

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 ARIZONA, :

4 Petitioner :

5 v. : No. 07-1122

6 LEMON MONTREA JOHNSON. :

7 - - - - - x

8 Washington, D.C.

9 Tuesday, December 9, 2008

10

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

14 APPEARANCES:

15 JOSEPH L. PARKHURST, ESQ., Assistant Attorney General,
16 Tucson, Ariz.; on behalf of the Petitioner.

17 TOBY J. HEYTENS, ESQ., Assistant to the Solicitor
18 General, Department of Justice, Washington, D.C.; on
19 behalf of the United States, as amicus curiae,
20 supporting the Petitioner.

21 ANDREW J. PINCUS, ESQ., Washington, D.C.; on behalf of
22 the Respondent.

23

24

25

C O N T E N T S	
	PAGE
1	
2	ORAL ARGUMENT OF
3	JOSEPH L. PARKHURST, ESQ.
4	On behalf of the Petitioner
5	TOBY J. HEYTENS, ESQ.
6	On behalf of the United States, as amicus
7	curiae, supporting the Petitioner
8	ANDREW J. PINCUS, ESQ.
9	On behalf of the Respondent
10	REBUTTAL ARGUMENT OF
11	JOSEPH L. PARKHURST, ESQ.
12	On behalf of the Petitioner
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

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

P R O C E E D I N G S

(10:02 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 07-1122, Arizona v. Johnson.

Mr. Parkhurst.

ORAL ARGUMENT OF JOSEPH L. PARKHURST

ON BEHALF OF THE PETITIONER

MR. PARKHURST: Mr. Chief Justice, and may it please the Court:

Petitioner asks that this Court apply the principles established in Pennsylvania v. Mimms to uphold the pat-down search of a vehicle passenger seized during a lawful traffic stop. Mimms established that a traffic stop satisfies Terry's first prong as to suspicion of criminal activity, and it also established that a pat down of a driver is justified if the officer has a reasonable suspicion that the driver is armed and dangerous.

Fourth Amendment searches must be reasonable, and the pat down in this case was reasonable. And it is common -- it's a commonsense principle that the principles in Mimms also apply to passengers in the context of a traffic stop.

JUSTICE KENNEDY: I didn't hear your first

1 -- in your opening. Did you say that Mimms established
2 that it's likely that he's armed and dangerous? I
3 missed that.

4 MR. PARKHURST: No, no. That's not what I'm
5 saying --

6 JUSTICE KENNEDY: I'm sure it wasn't, but I
7 missed what you said on that point.

8 MR. PARKHURST: What I said is that Mimms
9 establishes that a pat down is justified in the context
10 of a traffic stop if the officer believes that the
11 driver is armed and dangerous.

12 JUSTICE KENNEDY: Thank you.

13 MR. PARKHURST: Correct.

14 CHIEF JUSTICE ROBERTS: Do you agree that
15 there's a point in an interaction that begins with a
16 traffic stop, begins with a seizure, at which the nature
17 of that interaction is changed so that it's no longer --
18 so that it becomes a consensual interaction?

19 MR. PARKHURST: That -- yes, Chief Justice.
20 That can happen in a traffic stop. There's no evidence
21 in this particular case that there was any kind of
22 evolution to a consensual encounter.

23 CHIEF JUSTICE ROBERTS: Maybe I should
24 rephrase the question. Do you agree that it would be
25 unconstitutional for an officer to conduct a pat down

1 after an initial seizure while that same interaction
2 still continues?

3 MR. PARKHURST: No, I disagree with that,
4 Your Honor. An officer can conduct a pat down any time
5 it is reasonable in light of factors that the officer
6 may notice about the individual. If the individual
7 presents an immediate danger to the officer or to the
8 public, a pat down may be reasonable under the broad
9 Fourth Amendment principles, even if this happens to be
10 a consensual encounter or a --

11 JUSTICE KENNEDY: So in your view, or I
12 suppose the government's view -- well, I'll let the
13 government argue for itself. In your view, if the
14 officer is just looking for the man in the gray overcoat
15 and he stops someone on the street and says, have you
16 seen a man with a gray overcoat, and the person says,
17 well, I saw something like that, can he just suddenly
18 spin him around and pat, and pat that person?

19 MR. PARKHURST: If the officer possesses
20 articulable facts that this person is immediately
21 dangerous to that officer.

