

ORIGINAL

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PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: ILLINOIS, Petitioner v. WILLIAM aka SAM WARDLOW.

CASE NO: 98-1036 c.f.

PLACE: Washington, D.C.

DATE: Tuesday, November 2, 1999

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 ILLINOIS, :

4 Petitioner :

5 v. : No. 98-1036

6 WILLIAM aka SAM WARDLOW. :

7 - - - - -X

8 Washington, D.C.

9 Tuesday, November 2, 1999

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 10:02 a.m.

13 APPEARANCES:

14 RICHARD A. DEVINE, ESQ., Chicago, Illinois; on behalf of
15 the Petitioner.

16 MALCOLM L. STEWART, ESQ., Assistant to the Solicitor
17 General, Department of Justice, Washington, D.C.; for
18 the United States, as amicus curiae, supporting the
19 Petitioner.

20 JAMES B. KOCH, ESQ., Chicago, Illinois; on behalf of the
21 Respondent.

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1 P R O C E E D I N G S

2 (10:02 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 now in No. 98-1036, Illinois v. William Wardlow.

5 Mr. Devine.

6 ORAL ARGUMENT OF RICHARD A. DEVINE

7 ON BEHALF OF THE PETITIONER

8 MR. DEVINE: Mr. Chief Justice, and may it
9 please the Court:

10 On September 9th, 1995, when William Wardlow
11 looked at Officer Nolan and took flight, the officer had
12 reason to believe that there was a problem. He pursued
13 and stopped Wardlow to investigate and discovered a loaded
14 gun in his possession.

15 The three key factors in this brief statement
16 are flight from a clearly identified police officer
17 without provocation. These factors provided reasonable
18 suspicion supporting a Terry stop.

19 At the core of this case --

20 QUESTION: When you said he had reasonable cause
21 to believe there was a problem, you mean that he had
22 reason to believe that crime was afoot. Is that the test?

23 MR. DEVINE: Yes, Your Honor. The reasonable
24 police officer had, under these circumstances, reasonable
25 suspicion to believe that crime was afoot.

1 QUESTION: What crime?

2 MR. DEVINE: Throughout the history of this
3 country, flight has been considered by the courts and by
4 commentators as inherently suspicious.

5 QUESTION: Of what?

6 MR. DEVINE: It is not -- it is not required,
7 Your Honor, that the officer have reasonable suspicion of
8 a particular crime. This was commented on in Anderson and
9 in LaFave. If the officer has reasonable suspicion to
10 believe that criminal activity may be afoot, as this Court
11 has noted, there may be innocent behavior, but the
12 officer, the reasonable officer, can stop briefly to
13 determine whether his suspicions are justified or not.

14 QUESTION: Does he have to have some rough idea
15 of what kind of crime? I mean, it wasn't money laundering
16 I take it.

17 MR. DEVINE: No, Your Honor. And --

18 QUESTION: What was it?

19 MR. DEVINE: -- it is our submission that if the
20 officer has reasonable suspicion that there may be some
21 type of criminal activity -- and flight has historically
22 been related to criminal activity, as Mr. Burrill noted in
23 his commentary back in the 1860's, that flight for a
24 burglar, an arsonist, a robber is common, and that in fact
25 if someone committed one of these acts, that it is so

1 natural to flee that if an individual did not, he would be
2 considered mentally deficient.

3 QUESTION: I suppose if a policeman sees
4 somebody with a smoking rifle, he wouldn't exactly know
5 what precise crime was -- was probable or possible either.
6 The man might have killed somebody or he might have shot a
7 bald eagle. You really wouldn't know which, would you?

8 MR. DEVINE: You would not, Your Honor. In
9 addition, going back to Terry, the case which is the
10 seminal case on this issue, the activity that the officer
11 noted was as consistent with innocent behavior as with
12 what the officer suspected, namely that the individuals
13 walking around were casing the joint preparing to rob a
14 department store.

15 QUESTION: Mr. --

16 QUESTION: There is some reference in the
17 Illinois court opinions to the fact that this was a high
18 crime neighborhood. Does that bear on your calculus?

19 MR. DEVINE: Mr. Chief Justice, we are proposing
20 that a rule be adopted that is not limited to high crime
21 areas. We believe that the flight is so inherently
22 suspicious that when you have unprovoked flight from an
23 identified police officer, that wherever it takes place,
24 it provides the reasonable suspicion necessary.

25 QUESTION: Well, you want some per se rule, it

1 sounds like, rather than what we have normally done on a
2 Terry stop, which is inquire whether there is reasonable
3 suspicion based on the totality of the circumstances. You
4 reject that as the test?

5 MR. DEVINE: No, Your Honor. This, in fact,
6 comports with totality of the circumstances. But what we
7 do say is when these three factors are involved, they are
8 sufficiently important and sufficiently focused that they
9 provide and should provide the officer with a reasonable
10 suspicion.

11 QUESTION: But in -- in -- in this case, there
12 may well be special circumstances that would enter the
13 mix. The officer was going to a building that the
14 officers thought was the location for a lot of drug
15 trafficking. And presumably we have circumstances here
16 where the -- where the person who ran had seen that it was
17 a police officer following that person, and so that's
18 different from a flight where the person doesn't even know
19 there's a police officer --

20 MR. DEVINE: Well, no, Your Honor, there are
21 three --

22 QUESTION: -- there.

23 MR. DEVINE: There are three factors that we
24 propose be part of the rule: one, the flight; second,
25 that it's from a clearly identifiable police officer; and

1 thirdly, that it's without provocation. We understand
2 that just flight in a vacuum doesn't give us the reason to
3 say that there's reasonable suspicion, but when the three
4 factors are combined, we believe that that is -- that is
5 the case.

6 QUESTION: Mr. --

7 QUESTION: Would be the same rule if, say, the
8 -- the person who's stopped was wearing jogging shoes and
9 sweat pants and a sweatshirt and carrying a basketball?

10 MR. DEVINE: Your Honor, it would fit in, in
11 that the reasonable police officer, the standard that the
12 Court uses, would have to conclude that the flight was in
13 response to his presence and without provocation. So,
14 whatever the garb of the individual, if he looks at the
15 police officer, and then takes off, that creates the
16 reasonable suspicion.

17 QUESTION: What -- what if he had seen him
18 running, then he stopped for a while, then he saw the
19 police officer, and he started running again? That would
20 still -- that would still apply, wouldn't it?

21 MR. DEVINE: No, Your Honor. I would say in
22 that case if the individual is running in the direction,
23 glances at the police officer, and continues on.

