19 That would have to be someone who knows this  
20 person and -- and -- and there -- you know, what that tells  
21 us is they know something about this person. And if they  
22 have taken the trouble and called the police and said this  
23 person is carrying controlled substances, they're running  
24 a risk, of course. Anyone -- I mean, these people are  
25 anonymous, but that's no guarantee the police can't identify

1 them. And they're running a risk of facing criminal charges  
2 and civil charges -- I mean, ostracized by society and all  
3 this.

4 QUESTION: Suppose somebody calls up and says, I  
5 just saw Mrs. White leaving the building. She's wearing  
6 such and such clothes. She's carrying a brown briefcase.  
7 She's getting into a brown station wagon, and she has  
8 cocaine in her bag -- handbag.

9 MR. MARSTON: That, again -- I mean, that would  
10 be --

11 QUESTION: Well, all it means is that somebody  
12 saw her --

13 MR. MARSTON: That's right.

14 QUESTION: -- get in a car dressed so and so.

15 MR. MARSTON: But they know her as Vanessa Rose  
16 White.

17 QUESTION: Oh, yes. Oh, yes, they certainly know  
18 --

19 QUESTION: But you're not relying on that here,  
20 because they didn't ask for her identity. So that's out of  
21 the case.

22 MR. MARSTON: Right. Right. But the point is  
23 with this situation if the tip is false, and that's one --  
24 one -- not the only reason -- but one reason for the  
25 verification is we're down to a limited number of suspects,

1 and the person would have to know that the police are going  
2 to pursue them for giving a totally false tip. They're open  
3 to civil suit and that sort of thing. That's what gives the  
4 tip some veracity.

5 QUESTION: But the tip was false on the crucial --

6 MR. MARSTON: That would -- that would open them  
7 up to that.

8 QUESTION: The tip was false in the sense that  
9 they didn't find in the -- in the case what the tipster said  
10 would be found.

11 MR. MARSTON: They did find controlled substances,  
12 though. And they did find cocaine on her person, in her  
13 purse.

14 QUESTION: Well, they didn't find -- the tip was  
15 wrong. The tip was not accurate.

16 MR. MARSTON: That's right, sir. But what we have  
17 to justify is the stopping of the car, and they didn't find  
18 that until afterward. This Court from time immemorial, and  
19 quite logically, has said you can't get a search upheld by  
20 what you find. Of course, the converse would have to true.  
21 If they were justified --

22 QUESTION: But you -- you do agree that you have  
23 -- know enough facts that -- that -- what the tipster -- you  
24 must eventually say that we can conclude that the tipster  
25 knew this person well enough to have a reasonable belief

1 that she had cocaine in the -- in the case?

2 MR. MARSTON: Yes, sir.

3 QUESTION: Unless it's a serious crime?

4 MR. MARSTON: Well, again, yes. Again, that's  
5 not -- you know, I'm not here to defend that today but  
6 that's always accepted.

7 The telephone call that says there's a bomb and  
8 out they go, SWAT team and army bomb dispose and everything  
9 else. And everyone says -- all the commentators -- that's  
10 fine. And yet, you know, if it's drugs, many commentators  
11 say, no, you can't do it if it's drugs.

12 It doesn't make any sense. If an anonymous tip  
13 has any probative value at all, it's going to be the same.  
14 And -- and of course --

15 QUESTION: Well, I'm not sure what rule you're  
16 recommending. You say, it doesn't make any sense, but --  
17 that's the rule you're recommending?

18 MR. MARSTON: No, I'm making -- I'm suggesting  
19 that the seriousness of what the anonymous tipster alleges  
20 is not -- does not affect the value of the tip. In other  
21 words, if a person calls up and, and says there's a bomb,  
22 that doesn't make it more likely to be true than if he calls  
23 up and says there's -- there's drugs.

24 QUESTION: So, it really doesn't matter, you're  
25 saying, whether the tipster gives any indication of knowing

1 the person well. I mean, you know, when a tipster calls up  
2 and says there's a bomb in the building, you don't say, now  
3 wait a minute, do you know the owner of the building? You  
4 don't care at all, do you?

5 MR. MARSTON: In that situation, no, sir,  
6 because --

7 QUESTION: Well, now, you can't have it both ways.

8 MR. MARSTON: Well -- my position is -- I mean,  
9 that would not bother me if the Court was to say, you don't  
10 have to verify it. But --

11 QUESTION: Right. But that's not the position  
12 you're taking. That -- that's a sensible position, a  
13 consistent position. But you're -- you're trying to ride  
14 the two horses it seems to me.

15 MR. MARSTON: Well, the fact --

16 QUESTION: Does the nature of the crime make a  
17 difference or doesn't it?

18 MR. MARSTON: It does -- it does not -- it makes  
19 a difference as to exigency, as to the need to move.

20 QUESTION: Well, that's just giving it a fancy  
21 name.

22 MR. MARSTON: No, sir, it's not. This Court --  
23 this Court has recognized exigency as justifying excusing  
24 a search warrant. Officers go out and under certain  
25 circumstances -- I mean, you know, they're supposed to

1 always to a search warrant. Certain circumstances the need  
2 for a search warrant is excused.

