

ORIGINAL

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PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: FLORIDA, Petitioner v. J.L.

CASE NO: 98-1993 *C.F.*

PLACE: Washington, D.C.

DATE: Tuesday, February 29, 2000

PAGES: 1-54

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OF THE
UNITED STATES

CAPTION: FLORIDA BROTHERS, LLC

CASE NO.: 98-1993-14

PLACE: Washington, D.C.

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PAGES: 124

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 FLORIDA, :

4 Petitioner :

5 v. : No. 98-1993

6 J.L. :

7 - - - - -X

8 Washington, D.C.

9 Tuesday, February 29, 2000

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:05 a.m.

13 APPEARANCES:

14 MICHAEL J. NEIMAND, ESQ., Asistant Attorney General, Fort
15 Lauderdale, Florida; on behalf of the Petitioner.

16 IRVING J. GORNSTEIN, ESQ., Assistant to the Solicitor
17 General, Department of Justice, Washington, D.C.; on
18 behalf of the United States, as amicus curiae,
19 supporting the petitioner.

20 HARVEY J. SEPLER, ESQ., Assistant Public Defender, Miami,
21 Florida; on behalf of the Respondent.

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

2 (11:05 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in Number 98-1993, Florida v. J.L.

5 Spectators are admonished, do not talk until you
6 leave the courtroom. The Court remains in session.

7 Mr. Neimand. Is it Neimand, or Neimand?

8 MR. NEIMAND: Neimand, Your Honor.

9 CHIEF JUSTICE REHNQUIST: Neimand. Mr. Neimand.

10 ORAL ARGUMENT OF MICHAEL J. NEIMAND

11 ON BEHALF OF THE PETITIONER

12 MR. NEIMAND: Mr. Chief Justice, and may it
13 please the Court:

14 The issue before the Court today is whether an
15 anonymous tip that provides a specific location and a
16 specific description of individuals, and one of the
17 individuals is carrying a gun, provides a reasonable
18 suspicion to make a Terry stop and frisk when only the
19 innocent details, that is, the location and the identity
20 of the individuals, are immediately verified.

21 The Florida supreme court held that under such
22 facts that would never provide reasonable suspicion to
23 allow for the stop. The Florida supreme court requires
24 further verification of either future predictive behavior
25 or observation of criminal activity in order for the stop

1 to be effectuated.

2 QUESTION: What's the closest case in this
3 Court, in your view, that you think supports your
4 position?

5 MR. NEIMAND: Well, the closest case that we
6 have is Alabama v. White, where on facts similar to this
7 the Court held that it was a close call, but in fact there
8 was a reasonable suspicion. In that case, it was a drug
9 case, the police officers acted upon a little more than we
10 had here. Some of the predictive activity did not occur,
11 and a small amount of the predictive activity did occur,
12 but that predictive activity was innocent.

13 QUESTION: Well, I thought the court there said
14 that standing alone the tip in the Alabama case would not
15 warrant someone of reasonable caution in the belief that a
16 stop was appropriate, but in this case, there is more than
17 the tip, and it went on to articulate other factors.

18 MR. NEIMAND: Yes, Your Honor, that is the
19 closest case, but also, if you -- when we read Alabama v.
20 White, this Court said that that question of the anonymous
21 tip, in and of itself, was left open and would be left to
22 be decided another day.

23 QUESTION: Well, it may have said that
24 elsewhere, but it also said what I read to you, that
25 standing alone, it wouldn't be enough, so to accept your

1 view we would have to move a step beyond Alabama.

2 MR. NEIMAND: I believe so, Your Honor, and I
3 believe under the facts and circumstances in this case,
4 where we're dealing with a dangerous weapon, a firearm,
5 the public/officer safety concerns come into effect.

6 QUESTION: Are you arguing, then, for a firearm
7 exception on the anonymous tip doctrine?

8 MR. NEIMAND: No, not at all, Your Honor. A
9 firearm exception would basically say any time a tip says
10 a firearm, that's all that's needed. What the State is
11 arguing here is that when there is a firearm involved,
12 then that is one of the circumstances that we look at
13 under the totality of the circumstances to determine
14 whether the anonymous tip is valid.

15 QUESTION: Is it even illegal in Florida to
16 carry a concealed firearm, or can people --

17 MR. NEIMAND: It is a --

18 QUESTION: -- legally have one?

19 MR. NEIMAND: It's a regulated privilege, not a
20 right in the State of Florida, and that allows for a --

21 QUESTION: But one does not assume in Florida
22 that in every instance possession of a firearm concealed
23 is unlawful?

24 MR. NEIMAND: No.

25 QUESTION: Well, but it's unlawful for a minor,

1 isn't it?

2 MR. NEIMAND: Correct.

3 QUESTION: And this person was a minor?

4 MR. NEIMAND: Correct, 10 days shy of his 16th
5 birth date.

6 QUESTION: The red brief says that you in effect
7 are arguing for a gun exception to the anonymous tip rule,
8 and it seems to me that the red brief is in essence fair
9 when it characterizes your argument that way, because I
10 think what you're telling us that the nature of the tip,
11 i.e., that there is a gun, somehow makes the tip more
12 reliable.

13 MR. NEIMAND: It -- that would depend --

14 QUESTION: And I -- that doesn't seem to me
15 logical.

16 MR. NEIMAND: That would depend --

17 QUESTION: It seems to me there may be good
18 arguments for your position, but it's not because it makes
19 the tip somehow more reliable.

20 MR. NEIMAND: Your Honor, that would depend upon
21 the circumstances. We

22 QUESTION: It doesn't make it any more reliable
23 here, does it? I thought -- I mean, does it make it more
24 reliable? It certainly doesn't.

25 MR. NEIMAND: Well, it's a fact that we're

1 looking at reliability that someone who had seen what was
2 going on made a phone call to the police, that they
3 described the individuals, and that information contained
4 a description, a location, and the fact that one of the
5 individuals was carrying a firearm.

6 QUESTION: But that could be true of a tip that
7 the person was carrying drugs. Your argument here is that
8 it's much more dangerous to society if this person is not
9 picked up, he could do more harm with a gun than he could
10 with a cache of drugs, isn't it?

11 MR. NEIMAND: Correct, Your Honor.

12 QUESTION: And therefore you don't need as much
13 reliability. Isn't that your argument?

14 MR. NEIMAND: Correct.

15 QUESTION: Your argument is not that the tip is
16 more reliable. It's that you don't -- we will not insist
17 upon the same degree of reliability when the argument is
18 that the guy has a gun. Maybe even less for an atomic
19 bomb?

20 (Laughter.)

21 QUESTION: Now, my question is, why do we apply
22 this principle just to stop and frisk? If the principle
23 is a valid one, shouldn't it apply to search and seizure
24 as well, so that we shouldn't really insist upon the same
25 degree of probable cause if it is said that someone has an

1 arsenal in his basement.

2 MR. NEIMAND: Well, I --

3 QUESTION: Because I mean, the degree of public
4 harm is enormous, or, you know, is making bombs -- now, we
5 don't do that for search and seizures. I don't see why
6 there's any more justification for doing it for stop and
7 frisk than there is for doing it for search and seizure.

8 MR. NEIMAND: Well, in the search and seizure
9 area the State has cited numerous cases where we do look
10 at officer safety in extending searches and frisks. We
11 look at the New York v. Belton, where we have an ability
12 to search the car for weapons after the individual is
13 already in the police car.