24 QUESTION: No. He stops. He had stopped and he
25 was catching his breath and then he looked up and saw the

1 police officer and took off.

2 MR. DEVINE: I would say that that's ambiguous
3 behavior that would fall within the totality of
4 circumstances rather than within the rule we're proposing,
5 Your Honor.

6 QUESTION: Mr. Devine, the -- let me tell you
7 the difficulty that I have with your proposal. You -- you
8 mentioned a moment ago, quite correctly, that under any
9 reasonable suspicion rule, some innocent people are going
10 to be stopped or are liable to be stopped under that rule,
11 and we accept that. That's -- Terry -- Terry starts on
12 that premise.

13 The -- the trouble is how high is the risk that
14 -- that innocents are going to be stopped or -- or how
15 many innocents are going to be stopped in relation to the
16 -- to the whole? That -- that seems to me the tough
17 question. And the reason it's a tough question here --
18 I'd like you to comment on it -- is that it seems to me
19 that if we accept your premises, where in the high crime
20 area a clearly identified police officer arrives -- and in
21 fact, in this case arrived as -- I guess in a convoy of -
22 - of four cars -- it seems to me that anyone in his right
23 mind is going to want to get out of the way fast. If I
24 were standing on that corner, I don't know whether I would
25 run or duck into a -- an alleyway or what, but I would

1 want to get out of the way.

2 And therefore, it seems to me, on your premise,
3 there are going to be a substantial number of quite
4 innocent people who, recognizing the spot they are in, are
5 going to go on and get just as far away from the police
6 and any shoot-out or whatnot that may occur as they
7 possibly can. And it raises the specter of simply too
8 many innocent people getting picked up on your rule. What
9 do you say to that?

10 MR. DEVINE: Well, Your Honor, I would again
11 note that flight, going back to the time of the Framers,
12 has been considered suspicious behavior, but looking at
13 the balancing this Court does in analyzing the
14 reasonableness under the Fourth Amendment, we look at the
15 governmental interest. Here the governmental interest is
16 a police officer who's on the scene, sees an individual
17 look at him, and take flight. The police officer does not
18 have the ability to further investigate. The police
19 officer does not have any ability to find out what is
20 going on.

21 QUESTION: Yes, but he may have the ability to
22 note a number of other facts besides the one that you
23 mentioned, and some of them have come up on the bench
24 here. What if -- what if the individual in fact ducks
25 into a -- runs toward a building which is a known crack

1 house?

2 I mean, there -- there are lots of little
3 details that come into a totality of the circumstances
4 test that might make, for example, the stop in this case a
5 perfectly good Terry stop, but it gives one pause when you
6 ask us, number one, to depart from totality, number two,
7 to come up with a bright line rule in which there's at
8 least a substantial risk of a lot of innocent people being
9 -- being caught.

10 MR. DEVINE: Your Honor, I -- I would submit an
11 alternative thought, namely that -- that flight is such
12 inherently aberrant behavior that it does create the
13 reasonable suspicion --

14 QUESTION: Yes, but we don't have a rule that
15 says anytime anyone flees from the police, there is --
16 there is sufficient suspicion for a Terry stop. We don't
17 accept that rule. And in fact, that -- that's even
18 narrower than -- than you're arguing for in this case.

19 MR. DEVINE: Well, this Court has commented that
20 when an individual flees from the police, common sense
21 might tell us --

22 QUESTION: Oh, it's darned good evidence. No
23 question. The writer of proverbs was right, but we've
24 never accepted that as a sufficient test in and of itself.

25 QUESTION: Well, not yet we haven't.

1 Have you accepted --

2 (Laughter.)

3 MR. DEVINE: I know some of the Justices may
4 have.

5 QUESTION: Have -- have you accepted the premise
6 that -- that normally when the police show up, all of the
7 neighbors run away? I -- my experience has been just the
8 opposite, that the police have to keep the crowd back.

9 MR. DEVINE: Well, Your Honor, I certainly --

10 QUESTION: The curiosity tends to cause people
11 to hang around as soon they see a couple -- gee, what's
12 going on here?

13 MR. DEVINE: I --

14 QUESTION: I certainly --

15 MR. DEVINE: Pardon me, Your Honor.

16 Certainly in -- in my experience, Your Honor,
17 flight from the arrival of police officers, as they go
18 about the duty -- about their duties, is not a common
19 experience.

20 QUESTION: But your experience --

21 QUESTION: Mr. Devine, there's been a lot of
22 talk about my experience, your experience. Is there any
23 evidence, apart from intuition, that people who have
24 something to hide run? Justice Souter asked the question
25 about how many innocent people are in jeopardy. Is there

1 any empirical evidence at all to back up this intuition
2 that people don't run unless they have something to hide?

3 MR. DEVINE: Well, Your Honor, we have the
4 entire history of this country with the commentators and
5 the cases that have --

6 QUESTION: You have this case for starters.
7 Right?

8 MR. DEVINE: Well, absolutely, Your Honor. You
9 have after the stop, a weapon with five live rounds in it
10 was found on Mr. Wardlow.

11 QUESTION: Well, we have this case, but how many
12 on the other side where this practice is followed? How
13 many innocent people get stopped because they sped away?

14 MR. DEVINE: Well, again, Your Honor, based on
15 my -- my view of it as a prosecutor for a number of years,
16 I don't believe it occurs that often. But what we are
17 talking about --

18 QUESTION: But we don't have any empirical
19 studies of this, do we?

20 MR. DEVINE: We don't have any to submit, Your
21 Honor. We have the history of this country, how flight
22 has been looked at over the course of the history of this
23 country.

24 QUESTION: And that -- that's -- some of those
25 cases, at least, involve flight after an accusation, after

1 a charge.

2 MR. DEVINE: Some did, Your Honor, but Burrill
3 in his commentaries, referring to the common law, clearly
4 referred to flight from the scene and how natural it was
5 for criminals to flee.

6 In addition, Wigmore, that was cited by -- who
7 was cited by respondent, also talks as the flight being
8 the evidential matter that we look at.

9 QUESTION: Mr. Devine, do we have any empirical
10 studies about -- empirical studies about how often, when
11 there's been somebody killed and somebody nearby has blood
12 on his hands, that person is likely to have been involved
13 in the killing? Are there any empirical studies on that?