3 Here, you'd have the same thing. Normally, the  
4 reasonable thing to do is to check out the tip, see if --  
5 if the -- there's any basis for believing the tipster, find  
6 out if -- if this tipster knows something about this person  
7 and so on. But you don't have to do that -- where doing  
8 that might endanger human life and limb. And I don't -- no,  
9 sir, I don't think that's consistent at all.

10 I would say -- and this is consistent -- that in  
11 both cases the probative value of the tip is the same. The  
12 difference is that reasonably you should take greater and  
13 more rapid action with regard to something that poses an  
14 imminent danger to human life and limb. And it's not  
15 unreasonable to require that they verify a tip that involved  
16 drugs which do not create a present, now, immediate danger.

17 QUESTION: When you talk about --

18 QUESTION: Would you distinguish between a felony  
19 and a misdemeanor? At common law they distinguished, didn't  
20 they, between the circumstances under which you might -- an  
21 officer or citizen might arrest and some of that distinction  
22 turned on felony versus misdemeanor.

23 MR. MARSTON: I know of one case where that was  
24 done, and -- and it really is not completely logical except  
25 that it is traditional and it does look to the legislature

1 as the determiner of the seriousness of the crime. That's  
2 a distinction many courts and commentators make between  
3 serious crimes and not serious crimes.

4 If you're going to make that distinction, it would  
5 make more sense to say that a serious crime is one so  
6 defined by the legislature by making it a felony than, you  
7 know, just sit up and take a guess and say drugs are not  
8 serious and murder is serious and so on.

9 QUESTION: Well, was the crime to which the  
10 respondent here pleaded guilty -- was that a felony or a  
11 misdemeanor under Alabama law?

12 MR. MARSTON: That was a felony. He pleaded  
13 guilty to two felonies, and the crime alleged by the tipster  
14 was a felony. So, both cases -- you know, we're doing  
15 felonies both ways.

16 QUESTION: So, suppose there's an anonymous tip  
17 that just says the people standing on the corner of 4th and  
18 M are engaged in a drug transaction?

19 MR. MARSTON: The people?

20 QUESTION: The people standing on the corner of  
21 4th and M are engaged in a drug transaction.

22 MR. MARSTON: Right now?

23 QUESTION: Right now.

24 MR. MARSTON: Okay.

25 QUESTION: And that's all.

1 MR. MARSTON: All right. They would -- I would  
2 suggest that -- that that's probably not specific enough  
3 because there could be a lot -- the requirement --

4 QUESTION: So, you would say that if the police  
5 officers then proceeded and saw some people standing there  
6 talking he could not engage in the stop based on the tip?

7 QUESTION: He saw how many people? I mean, see,  
8 you'd get into a lot of different problems. How many people  
9 on this street? What time is it? If it --

10 MR. MARSTON: Well, there's just some people  
11 standing on the street.

12 QUESTION: Well, you get -- the problem with it  
13 is in the case of an investigative stop, it's got to be  
14 specific, and that's what you're going to have problems with  
15 there.

16 Now, if it's at a time of day when there's no one  
17 else around and there's two people there, yes, sir. That  
18 might well be enough to create a reasonable suspicion.

19 If it's at noon and you've got all kinds of people  
20 walking around, you're going to get into a lack of  
21 specificity. You're not limiting it to one person. You're  
22 creating a danger that all -- the same danger with a general  
23 search warrant or something. The danger that, you know,  
24 you're going out and bringing in the whole world. And --  
25 and that would be the problem with that type of a

1 situation. But it would have to be investigated. You'd  
2 have to look at the situation.

3 I would point out, of course, that in Gates  
4 neither -- nor here -- no one knew who the tipster was or  
5 why they should be believed or why they came forward with  
6 their information. And -- and this case is exactly like  
7 Gates in that respect.

8 This case differs from Gates other than in scope  
9 only in that in some instances this case is a little more  
10 specific. In Gates the -- the tipster said that the Gates  
11 would be going to Florida, which is a big state. Here, they  
12 were going to Doby's Motel. In this case, the tipster said  
13 cocaine and here -- in Gates, he said drugs.

14 QUESTION: Mr. Marston, can I ask you a question  
15 about the facts, if I may, over here?

16 MR. MARSTON: I'm sorry.

17 QUESTION: The one -- does the record tell us why  
18 they used a second patrol car and stopped the woman before  
19 she got to the motel?

20 MR. MARSTON: The record does not tell you that,  
21 sir, but I can tell you if you'd like to know. They were  
22 in -- these were narcotics officers in an unmarked car.

23 QUESTION: I see. They had to have one with a  
24 light on.

25 MR. MARSTON: And they didn't have a light and

1 probably a rather strange car. I think any person probably  
2 seeing some narcotics officers motioning to get over would  
3 think they were, you know, in danger.