14 QUESTION: Well, that's fine, but not to conduct
15 a search on the basis of less probable cause than would
16 normally be necessary. We don't say, if there's a really
17 serious threat to the public involved you don't need the
18 same degree of probable cause. We haven't said that.

19 MR. NEIMAND: Well, the intrusions between
20 probable cause and a reasonable-suspicion Terry frisk are
21 a little bit different.

22 QUESTION: Oh, I understand that.

23 MR. NEIMAND: And that --

24 QUESTION: But if the principle is valid I don't
25 know why it wouldn't apply to one as to the other.

1 MR. NEIMAND: Well, because the intrusions are
2 different, and you would need more for a full-scale arrest
3 and search when there's probable cause, because you have
4 to establish probable cause, and probable cause I don't
5 believe is as fluid a situation as reasonable suspicion,
6 because in a reasonable suspicion situation we are in fact
7 looking at a totality of the circumstances.

8 QUESTION: But in all events --

9 QUESTION: You're getting back on the notion
10 that I thought we put that to rest and don't have to go
11 over the same ground again. You acknowledge that it has
12 nothing to do with whether the suspicion is reasonable or
13 not.

14 MR. NEIMAND: No, I don't acknowledge that.

15 QUESTION: Well we've --

16 MR. NEIMAND: If I did, I misspoke, Your Honor.
17 I think that the fact of the matter is that when there is
18 that firearm in that situation, and in a particularly
19 described situation, not in a situation where you would,
20 say, get a tip that there is 100 people on the corner all
21 wearing plaid shirts, and one of those individuals has a
22 firearm. That would be the firearm exception, if the
23 officer then could go and search each and every one of the
24 individuals.

25 QUESTION: Well, if in this very same case the

1 tip were, there is a man in a plaid shirt who's in
2 possession of a marijuana cigarette standing on the
3 corner.

4 MR. NEIMAND: I do not believe at that point in
5 time the public safety, or the officer's safety would be
6 affected, and therefore we would have to wait to see
7 whether or not there was --

8 QUESTION: Well, the tip here is, there's a
9 weapon, and the officer is nowhere near it, but you say
10 that that's enough to assume that the officer's safety is
11 in jeopardy?

12 MR. NEIMAND: Well, the --

13 QUESTION: He's taking his car to drive over to
14 check it out.

15 MR. NEIMAND: Well --

16 QUESTION: He's not there.

17 MR. NEIMAND: Correct, but once he goes there,
18 what is the officer supposed to do at that point in time,
19 and that's where the --

20 QUESTION: Well, one would have thought nothing,
21 unless we extend the anonymous tip doctrine to cover it.
22 I mean, I would have though that -- our cases would
23 suggest the anonymous tip, with nothing more than somebody
24 in a plaid shirt on a street corner has a concealed
25 weapon, I wouldn't have though that was enough, unless we

1 somehow extend the doctrine.

2 MR. NEIMAND: Well, in that situation what would
3 be proper police -- it might not be what is under the case
4 law, but what would be proper police investigation in that
5 situation, and you would have to give the officer's
6 experience, and the -- based upon the neighborhood, the
7 area --

8 QUESTION: Counsel, the officer's experience is
9 that guns are often mixed up with drugs, so the anonymous
10 tip is, three guys standing on a street corner, and one of
11 them in a plaid-like shirt has crack, and the police
12 officer knows from his experience that people who engage
13 in selling crack often have guns, so does it follow, from
14 what you say, the police having an anonymous tip about
15 crack can therefore frisk for a weapon?

16 MR. NEIMAND: No. In that situation, once again
17 the tip is the knowledge that there are drugs, or the idea
18 that there might be drugs present, and I believe that the
19 requirement there is to wait until there is actual sale or
20 use of the drugs, and then you have the --

21 QUESTION: But he's not -- the officer's
22 concern, in this case she, her concern is not the drugs
23 but the gun. She knows from her experience that those two
24 very often go together, so why, on the same safety
25 rationale for the police officer, once she gets there,

1 couldn't she say, well, the tip was about drugs, but I
2 know from experience that he's probably carrying a gun, so
3 I'm going to, for my safety, frisk him?

4 MR. NEIMAND: Well, the first thing is that the
5 tip would have come in, and an officer getting a tip of
6 that nature would have surmised that the person had seen
7 the individuals, where they were located, described them,
8 and had seen the gun, and therefore, without the drugs
9 being involved -- and the tip would have said the gun, and
10 that's the difference.

11 In the other situation Your Honor gives us, we
12 don't know that there are drugs. We're using the basic
13 surmise of the officer that there could be a gun, but the
14 information that was gotten was the drugs, and that is
15 part of the totality of the circumstances --

16 QUESTION: Well, in your public safety argument,
17 as I understand it you're not arguing just for the safety
18 of the policeman, but that more damage can result to some
19 member of the public in a confrontation with somebody with
20 a gun than a confrontation with somebody who has a cache
21 of drugs, isn't that correct?

22 MR. NEIMAND: Correct, Your Honor. In that
23 situation, that's why we say the officer/public safety,
24 because if the officer does not act, then the
25 individual --

1 QUESTION: But there's one thing I don't
2 understand. At the very beginning I think you said that
3 it's perfectly all right in Florida, unless you're a
4 juvenile -- and I don't know how this officer knew this
5 young person was a juvenile based on the tip, but except
6 for juveniles, is it not lawful for persons in Florida to
7 carry concealed weapons?

8 MR. NEIMAND: There is a privilege that if they
9 go through the permitting --

10 QUESTION: But the mere fact that you suspect
11 someone of having a gun doesn't mean he doesn't have that
12 privilege, he doesn't have a permit.

13 MR. NEIMAND: No, but we can --

14 QUESTION: I would think that it's more jeopardy
15 if you say they're a drug dealer, because that's
16 definitely illegal, but if you just say he's got a gun,
17 well, you presume that the person obeys the law.

18 MR. NEIMAND: It's a presumption that they
19 legally got the gun, but not a presumption that they will
20 legally use the gun.

21 QUESTION: Well, we reached a different result
22 in Adams v. Williams, did we not?

23 MR. NEIMAND: Yes.

24 QUESTION: Where they said, Connecticut you
25 could carry with a permit --

1 MR. NEIMAND: Right.

2 QUESTION: -- and we said that a frisk was
3 nonetheless justified.

4 MR. NEIMAND: Uh-huh.

5 QUESTION: Mr. Neimand, I thought a frisk in
6 stop and frisk, a frisk is incidental to the stop. What
7 we said is, when you see somebody behaving suspiciously,
8 what the policeman is authorized to do is to stop the
9 person and make inquiry -- Why are you hanging around on
10 this street corner? Where do you come from? Why are you
11 here? What's your name? -- make inquiries like that.

12 Now, in this case, by contrast -- and incidental
13 to those inquiries he has to protect himself, so he can
14 pat the person down before making the inquiry. That's how
15 it developed.

16 In this case, by contrast, the whole reason for
17 the policeman going up to this person is to frisk him.
18 What possible question was he going to ask the fellow that
19 would satisfy him that in fact he is not the suspicious
20 character that he had reason to believe? What's he going
21 to ask him? Do you have a gun in your pocket? Is that
22 going to be very helpful?