22 JUSTICE GINSBURG: Then you're doing away
23 with the first Terry factor altogether. Do you think
24 all you need is reasonable suspicion that the person is
25 armed and dangerous? What happened to the reasonable

1 suspicion that a crime has just been committed or is in
2 the course of being committed?

3 MR. PARKHURST: Well, the first prong of the
4 Terry analysis, justice Ginsburg, is whether the
5 officer's action is justified at its inception, and one
6 way that it may be justified is if the officer possesses
7 suspicion that criminal activity is afoot. But we also
8 know from other case law that another way the officer's
9 actions may be justified is during a traffic stop where
10 there's no criminal activity.

11 JUSTICE SCALIA: Of course, for a Terry --
12 for a Terry pat down you don't need, do you, articulable
13 suspicion that the person is armed and dangerous? So
14 long as you have a suspicion of unlawful activity, you
15 can stop the individual and pat down. Do you have to
16 have, in addition to stopping the individual, an
17 articulable suspicion that he is armed and dangerous?

18 MR. PARKHURST: I believe that's what Terry
19 says, that you --

20 JUSTICE SCALIA: Both armed and dangerous?

21 MR. PARKHURST: Yes.

22 JUSTICE SOUTER: Well, in your view if an
23 officer was going down the street and he saw an
24 individual as to whom he had no suspicion a crime was
25 being committed, had been or was about to be, but he

1 said that guy looks like trouble for anybody who has
2 anything to do with him, so he goes up to him and he
3 says, I want to talk to you, and because he has
4 reasonable suspicion that the individual looks like
5 trouble, he pats him down. Is that a good pat down?

6 MR. PARKHURST: Well, he would also have to
7 possess articulable reasons that a prudently -- a
8 reasonably prudent person would be satisfied with that
9 this person is an immediate danger to him.

10 JUSTICE SOUTER: The individual gives him --
11 gives him mean looks and he has a bulge of something on
12 his hip.

13 MR. PARKHURST: Well, that could very well
14 support a pat down.

15 JUSTICE GINSBURG: Then you are doing away
16 with the first Terry factor. There are two factors
17 recognized: One, reasonable, articulable suspicion that
18 a crime is afoot; and two, this person is reasonably
19 suspected of being armed and dangerous. Your answer to
20 Justice Souter suggests that you don't need the first
21 one, you don't need to have any suspicion that a crime
22 is afoot; it's enough that you reasonably suspect that
23 the person is armed and dangerous.

24 MR. PARKHURST: What I'm suggesting, Justice
25 Ginsburg, is that the first prong of Terry is much

1 broader than just suspicion of criminal activity.

2 JUSTICE SOUTER: No, but in my hypothesis
3 there was nothing that would satisfy the first prong of
4 Terry. There is no lawful traffic stop, there is no
5 indication that the individual has committed a crime or
6 is about to or is doing so. So, so -- so Terry one is
7 blank in my hypothesis, and you nonetheless conclude
8 that as a result of dirty looks and the bulge of a
9 probable gun on the hip, the officer can in effect
10 initiate the action with the individual and pat him
11 down.

12 MR. PARKHURST: What I'm suggesting, Justice
13 Souter, is that in the officer's community caretaking
14 function the officer is authorized to approach an
15 individual that he thinks is trouble, and in the course
16 of asking neutral questions, if the officer believes
17 that this person is immediately dangerous to the
18 officer, then a pat-down would be appropriate in that
19 instance. I'm not --

20 JUSTICE ALITO: Doesn't the officer need --
21 justification for a stop, for a Fourth Amendment
22 seizure, whether because of a traffic violation or
23 because of suspicion of criminal activity; and then in
24 addition to that, reasonably believe that the person is
25 dangerous? I thought that would be -- I thought that

1 was your argument.

2 MR. PARKHURST: Well --

3 JUSTICE ALITO: In the context of a traffic
4 stop, you don't need, as to the passenger and the
5 driver, you don't need suspicion of criminal activity.
6 The person has been seized as a result of the stop, and
7 then if you add on to that the reasonable suspicion of
8 danger to the officer, that would be sufficient.

9 MR. PARKHURST: What I'm saying, Justice
10 Alito, is that in this particular case we certainly have
11 a legitimate stop, and under Brendlin we also know that
12 the passenger is seized during a reasonably routine
13 traffic stop until the passenger is released. So what
14 we have here is a presumption that the officer has the
15 authority to control the passenger during the routine
16 traffic stop, and we also have an instance in a traffic
17 stop where an officer cannot avoid the individual, be it
18 a driver or passenger. So in our case it seems like to
19 the easy case where Mr. Johnson and Officer Trevizo were
20 placed in close proximity, she detected things about him
21 that she believed made him a threat to her, an immediate
22 threat, and therefore all we're asking in our case is
23 that she be -- she have the entitlement under the Fourth
24 Amendment to pat him down.