4 QUESTION: That would explain why they would use  
5 the second car.

6 MR. MARSTON: They used the second car.

7 QUESTION: But it wouldn't really explain why they  
8 wouldn't wait until she got to the motel.

9 MR. MARSTON: Well, that record also doesn't  
10 explain that.

11 QUESTION: It doesn't.

12 MR. MARSTON: But I would suggest to you that  
13 probably they figured one she got in the motel -- of course,  
14 the tip would have been exhausted at that point because the  
15 tipster said she would be going to the motel and that's all.  
16 So, they might have thought that --

17 QUESTION: But they stopped her in front of the  
18 -- and actually they called the other car and told them to  
19 stop her while she was on the Mobile Road, didn't they?

20 MR. MARSTON: Mobile -- yes, sir.

21 QUESTION: Mobile.

22 MR. MARSTON: Yes, sir.

23 QUESTION: But isn't that kind of a main highway?

24 MR. MARSTON: Yeah --

25 QUESTION: Is that a limited access highway?

1 MR. MARSTON: No, it's not limited access. It's  
2 a very, very busy city boulevard.

3 QUESTION: I see.

4 MR. MARSTON: Both of these streets -- all the  
5 streets involved are. But I believe what happened was they  
6 -- they said, all right, we're going to have to stop her and  
7 they called this patrol car and simply were not able to do  
8 it in a surgical fashion. The patrol car moved in and made  
9 the stop and -- and she happened to be in front of the Jet  
10 Motel -- I mean Drive-In.

11 QUESTION: Why did they want to make the stop?  
12 They didn't make the stop when she came out and got in the  
13 car --

14 MR. MARSTON: Yes, sir.

15 QUESTION: I mean, why at that particular time?

16 MR. MARSTON: All right. Justice Marshall, the  
17 reason for that was, first of all, when she first came out  
18 of the apartment --

19 QUESTION: Yeah.

20 MR. MARSTON: -- all of that time, from the time  
21 she got out of the car up until the time she got almost to  
22 Doby's, they were -- they were verifying the things that  
23 this informer had told them.

24 QUESTION: But she didn't have a bag.

25 MR. MARSTON: They didn't see a bag when she came

1 out of the building. The bag was already in the car.

2 QUESTION: Well, then what -- if she had -- was  
3 carrying the bag, they would have seen it.

4 MR. MARSTON: Yes, sir.

5 QUESTION: And they didn't see it.

6 MR. MARSTON: No, sir.

7 QUESTION: Well, now why all of a sudden do they  
8 want to look for the bag?

9 MR. MARSTON: Because that is where the tipster  
10 said that the cocaine --

11 QUESTION: Well, why didn't they stop her there  
12 and look in the car, when she first got in the car?

13 MR. MARSTON: Well, that would have been fine,  
14 but at that point, Justice Marshall, they had relatively  
15 little verification. They had the fact that she had come  
16 out of this particular apartment building at that time.  
17 Now --

18 QUESTION: Well, what happens to give them  
19 additional information?

20 MR. MARSTON: The fact that she got that brown  
21 Plymouth station wagon with the broken right tail light and  
22 then headed to Doby's Motel. They were just adding  
23 verification.

24 Now, you -- you might well be right, Justice  
25 Marshall. Perhaps they could have stopped her coming out

1 of the --

2 QUESTION: Yeah.

3 MR. MARSTON: -- out of the apartment right there.  
4 But I would suggest that -- that, you know, we should  
5 compliment officers for being more cautious, for being, you  
6 know, developing things more rather than moving in at the  
7 first opportunity.

8 QUESTION: Mr. Marston, how many -- how likely is  
9 it that somebody that left where she left in the car would  
10 have gone the Doby Motel? I mean, is it --

11 MR. MARSTON: I don't have --

12 QUESTION: -- is it a circuitous route to get  
13 there or is the Doby Motel, you know -- if you went one of  
14 two ways on the main street when you left where she was,  
15 you were bound to go by the Doby Motel?

16 MR. MARSTON: No, sir. The Doby Motel is four --  
17 a little less than four miles from where she started and  
18 it's a circuitous --

19 QUESTION: Circuitous.

20 MR. MARSTON: Circuitous.

21 QUESTION: I missed it the first time, too.

22 MR. MARSTON: It goes down one, two, three, four  
23 turns.

24 QUESTION: Uh-huh.

25 MR. MARSTON: And it's not -- it's a relatively

1 small motel. It would be -- I can't give you the  
2 mathematical probability, but it would be astronomical that  
3 a person not intended by the -- by the informer would get  
4 in the car and -- and do all the -- get in that car, get in  
5 that --

6 QUESTION: Let me ask you another thing. What  
7 was the purpose of the stop? What -- is -- is it your  
8 position that had they stopped her and seen the suitcase or  
9 the briefcase that they could have -- could have made an  
10 arrest?

11 MR. MARSTON: Possibly. Possibly. But they did  
12 not do that.

13 QUESTION: But you don't think that's necessary  
14 to your case?

15 MR. MARSTON: No, sir. It's not necessary to our  
16 case because all they did was stop the car and ask her  
17 permission to search. Now, they did ask her to get out of  
18 the car and move to the rear. But they -- of course, that  
19 isn't what produced the evidence, number one. And it --

20 QUESTION: Well, why does the tip give  
21 justification to do that? Because the theory is that if the  
22 person has cocaine in the briefcase, the person, of course,  
23 will let you search the briefcase and -- why does it justify  
24 a stop?