23 MR. NEIMAND: Well, that's what the Florida
24 supreme court said would be helpful, and you put the
25 officer --

1 QUESTION: It wouldn't be helpful at all. The
2 whole purpose of his going up is to frisk.

3 MR. NEIMAND: Correct.

4 QUESTION: And that's quite different from the
5 rationale behind our stop-and-frisk jurisprudence.

6 MR. NEIMAND: Terry normally -- Terry holds
7 exactly that. You have to have evidence of criminal
8 activity, and then during that stop, if you are afraid of
9 safety --

10 QUESTION: During the stop in order --

11 MR. NEIMAND: Yes.

12 QUESTION: -- to interrogate the person.

13 MR. NEIMAND: Exactly.

14 QUESTION: And I don't see what possible benefit
15 interrogation would have had in this case.

16 MR. NEIMAND: Well, that's what makes it a
17 different situation in terms of the totality of the
18 circumstances. The officer is going to investigate this
19 alleged crime of carrying a concealed firearm, and he goes
20 up and speaks to the individual. There is a distinct
21 possibility that when he says, do you have a gun, the gun
22 will be exhibited and used, and therefore this is
23 different. Therefore, there is a concomitant need to both
24 stop and frisk immediately. It is an unusual
25 circumstance. It is not the rule.

1 QUESTION: Mr. Neimand, do you concede -- there
2 were three people standing at that street corner, and the
3 officer frisked them all. As to the other two -- the
4 anonymous tip related only to the one with the plaid-like
5 shirt. As to the other two, was that wrongful conduct on
6 the part of the police to frisk the other two?

7 MR. NEIMAND: The record was not -- if I'm --
8 I'm not sure how clear the record is on the sequence of
9 events. I would say that if those frisks occurred first,
10 they probably were not proper, because they were not the
11 ones who were said to have the gun. I think once they
12 found the gun, I believe it was proper.

13 QUESTION: Guilt by association.

14 MR. NEIMAND: Well, public safety exception,
15 Your Honor. I --

16 QUESTION: It seems to me that's absolutely the
17 wrong answer, that if, indeed -- if, indeed he was
18 frisking for the proper purpose, that is, to protect
19 himself, he had just as much reason to frisk the two that
20 were next to this fellow while he was conducting the
21 interrogation, just as when the police stop a car on
22 reasonable suspicion they can frisk not just the driver,
23 but other people in the car, to be sure that they are not
24 endangered.

25 I don't see any reason why he shouldn't frisk

1 all three, unless I believed, as you apparently do, that
2 really what he went there for was not to interrogate, but
3 to frisk.

4 MR. NEIMAND: Well, no --

5 QUESTION: And he only had a reason to frisk the
6 person against whom the anonymous tip was made.

7 MR. NEIMAND: I believe that the reason was to
8 interrogate, but because of the evidence of the
9 criminality, was he carrying a concealed firearm, we are
10 put in a different situation, that to interrogate before
11 you ascertain whether a crime has been committed puts the
12 police officer in harm's way at that time, and if you fail
13 to do the interrogation you place the public safety in
14 harm's way, because you do not know when that individual
15 might take out the gun and start using it.

16 I would like to save the remainder of my time.

17 QUESTION: Very well, Mr. Neimand.

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

19 ORAL ARGUMENT OF IRVING L. GORNSTEIN

20 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

21 SUPPORTING THE PETITIONER

22 MR. GORNSTEIN: Mr. Chief Justice, and may it
23 please the Court:

24 An officer may conduct a stop and frisk when,
25 under the totality of the circumstances, there is

1 reasonable suspicion that a crime is occurring and that
2 the suspect is armed and dangerous.

3 QUESTION: Well, you don't say that was met
4 here, do you, reasonable suspicion?

5 MR. GORNSTEIN: Yes. Reasonable suspicion is,
6 under the totality of the circumstances, met in this case.

7 QUESTION: What facts were there, other than the
8 anonymous tip, and someone who, in fact, was on a street
9 corner in a plaid shirt?

10 MR. GORNSTEIN: The totality of the
11 circumstances consists of the following four things: the
12 tip, the confirmation of the verifiable details of the
13 tip, the absence of any observations that led the officer
14 to conclude that there was -- that his suspicions should
15 not be aroused when he got to the scene, and the fact that
16 this tip concerned a gun that was unlawful for a child to
17 possess, and therefore the level of suspicion that you
18 need in --

19 QUESTION: Was it readily apparent that it was a
20 juvenile?

21 MR. GORNSTEIN: Well, the --

22 QUESTION: Would somebody know whether the
23 person were 18 or 17 on appearance?

24 MR. GORNSTEIN: This -- the law of Florida is
25 that anyone under 21 cannot carry a gun, and this person

1 was under 16 years of age, so any officer who came to the
2 scene and observed that person would have had reasonable
3 suspicion that that was a child there.

4 QUESTION: Can you tell me about the tips for a
5 moment? Do you have any information that we can consult
6 as to whether or not the great majority of tips in gun
7 cases are correct or incorrect?

8 Our jurisprudence is such that we fear tips
9 because of pranks and people who have vendettas, and the
10 assumption is, is that they are usually unreliable. Can
11 you tell us anything to bear on this? Are tips about guns
12 generally reliable, or not?

13 MR. GORNSTEIN: We don't have any empirical
14 evidence on this, and when you're presented with a tip
15 like this, I think what you resort to is a common sense
16 judgment that if there's nothing on the face of the tip
17 that is unreliable, the officer is going to go out to the
18 scene.

19 Once he's at the scene, and he confirms the
20 observable details, and nothing decreases his suspicion,
21 then the alternatives to a stop-and-frisk pose an
22 unreasonable risk of danger to the police and the public.

23 QUESTION: If the police have the name of the --
24 the capacity to check the number from which the call
25 originated, does that make the tip perhaps more reliable?

1 MR. GORNSTEIN: It does -- it does --

2 QUESTION: Because it's a crime to violate -- to
3 have a false report under 911, so --

4 MR. GORNSTEIN: It would. It would make the tip
5 more reliable, and that would be a factor in the totality
6 of the circumstances if it could be shown that it was a
7 911 call that you could record, that you knew where the
8 call came from.

9 QUESTION: What do we know here? Did the tip
10 say it was a youngster?

11 MR. GORNSTEIN: It said, I believe -- the
12 testimony is at A-41, and this is the only thing on it,
13 and the officer says, I believe they stated they were
14 young, referring to the tipster.

15 QUESTION: Can I go back to your earlier answer?
16 Why is it -- the fact that you have caller ID makes the
17 tip more reliable?

18 MR. GORNSTEIN: It's because --

19 QUESTION: Even though the caller doesn't know
20 that you have caller ID?

21 MR. GORNSTEIN: Well, it would have to be
22 combined with general knowledge that --

23 QUESTION: Oh.

24 MR. GORNSTEIN: Of -- Justice Scalia, of the
25 public, that they could potentially --

1 QUESTION: And combined with a very stupid
2 caller who tries to be anonymous when he knows that he
3 can't be anonymous --

4 MR. GORNSTEIN: Well --

5 QUESTION: -- because he's calling from his own
6 phone and you have caller ID. It seems to me that the
7 very mere fact that he remains anonymous and doesn't tell
8 you his name indicates that he believes he can be unknown
9 and doesn't want to be known.

10 MR. GORNSTEIN: Justice Scalia, there are
11 varying degrees of anonymity, but I would accept your
12 basic point that unless the person -- it's generally known
13 that caller ID is out there, that it doesn't weigh into
14 the calculus that much.