25 JUSTICE GINSBURG: But Officer Trevizo

1 herself testified that she thought the seizure part was
2 over. She asked him would he get out of the car, and
3 then she said -- I think she used the word "consensual"
4 herself, that it was a consensual encounter.

5 MR. PARKHURST: Well --

6 JUSTICE GINSBURG: That after the initial
7 seizure was over, and then she wanted to question him
8 about gang, his gang affiliations -- and didn't she
9 testify? I seem to remember she did, and she said it
10 was voluntary.

11 MR. PARKHURST: She said that he could have
12 refused to get out of the car. There's two things about
13 that, Justice Ginsburg. One is we don't need to credit
14 necessarily the officer's own subjective beliefs as to
15 the -- whether the subject was free to leave or not.
16 The second thing is, we know from Brendlin that unless
17 the officer has given or the individual has asked for
18 permission to leave, there's -- there is really no
19 release. So Officer Trevizo was certainly entitled to
20 enter a consensual conversation with Mr. Johnson during
21 the lawful seizure, but there was no indication that he
22 was free to leave. Moreover, even if he reasonably felt
23 free to leave, it's irrelevant to whether he reasonably
24 posed a danger to the officer.

25 JUSTICE KENNEDY: I guess what you're saying

1 is that if there is a stop of the passenger and an
2 interrogation of the passenger, the passenger can't say,
3 incidentally, this is consensual, and thereby avoid a
4 pat down?

5 MR. PARKHURST: Correct, correct, and
6 whether or not --

7 JUSTICE KENNEDY: And it seems to me there
8 is some indication that that's what happened here if you
9 credit the police officer's testimony.

10 MR. PARKHURST: Right. Certainly --

11 JUSTICE KENNEDY: In other words, you can
12 have consent within the context of a stop that has not
13 yet ceased.

14 MR. PARKHURST: Correct. It would be
15 analogous to, say, a, an inmate in a prison offering to
16 give information to one of the prison guards. There's
17 no question that the inmate is still in custody, even
18 though the conversation itself is consensual.

19 JUSTICE STEVENS: May I ask if your view of
20 the law that, if the officer is pretty sure that the
21 person he's having a consensual encounter with has a gun
22 -- he could see the bulge or something -- is that
23 sufficient or does he have to have some proof that the
24 person is about to use the gun?

25 MR. PARKHURST: It would be -- in the

1 context of a traffic stop because of all the unknowns
2 that an officer must face, a bulge is usually sufficient
3 to justify a pat down.

4 JUSTICE STEVENS: What about just meeting on
5 -- on the street, the officer meets the man on the
6 street and asks him where he's going or something like
7 that, and he sees a -- a bulge in the pocket that
8 convinces the officer he has a gun, but that's all.
9 That's the only evidence of a threat to the officer. Is
10 that enough?

11 MR. PARKHURST: In that instance, it may be
12 the prudent course to at least ask whether the person is
13 armed. On a -- on a random --

14 JUSTICE STEVENS: What if he says "yes"?

15 MR. PARKHURST: Well, then the officer could
16 ask something along the lines of whether he has a permit
17 to carry a gun. And whether or not the person has a
18 permit to carry the gun or is lawfully in possession of
19 the gun, it's a matter of basically the totality of the
20 circumstances whether --

21 JUSTICE SCALIA: Well, but I -- I thought
22 you said that there has to be an articulable suspicion
23 that he is armed and dangerous.

24 MR. PARKHURST: Right.

25 JUSTICE SCALIA: A bulge would not be enough

1 to conduct a pat down after a Terry stop, therefore.

2 MR. PARKHURST: That's exactly -- exactly
3 what I'm --

4 JUSTICE SCALIA: Well, then why should it be
5 enough to -- to justify a pat down here?

6 MR. PARKHURST: Well, because -- well, there
7 was no bulge in this case. However, it's a matter of
8 all the factors. It's a weighing of all the factors.