25 MR. MARSTON: Well, it justifies a stop because

1 it creates -- it is articulable, objective reasons that this  
2 specific person is engaged in criminal activity.

3 Now, as far as your -- your basic question -- what  
4 were they planning to do -- this Court in Terry ruled that  
5 when an officer has these reasonable articulable suspicions  
6 and so on that the officer may stop the person in question.  
7 Now, of course, common sense tells us it would be a most  
8 remarkable situation where the person made a full  
9 confession.

10 Usually what happens in the investigatory stop  
11 situation is -- and this is really I think the beauty of  
12 Terry -- is that if it's an innocent person, they do just  
13 that. They tell the officer who they are. What are you  
14 doing here? Well, I'm looking for my cat or whatever.

15 If it's a if it's a person with something to hide,  
16 that commonly they'll do something else. Very commonly they  
17 will flee or they will abandon the contraband and that sort  
18 of thing.

19 In this case, Ms. White just stopped the car and  
20 did what the officers asked. So about all they were left  
21 with was to say, may we search your car? And she said yes.

22 QUESTION: What if she'd said no? Do you think  
23 they could have said we'll search it anyway?

24 MR. MARSTON: We're -- we're back to --

25 QUESTION: That's the --

1 MR. MARSTON: -- Justice Scalia's question.

2 QUESTION: I guess that's the question.

3 MR. MARSTON: That if seeing -- and they had at  
4 that point seen the attache case in plain view -- if that  
5 was enough to turn this to probable cause, yes, they would  
6 have been justified in searching. Otherwise, it would have  
7 been, good afternoon, Ms. White.

8 QUESTION: Do you think the fact that she might  
9 have said have no could be taken as evidence supporting the  
10 search if they --

11 MR. MARSTON: I have always -- and I cannot cite  
12 a case on this that this Court has handed down analogous  
13 rulings -- but I have always taken the position in -- in  
14 training police officers that you cannot cite the invocation  
15 of a constitutional right as evidence of guilt. So, I would  
16 say, no, sir.

17 Thank you so much.

18 QUESTION: Thank you, Mr. Marston.

19 Mr. Byrne, we'll hear now from you.

20 ORAL ARGUMENT OF DAVID B. BYRNE, JR.

21 ON BEHALF OF THE RESPONDENT

22 MR. BYRNE: Mr. Chief Justice, members of the  
23 Court:

24 The core issue in this case is to what degree may  
25 a police officer rely upon an anonymous tip informing

1 reasonable, articulable suspicion necessary to justify a  
2 Terry stop. We respectfully suggest that in the -- facts  
3 in this case did not rise to that level of articulable  
4 suspicion. And the reason is that the reasonable suspicion  
5 requires more than minimal corroboration of innocent  
6 details.

7 There were at least four spots in this factual  
8 scenario where the police officers probably could have  
9 gotten that reasonable suspicion but did not for various  
10 reasons. A reference to our brief at page 33 and 34, I set  
11 forth or seek to set forth 12 deficiencies in this -- in  
12 these facts that fail to meet the reasonable articulable  
13 suspicion required for a Terry-type stop.

14 And in this case we began with the premise that  
15 the officers knew nothing about their informant. During  
16 the suppression hearing Officer Davis candidly admitted that  
17 he had no facts to determine the credibility, the  
18 believability, the veracity of his informant. And secondly,  
19 he had no facts upon which he, as an officer, could rely  
20 upon in determining whether there was a factual basis for  
21 his knowledge.

22 QUESTION: That for an articulable suspicion?  
23 You might need it for probable cause, but if somebody just  
24 calls -- calls me up anonymously -- I have no idea who it  
25 is, but says, you know, so and so is stealing from your

1 garden every night -- do you think I might not go out and  
2 look that night to see if somebody's stealing my tomatoes?

3 MR. BYRNE: I think one might look to see if --

4 QUESTION: Why? Because I would have -- I would  
5 have a suspicion, an articulable suspicion.

6 QUESTION: Well, I think at that point, Your  
7 Honor, that you would probably be there because you were  
8 both curious as to why the tomatoes were missing and also  
9 wanting to find if the culprit might show up that night,  
10 but you didn't have the factual basis.

11 In this case, I think the key element that's  
12 missing, Judge -- Justice -- is the fact that we do not have  
13 any description as a threshold matter of Vanessa White. If  
14 they had given a detailed description or, second, if the  
15 officers knew who Vanessa White was -- but in this case any  
16 lady could have entered that brown Plymouth station wagon  
17 with a broken right tail light and that's what they had.

18 QUESTION: Well, but they -- they had someone  
19 emerging from 235-C Lynwood Terrace Apartments, and they had  
20 it at a certain time of day, which certainly suggests that  
21 the informant knew something about the movements of the  
22 person.

23 MR. BYRNE: Chief Justice Rehnquist, if you look  
24 at the joint appendix at page 16, I think that there is not  
25 a suggestion that the person later identified as Vanessa

1 White came from that particular apartment, but rather she  
2 would be -- the fact the informant gave would be that she  
3 would be leaving the area. Now, I think that is  
4 substantially different from leaving a particular apartment.