15 QUESTION: Keep everything else the same, and
16 only vary the gun and change it to a book that's
17 copyrighted unlawfully, or drugs, marijuana, or some other
18 thing. Then I take it you'd say there wasn't reasonable
19 suspicion.

20 MR. GORNSTEIN: That's correct, because
21 Alabama --

22 QUESTION: All right. Now, how do we get the
23 fact, since it's supposed to be reasonable suspicion, that
24 criminal activity is afoot? How do we say that that
25 changes? That doesn't change. What changes is the degree

1 of reasonable suspicion that will justify the stop, or
2 this frisk.

3 MR. GORNSTEIN: I would say that it would be the
4 degree of suspicion that we call reasonable under the
5 circumstances.

6 QUESTION: I thought maybe you could say that,
7 then -- but the way the term has been used in the cases,
8 it hasn't been said suspicion that is sufficiently
9 reasonable to justify the search. Rather, it said,
10 reasonable suspicion that criminal activity is afoot.

11 MR. GORNSTEIN: Well, I would agree with you
12 that the cases haven't specifically addressed this
13 particular factor, but that's because the issue hasn't
14 been put to the Court. This is the first time the case
15 is -- the issue is being put to the Court that the degree
16 of danger weighs into whether it constitutes reasonable
17 suspicion under the circumstances.

18 QUESTION: What about probable cause? Would you
19 adopt a similar sliding scale for probable cause, and if
20 not, why not?

21 MR. GORNSTEIN: Justice Scalia, no, and the
22 reason is that probable cause is constitutional text that
23 has a meaning that must be drawn from its history and from
24 its early application, and that kind of sliding scale
25 approach does not apply in a probable cause, but what we

1 are --

2 QUESTION: And since we made up reasonable
3 suspicion it's totally --

4 MR. GORNSTEIN: Justice Scalia --

5 QUESTION: -- unconnected to the Constitution,
6 right?

7 MR. GORNSTEIN: No. What it is interpreting is
8 the general reasonableness requirement, and the way the
9 Court formulated that reasonableness requirement in Terry
10 is that you look at what a reasonable and prudent person
11 would consider appropriate under the totality of the
12 circumstances, and a reasonable and prudent person would
13 necessarily take into account the fact that the tip
14 concerns something that poses an immediate danger of
15 violence.

16 If the tip is about somebody at a courthouse
17 with a bomb, or somebody at a school with an automatic
18 weapon, a reasonable and prudent person is going to
19 operate on somewhat less suspicion than otherwise in
20 deciding whether to make a stop and frisk.

21 QUESTION: How about not an automatic weapon,
22 just a weapon at school, anonymous tip?

23 MR. GORNSTEIN: Well, it depends on whether the
24 carrying of the weapon is -- you would have reasonable
25 suspicion that it was illegal to carry the weapon, and in

1 Florida, if somebody is --

2 QUESTION: Well, sure. The school has policy.

3 MR. GORNSTEIN: Yes.

4 QUESTION: No weapons in school.

5 MR. GORNSTEIN: That's correct.

6 QUESTION: Anonymous tip, weapon.

7 MR. GORNSTEIN: Then if you --

8 QUESTION: Is that enough?

9 MR. GORNSTEIN: If you identify the person with
10 sufficient specificity so that when the officer comes to
11 the scene and confirms the observable details of the tip,
12 and there's nothing else in his observations that
13 decreases his level of suspicion, then the reasonable and
14 prudent course is to stop and frisk, because the
15 alternatives to the stop and frisk are -- create real
16 danger to the police and the public.

17 If the police approaches the person, he runs a
18 risk of getting shot. If he waits and see if the gun is
19 pulled out, that person might shoot somebody, and it's
20 that real risk of danger --

21 QUESTION: But is it therefore critical to your
22 position that they realize this was a young person?

23 MR. GORNSTEIN: It is -- well, I would say that
24 it is critical in this case that there be reasonable
25 suspicion that the person does not have a license, and

1 that's furnished in this case by the fact that there's
2 reasonable suspicion that he's under 21 years of age.

3 QUESTION: Not in the --

4 QUESTION: If he had not been under 21, you
5 would agree that the stop would have been impermissible?

6 MR. GORNSTEIN: You would need reasonable
7 suspicion --

8 QUESTION: Well, no, on the facts of this --
9 say precisely the same facts, except he called him and
10 said, my cousin who is 22 is over there.

11 MR. GORNSTEIN: The --

12 QUESTION: Could he have made the stop?

13 MR. GORNSTEIN: My only hesitation in saying no,
14 he couldn't Justice Stevens, is there are places like New
15 York City and the District of --

16 QUESTION: No, we've got -- we've got a place in
17 this particular case, a bus stop, three young -- three
18 men, 22 years old, one of them wearing a plaid shirt.

19 MR. GORNSTEIN: I would say no, except -- and if
20 I could just finish the answer, the difference is that
21 there are some places where there are many guns and very
22 few licenses, and if Florida was such a place, or this
23 particular area were such a place, like the District of
24 Columbia or New York City, where there are an
25 extraordinary number of guns and an extremely limited

1 number of licenses -- only, say, private detectives really
2 have them -- then there would still be reasonable
3 suspicion.

4 QUESTION: Right.

5 MR. GORNSTEIN: Otherwise, no.

6 QUESTION: But I'm still asking about Florida,
7 and you would agree, in Florida he could not have --

8 MR. GORNSTEIN: I don't have -- I don't know
9 enough about the facts in Florida.

10 QUESTION: Mr. Gornstein, isn't the reasonable
11 implication of the tip that he is carrying a gun
12 illegally? Do you call up the cops to tell them that
13 somebody is carrying a gun legally? Surely --

14 (Laughter.)

15 QUESTION: Surely, the reasonable implication of
16 the tip is that this person is behaving against the law.

17 MR. GORNSTEIN: Justice Scalia, that is a
18 possible inference to draw, but --

19 QUESTION: Possible. I can't imagine --

20 MR. GORNSTEIN: Well, because in places where
21 guns are widely carried and legally so, some people may
22 not know about that, and so the tip may just be that the
23 person observed a gun and it was frightening to them, but
24 I take your point that that is one possible reasonable
25 inference that an officer could draw, and based on -- if

1 the officer's experience was that this was so, then that
2 would figure into the totally of the circumstances.

3 QUESTION: Mr. Gornstein, there was nothing in
4 this tip to convey that. The officer reported she was
5 told that there were several black males standing at a bus
6 stop, a description given of each one. The male with the
7 gun had a plaid-looking shirt and was a black male.
8 That's -- I don't recall other information.

9 MR. GORNSTEIN: On A-41, in the middle, I
10 believe they stated they were young, and so the tip
11 alerted the officer to the possibility that this was
12 somebody under 21 years of age, and when the officer got
13 to the scene and saw somebody shy of 16 years old, they
14 certainly had reasonable suspicion that the person was
15 carrying a concealed weapon in violation of Florida law.

16 QUESTION: Thank you, Mr. Gornstein.

17 Mr. Sepler, we'll hear from you.

18 ORAL ARGUMENT OF HARVEY J. SEPLER

19 ON BEHALF OF THE RESPONDENT

20 MR. SEPLER: Mr. Chief Justice, may it please
21 the Court:

22 I think the -- one of the first questions that
23 was asked is the most critical. This is Alabama v. White,
24 but without the predictive features. The State conceded
25 it, the Solicitor General conceded it.