14 MR. DEVINE: No, I'm not aware of any empirical
15 studies, Your Honor.

16 QUESTION: Do you think that would justify a
17 Terry stop?

18 QUESTION: What do you -- what do you say about
19 the argument that -- well, there are some neighborhoods,
20 high crime neighborhoods in particular, where people are
21 afraid of the police? Maybe the police just stop people
22 randomly and search them, and there can be a racial
23 element involved, a white policeman in a black
24 neighborhood. Say, that in that neighborhood, people are
25 frightened of the police and they run away. They just

1 don't want to get involved.

2 MR. DEVINE: Well, Your Honor, I would first
3 note that in many of those same neighborhoods, the victims
4 are the ones who are concerned about crime being solved.

5 QUESTION: That's -- I understand that.

6 MR. DEVINE: But --

7 QUESTION: I'm saying -- I'm saying what -- what
8 is your response to that argument?

9 MR. DEVINE: My response is that -- that since
10 Terry, when the Court discussed that issue, this Court has
11 said that under the Fourth Amendment we apply a colorblind
12 test. We look at the balancing outside of those issues,
13 and if those issues are there, application of sanctions
14 under the Fourth Amendment isn't going to resolve them.
15 They should be handled, as this Court has said, as
16 recently as Wren, either by equal protection claims or
17 section 1983 claims or administrative charges within the
18 particular police department.

19 I would submit, Your Honor, that if we start to
20 classify when we can do a Fourth Amendment stop, based on
21 Terry, or arrest based on probable cause, considering what
22 the race of the police officer is, the race of the
23 individual that is involved, the Fourth Amendment will be
24 unworkable and will prevent the police officers from doing
25 the job that we want them to do.

1 That's why we believe a bright line rule is
2 appropriate here.

3 QUESTION: So, in your --

4 QUESTION: Mr. Devine, your -- your question
5 presented is whether a person's sudden and -- in petition
6 for certiorari, whether a person's sudden and unprovoked
7 flight from a clearly identifiable police officer who is
8 patrolling a high crime area is sufficiently suspicious to
9 justify a temporary investigatory stop pursuant to Terry
10 against Ohio. That doesn't sound to me so much like a
11 request for a bright line rule, as saying do these
12 circumstances come -- satisfy the Terry case, which maybe
13 it's another way of saying the same thing. But I -- I
14 don't read that necessarily as saying that you believe
15 that every time these factors coalesce, there will be a
16 cause for a Terry stop.

17 MR. DEVINE: Well, Your Honor, we do submit that
18 -- and the high crime area is in the cert petition, but we
19 submit that the three factors that we've identified,
20 flight without provocation from a clearly identified
21 police officer -- you reach a point where you have
22 reasonable suspicion with those factors.

23 And we believe it is important that this Court
24 speak clearly on this because a police officer does have
25 to make an instantaneous decision --

1 QUESTION: May I ask on your bright line rule?
2 Would it apply to someone driving in car who sees an
3 officer in the rear window and then decides to turn off
4 because he's not sure he's going to be stopped?

5 MR. DEVINE: If it -- if it is not identified as
6 flight from the standpoint of the reasonable police
7 officer --

8 QUESTION: No, it is. He -- that's exactly the
9 -- he just doesn't want to take the chance on being
10 stopped, so he tries to get away, but without -- without
11 evading the speed limit.

12 MR. DEVINE: Well, Your Honor, we would -- we
13 have made a point of differing -- distinguishing avoidance
14 from flight. Turning one's gaze, crossing the street,
15 walking away do not constitute flight. Certainly in that
16 instance, if the individual in the car sped off after
17 observing a police officer, we would say that is flight
18 without provocation that would justify the Terry stop.

19 QUESTION: Well, how does provocation -- I know
20 the genesis of the phrase, but why is provocation
21 important?

22 And, incidentally, why wasn't this provocation
23 when four cars come swooping down?

24 MR. DEVINE: Well, provocation --

25 QUESTION: What does provocation add to the mix?

1 MR. DEVINE: If the police officer, for example,
2 came up and threatened an individual and they ran away,
3 that would not be flight that would fall within the
4 definition.

5 QUESTION: Threatened him with what? I'm going
6 to beat you up or --

7 MR. DEVINE: With a beating, with harassing of
8 some nature. If there is evidence of that, that the
9 police officer says that, or if the police officer has
10 made some other comment to the individual that could be
11 interpreted as threatening him, that would be provocation.

12 We -- we have said that unprovoked flight is
13 where a reasonable police officer can say it's the
14 presence of the police officer that has caused the
15 individual to flee.

16 QUESTION: Suppose the police officer and his
17 colleagues go to the area and swoop down in order to cause
18 some people to flee and then stop them. Is that
19 unprovoked in your --

20 MR. DEVINE: If --

21 QUESTION: -- definition?

22 MR. DEVINE: If a police officer arrives on the
23 scene to see who will -- who will run and if someone does
24 run at the presence of a police officer, that would come
25 within the scope of what we're talking about. But I'd

1 submit, Your Honor --

2 QUESTION: But which way do you come out?

3 MR. DEVINE: I would say that --

4 QUESTION: That's not provoked?

5 MR. DEVINE: That's not provoked flight. It has
6 to be with -- so, the motivation of a particular police
7 officer will not -- as this Court has said on many
8 occasions, we'll look at the reasonable police officer,
9 what he observes.

10 And the point is that the individual who is --
11 who is fleeing creates the suspicion by flying from the
12 presence of the police officer.

13 QUESTION: Indeed, it might be good patrolling
14 practices I suppose and stop innocent citizens from being
15 subjected to Terry stops more often than they otherwise
16 would if a police officer, seeing -- or a couple of police
17 officers seeing a -- some suspicious individual said,
18 let's walk over towards them and -- and -- you know, I'm
19 not sure it's suspicious enough for a Terry stop now, but
20 let's see if they run.

21 MR. DEVINE: Well, the police --

22 QUESTION: And as they approach, they do run and
23 the police officers then stop them. That would seem to me
24 pretty good police practice. Wouldn't it seem so to you?

25 MR. DEVINE: Yes, Your Honor. And as this Court

1 have noted, the police have the right to walk up to
2 individuals, to question. The individual may not -- may
3 not respond --

4 QUESTION: And the individual has a right to
5 walk away, which you concede, I take it.

6 MR. DEVINE: Oh, that's right, Your Honor. Yes,
7 he does. But -- but it's the flight from the presence of
8 the police officer that creates the issue. In Hodari --

9 QUESTION: And just walking fast won't do it.
10 Is that your position?

11 MR. DEVINE: It would have to be determined to
12 be flight, Your Honor. And that walking away fast does -
13 -

14 QUESTION: Power walking. What about power
15 walking?

16 (Laughter.)