9 JUSTICE SCALIA: No, I understand. I weigh
10 all the factors, and there's nothing but a bulge.

11 MR. PARKHURST: Okay. Well, it's a matter
12 of whether you believe that the person is dangerous.

13 JUSTICE SCALIA: Okay. So the bulge alone
14 -- Well, whether I believe? There has to be, you know,
15 a reasonable basis for --

16 MR. PARKHURST: Right.

17 JUSTICE SCALIA: -- an articulable basis for
18 the belief, right?

19 MR. PARKHURST: Yes.

20 JUSTICE SCALIA: So I don't see why a bulge
21 alone would -- would satisfy.

22 MR. PARKHURST: Well, in Mimms it was just a
23 bulge in the -- the driver's jacket that justified the
24 pat down. However, a person may possess a gun lawfully,
25 and that person may or may not be a danger. For

1 instance, an off-duty police officer, they often carry
2 their sidearms with them.

3 They are not going to -- even if another
4 officer knows that they're armed, they don't perceive
5 them as a danger, and therefore no pat down is going to
6 ensue.

7 JUSTICE SCALIA: We have a whole separate
8 line of cases apart from the Terry stop cases which
9 allow officers to protect themselves by conducting a
10 search of the surrounding area when they arrest
11 somebody. And that justifies a pat down of the person
12 that they arrest also, doesn't it?

13 MR. PARKHURST: Yes.

14 JUSTICE SCALIA: Whether or not they think
15 that -- that he's about to -- to draw the gun and shoot
16 them.

17 MR. PARKHURST: Correct. It's -- it's a
18 matter --

19 JUSTICE SCALIA: Why wouldn't that line of
20 cases be extendible to this kind of a situation?

21 MR. PARKHURST: Well, it's a matter of
22 during a traffic stop, Brendlin even says that officers
23 must be able to exercise unquestioned command of the
24 situation.

25 JUSTICE SCALIA: Why -- why during a traffic

1 stop shouldn't they be able to ensure their own safety
2 by -- by patting down the people who have been stopped,
3 whether or not they have an articulable suspicion that
4 they are about to draw and shoot? But that's not what
5 you're proposing, is it?

6 MR. PARKHURST: Well, what I'm proposing is
7 the -- the standard Terry test. That --

8 JUSTICE SCALIA: Yes.

9 MR. PARKHURST: -- the suspicion must be
10 that they're armed and dangerous.

11 JUSTICE SCALIA: Why -- why go the Terry
12 route instead of the route that -- that covers search of
13 the area around the person who is arrested?

14 MR. PARKHURST: Well, I believe that this --
15 the facts of this case fall pretty much under Terry. A
16 -- a traffic stop will -- will impose circumstances that
17 you're not going to get in a -- in a normal street
18 encounter, because basically an officer -- we presume
19 that an officer has the authority to control any of the
20 occupants of a car. And "control" means not just
21 ordering them out as in *Mimms and Wilson*, but also
22 making sure that one of the occupants doesn't get behind
23 you while you're dealing with the traffic investigation.
24 It's -- it's --

25 JUSTICE GINSBURG: When -- when did this

1 end? You just said -- you said when the car is stopped
2 everyone is seized, the driver and the passengers as
3 well. The seizure ends at some point. Is that when the
4 driver is ticketed and the police cruise off or --

5 MR. PARKHURST: That's the normal situation,
6 and usually that's the analysis that bears on whether
7 the driver has given valid consent to a search of the
8 automobile or something like that. We -- we must bear
9 in mind that a pat-down search is not an evidence
10 search. This is not a full search. It's just a search
11 of the outer clothing for an immediately accessible
12 weapon.

13 JUSTICE STEVENS: General Parkhurst --

14 JUSTICE GINSBURG: Then how did the -- how
15 did the officer come up with the marijuana as well as
16 the gun?

17 MR. PARKHURST: Well, because once he was
18 arrested for the gun, then they did a search incident to
19 arrest.

20 JUSTICE STEVENS: General Parkhurst, I -- I
21 seem to be a little confused about the facts of this
22 case. I had the -- remember the testimony that she
23 thought the -- that the encounter had become consensual,
24 which meant that he was no longer -- in her view, no
25 longer under police custody. But are you also saying

1 she also thought he was about to assault her; and,
2 therefore, she was in danger?

3 MR. PARKHURST: She did not --

4 JUSTICE STEVENS: There is a substantial
5 difference between being both in danger and saying,
6 well, the arrest was all over.