1 The only justification that I can see in the
2 State's argument for upholding the stop and frisk is that
3 an anonymous tipster alleged the presence of a firearm,
4 but that, of course, doesn't make the tip any more
5 reliable, and it doesn't lower the reasonable suspicion
6 standard.

7 In Terry v. Ohio, this Court said that where
8 there is a reasonable suspicion that the individual is
9 engaged in criminality, the officers can stop, and that
10 where there is a reasonable belief that the individual is
11 armed and presently dangerous -- and presently
12 dangerous -- then the officer can conduct a frisk.

13 There were three -- as I understand it, there
14 were three components to the Terry holding that I think
15 are very, very relevant to this case: first of all, that
16 a pat-down is not a minimal intrusion. Second of all,
17 that the limitation placed on Terry is, where there's a
18 reasonable belief that the threat is of an individual that
19 is armed and presently dangerous. This is to an actual
20 and immediate threat, not a possible or a potential one.

21 And the third is -- and this I think is very,
22 very important. I'm not sure it's been touched on
23 adequately to this point -- is that before the officer may
24 begin the pat-down, the officer must give the individual
25 an opportunity to dispel any safety concerns. In this

1 case, of course, there was no opportunity given. The
2 officer came up and didn't ask any questions, didn't
3 conduct any type of investigation, just went right to the
4 frisk.

5 QUESTION: If the petitioner's position is
6 correct, that would follow, would it not, that with a gun
7 in the guy's pocket, as they believed, to ask a bunch of
8 questions is not going to obviate any public safety
9 concern.

10 MR. SEPLER: It is correct, Your -- Mr. Chief
11 Justice, that if the State's proposal were adopted, yes,
12 at that point the officers would be entitled to move
13 directly to the frisk, and they wouldn't have to do
14 anything else, but of course, that proposal depends,
15 number 1, on the tip being a reliable tip, which, of
16 course, there is no showing here, that also --

17 QUESTION: Does it matter if the tipster said,
18 these are young people, and under Florida law someone
19 under 21 may not have a weapon? Does that alter the
20 equation here?

21 MR. SEPLER: I don't believe it does, Your
22 Honor, and --

23 QUESTION: Why not?

24 MR. SEPLER: And this is why. If the statute
25 were to say --

1 QUESTION: It is an additional factor.

2 MR. SEPLER: If the statute, Your Honor, were to
3 say that young people couldn't possess guns, then I think
4 it would make all the difference in the world.

5 QUESTION: Well, does Florida law prohibit
6 people under age 21 from carrying concealed weapons?

7 MR. SEPLER: No. Under Florida law, individuals
8 may possess weapons for a limited purpose, but in terms of
9 having a license to carry a concealed firearm, 21 is the
10 limit. However, in this case, of course, there was no tip
11 that said --

12 QUESTION: Just a minute, so I'm clear. It
13 is -- is it lawful or not in Florida for someone under 21
14 to have a concealed weapon?

15 MR. SEPLER: No, not --

16 QUESTION: It is not?

17 MR. SEPLER: It is not lawful. In order to have
18 a --

19 QUESTION: Now -- then if the tipster says it is
20 a young person who has a concealed weapon, he's standing
21 on a street corner in a plaid shirt, the officer goes
22 there and says, hmm, plaid shirt, street corner, yep,
23 looks young, that's an additional factor, isn't it?

24 MR. SEPLER: Your Honor, if I may answer you
25 this way. If the officer were to have gone to the street

1 corner, with a tip that said young, and said -- and
2 testified to this, and I must tell you, as you have no
3 doubt noticed, that the transcript in this case is very,
4 very small.

5 If the officer would have gone and said, I have
6 a tip of a young individual on a corner, and went there,
7 and the officer had testified, I looked at this individual
8 and he looked less than 21, he looked younger than 21, our
9 position might be different. But of course, that didn't
10 happen.

11 Young is a variable term. I think Webster's
12 Third World Dictionary defines young as more -- as --
13 well -- I'm sorry, I was --

14 QUESTION: You don't need to belabor that point
15 to this bench.

16 MR. SEPLER: Okay.

17 (Laughter.)

18 QUESTION: Excuse me.

19 QUESTION: Can I ask you an obvious --

20 QUESTION: May I say that I don't understand why
21 it would make any difference in the world? All it would
22 show is that if he had a gun it would be unlawful. It
23 would make no difference whatever to the reliability of
24 the tip that he had a gun. It would just go to whether,
25 if he did have it, he had it unlawfully. I don't see how

1 it affects it.

2 MR. SEPLER: Well --

3 QUESTION: The basis of your case is that the
4 tip was not reliable enough, isn't it?

5 MR. SEPLER: I think that's correct.

6 QUESTION: And this doesn't go at all to the
7 reliability of the tip.

8 MR. SEPLER: It may go, if I may, to -- as I
9 understood the Court's question, it may go to whether
10 there was a reasonable suspicion, independent of the tip,
11 and the tip may have provided a -- arguably may have
12 provided a context for what the officer sees at the scene.

13 QUESTION: There's no doubt that, I think, in
14 the cases reasonable suspicion has been used to date to
15 refer to reasonable suspicion that crime is afoot, and
16 they have a number of circumstances here that give that
17 suspicion, but they concede that on the ordinary standard
18 I think it wouldn't meet it, as so far.

19 But suppose that it was a bomb at a school. I
20 mean, I'm testing the proposition of whether that word
21 reasonableness varies, at least sometimes, in light just
22 not of the suspicion about whether the person has the
23 bomb, but the very fact that it's a bomb.

24 MR. SEPLER: I understand you.

25 QUESTION: Yeah. I mean, that's the obvious

1 question, and of course, that's something that disturbs me
2 the most.

3 I just can't believe that if somebody called up,
4 described the person in detail, said he has a bag, and
5 moreover he has thousands of pounds of bomb material in
6 that bag outside the courthouse or the school, I can't
7 believe that the police shouldn't go and find out. But I
8 mean, maybe I'm wrong.

9 MR. SEPLER: Well, I agree with Your Honor. One
10 could envision situations that are increasingly more
11 difficult to analyze.

12 QUESTION: All right. Well, once you say that,
13 then the question becomes whether a gun is or is not
14 enough like a bomb to warrant the variance.

15 MR. SEPLER: Let me see if I can clarify it,
16 Your Honor. In no sense did I concede that a bomb is
17 different.

18 QUESTION: Well, what do you think about the
19 bomb? I mean, I put it as dramatically as I could --

20 MR. SEPLER: Well --

21 QUESTION: -- because I wanted you to see the
22 point of the question. If it's a bomb about -- and they
23 call up, you know, big bomb, in a bag, same amount of --
24 in fact, less belief, really, because people don't
25 normally carry bombs in bags, but they say that -- you see

1 the point. Clear description of the person. Clear
2 description of the bag.

3 Within 5 minutes they go to the place, and there
4 somebody who meets a detailed description is standing
5 there with precisely the bag. Can the police open the
6 bag?

7 MR. SEPLER: No. The answer's a difficult
8 question, Your Honor, and I would say that in general
9 terms the answer is no, and what I'm suggesting -- of
10 course, I understand that these are difficult questions,
11 and --

12 QUESTION: Well, what if it's in a school, and
13 the school is very nervous about danger to the students,
14 and they get the tip about someone in the school, either
15 with a weapon or a bomb?