17 MR. DEVINE: My power walking would --

18 QUESTION: From an elderly -- from an elderly
19 and overweight police officer.

20 (Laughter.)

21 MR. DEVINE: Well, Your Honor, I would --

22 QUESTION: I am still troubled or concerned.
23 I'm just not sure I understand this provocation that
24 Justice Kennedy is asking about.

25 We had a case last year, I know you're familiar

1 with, on the loitering ordinance.

2 MR. DEVINE: Yes.

3 QUESTION: Supposing as a remedy of that,
4 instead of doing the procedure authorized by that
5 ordinance, the police adopted a practice, whenever they
6 saw a group of young men standing in the street corner to
7 come with a siren on and see how many run. Would that --
8 would that be provocation or would that be no
9 provocation?

10 MR. DEVINE: If it's the presence of the police
11 officers, Your Honor, and the flight from that, then we
12 would say that's not provocation.

13 QUESTION: If his presence is accompanied by
14 turning on the bright light and the siren.

15 MR. DEVINE: No, Your Honor, because that
16 signals the police officers are there to perform a
17 function. It does not give an individual the basis for
18 saying I have to just get away from this situation. It
19 creates the reasonable suspicion.

20 And the reason that we suggest that a rule, a
21 clearly stated rule, is appropriate here, there are
22 circumstances when this Court will do that, as you did in
23 Maryland v. Wilson, saying passengers can be taken out of
24 a car. And in fact, in Hodari, we believe this Court
25 properly clearly talked about seizure requiring a physical

1 restraint where the subject refuses to yield.

2 QUESTION: Mr. Devine, what happens to these
3 people when they run? Are they arrested?

4 MR. DEVINE: No, Your Honor. That's -- that's
5 the other side of this. The intrusion on the liberty
6 interests compared to the need to do good police work is
7 minimal. An individual can be stopped for a few brief
8 moments for some questions, limited in scope related to
9 the suspicion that the police officer originally had. So,
10 the intrusion on the liberty of the individual is --

11 QUESTION: No, but I'm sure that a running -- a
12 fleeing person could be tackled by the police, for
13 example, couldn't he?

14 MR. DEVINE: Pardon me, Your Honor?

15 QUESTION: The police officer could tackle the
16 man running away from him, couldn't he? He has to seize
17 him in order to stop him.

18 MR. DEVINE: In order to stop him, that's true.
19 If the person did not yield to authority, this Court has
20 said that physical control is necessary.

21 Thank you, Your Honor.

22 QUESTION: Thank you, Mr. Devine.

23 Mr. Stewart, we'll hear from you.

24 ORAL ARGUMENT OF MALCOLM L. STEWART

25 FOR THE UNITED STATES, AS AMICUS CURIAE,

1 SUPPORTING THE PETITIONER

2 MR. STEWART: Mr. Chief Justice, and may it
3 please the Court:

4 It's certainly true, as respondent and his amici
5 point out, that individuals may, on some occasions, have
6 innocent motives for fleeing the police. But the purpose
7 of a Terry stop is not to apprehend individuals who are
8 known to be guilty of criminal offenses; rather, it's to
9 provide a means by which police may resolve ambiguities in
10 situations where they have reasonable -- reason to suspect
11 criminal activity, but lack probable cause to make an
12 arrest. And in our view, flight from identifiable police
13 officers will ordinarily correlate sufficiently with
14 likely involvement in criminal activity.

15 QUESTION: Well, Mr. Stewart --

16 QUESTION: What do you do --

17 QUESTION: -- do you propose some per se rule,
18 as Mr. Devine was arguing, or are you advising us to stick
19 with the Terry reasonable suspicion/totality of the
20 circumstances?

21 MR. STEWART: I think we -- we believe you
22 should look at the totality of the circumstances. I think
23 in the end our position is not significantly different in
24 -- in substance from the petitioner's, although we may use
25 different terminology. Our view is that ordinarily when

1 an individual flees at the sight of an identifiable police
2 officer, under circumstances in which the officer
3 reasonably infers that the individual is running because
4 of the officer's presence, rather than for some other
5 reason, ordinarily that would raise a sufficient inference
6 of guilt to justify a Terry stop.

7 The question of provocation has --

8 QUESTION: Are you saying that there's -- is
9 there a right of an individual to go their own way even
10 though there's a police officer known to be on the scene?
11 Can you walk away rapidly? Can you just not want to have
12 anything to do with them?

13 MR. STEWART: I think there -- there is a --
14 there is no right to avoid police observation or police
15 contact, that is the Court -- in public areas. Public
16 areas are, by their nature, subject to police surveillance
17 and this Court has held that even without particularized
18 suspicion, police may approach an individual on the street
19 and request voluntary cooperation.

20 Now, there is a liberty interest in freedom of
21 movement in public areas, and the police may not
22 arbitrarily restrain the individual in that exercise of
23 liberty. And I think what the Court has referred to as an
24 individual's right to go on his way is really simply
25 another way of stating that without particularized

1 suspicion, the police can't require the individual to
2 answer their questions. They can't even require the
3 individual to stand still long enough to hear the
4 questions.

5 QUESTION: But there -- what do you make of the
6 slippery slope argument that -- that takes the -- the
7 situation one step further? It was made in at least one
8 of the amicus briefs. As you say, the police certainly
9 can properly ask a question of anybody on the street, and
10 most people will answer the question or at least not
11 behave rudely.

12 If the petitioner's petition -- position is
13 accepted, what do we do or what rule would we have in the
14 case in which the individual who was accosted by the
15 police on the street and asked a question, instead of
16 answering it tells the officer to go to blazes or perhaps
17 something stronger than that? Does that -- is that going
18 to be the equivalent of flight, i.e., deviant response,
19 and -- and justify a Terry stop?

20 MR. STEWART: No. I think -- I think flight is
21 really different fundamentally in at least three respects
22 from less extreme means of expressing a desire to avoid -
23 -

24 QUESTION: Let's assume the language is extreme.

25 MR. STEWART: Okay. One of the -- one of the

1 things that is distinctive about flight is that in many
2 cases it is likely to connote a panicked reaction, an
3 emotional reaction to the police presence. And -- and
4 panic is in our view more likely to signal consciousness
5 of guilt than is an -- an emphatic, salty expression of
6 disdain for the police.