7 MR. PARKHURST: No, she -- she did. She
8 believed that he posed an immediate danger to her based
9 on the numerous factors that she cited in her testimony.
10 So she was -- she was afraid. She was afraid from the
11 outset, as a matter of fact, because of the way that he
12 made eye contact with the officers.

13 However, we don't want our officers to avoid
14 their law-enforcement functions just because they're in
15 contact with a possibly dangerous person.

16 JUSTICE SCALIA: Why -- why had this
17 descended from a -- a seizure to a post-seizure
18 consensual encounter? Why was the seizure over?

19 MR. PARKHURST: Well, we're arguing that the
20 seizure was not over.

21 JUSTICE SCALIA: Well, it seems to me you're
22 -- you're acknowledging that she said that it was a
23 purely -- you're not arguing it as based on a purely
24 consensual encounter? I thought that that's what you --

25 MR. PARKHURST: No. No, Your Honor. We're

1 suggesting that the seizure had never ended in this
2 case. The Arizona court of appeals --

3 JUSTICE SCALIA: Even though she said so?

4 MR. PARKHURST: Correct, because we don't
5 have to necessarily take her word for that.

6 JUSTICE SCALIA: Okay.

7 MR. PARKHURST: That's a -- that's a legal
8 --

9 JUSTICE KENNEDY: The white light is on. I
10 don't want to -- but your opening argument that you
11 presented indicated that a seizure is not necessary.
12 You -- you wanted a further rule.

13 MR. PARKHURST: I -- well --

14 JUSTICE KENNEDY: If the officer believes
15 that a person is armed and might be dangerous, then they
16 can pat down. That's -- that's the rule that you
17 proposed, I thought.

18 MR. PARKHURST: We believe that that is
19 true. That's not the rule that necessarily arises from
20 the facts of this case, because we believe that there is
21 a seizure throughout the entire encounter, and that
22 there is really -- there is no question that, as a
23 seized passenger, Officer Trevizo could pat him down.

24 And unless the Court has any other
25 questions, I would like to reserve the rest of my time.

1 CHIEF JUSTICE ROBERTS: Thank you, counsel.
2 Mr. Heytens.

3 ORAL ARGUMENT OF TOBY J. HEYTENS
4 ON BEHALF OF THE UNITED STATES,
5 AS AMICUS CURIAE,
6 SUPPORTING THE PETITIONER

7 MR. HEYTENS: Mr. Chief Justice, and may it
8 please the Court:

9 The decision in this case should be reversed
10 for one of two independent reasons. First, at the time
11 that Officer Trevizo performed this frisk, the Arizona
12 Court of Appeals erred when it held that the seizure
13 that had been caused by the initial traffic stop was
14 already over. This seizure was still ongoing at the
15 time of the frisk.

16 Second, regardless of the answer to that
17 question, under this Court's decisions in *Mimms* and
18 *Wilson* it is constitutionally reasonable for a police
19 officer to order any occupant out of a vehicle during a
20 lawful traffic stop and to frisk that individual if the
21 officer has a reasonable suspicion that that individual
22 is armed and presently dangerous to the officer. In
23 this case --

24 CHIEF JUSTICE ROBERTS: Do you agree that
25 there is a point at which the encounter initiated by the

1 traffic stop changes in some way that a pat down is no
2 longer justified?

3 MR. HEYTENS: We certainly agree, Mr. Chief
4 Justice, that at some point the encounter is over, and
5 that if it is in fact not over, the --

6 CHIEF JUSTICE ROBERTS: Well, if the
7 encounter is -- by "the encounter is over," do you mean
8 that they separate; they're no longer together? My
9 question is whether or not it's a continuing encounter
10 but transforms somehow in its quality so that the pat
11 down is no longer justified.

12 MR. HEYTENS: We agree that at some point a
13 seizure can morph into a consensual encounter. We don't
14 have any dispute with that. We would say that the
15 fundamental reality of this situation is what the Court
16 recognized in Brendlin, which is that at the time the
17 car pulls over a reasonable person would understand
18 himself to not be free to leave unless and until the
19 police officer says something that makes fairly clear
20 that the seizure is over and he's free to go.

21 CHIEF JUSTICE ROBERTS: I suppose there is
22 an argument, anyway, that even though the initial
23 seizure is over, the consensual encounter continues.
24 And at some point the officer, as a result of whatever
25 happens during that consensual exchange, becomes

1 concerned for her safety.