16 MR. SEPLER: Let me suggest both questions -- I
17 understand that one can conceive of very difficult
18 questions that --

19 QUESTION: What is your answer?

20 MR. SEPLER: Well, my answer, Your Honor --

21 QUESTION: -- the answer as well as the
22 question.

23 MR. SEPLER: Yes, thank you, Your Honor. My
24 answer is is that in very limited circumstances, where
25 there is an actual and immediate danger, and where the

1 danger is so extreme that it constitutes an extreme public
2 emergency, in those situations I would suggest that in
3 those situations reasonable suspicion might bend, but
4 those are in a very, very limited and narrow set of
5 circumstances.

6 QUESTION: And the same for probable cause. I
7 mean, suppose they say the bomb is -- it's a big bomb, and
8 it's in his locker, it's not on his person, so even if you
9 did a stop-and-frisk you wouldn't discover it, but they
10 say, this guy has an enormous bomb. It's in the school
11 building in his locker.

12 Now, could you go -- a stop-and-frisk won't
13 disclose it. Do you have probable cause, on the basis of
14 this anonymous tip, to go and conduct a search and seizure
15 of a locker?

16 MR. SEPLER: I believe you do not, and here is
17 why. Here is the analysis at least that seems to be at
18 least most comfortable to me, and I would -- in preparing
19 for the bomb question, because it is a very obvious
20 question one might answer. I might say that first of all,
21 if the tip were based -- I'm sorry, if the belief of a
22 bomb is based on a tip, my first -- the first thing that
23 an officer needs to do is, is this a reliable tip? Does
24 it meet all the other requirements?

25 QUESTION: Our assumption is, it's anonymous.

1 MR. SEPLER: All right. If it's --

2 QUESTION: We don't know if it's reliable. It
3 came out of the blue. It's a phone call. That's the tip.

4 MR. SEPLER: Yes, Your Honor.

5 QUESTION: You don't know anything else.

6 MR. SEPLER: Yes, Your Honor. If it is a
7 reliable -- if it is not -- if it's an anonymous tip, then
8 the next thing that I believe a police officer ought to do
9 is, is there any kind of independent police work that I
10 can do to either corroborate what I've heard in this tip,
11 or find something other than that that's suspicious?

12 If there's not any other corroborating
13 information that I can -- I need to make an on-the-spot
14 determination whether this is an actual and immediate
15 threat.

16 There are a lot of bomb tips that come into
17 police stations. Police have -- they do need to make
18 distinctions, discriminations as to which tips present an
19 actual and immediate one, versus where is there a
20 potential --

21 QUESTION: Well, I think we can follow this --

22 QUESTION: How can you know? How can you
23 possibly make that assessment as a police officer when
24 you're in a place like a school or a public building with
25 many people, potentially in great danger? How do you make

1 that assessment?

2 MR. SEPLER: I think under a totality of
3 circumstances approach. It's what's in the tip. If the
4 tip were that there's a bomb here and it's going to go off
5 at some time before 12:00, well, then there's an
6 opportunity to make this investigation.

7 Our case, of course, asks whether there's --

8 QUESTION: All right, but --

9 QUESTION: I think what you're doing is, you're
10 saying that a gun is not as serious as a bomb.

11 MR. SEPLER: What I'm suggesting to the Court is
12 that the nature of the offense in general terms ought not
13 to reduce the reasonable suspicion standard.

14 QUESTION: Okay. Then let's assume that with
15 all the efforts the police may make in the bomb case, or
16 with no efforts because there is no time, the police have
17 nothing more than they have in this case, except instead
18 of a gun, the tip talks about a bomb. Is it lawful for
19 the police to go into the school locker in Justice
20 O'Connor's example?

21 MR. SEPLER: In general terms, I would say no,
22 unless the officers make an on-the-spot determination that
23 based on their experience there is an actual and immediate
24 threat.

25 QUESTION: No, but they don't know that. All

1 they know is the tip.

2 MR. SEPLER: Then if there's not -- if they
3 cannot make a determination that there's an actual and
4 immediate threat there, then I would answer your question
5 no.

6 QUESTION: Do you think it would be a proper
7 answer to say, there are times when the police ought to
8 commit trespass and just go in anyway, Fourth Amendment or
9 no Fourth Amendment?

10 MR. SEPLER: Again, I think that the answer to
11 that is generally no. If the police have -- believe that
12 there's an actual and immediate threat, they may be
13 entitled to do that.

14 That's not the situation here, of course. Here,
15 what we have is, we have individuals who were doing
16 absolutely nothing. Absolutely nothing. The officer
17 testified at the suppression hearing that the -- in so
18 many words that the only reason that she stopped these
19 boys were because they were standing next to a bus stop.
20 For all we know, they could have been waiting for a bus.

21 And the argument that's made by the State is not
22 limited to juveniles, and I don't think it would make a
23 difference even if it was limited to juveniles, because we
24 don't have enough here to even suggest that a reasonable
25 officer would have believed these were juveniles.

1 QUESTION: But if you accept the proposition
2 that there was suspicion that this juvenile was carrying
3 the gun illegally because juveniles aren't allowed to
4 carry concealed weapons in Florida, there is a difference,
5 then, between this case and someone who was, say, 35 years
6 old.

7 MR. SEPLER: The only -- Mr. Chief Justice, the
8 only difference would be if the officer were to have
9 testified, I looked at this individual, I could tell that
10 this individual was a juvenile, and I could tell that this
11 individual --

12 QUESTION: Well --

13 MR. SEPLER: -- didn't fit within one of the
14 exceptions for a juvenile.

15 QUESTION: Okay. You say the transcript is very
16 sparse, and I agree with you, but here the individual
17 turns out to be under 16, and I think it's a fair
18 inference that a person, a police officer looking at
19 someone under 16, without knowing it, can say this person
20 is under 21.

21 MR. SEPLER: With all respect, I would not be as
22 readily to make that inference. We don't know what this
23 respondent looked like. Again, the officer could have
24 easily testified to that, and she didn't, and I don't
25 know -- I don't believe that we can fairly read into the

1 record that by looking at this individual she could tell
2 that he was a juvenile. I think we are bound by what we
3 are given, and what we are given is Alabama v. White, with
4 no predictive elements.

5 QUESTION: Well, it was your suppression
6 hearing, too. I mean, in a sense, you had the burden of
7 proof to show that the evidence should be suppressed, and
8 if you want to cross-examine her and say, did you really
9 think this -- make any determination about this person's
10 age, you could have done so.

11 MR. SEPLER: Our responsibility, as I understand
12 it, under a motion to suppress is to bring forth the
13 arguments that this was not a lawful stop and frisk. The
14 State at that point had every opportunity to show that it
15 was a lawful one.

16 This is not a mere matter of semantics. I
17 believe that this is a very important case, because --

18 QUESTION: All right. Now, yes, but I'm still
19 disturbed about the bomb and the reason is, you vacillated
20 a little, or -- I think between -- one, I could saying,
21 well, there's an across-the-board public safety exception
22 from probable cause and the other things. Of course if
23 there's an atomic bomb they're going to look, and they
24 should, so there's an exception, rarely invoked, for
25 public safety of extreme sorts.

1 All right. You take that tack, then you've got
2 to at least say, well, what about guns in schools. If you
3 don't take that tack, and just say you can vary the
4 reasonable suspicion for bombs, then you've got to explain
5 why at least guns in schools is somehow different from a
6 bomb in a school.