5 In this case, had the informant -- or had the  
6 officer gotten there and had simply said, let me call the  
7 gas company or let me call and see if, during this hour of  
8 passage of time, if Vanessa White actually rented 235-C, or  
9 if they had determined that in this case the brown Plymouth  
10 station wagon was registered to Vanessa White --

11 QUESTION: Well, in the --

12 MR. BYRNE: But they didn't do either.

13 QUESTION: In the opinion of the Alabama Court of  
14 Criminal Appeals, which is at page 22, 23, 24 of the -- what  
15 is it, the petition? -- the Alabama Court of Appeals says  
16 that Corporal Davis received a phone call from an anonymous  
17 person stating that Vanessa White would be leaving 235-C  
18 Lynwood Terrace Apartments at a particular time in a brown  
19 Plymouth station wagon.

20 Now, I thought you just said that the tip was that  
21 she would be leaving that area?

22 MR. BYRNE: Yes, sir, at page 16 of the joint  
23 appendix --

24 QUESTION: Well, I'm talking about the opinion --  
25 we're reviewing the court of appeals' opinion.

1 MR. BYRNE: I agree, sir, that is -- Chief  
2 Justice, that is what it says. I believe it to be factually  
3 in error.

4 QUESTION: What how -- what about page 5 --

5 MR. BYRNE: But it is --

6 QUESTION: -- of the joint appendix? Maybe you  
7 could help me with that. The question specifically, "From  
8 what location would she be leaving?" Answer: "She would  
9 be leaving 235-C Lynwood Terrace." That's the direct  
10 examination of Corporal Davis.

11 MR. BYRNE: Yes, sir.

12 QUESTION: Now, is there -- is there something  
13 that appears in the transcript that indicates he later  
14 recants that?

15 MR. BYRNE: The cross-examination of Corporal  
16 Davis, beginning on page 13 of the joint appendix --

17 QUESTION: Well, I think -- I think what he's  
18 saying there -- that exchange that you quoted -- I think  
19 all he meant to say is that the caller didn't say that 230  
20 -- whatever the number is -- 30 -- 235-C -- was her  
21 residence.

22 The question is the caller -- so, in effect the  
23 information was that she would be leaving her residence at  
24 a given time. The caller didn't say she would be leaving  
25 her residence. He just said she would be leaving this area.

1 I -- I think what was left out is whether that was her  
2 residence or not.

3 QUESTION: I -- I think you'll find, Mr. Byrne,  
4 if there is any doubt about it, that we will probably take  
5 the view of the Alabama Court of Criminal Appeals.

6 MR. BYRNE: I think that if the Court does that,  
7 it would not change the result because in this case the  
8 officers did not verify that the lady who appeared and  
9 ultimately got in the brown Plymouth station wagon came from  
10 235-C. Had they done that, I think it would have been  
11 helpful. But they were outside, in effect, surveilling the  
12 brown Plymouth station wagon.

13 QUESTION: Again, the Alabama Court of Criminal  
14 Appeals says the officers observed appellant leave the 235  
15 building.

16 MR. BYRNE: Yes, sir. That building, Your Honor,  
17 houses more than one apartment.

18 QUESTION: So you -- you say they saw -- they saw  
19 her observe the building but not the 235-C?

20 MR. BYRNE: Yes, sir, not the particular  
21 apartment. As I understand it, the officers took up a  
22 position of surveillance and observed -- observing both the  
23 235 building and the brown Plymouth station wagon which was  
24 parked in front of the building.

25 QUESTION: Well, do you think the anonymous tip

1 would have been significantly left -- less precise if it had  
2 said a woman will leave the 235 building and get into a  
3 brown station wagon than if it had said a woman will leave  
4 235-C in the 235 building and get into a Plymouth station  
5 wagon?

6 MR. BYRNE: I think that --

7 QUESTION: Both of them seems to me to be, you  
8 know, narrowing it down to a --

9 MR. BYRNE: I think that would be still pretty  
10 minimal corroboration, Your Honor, because in this case,  
11 absent a specific description, we don't know who was getting  
12 into that vehicle. We do not know that it was Vanessa  
13 White. We simply know that it was a lady that entered the  
14 vehicle.

15 A detailed description -- and as Justice White  
16 suggested -- if we had the kind of description initially  
17 given in Draper -- now, Draper's facts of course were --  
18 were probable cause facts -- but I think it's significant  
19 also that that was a known informant -- in fact, a paid --  
20 a paid special employee.

21 But in that case, they described the gentleman who  
22 would be leaving the train, Draper, coming back to Denver  
23 from Chicago, as being a black male, five, eight, 160,  
24 wearing brown pants, black shoes, carrying a tan briefcase.

25 Now, the visual observation then of the officer

1 who saw a person fitting that exact description, coupled  
2 with the further detail that that person, Draper, would be  
3 moving at a rapid pace, brisk walk. And, indeed, the person  
4 fitting that description, with that walk, did get off the  
5 train from Chicago in the -- the Denver terminal. And under  
6 those circumstances -- and I will grant to the Justice that  
7 that was a probable cause for arrest and search. Because  
8 they found, in fact, the contraband on Draper that day.