2 MR. HEYTENS: Absolutely, Mr. Chief Justice,
3 and that's our second argument, which is at the end of
4 the day we don't think it matters whether he's seized.
5 Because whether he's seized or not, this is still a
6 roadside encounter with a person who was a passenger in
7 a vehicle that was --

8 JUSTICE STEVENS: Let me ask you, suppose
9 it's a roadside encounter in which the driver is
10 changing a flat tire and the officer stops and wants to
11 talk to him for a while and then he suddenly thinks,
12 well, maybe this guy's armed. Is it okay for him to go
13 ahead and search him?

14 MR. HEYTENS: Well, I guess the first thing
15 I want to say, Justice Stevens, is that it's not okay to
16 think, maybe he might be armed. The officer has to have
17 articulable suspicion.

18 JUSTICE STEVENS: Well, Maybe he has an
19 articulable suspicion.

20 MR. HEYTENS: Okay. Under those
21 circumstances we think absolutely, and we think your
22 hypo --

23 JUSTICE STEVENS: Is that any different from
24 meeting somebody on the -- on the street corner?

25 MR. HEYTENS: It is different in the sense

1 that --

2 JUSTICE STEVENS: The flat -- my flat tire
3 example.

4 MR. HEYTENS: It is different because it's a
5 roadside encounter, and this Court has recognized again
6 and again and again --

7 JUSTICE STEVENS: But those are roadside
8 encounters after a traffic violation.

9 MR. HEYTENS: I -- I agree with you, Justice
10 Stevens, which is why at the end of the day we don't --
11 we think that the officer, in basically those facts,
12 should be able to perform a frisk on the street as well.
13 I guess just -- again to say, I don't think the Court
14 needs to reach that issue, because I --

15 JUSTICE STEVENS: You don't rely at all on
16 the fact this is a traffic stop?

17 MR. HEYTENS: We do rely on the fact --

18 JUSTICE STEVENS: On your second point, that
19 is.

20 MR. HEYTENS: We think this case is
21 substantially easier because it's a traffic stop,
22 because --

23 JUSTICE STEVENS: Why is it easier?

24 MR. PARKHURST: Because this Court has
25 recognized again and -- let me give you the example of

1 Wilson. Wilson is the case where the Court holds that
2 it is per se reasonable for an officer to order a
3 passenger to get out of the car.

4 JUSTICE STEVENS: Yes, but those are all
5 cases in which there is a violation of law that preceded
6 the activity. I asked you about cases in which there is
7 nothing other than the officer's interest in patting
8 down the guy because he thinks he has a gun.

9 MR. HEYTENS: Justice Stevens, I think
10 Wilson is highly significant in this regard, because the
11 Court went out of its way in Wilson to point out that
12 there's no reason to suspect a passenger with any
13 illegal activity at all. The Court said you could
14 distinguish Mimms on the ground that with regards to the
15 driver you have suspicion that he's --

16 JUSTICE KENNEDY: No, I disagree with that.
17 The holding there was that the passenger was stopped,
18 the passenger was seized, so this was a pat down in the
19 context of an ongoing seizure.

20 MR. HEYTENS: Justice Kennedy, I guess I
21 would say we disagree with this. The Court didn't hold
22 until Brendlin that a passenger is seized by virtue of
23 the initial traffic stop. The Court went out of its way
24 in Brendlin to say that none of its previous decisions
25 had answered the question of whether the passenger is

1 seized by virtue of the original traffic stop. And the
2 Court didn't even identify --

3 JUSTICE KENNEDY: Well, even if that's true,
4 why don't we accept Mimms with the gloss of Brendlin?

5 MR. HEYTENS: We think that Brendlin is of
6 course absolutely correct, and we think the passenger
7 was seized, and we think fundamentally that's why this
8 case is fairly easy.

9 JUSTICE GINSBURG: But you say -- your brief
10 goes much, much further. And I'm looking at page 9
11 where you say: "Police have to be able to protect the
12 officer's safety from a person reasonably believed to be
13 armed and dangerous whenever the officer encounters that
14 person in a place where the officer has a lawful right
15 to be."

16 I read that to mean if the law -- the
17 officer is on the street, in a pub, any place where he
18 has a lawful right to be, that officer can, on the basis
19 of a suspicion of armed and dangerous, pat down, and you
20 don't need the first Terry. It's only -- it's only the
21 armed and dangerous.