7 The second -- the second, and perhaps the -- the
8 most fundamental difference is that flight expresses the
9 desire not simply to refuse cooperation with the police,
10 but to be free from any form of police observation or
11 scrutiny. And that's really one of the reasons that we
12 think the purposes of the Terry stop are particularly
13 implicated in this situation; that is, the fundamental
14 purpose of the Terry stop is to allow the police briefly
15 to freeze the status quo while they undertake further
16 inquiry to determine whether there --

17 QUESTION: If you're going to frisk the person,
18 doesn't the policeman have to have at least some notion of
19 what kind of a crime this person might have committed.
20 Justice Harlan said in Terry that to frisk him, you'd have
21 to have -- that the reason for the stop is an articulable
22 suspicion of a crime of violence. So, if we have no idea
23 what kind of crime is at stake -- he just runs -- what's
24 the ground for frisking him?

25 MR. STEWART: Well, I think the ground for

1 frisking him is, first, the belief that he may be -- the
2 ground for frisking him is to protect the officer's safety
3 while the stop is taking place.

4 QUESTION: You disagree with Justice Harlan's
5 articulation of the standard.

6 MR. STEWART: Well, I think what Justice Harlan
7 was saying -- I don't know that Justice Harlan had in mind
8 the situation in which police had an articulable basis for
9 suspecting criminal activity but no particular crime in
10 mind.

11 QUESTION: Well, that -- that was not the view
12 of the majority in Terry. Justice Harlan wrote
13 separately, did he not?

14 MR. STEWART: That -- that's correct.

15 And in terms of the principles, the rationale
16 underlying the Court's Terry stop jurisprudence, I don't
17 think there is any basis for saying that police have to be
18 concerned with a particular crime. The purpose of the
19 Terry stop is to resolve ambiguities, and in *United States*
20 *v. Sokolow*, for example, the -- the police -- the law
21 enforcement agents, roughly speaking, had drug crimes in
22 mind, but there was no particular form of narcotics that
23 they suspected. There was no particular unlawful
24 transaction.

25 So, to return to your question, Justice Souter,

1 part of the reason that we think flight is extraordinary
2 again is that it denotes a desire not simply to refuse
3 cooperation, but to avoid all forms of police scrutiny.
4 And for that reason, in our view, it's a particularly
5 appropriate occasion for a Terry stop.

6 QUESTION: Your -- your brief mentioned the fact
7 it was a high crime area, and that seems to have dropped
8 out of your argument really. And I suppose if the police
9 see somebody running in a very elegant neighborhood near
10 the country club, it's just as suspicious.

11 MR. STEWART: If the -- if the police see
12 somebody running in the elegant neighborhood and the
13 running appears to have been prompted by -- by their --

14 QUESTION: It's prompted by the police.

15 MR. STEWART: Yes, I think that would be
16 suspicious, and we would say it is sufficient to justify a
17 Terry stop.

18 QUESTION: I would think it would be more
19 suspicious. I mean, somebody may be running away in a
20 high crime neighborhood because he doesn't believe that
21 the person is a policeman, whereas in a low crime
22 neighborhood, you know, surrounded by honest people, this
23 must be a policeman.

24 MR. STEWART: Typically -- you could make the
25 argument either way. Typically the courts have regarded

1 presence in a high crime neighborhood as -- as reinforcing
2 rather than undermining suspicion, but I think --

3 QUESTION: Well, Adams against Williams
4 certainly refers to a high crime neighborhood. Doesn't
5 it?

6 MR. STEWART: That's correct.

7 I think our basic point is if you have flight
8 from an identifiable police officer in apparent response
9 to the officer's arrival and nothing else on either side
10 of the scale, that should be sufficient to justify a Terry
11 stop. Here we think that the -- the fact that this
12 occurred in a high crime neighborhood at least somewhat
13 reinforces the inference of suspicion.

14 QUESTION: There could -- there could be a lot
15 of elses, though, besides mere provocation, couldn't
16 there? I mean, there -- there were instances a few years
17 ago in the Washington area in which some man was -- was
18 posing as a policeman in a -- in a police car with a --
19 put a red light up on top of the car and stopped women and
20 robbed and raped them.

21 Now, what if something like that has been going
22 on and a woman is driving along in a car and there is a
23 real policeman, plain clothes, he puts a red light up and
24 she takes off fast? Now, would you call that provocation?
25 I would hardly call it provocation, but there would be

1 good reason for her to take off.

2 MR. STEWART: I think certainly if the
3 individual could establish that within a particular
4 community it had become the norm for people to flee from
5 the sight of an apparent police officer for whatever
6 reason, if that had become typical behavior within the
7 community --

8 QUESTION: Well, Mr. Stewart, you know, we don't
9 have a lot of empirical testimony in these cases as to
10 whether something had become the norm in a community. You
11 have to be a little more categorical than that.

12 MR. STEWART: And I think certainly the general
13 rule would be absent -- we would think that the norm in
14 most and perhaps all communities is the innocent don't
15 typically flee upon the arrival of the police, but we
16 would say if an extraordinary case arose in which a person
17 could actually establish that this had become accepted,
18 typical behavior --

19 QUESTION: Well, doesn't that bring it back to
20 the general Terry test again? You know, this may be a
21 presumptive thing, but it isn't going to be categorically
22 true in all cases that these three factors will justify
23 the Terry stop.

24 MR. STEWART: I think that's correct. I think
25 the individual always will have the opportunity to show

1 that other contextual factors made it unreasonable for the
2 police officer to infer guilt from the fact of -- of
3 flight.

4 QUESTION: And the test is not whether the
5 individual was reasonable in fly -- in fleeing, but
6 whether the policeman should have realized that the --
7 that the fleeing does not necessarily connote guilt.

8 MR. STEWART: That's correct. If -- if Mr.
9 Wardlow, for instance, had not been engaged in any illegal
10 activity and if he -- presumably the suppression hearing
11 would -- would never have arisen, but if it had been the
12 case that he fled because he was sincerely afraid of the
13 officer and felt no consciousness of guilt, there would be
14 no Fourth Amendment violation. The officer would have
15 behaved reasonably given the information in front of him
16 even though it would have -- thank you, Your Honor.

17 QUESTION: Thank you, Mr. Stewart.

18 Mr. Koch, we'll hear from you.

19 ORAL ARGUMENT OF JAMES B. KOCH

20 ON BEHALF OF THE RESPONDENT

21 MR. KOCH: Mr. Chief Justice, and may it please
22 the Court:

23 One simple rule will not cover every situation,
24 and that's why, in determining reasonable suspicion, this
25 Court has consistently rejected bright line rules,

1 emphasizing a case-by-case, fact-specific nature on a
2 reasonable inquiry.