9 But in this case I think we have to go back to  
10 Justice White's opinion in Jernigan v. Louisiana where he  
11 dissented from a denial of cert., and as he focuses the  
12 critical issue there he asked us and draws our attention to  
13 the specificity of the information provided, the independent  
14 corroboration by the police. In here the corroboration is  
15 extraordinarily minimal.

16 And third, the danger to the public, which gets  
17 back to the -- to the observation of two of the Justices of  
18 the Court.

19 Now, in Gates Justice White was reluctant. And  
20 granted, Gates was a case that wanted to foster the warrant  
21 process. But at least in that case Gates -- Justice White  
22 in Gates was reluctant to prove any standard which did not  
23 require a showing of the facts from which an inference might  
24 be drawn, first, that the informant was credible or  
25 believable and, secondly, was that information obtained in

1 a reliable fashion.

2 QUESTION: Well, Gates, too, was a probable cause  
3 case, was it not?

4 MR. BYRNE: Yes, sir, no question about it. But  
5 I differ from my brother in saying that the facts in Gates  
6 in my judgment were extraordinarily different. And this is  
7 not a mini-Gates factual scenario.

8 The facts in Gates involved the verification by  
9 a police officer of eight separate facts dealing from unique  
10 travel arrangements, where Sue Gates would drive, Lance  
11 Gates would fly. The destination: West Palm Beach,  
12 Florida. In fact, within 24 hours of the time predicted,  
13 passage is booked. He does -- he, Lance Gates, flies to  
14 that location. He goes directly to a Holiday Inn where Sue  
15 Gates is registered there. The two of them immediately  
16 leave, driving by a highway, an arterial highway that is  
17 frequently used in going back to Bloomingdale, Illinois and  
18 to the Chicago area. The length of time in Florida --

19 Now, as one of the Justices -- and I may be wrong  
20 in this, but I believe Justice White said this -- this  
21 wasn't innocent activity. This was suspicious as the  
22 dickens. And I -- I would tend to agree with that, because  
23 this is --

24 QUESTION: I said that. I just said that a little  
25 earlier today.

1 MR. BYRNE: I'm sorry, sir.

2 But at any rate, I would suggest that this also  
3 doesn't reach the stop situation that the Chief Justice's  
4 opinion in Sokolow addressed late in 1989 because there, DE  
5 agents -- DEA agents, excuse me -- observed and verified  
6 with their own eyes and senses six objective characteristics  
7 of a drug courier.

8 And that was the \$2,100 in cash from a roll of  
9 20s; they travelled under an assumed name; the destination  
10 at Miami was a source city for drugs; they stayed in Miami  
11 48 hours and it takes 20 hours to simply fly there and get  
12 on the plane and fly back; apparent nervousness; and he  
13 checked none of the luggage.

14 I also would like to digress and go back to Gates  
15 because I left out something. When my brother suggests  
16 there was totally innocent activity in Gates, let me suggest  
17 that suspicion also should have been generated by reason of  
18 the fact that Lance Gates was using switched plates on the  
19 vehicle that went back to Bloomingdale. It was a plate,  
20 albeit registered to him, but it was a plate for a different  
21 kind of car -- I believe a Hornet automobile, as opposed to  
22 the Mercury that he was driving.

23 In total, though, and in sum, I would suggest that  
24 -- that we've got far more verification, reasonable  
25 suspicion, articulable suspicion in Sokolow than are present

1 in these facts.

2 QUESTION: What if you had these -- these facts  
3 and the caller added, "And she will be carrying a bomb which  
4 she is going to plant at the hotel"?

5 MR. BYRNE: I think reasonably articulable  
6 suspicion is a standard that is reasonably fixed, but I  
7 think reasonable men, dependent upon what the crime is, must  
8 react differently. And if we've got the danger to the  
9 public as being the third criteria that Justice White  
10 suggests, when you get the area of bomb in a possible motel,  
11 then whether or not you make a particular criminal case "in  
12 a neat, tight package" or you preserve life, we must, as a  
13 society, preserve life.

14 QUESTION: What does that mean? That there --  
15 that there was a reasonable -- reasonable -- reasonably  
16 articulable suspicion in that case?

17 MR. BYRNE: No, sir. Once again, I don't think --

18 QUESTION: Or you don't care in that case?

19 MR. BYRNE: Yes, sir, I care. I think what I  
20 would do in that case is if I were the police officer on  
21 the street, given those facts, I would preserve life and  
22 then run the risk that I couldn't make my case.

23 QUESTION: You don't care. You'd say there still  
24 is no reasonably articulable suspicion but the officer ought  
25 to do it anyway.

1 MR. BYRNE: I don't think there is reasonably  
2 articulable suspicion.

3 QUESTION: Then the law should not protect the  
4 officer in that case if he is sued for a violation of the  
5 Fourth Amendment?

6 MR. BYRNE: In my -- in my -- in my judgment, Your  
7 Honor, given those -- those facts, I believe that his true  
8 exposure to suit would be de minimis.