7 I mean, and it seems to me you have to do one or
8 the other, or you have to take the absolute position, no,
9 no even a bomb, not even the atomic bomb, et cetera. I
10 don't see how you can avoid taking one of those three
11 positions.

12 MR. SEPLER: And Your Honor, that's why I
13 preface this with, there are hypotheticals that one could
14 come up which make --

15 QUESTION: It's not purely hypothetical. What's
16 disturbing me about the case is, I don't know exactly what
17 to analogize guns to. Should I try to distinguish between
18 guns at a bus stop and guns at a school? Should I try to
19 stat distinguishing between guns and bombs in the latter
20 case? How do I deal with it? That's a real problem I'm
21 having, not some hypothetical one.

22 MR. SEPLER: And I believe the answer was in
23 Terry. The answer is, whether there is an actual and
24 immediate threat. Where there's an actual and immediate
25 threat, this Court under Terry and the cases that have

1 relied upon Terry have said that at that point, the
2 officers are authorized to do what they need to do.

3 QUESTION: Well, that may not be enough. We're
4 in a time after we've seen tragedies like at the Columbine
5 High School in Colorado, and if I'm correct, a number of
6 high schools around the country are now putting out
7 guidelines and asking fellow students to please alert the
8 school authorities any time the student thinks there might
9 be someone in the school with a gun, and so I think we're
10 going to see lots of anonymous tips coming along in the
11 setting of public schools and in the aftermath of some
12 real tragedies.

13 Now, what's our analysis supposed to be? Does
14 it bend a little, or does it not?

15 MR. SEPLER: No, I do not believe that your
16 analysis changes at all from where it is now.

17 QUESTION: On that same question, we have any
18 number of countless cases of Terry stops where there was a
19 furtive movement, it was a high crime neighborhood and so
20 forth. In a sense, it seems to me a tip from an outside
21 source made to a police dispatcher has somewhat more
22 authenticity than perhaps our earlier cases have
23 indicated.

24 MR. SEPLER: I would suggest, Justice Kennedy,
25 that it has even less, and the reason I say that is this.

1 This Court has said in Adams that where there's a tip from
2 a known informant who is subject to State laws for filing
3 false complaints, it adds a degree, a special degree of
4 reliability.

5 This Court has also held that where there is
6 sufficient meaningful corroboration to the tip, that also
7 adds a special -- lends a special degree of familiarity.

8 Here, we have none of that. This is an
9 anonymous tipster. There is no way for an individual to
10 trace the tipster, or no way for the police to trace the
11 tipster. There's nothing about the details that were in
12 this tip, other than a bald allegation of the presence of
13 a gun, that would in any way allow for the police officer,
14 or a court reviewing this, to make a determination of a
15 meaningful corroboration.

16 QUESTION: Well, that's true, but what do you do
17 about, say, students have guns in schools, you know, and
18 it's quite possible some other kid knows that the gun, and
19 can describe everything in utmost detail, but just doesn't
20 want to get involved, so he phones up, describes it in
21 absolute detail, but doesn't give his name, and then it
22 checks out immediately, but for the name.

23 So I mean, it isn't just an absurd tip. It
24 isn't great reliability, but it isn't terrible.

25 MR. SEPLER: In general, Your Honor, I believe

1 that the analysis has been established if the tip is not
2 inherently reliable, it must give enough information to
3 allow for a meaningful corroboration.

4 Now, I would suggest also that --

5 QUESTION: Is that based on the assumption that
6 most anonymous tips are unfounded?

7 MR. SEPLER: Certainly that is one of the
8 concerns. We --

9 QUESTION: There's no evidence of that either
10 way.

11 MR. SEPLER: We have cited in our brief one
12 estimate that shows that 90 percent of the tips are
13 unreliable, anonymous tips.

14 Let me suggest to the Court, whether the figure
15 is 90 percent or 80 percent, or 70 --

16 QUESTION: That was anecdotal and quite --

17 MR. SEPLER: I understand that, Your Honor.

18 QUESTION: On the other hand, I agree with you.
19 I see nothing on the other side.

20 MR. SEPLER: There is nothing on the other --
21 and this is -- this is a, I believe, Your Honors, is a
22 very fundamental case, because it's going -- it goes to
23 the heart of the relationship between police and citizens
24 in a free society.

25 QUESTION: Mr. Sepler, may I ask you in the

1 school setting, I just -- this just occurred to me, so
2 tell me if I'm wrong in thinking this way, that there's a
3 custodial kind of relationship between the school and the
4 student, so if there's a tip about a student gun, maybe
5 the principal has some authority which the principal can
6 give to the police that doesn't exist when you have an
7 anonymous tip about somebody standing at a bus stop.

8 MR. SEPLER: I believe that's absolutely
9 correct, Your Honor, and that's why I answered Judge --
10 Justice Breyer's question in general. I think that that's
11 absolutely correct.

12 One could envision that if the State's proposal
13 were adopted you're going to have situations, or we are
14 all going to have situations where in a child custody case
15 an embittered spouse seeks to seek an advantage over the
16 other spouse and calls in a tip. Employees who have a
17 grudge against employers are going to call in a tip.
18 You're going to have even -- you're going to even have
19 lawyers who get an adverse ruling call in a tip.

20 There is nothing about this tip that
21 distinguishes not only these individuals, but
22 distinguishes the tipster to show that the tipster bears a
23 particular familiarity with the individuals.

24 Generally, as this Court knows, the law is that
25 the tipster has to know something. He's got to know

1 something about the suspect, or about the crime, that
2 would allow the police officer to believe, well, he knows
3 something more.

4 But here what you have is, you have an
5 individual, we don't know -- the individual could have
6 been another child. There's nothing to say who this
7 person is, and to adopt a rule that says the bald
8 assertion that somebody's got a gun is going to allow
9 police, unhampered, to stop and frisk anybody, anywhere,
10 at any time, is just too much. We need to hold tipsters
11 accountable. You need to hold police accountable. This
12 is a very important case, Your Honor.

13 QUESTION: Indeed, we distrust policemen enough
14 that we have the exclusionary rule in order to deter them
15 from conducting unreasonable searches and seizures, but I
16 guess it would be pretty neat for the tipster to be
17 another policeman.

18 All you have to do is allege that the person has
19 a gun, and it will permit a search --

20 MR. SEPLER: That's --

21 QUESTION: -- a body search, which may not
22 uncover a gun, but may well uncover marijuana, cocaine, or
23 some other unlawful contraband.

24 MR. SEPLER: That's certainly one of the more
25 troubling implications.

1 QUESTION: Why would that be? I mean, they
2 haven't said that.

3 MR. SEPLER: I'm not --

4 QUESTION: This is an instance where the tipster
5 calls up, gives -- we could imagine -- I don't know how
6 much detail you have to have, but they say there's a
7 description. The description we can imagine is in detail.
8 Imagine that it is, you know. The issue is the anonymity,
9 not just calling up and saying somebody has a gun. He has
10 to describe the person in some detail. It has to check
11 out. It's not that there are no checks. It's just, there
12 isn't enough of a check.

13 MR. SEPLER: It is true that in White this Court
14 held that the same type of details absent a tip would not
15 have been sufficient. I think it's absolutely true, I
16 mean, there are certainly problems, and we're not relying
17 on this, but it is an implication of the case.