3 In response to petitioner's argument with --
4 with the three tests, the reason flight alone or flight
5 from a police officer without provocation cannot in every
6 situation constitute a per se rule, is if someone doesn't
7 want to speak with the police, sees them coming, and
8 walks, skips, jumps, gets on his bike, or get in a car, he
9 would be subjected under this per se rule to a Terry stop,
10 and for no other reason than he didn't want to speak with
11 the police officers. That's why the Illinois Supreme
12 Court, using a case-by-case analysis found it untenable in
13 this situation, that flight in every situation was
14 reasonably suspicious.

15 QUESTION: Well, that goes too far. I mean, it
16 isn't walk, skip, ride a bike, or whatever. It has to be
17 departing -- as I understand the test proposed, departing
18 in such a fashion as to make it clear that he's trying to
19 escape the police, a panicked departure --

20 MR. KOCH: Well --

21 QUESTION: -- to prevent the police from
22 catching up with him, in such manner as to -- as to
23 prevent the police from catching up with him.

24 MR. KOCH: That calls into question then or
25 calls into certainly consideration the notion of what is

1 flight, and that is as descriptive term as applied by the
2 police.

3 QUESTION: Sure.

4 MR. KOCH: If my client was elderly, saw the
5 police and turned on his walker to go away, that might be
6 slow flight. He may be simply trying to avoid the police
7 and not trying to escape them.

8 QUESTION: That's where the totality of the
9 circumstances comes in. I mean, none of these things can
10 be -- can be applied without some judgment in the
11 particular context, which depends upon the totality of the
12 circumstances.

13 MR. KOCH: Well, I would agree. And in the
14 totality of circumstances in this case, what the Illinois
15 Supreme Court said is the officer merely failed to
16 articulate what is it about that non-criminal activity,
17 the flight, the avoidant behavior, that was suspicious and
18 directed the officer's attention.

19 QUESTION: Well, but you know, I -- certainly
20 there was an argument that this sort of panicked flight is
21 enough. What more should the officer have to say?

22 MR. KOCH: The officer should have to say or
23 articulate what is it about the flight that caused him to
24 focus on this particular person at that time. Was there a
25 scream? Was he running from a store? Were there --

1 QUESTION: Well, but you know, you're saying
2 more should be required, but there's certainly an argument
3 on the other side that a panicked flight is enough.

4 MR. KOCH: There is an argument on the other
5 side that panicked flight is enough in a case-by-case
6 basis. They're asking for a per se rule that every time
7 someone sees --

8 QUESTION: Well, but I -- I think the argument
9 developed on -- on the petitioner's case is that they
10 think these circumstances generally come within a Terry
11 stop rule, not that every single time you have a flight,
12 as Justice Scalia's questions indicate, you're -- you're
13 going to have a basis for a Terry stop.

14 MR. KOCH: On every -- every time somebody flees
15 then from the police without provocation, if I understand
16 the question.

17 QUESTION: Yes.

18 MR. KOCH: And -- and I would say that it sounds
19 like or smacks of a per se test, that every time somebody
20 seeks to avoid the police at any rate or any speed and it
21 calls --

22 QUESTION: Well, no, it's not at any rate or any
23 speed. Surely, you realize that just from listening to
24 the argument. It's a panicked flight.

25 MR. KOCH: Well, if I can apply it to this case,

1 and Justice Souter's comment, in this particular
2 neighborhood -- though we would disagree it is a high
3 crime area, the Illinois Supreme Court said it was on a de
4 novo review -- but it would make perfect sense for -- if
5 you see four police cars and eight police officers
6 converging on a scene at one time, that one person might
7 duck behind a car. The Solicitor General would call that
8 aberrant behavior. Others might flee so that they -- they
9 aren't subjected to gunfire, maybe being called as a
10 witness, being interviewed.

11 And again, in this case, it makes perfect sense
12 because my client left the scene, went around an alley and
13 came right over to the police. He came back to them. So,
14 it might be that everybody in the neighborhood would --
15 would accordingly react. So, it wasn't panicked. It was
16 a reasoned judgment to avoid some confrontation between
17 the police and whatever it was that called four cars and
18 eight police officers to the scene.

19 QUESTION: I'm not really sympathetic to -- to
20 those who -- who run away because they don't want to be
21 called as a witness. I mean, you think that's -- out of
22 sympathy for that class of people, we should refuse to
23 adopt this rule?

24 MR. KOCH: No, I don't, Your Honor, but -- and I
25 don't know that you would be sympathetic either to those

1 who don't want to be subject to misidentification or
2 harassment, those who don't want to be intimidated in the
3 area. There may be people who -- who don't want to be
4 called as a witness. There may be people who are simply
5 intimidated by the entire nature of seeing four cars and
6 eight police officers converge on a scene.

7 QUESTION: There may indeed. I mean, nobody
8 contends that every time a police officer conducts a Terry
9 stop, it's a guilty person. The innocent are going to be
10 caught up in -- in the necessary procedure of -- of
11 assuring the safety of the streets.

12 MR. KOCH: Well, then there should be, as I
13 understand Terry, some articulable basis for stopping that
14 person who's left. Something --

15 QUESTION: You really don't think it's an
16 articulable basis that a police officer is patrolling a
17 beat. There's somebody on the other side. He does a
18 double take. He sees -- he looks again and starts running
19 in panic. That -- that does not arouse any suspicion?

20 MR. KOCH: That may arouse suspicion in context.
21 Was he running from a scream? Was he running from a
22 store?

23 QUESTION: Fine.

24 MR. KOCH: Flight in and of itself --

25 QUESTION: No. He's running from the policeman.

1 He is clearly running from the policeman. You seriously
2 contend that that does not arouse any reasonable
3 suspicion.

4 MR. KOCH: I would submit it is suspicious and
5 it's a hunch that something is amiss.

6 QUESTION: Right, right.

7 MR. KOCH: But without some articulable
8 suspicion of what --

9 QUESTION: It's unprovoked. He's fleeing in
10 panic from a policeman.

11 Now, there may be other circumstances that --
12 that could come in, but absent those other circumstances,
13 which I don't see here -- what are the other circumstances
14 here that -- that deprive that -- that flight of its -- of
15 its normal -- what I would consider its -- its normal
16 purport?

17 MR. KOCH: Well, time, context, other people on
18 the street. If it was -- if my client was running and it
19 was 2:00 in the morning, if it was a cold winter's day, if
20 he was running from some -- the police officer, heard a
21 scream, were they responding in the neighborhood to some
22 response?

23 QUESTION: Oh, it could have worse. It could
24 have been more suspicious. I don't deny that, but what
25 makes the flight less suspicious than normal flight in

1 this case?