22 MR. HEYTENS: Justice Ginsburg, we agree
23 that that is ultimately the correct Fourth Amendment
24 rule. But what we're saying is that the Court doesn't
25 need to decide whether it agrees with us on this

1 point -- that point, excuse me, to resolve this case,
2 because there are two very important distinctions
3 between this case and that one.

4 The first one is that we know that Mr.
5 Johnson was seized. This was not a consensual
6 encounter. We know under this Court's holding in
7 Brendlin that there was a seizure of Mr. Johnson in this
8 case. And the question is whether anything happened in
9 this case to unseize him; and we think that the answer
10 to that question is clearly no.

11 And then the second reason is this Court has
12 recognized over and over again that traffic stops pose
13 unique heightened dangers to police officers, and so
14 regardless of what the rule is outside the traffic
15 stop --

16 JUSTICE STEVENS: But you'd apply the same
17 rule if the -- if the officer just stopped to help the
18 guy change his tire.

19 MR. HEYTENS: We do think that at the end of
20 the day, Justice Stevens, the overriding command of the
21 Fourth Amendment is that a police officer's conduct must
22 be judged by a reasonableness standard, and we think
23 that overriding command allows police officers to take
24 limited and appropriate steps to protect their own
25 safety.

1 JUSTICE SOUTER: But I take it, if I
2 understood your earlier answer, you would extend the
3 application of the rule as you understand it to the
4 encounter simply on the sidewalk by a police officer who
5 has no suspicion that the individual he wants to talk to
6 has been, is or is about to commit a crime, but if the
7 officer chooses to initiate the conversation, he then,
8 in effect, if he can articulate any suspicion, like
9 we'll say the dirty look and the bulge on the side, he
10 can go ahead and pat down. Is that -- is that your
11 view?

12 MR. HEYTENS: At the end of the day, Justice
13 Souter, that is our view. I think that case is harder
14 than this case, and let me explain why.

15 It seems like the argument on the other side
16 is predicated expressly on the notion that unless a
17 police officer has suspicion of crime, he can just avoid
18 dangerous people, like any of the rest of us can choose
19 to avoid them.

20 JUSTICE STEVENS: May I ask you if the
21 Department of Justice has ever taken this position
22 before?

23 MR. HEYTENS: I'm not aware of whether we
24 have had to take this position before, Justice Stevens.

25 JUSTICE STEVENS: I'm asking you whether you

1 have. You don't think they have, do you? It's a rather
2 extreme position.

3 MR. HEYTENS: I'm not aware of whether we
4 have taken this position or not in any previous case,
5 because I'm not aware of any case that raises the issue
6 that's raised by the going up to someone on the street
7 hypothetical.

8 We have certainly consistently taken the
9 position that in the context of traffic stops it is
10 constitutionally reasonable for police officers to
11 perform Terry frisks whenever they have reason to
12 believe that their safety is in danger. As I was saying
13 to Justice Ginsburg, I think -- excuse me, Justice
14 Souter, I believe -- I think the problem in the
15 hypothetical where the officer goes up to someone on the
16 street, it's predicated under the assumption that the
17 police officer, like you and me, should just avoid
18 dangerous people.

19 We think that's fundamentally wrong about
20 what the nature of a police officer's job is.

21 JUSTICE SOUTER: Well, there's something
22 fundamentally wrong probably about that, but the --
23 the -- I think the problem that sort of drives the
24 questioning is that if you extend the rule as far as you
25 want to extend it, we have to take into consideration

1 that the standard of articulable suspicion is the
2 standard that, in practical terms, can pretty well
3 always be met.

4 You can -- you know Benjamin Franklin's
5 remark, it's great to be a reasonable person because you
6 can think of a reason for anything you do. And that's
7 what's driving, at least driving my questions.

8 MR. HEYTENS: Well, I certainly would add,
9 Justice Souter, that it has to be a reasonable person.
10 It's not that a police officer can recite some reason.
11 It's whether a reason that a reasonable person in that
12 position would find reasonable.

13 JUSTICE SOUTER: Yeah, but what the officer
14 cites is going to be a matter of fact, and the facts at
15 that point are gone, they're in the past. And all
16 you've got is the officer saying, you know, this is --
17 this is what I perceived. And maybe you've got the a --
18 defendant somewhere saying, oh, no, it wasn't like that.
19 But in a -- in a situation like that, if articulable
20 suspicion, in effect, can justify a sidewalk pat down
21 without any articulation of a basis to think crime is
22 afoot, then you've got a -- you've got a pretty wide
23 open standard in the real world.