18 Certainly we've cited to instances in Los
19 Angeles, New York, Detroit, Philadelphia, where police
20 fabrication has now been called into serious question.
21 I'm not suggesting that this is going to happen, but it is
22 also true from a common sense perspective that if this
23 proposal were adopted, tips that now come into police
24 stations and you want immediate action, all you've got to
25 say is, he's got a gun, and the police are going to be

1 right there, and they're going to be authorized to make a
2 stop and make a frisk, on the same basis.

3 And it's rather ironic, Your Honors, that if the
4 same information, if the police officer had have been on
5 the street corner, and seen the respondent looking exactly
6 the way the tipster said he was going to look, and saw him
7 and said, based on my 30 years experience, that person
8 looks like he's up to no good. He looks like he's going
9 to commit a crime, and he looks like he's armed and
10 dangerous, that under this Court's law that officer would
11 not be entitled to move in on that hunch.

12 QUESTION: But that's the Alabama v. White --

13 MR. SEPLER: That's --

14 QUESTION: -- that says the other circumstances,
15 other than the anonymous tip were not enough, but coupled
16 with the anonymous tip, it was.

17 MR. SEPLER: In Alabama v. White, as I
18 understand it, the critical factor in making the
19 determination was that there was corroboration of
20 predictive features of the tip, and that absent those
21 predictive features, and absent the corroboration of those
22 predictive features, the tip in Alabama v. White would not
23 have been sufficient.

24 But again, if the officer had a hunch, based on
25 his or her 30 years experience, and seen the very same

1 things that were in -- that were named in the tip, the
2 officer would not be entitled to make that stop and frisk.

3 QUESTION: Yes, but perhaps you missed my point
4 with respect to Alabama. That was exactly the analysis of
5 the Court in Alabama v. White, that without the tip, what
6 the officer did and saw would not be sufficient. With the
7 tip, it was, so the fact that an officer standing on the
8 street corner here could have seen, without the tip, and
9 still couldn't have done anything, really is not any
10 inconsistency at all. It's quite consistent with our
11 doctrine.

12 MR. SEPLER: Your Honor, again, as I -- and I
13 hope I'm answering your question directly -- as I
14 understand White, it was yes, that there was a tip, but it
15 was the corroboration of the predictive features in the
16 tip that made all the difference. If the tip didn't have
17 any predictive features, then even though there was a tip,
18 and even though there was corroboration of details of
19 identification, this Court in White found that to be
20 insufficient. That --

21 QUESTION: I don't under -- do you really
22 understand this predictive features fillip on the
23 doctrine? I mean, suppose the tipsters here had said,
24 there's a fellow in a plaid shirt standing on the corner,
25 and he's going to continue to stand on the corner for 2

1 more hours, would that be enough? I don't really see --

2 MR. SEPLER: I don't believe --

3 QUESTION: -- how the predictive feature, unless
4 it's, there's something suspicious in the predictive
5 feature --

6 MR. SEPLER: I agree, Your Honor --

7 QUESTION: I've never understood that about the
8 case.

9 MR. SEPLER: As I understand the predictive
10 features, you predict conduct. As -- well, of course,
11 Wardlow didn't have conduct, but if -- but it's the
12 conduct that is the most critical.

13 If the person said he's going to -- on the
14 street corner and he's going to catch the number 4 bus,
15 well, that would be all the difference. If he's standing
16 there and he's not doing anything, you have no predictive
17 features of anything to corroborate, and absent those
18 predictive features, I think what you have in all
19 seriousness is, you do have a situation where anybody,
20 anywhere, could be stopped for nothing more than casual
21 observation.

22 This Court said in White that in order to allow
23 for meaningful corroboration, there has to be that
24 something more. The tip has to be as to facts or events
25 of things that are not occurring at the time that the tip

1 was made, as to things that are not available by casual
2 observation or rumor or reputation.

3 And then, of course, the Court went on to the
4 meaningful corroboration, and it used the predictive
5 elements to provide that meaningful corroboration. In
6 this sense, everything that was in that tip were things
7 that were occurring at the time that the tip was made,
8 everything in that tip were things that were available by
9 casual observation, by somebody who just saw these guys
10 and didn't like them, just didn't like them. I don't want
11 these gentlemen in my neighborhood so I'm going to call in
12 a tip.

13 There's nothing in the record to show or even
14 suggest that this was a high crime area. There's
15 absolutely nothing to show that these gentlemen made any
16 furtive movements, that they ran from police. The typical
17 situation again is that the police come up and they
18 confront somebody, and if they sweat, if they gave evasive
19 answers, if they make furtive movements, if they run,
20 that's the typical situation where a tip which has only
21 details of identification might be sufficient.

22 In this case, there wasn't any of that, and the
23 State's not even suggesting that there ought to be. What
24 the State is saying is that if there is a bald tip with a
25 naked assertion, that's enough, and we would suggest to

1 the Court that under White and under Adams v. Williams,
2 Illinois v. Gates, the answer to that is no. There has to
3 be a meaningful corroboration.

4 Thank you, Your Honors.

5 QUESTION: Thank you, Mr. Sepler.

6 Mr. Neimand, you have 4 minutes remaining.

7 REBUTTAL ARGUMENT OF MICHAEL J. NEIMAND

8 ON BEHALF OF THE PETITIONER

9 MR. NEIMAND: Thank you.

10 The questions concerning the bomb really
11 underscore the duality of the issues in front of the
12 Court. The first issue is that the Florida supreme court
13 said an anonymous tip could never be enough, and clearly,
14 with the bomb situation it would have to be enough.
15 There's too much public safety involved.

16 The second question then becomes, under the
17 facts of this case, were the facts sufficient to allow the
18 stop and frisk under the situation? In this situation,
19 because it was a juvenile -- there is a problem in Florida
20 with juveniles and hand guns -- the tip was immediately
21 corroborated, these individuals were at the exact
22 location, dressed accordingly, within 6 minutes. Then
23 what were the officers supposed to do under those
24 circumstances?

25 The officer could have waited and put the public

1 safety in jeopardy, or could have gone to investigate. If
2 he investigated he would have put his life in jeopardy by
3 not immediately frisking the individual, and that is why
4 in this case, on the factual situation the State submits
5 that the Florida supreme court was wrong, if, in fact, on
6 the law they were wrong as well.

7 As to the question of the 22-year-old in
8 Florida, because an individual has only a privilege to
9 carry a concealed firearm, there really is no problem with
10 an officer if there is a tip that an individual is
11 carrying a concealed firearm who is 22, or even older, to
12 come up to that individual and ask for the permit.

13 But before you ask for the permit, if you ask
14 somebody for a gun, just because they're legally carrying
15 the gun, that doesn't mean they're going to legally use
16 the gun and therefore, again, even in that situation the
17 public safety, the officer's safety in ascertaining
18 whether or not the individual has a permit to carry that
19 gun would allow the immediate frisk upon the stop, and
20 then the interrogation occurs.

21 And upon the interrogation, do you have a
22 permit, yes, I do, here it is, thank you very much, here's
23 your gun, and the stop as a Terry stop should be as
24 limited because the criminal activity, suspicion of
25 criminal activity was dispelled, and that's the dispelling

1 point of it in this type of situation.

2 Thank you.

3 CHIEF JUSTICE REHNQUIST: Thank you,
4 Mr. Neimand. The case is submitted.

5 (Whereupon, at 12:02 p.m., the case in the
6 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:

FLORIDA, Petitioner v. J.L.

CASE NO: 98-1993

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

Richard M. Sambora