2 MR. KOCH: That there is no context -- there's
3 no articulable basis by the police of what it is that
4 called my attention to him running. I saw him running.
5 Yes, that's suspicious. I want to check it out. I could
6 surveill him. I could call the -- the station and --

7 QUESTION: Well, they didn't just see him
8 running. They -- they saw him running from the police. I
9 mean, this was not a jogger.

10 MR. KOCH: Well, they saw him running from --
11 they looked -- my client looked in their direction --

12 QUESTION: And then ran.

13 MR. KOCH: -- and then ran. That's correct.

14 QUESTION: Let me -- let me make sure that I
15 understand your argument. You are not, as I understand
16 it, arguing here that it would have been error for the
17 Illinois courts to say under Terry that on all of the
18 circumstances of this case, the Terry stop was valid. As
19 I understand it, what you're arguing is that it is not a
20 proper basis to reverse the Supreme Court of Illinois by
21 adopting a per se rule that flight in response to the
22 police in high crime is per se enough.

23 MR. KOCH: That's correct, Justice Souter.

24 QUESTION: Is -- that's your point.

25 So, whether -- whether they -- whether in fact

1 this was or was not a good Terry stop is not really the
2 issue in this case, as I understand it. And I take it you
3 agree.

4 MR. KOCH: And I agree, and I would add that
5 what the --

6 QUESTION: You are not really. You are not
7 really agreeing because you are not really saying that --
8 in response to my questions, you -- you indicated that
9 you have no factors that you can bring forward on the
10 other side. I mean, we don't have to have a per se rule
11 in order to say unless there are some factors which
12 otherwise explain it to the reasonable police officer,
13 unprovoked flight, upon seeing a police officer, is enough
14 to satisfy Terry. That's not a per se rule. It's just
15 that there are no factors on the other side. And you
16 don't assert there are any in this case, or at least you
17 haven't told me any.

18 MR. KOCH: Justice Scalia, what the Illinois
19 Supreme Court said was what was untenable was there were
20 no articulable facts in the record from which they would
21 be willing to tilt in this situation individual's freedoms
22 in favor -- whether it's per se or totality, in favor of
23 the State.

24 QUESTION: Which means that they are unwilling
25 to consider flight from a police officer suspicious, and

1 that's really what all of this debate is about.

2 MR. KOCH: It's my --

3 QUESTION: I thought, Mr. Koch, that that was
4 your point. I thought that you really crossed swords on
5 that, that your position was flight in and of itself from
6 a police officer is not enough, and Mr. Devine's position
7 is, yes, it is enough. So, he is arguing for a bright
8 line rule and he was very candid in saying when you have
9 these three factors, that's it. You don't look to
10 anything else.

11 I thought your position was flight from a police
12 officer is not enough. You must have corroborating
13 circumstances. Now, in answer to Justice Scalia, you seem
14 to be backing off from that, but is that your position?

15 MR. KOCH: No. It is our position that flight
16 in and of itself is not sufficient to stop an individual
17 on the street, that there has to be some corroborating
18 circumstances that are articulated that criminal activity
19 is afoot.

20 QUESTION: You mentioned scream and running from
21 a store. What else would be corroborating circumstances?

22 MR. KOCH: There may be a call in the
23 neighborhood that they're responding to. It may be, for
24 example, under a -- perhaps a Reid v. Georgia analysis
25 that nobody else fled and he's the only person, that

1 they're responding to some activity that they see someone
2 running out of a store. There may be a whole myriad.
3 Really, the Illinois Supreme Court decision is really --
4 it's democracy promoting in the sense that there's an
5 endless variety of circumstances, coupled with flight.

6 QUESTION: Mr. -- Mr. Koch, the question
7 presented, whether a person's sudden and unprovoked flight
8 from a clearly identifiable police officer, who is
9 patrolling a high crime -- is sufficiently suspicious to
10 justify a temporary investigating stop under Terry. Now,
11 you didn't object to that. You didn't say the Court
12 couldn't reach that question in your brief in opposition,
13 did you?

14 MR. KOCH: No.

15 QUESTION: So, I understood your answer to
16 Justice Souter's question was that your position was that
17 really the Supreme Court of Illinois could have been wrong
18 in this case, but that the Supreme Court of Illinois could
19 have decided this case otherwise. It could have decided
20 the other way, but that your position was we simply should
21 give discretion to that -- them in reviewing it. Now,
22 where do you take that position in your brief?

23 MR. KOCH: That to give the Illinois Supreme
24 Court decision in review?

25 QUESTION: Well, as I understood your answer to

1 Justice Souter's question, it was that you're not saying
2 that the Supreme Court of Illinois couldn't have come out
3 the other way in this case. In effect, it could have come
4 out either way and we shouldn't review it. Now, where do
5 you -- too vague to support the inference that the
6 defendant MR. KOCH: It's my -- our position is that the
7 Illinois Supreme Court correctly said that flight in and
8 of itself will never be enough absent corroborating
9 circumstances, and they will not adopt a per se test --

10 QUESTION: And it would have been wrong in the
11 -- your position is that the Supreme Court of Illinois
12 would have been wrong to come out otherwise. The

13 Illinois MR. KOCH: Absent corroborating circumstances or
14 articulable suspicion, that's correct, Justice. says he

15 fled because QUESTION: But that's not what you came up here
16 to argue. Right? and -- and found the record too vague

17 to support MR. KOCH: I came here -- they also pointed out

18 that there QUESTION: What you came here to argue is that
19 the per se rule is a wrong reason for reversing the
20 Supreme Court of Illinois. Right?

21 MR. KOCH: That's -- ven't conceded it, you

22 should have QUESTION: Okay. question presented. why

23 MR. KOCH: That's correct. that. The question

24 presented QUESTION: May I ask you a question about the
25 facts? from a clearly identifiable police officer, and you

1 The -- the intermediate court and the Illinois
2 appellate court had a more thorough discussion of the
3 facts I think than the supreme court did. And there's a
4 sentence in the opinion that is -- the record here is
5 simply too vague to support the inference that the
6 defendant was in a location with a high incidence of
7 narcotic trafficking or, for that matter, that defendant's
8 flight was related to his expectation of police focus on
9 him.