9 QUESTION: Well, that doesn't really answer my  
10 question.

11 MR. BYRNE: If the question is could he be sued,  
12 yes, sir, it could be.

13 QUESTION: And a -- and a court would find that  
14 he violated the Fourth Amendment?

15 MR. BYRNE: If the question is whether or not  
16 there was a Terry stop as opposed to a complete search, I  
17 think that would break a difference. But I think, as the  
18 Chief Justice suggests, that what you would have is a  
19 violation of the Fourth Amendment seizure provision, and I  
20 think there is a technical violation.

21 QUESTION: Mr. Byrne, a much more common situation  
22 is an anonymous tip that a drug transaction is taking place.  
23 And in the present drug culture we have, many of these tips  
24 are and must be anonymous because the people that give the  
25 tip know that their own lives are in danger.

1           Are -- are drug transactions one, do you think,  
2           in which we should find that there is a reasonable ground  
3           for suspicion merely because there's a tip that has not much  
4           more verification than the one we have in the present case?

5           MR. BYRNE: Your Honor, there is no question that  
6           -- that drugs are a serious national concern. I think,  
7           though, when we talk about Fourth Amendment restrictions,  
8           however, I think we've got to be cognizant of the crime but  
9           -- but I think the core problem here is you've got the  
10          danger of anonymity without accountability.

11          QUESTION: But with reference to somebody having  
12          a bomb or committing a murder, there's -- there's usually  
13          not much reason for anonymity. Within drug transactions  
14          there is all the time.

15          MR. BYRNE: Yes, sir. I think -- I think that  
16          the question there is, of course, they're -- they're afraid  
17          that if they're -- they are disclosed, they may be burned.  
18          And I think that's the common parlance.

19          I think -- I think, however, that what you're  
20          doing is we're trying to balance the right -- the right of  
21          the citizen as opposed, in this case, to the informant.

22          Let me suggest that both, as an Assistant United  
23          States Attorney and as -- and as a defense counsel, I've  
24          seen numerous requests for disclosure of informants. And  
25          it has been my experience, respectfully, that courts and

1 judges do not grant that. And I, at least in my experience,  
2 limited though it may be, I have never seen a judge disclose  
3 a confidential informant. But that is a very clear danger.  
4 And it is any time when police rely upon informant activity.

5 QUESTION: Of course, it's even rarer for them to  
6 disclose an anonymous informant, and if my life were at  
7 stake, I suppose I'd play the odds and want to remain  
8 anonymous.

9 MR. BYRNE: I think that is -- I think that is  
10 clearly -- clearly true. But I think that this Court has  
11 in Adams v. Williams case at least expressed some concern  
12 about anonymity without accountability, because the Chief  
13 Justice in answering those questions points out in the four  
14 factors that he gives at least twice the fact that the  
15 informant was known, had provided information in the past  
16 and, most critically, would have been subject to criminal  
17 prosecution.

18 I do beg to differ from my co-counsel in that in  
19 this case, this informant would not have been subject to  
20 criminal prosecution because the officer said he did not  
21 know who that person was, and they had not heard from that  
22 individual subsequently. And that the informant was not  
23 "known" to the Montgomery Police Department.

24 The linchpin of this case is whether or not the  
25 Court will approve a stop and a detention of a citizen based

1 upon an information provided by an anonymous tipster who is  
2 not held to a standard of accountability and where the  
3 corroboration of the details is minimal. In this case, as  
4 pointed out by Justice O'Connor, had they allowed the  
5 vehicle to get and even turn into the motel, if the officer  
6 had approached and said, my name is Patrolman David Byrne,  
7 may I see your license, please, ma'am, and that license  
8 turned out to be Vanessa White and she had made the turn  
9 into the Doby Motel at a minimum, I believe, given all of  
10 the facts under these circumstances, you would have had  
11 reasonably articulable suspicion. I do not believe that we  
12 got to that level.

13 QUESTION: But -- but under your view, of course,  
14 they couldn't have made that stop. Or could they? Could  
15 they have made -- are you suggesting they could have made  
16 the stop and asked her for her license?

17 MR. BYRNE: At this point, I think they clearly  
18 -- they had a reason to under our code to have done it  
19 without regard to the reason they gave for the stop. The  
20 officer --

21 QUESTION: Because -- because of the broken tail  
22 light?

23 MR. BYRNE: Broken tail light. In this case,  
24 though, the officer was very candid and when he said -- when  
25 he identified himself, he simply said, we suspect that you

1 are carrying drugs in the car. And they also observed that  
2 she was -- it was filled with clothes as if she were moving.  
3 And at that point, Officer Reynolds, his partner, gets --  
4 begins to go through the car. They find the brown  
5 briefcase. They ask her for permission or consent to open  
6 the combination lock on it and inside they find a quantity  
7 of marijuana. In this case the record does not disclose,  
8 but it was --

9 QUESTION: I think that we -- we judge this case  
10 as though the consent was valid.

11 MR. BYRNE: Yes, sir. I think at this point we  
12 have to. The question is, was the stop a valid stop and  
13 was there reasonably articulable suspicion?