10 Now, have you conceded that this -- that your
11 client fled because he saw the police?

12 MR. KOCH: No, I have not, Your Honor. The
13 Illinois appellate court decision, in reviewing the
14 record, notes that there was one sentence that says he
15 fled because there's high -- there's high narcotics
16 traffic in the area and -- and found the record too vague
17 to support the high crime area. And they also pointed out
18 that there was no -- nothing articulated by Officer Nolan
19 as to such things as who else was on the street. Were
20 there -- in response to --

21 QUESTION: If you haven't conceded it, you
22 should have objected to the question presented.

23 QUESTION: You didn't say that. The question
24 presented is whether a person's sudden and unprovoked
25 flight from a clearly identifiable police officer, and you

1 didn't question that question in your brief in opposition.

2 MR. KOCH: That's correct.

3 QUESTION: Gee, I didn't really think we were
4 going to get into the facts of this case as to whether,
5 indeed, it was an unprovoked flight. I thought that was a
6 given and you --

7 MR. KOCH: There's nothing in the -- in either
8 the Illinois appellate court or the record that says it's
9 provoked or unprovoked.

10 QUESTION: Well, that may be. You should have
11 raised that point earlier. As far as I'm concerned, what
12 -- what we have before us is -- is that question and --
13 and we assume an unprovoked flight.

14 MR. KOCH: Even if it was unprovoked flight, and
15 -- and that's a given, it's unprovoked without
16 corroborating circumstances that his flight was related to
17 some criminal activity. And the per se rule that the
18 Illinois Supreme Court refused to adopt was just that:
19 Absent some corroborating circumstance, flight alone is
20 insufficient. Were it otherwise, what is left to fill the
21 void is unparticularized discretion, unsubstantiated
22 hunches, and non-individualized suspicion. It's my
23 understanding -- and I think the Illinois Supreme Court
24 was very clear -- was that there was nothing here by the
25 police officer to articulate what is it about the flight

1 that caused it to be suspicious.

2 QUESTION: Mr. Koch, I -- I'm -- I don't think
3 that -- tell me if I'm wrong in this. It seems to me that
4 the -- that your opponents here are not arguing for a
5 categorical position, that it is you who are arguing for
6 the categorical position. You say that unprovoked flight
7 alone can never be enough. Isn't that your position?

8 MR. KOCH: Yes, it is.

9 QUESTION: Unprovoked --

10 MR. KOCH: Absent corroborating circumstances of
11 some criminal activity --

12 QUESTION: Right.

13 MR. KOCH: -- something that -- that colors the
14 flight, the context.

15 QUESTION: Right.

16 And the other side, it seems to me, is not
17 arguing that unprovoked flight alone is often enough -- is
18 always enough. They're saying it can be enough, which is
19 what the Illinois court denied. They -- they --

20 QUESTION: That's certainly not my recollection
21 of the three-pronged argument. It seemed to me he was
22 asking for a pretty simple per se rule.

23 QUESTION: Well, I thought they acknowledged
24 that there are other circumstances which would show --
25 which would show that -- that there was reason for the

1 flight. And if -- if the policeman was aware of the
2 reason for the flight, then they -- they wouldn't think
3 there was basis for a Terry stop.

4 MR. KOCH: It's my understanding that they're
5 saying that flight from a police officer without
6 provocation is always in every circumstance grounds for a
7 Terry stop.

8 QUESTION: If you win on that -- if you win on
9 that, what about running away under these circumstances?
10 Suppose it also was from a 20-foot area in front of a
11 building that the police knew was commonly used for
12 narcotics sales that often had many people, including
13 lookouts, customers, and others.

14 MR. KOCH: And --

15 QUESTION: He's right in front of the storefront
16 which everyone knows is the storefront where on a daily
17 basis they sell narcotics. And you go to that 20-foot
18 square storefront, and there's somebody standing right in
19 front of it and people run away. And he looks at the
20 policeman, runs away. What about that?

21 MR. KOCH: And I would submit that if Officer
22 Nolan in that situation had testified -- in the record, it
23 does say, Justice Breyer, I went to this area with the
24 four cars --

25 QUESTION: It doesn't -- it seems -- maybe it's

1 a little ambiguous, but it seems to say 4035 Roosevelt
2 Avenue.

3 MR. KOCH: That's the -- that's where he sees my
4 client. But what he says is because of number of people
5 and customers and perhaps lookouts, and in the situation
6 you described, if Officer Nolan said he fled and I -- I
7 think he was acting as a lookout or I think he was coming
8 from one of the facts in Minnesota v. Dickerson --

9 QUESTION: I know, but what about my -- my
10 hypothetical rather than yours?

11 MR. KOCH: I think in your hypothetical, had
12 that been articulated, that may very well constitute
13 reasonable suspicion. That wasn't articulated in this
14 case. Nothing was articulated.

15 Thank you.

16 QUESTION: Would you take the same position if
17 instead of running off, he jumped into his car on the --
18 it was parked curbside -- and sped away?

19 MR. KOCH: I think I would take the same
20 position that we have the right to eschew interactions
21 with the -- with law enforcement or the government. If a
22 police officer were to walk over to you, you can -- you
23 can continue walking, walk across the street, get on your
24 bike. And certainly the manner in which you exercise your
25 Fourth Amendment rights shouldn't be bootstrapped into a

1 violation of them and cause a Terry stop any more than
2 perhaps if Mr. Bostick had said -- had been asked, I'd
3 like to search your luggage, and he says, I don't want to.
4 Can that be bootstrapped into a search of his luggage?
5 And the answer has to be no.

6 So, there's a very important constitutional
7 point here, that my client can come and go as he pleases
8 absent some objective criteria that he's engaged in
9 criminal behavior. So, yes, you can get on your bike, get
10 in the car, walk away, absent something articulated by the
11 police that causes him to be stopped, which is absent from
12 this record:

13 QUESTION: Suppose in the luggage case, in
14 response to the police request, the man takes his luggage
15 and starts to run.

16 MR. KOCH: In a -- that may be with other
17 factors, it may be there's some. But I would submit that
18 flight alone --

19 QUESTION: No. Just the -- just the simple
20 flight.

21 MR. KOCH: I would submit that that is not
22 grounds for a Terry stop. If the police officer says, I'd
23 like to search your luggage, he takes his bag and --
24 and --

25 QUESTION: On the grounds that it is more likely

1 than not that he is innocent of any activity, of any
2 criminal activity?

3 MR. KOCH: On the grounds that the manner in
4 which you exercise your rights shouldn't constitute a
5 violation of it.

6 Thank you.

7 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Koch.

8 The case is submitted.

9 (Whereupon, at 10:51 a.m., the case in the
10 above-entitled matter was submitted.)

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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:

ILLINOIS, Petitioner v. WILLIAM aka SAM WARDLOW.
CASE NO: 98-1036

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

BY: Deona M. May
(REPORTER)