14 QUESTION: And if it wasn't a valid stop, then  
15 the consent is a fruit? Is that it?

16 MR. BYRNE: In my view, Justice White, this is  
17 more akin to an arrest than it was a stop. I don't see any  
18 of the indicia of a Terry stop --

19 QUESTION: Yeah, but what -- what invalidates the  
20 consent? What's the basis for excluding the evidence?

21 MR. BYRNE: Given the --

22 QUESTION: It's the fact that the stop is illegal.

23 MR. BYRNE: Yes, sir.

24 QUESTION: And that -- and that the stop produced  
25 the consent.

1 MR. BYRNE: Yes, sir, and given -- given the  
2 opinion of the Alabama Court of Criminal Appeals, they  
3 reached and attacked this question only as a stop case, not  
4 as an arrest situation.

5 Once we leave the determination of reasonable  
6 suspicion to a police officer guided by a concept as  
7 amorphous as the totality of the circumstances, we have a  
8 very difficult situation because the officer whose  
9 responsibility it is to ferret out crime and enforce the  
10 law is -- is in an very difficult circumstance. And the  
11 totality of the circumstance's test, where it's being  
12 determined by mutual and detached magistrate, is a far  
13 greater guarantor of Fourth Amendment protections than  
14 giving the anonymous -- excuse me -- the totality of the  
15 circumstances test to the police officer to determine for  
16 himself if his tipster --

17 QUESTION: But -- but you don't -- you don't need  
18 a warrant for a -- for a Terry stop.

19 MR. BYRNE: No, sir. Absolutely not.

20 QUESTION: So, you're talking about going before  
21 a neutral and detached magistrate to get an arrest warrant  
22 in this case?

23 MR. BYRNE: No, sir. If I gave -- made that  
24 suggestion, I was in error, because I'm not. Gates simply  
25 dealt with a warrant situation where the totality of the

1 circumstances supplanted or replaced in part Aguilar and  
2 Spinelli's two-pronged test.

3 I would suggest that reading the opinions of the  
4 Gates' court, however, we did not completely abdicate or  
5 banish those considerations as factors among the totality  
6 of the circumstances.

7 QUESTION: I suppose if they -- if the -- if the  
8 lady had stopped at a drug store on the way to this motel  
9 and the police parked behind her and as she got out of the  
10 car, she said -- they said, excuse me, we think you're  
11 carrying drugs, can -- may we search the -- your car? And  
12 she said, sure. May we search this case -- attache case?  
13 Sure. There wouldn't be anything wrong with that I don't  
14 suppose? Because -- I suppose any policeman can walk up to  
15 some person on the street and say, excuse me, somebody tells  
16 me you're carrying drugs in your pocketbook, may I look at  
17 it.

18 MR. BYRNE: Your Honor, I do not believe for --  
19 that to be my reading of Teller -- Terry when I couple it  
20 with --

21 QUESTION: I know, but anybody -- anybody can say  
22 excuse me and if the person doesn't want to stop he can just  
23 go on. But if a person stops and listens to you and says,  
24 sure, you can search my briefcase, is anything wrong with  
25 that?

1 MR. BYRNE: Yes, sir, I believe so. As I recall  
2 in Delaware v. Prowse, there --

3 QUESTION: That's an automobile stop.

4 MR. BYRNE: Yes, sir, and I -- I understand now  
5 the distinction you're making. In an automobile stop there,  
6 that was different in the sense that we -- the -- in the  
7 analogy your gave, the vehicle has coming to a stop, she's  
8 getting ready to go to the drug store. But in Terry --

9 QUESTION: (Inaudible) car and you say, excuse  
10 me.

11 MR. BYRNE: Excuse me, but in this case, in Terry,  
12 the officer, who was a trained officer for many years of  
13 experience, observed suspicious activity independent of  
14 whatever she did. And I think that makes a difference, sir,  
15 because there it looked as if they were casing the joint for  
16 some period of time before they approached Terry and his  
17 friends, asked for their names, and they mumbled something,  
18 reached for the pocket and the officer put his hand in  
19 there. And at that point, of course, this Court upheld  
20 Terry.

21 But Terry was defined in the narrowest possible  
22 terms by the Chief Justice. Is it always unreasonable?  
23 And I would respectfully suggest that we have not moved  
24 beyond that narrow framework of Terry by reason of the --  
25 the time that has passed.

1 Thank you.

2 QUESTION: Thank you, Mr. Byrne.

3 Mr. Marston, do you have a rebuttal? You have  
4 four minutes remaining.

5 MR. MARSTON: Your Honor, I did not plan to have  
6 any, but I would be happy to answer any additional questions  
7 the Court might have.

8 CHIEF JUSTICE REHNQUIST: Apparently, there are  
9 none.

10 Thank you. The case is submitted.

11 MR. MARSTON: Thank you, Your Honor.

12 (Whereupon, at 12:08 p.m., the case in the above-  
13 entitled matter was submitted.)

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATION

*Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:*

*Alabama -v- Venessa Rose White - Docket No. 89-789*

---

---

*and that these attached pages constitutes the original transcript of the proceedings for the records of the court.*

BY *Lona M. May*

(REPORTER)

RECEIVED  
SUPREME COURT, U.S.  
MARSHAL'S OFFICE

'90 APR 25 P2:35