24 MR. HEYTENS: Well, I guess, Justice Souter,
25 to the extent you're concerned about that, I would say

1 the same thing is true about whether you have
2 articulable suspicion of criminal activity, and the
3 Court has decided that that risk is worth, you know,
4 dealing with under the context of that question. So I
5 don't really understand why in principle articulable
6 suspicion of armed and dangerousness is any different.

7 I would also say that in this case,
8 regardless of whether there will be hard cases, the
9 decision that this Court is reviewing is expressly
10 predicated on the view that Officer Trevizo had
11 reasonable suspicion Mr. Johnson was armed and
12 dangerous. That's on pages 13 and 14 of the petition
13 appendix.

14 It is also the predicate of the question on
15 which this Court grants review. The question which this
16 Court granted review presupposes that she had a
17 reasonable suspicion.

18 Thank you very much.

19 CHIEF JUSTICE ROBERTS: Thank you, counsel.

20 Mr. Pincus.

21 ORAL ARGUMENT OF ANDREW J. PINCUS

22 ON BEHALF OF THE RESPONDENT

23 MR. PINCUS: Thank you, Mr. Chief Justice,
24 and may it please the Court:

25 I think the other side made clear that its

1 principal argument is that Terry should be revisited and
2 that the two tests that Terry prescribed for a pat-down
3 search, that there be reasonable suspicion that crime is
4 afoot and reasonable suspicion of armed and dangerous,
5 should be revised so that all that is required for a
6 pat-down search is the second Terry standard.

7 CHIEF JUSTICE ROBERTS: What if -- we've
8 been talking about the officer approaching somebody on
9 the street who has the bulge in his pocket, what if the
10 person with the bulge in his pocket approaches the
11 officer? Can the officer at that point, even if he has
12 no suspicion that crime is afoot, conduct a pat down?

13 MR. PINCUS: No, I don't think so, Your
14 Honor. I think that --

15 CHIEF JUSTICE ROBERTS: This is -- this is
16 like the rule in the Old West that the sheriff has to
17 wait for the defendant to draw first?

18 MR. PINCUS: No, I think the officer can --
19 it's -- I think it's important to make clear that the
20 sliver of cases we're dealing with here are cases where
21 there is a reasonable suspicion of armed and
22 dangerousness but not a reasonable suspicion that
23 crime -- criminal activity is afoot.

24 CHIEF JUSTICE ROBERTS: So in response to my
25 --

1 MR. PINCUS: If there really is --

2 CHIEF JUSTICE ROBERTS: One moment. In
3 response to my hypothetical, even though the officer
4 reasonably thinks he is in a situation where he could be
5 shot, he can't do anything about it, not even a simple
6 pat down, even though he did not initiate the contact,
7 somebody comes up to him?

8 MR. PINCUS: If he reasonably believes he
9 could be shot, Your Honor, then probably there is
10 reasonable suspicion of criminal -- that criminal
11 activity may be afoot because he'll have --

12 CHIEF JUSTICE ROBERTS: No, no, let's just
13 say it's like this case: The guy's coming up, he's
14 wearing the colors of the Crips gang and he has a bulge
15 in his pocket. It's not a crime to wear that type of
16 clothing; it may not be a crime to have a bulge in your
17 pocket; but he nonetheless has a reasonable suspicion
18 that he's being -- he's in a threatening situation, even
19 though he has no basis for thinking that a crime is
20 being committed.

21 MR. PINCUS: Well, Your Honor, I think this
22 goes a little bit to Justice Souter's comment in the
23 first part of the argument. These two standards are --
24 are somewhat -- are mutually reinforcing, as we discuss
25 in our brief. And if, indeed, as here, the State is

1 only arguing armed and dangerousness, and not arguing
2 that criminal activity is afoot, it's clearly putting
3 itself at the low end of the armed and dangerous.

4 JUSTICE GINSBURG: But that's not -- Mr.
5 Parkhurst said in his opening that the traffic stop is
6 the equivalent of the articulable suspicion that a crime
7 is the equivalent of the articulable suspicion that a
8 crime is afoot. It justifies this stop, and then you
9 have to have something further to justify the pat down,
10 but the car, the seizure of the car and its passengers,
11 that is the equivalent of the first Terry. And why
12 isn't that so? It's a stop; it's a legitimate stop.

13 MR. PINCUS: I think that you're right,
14 Justice Ginsburg, that's the second argument that they
15 make, and our answer to that argument is that we don't
16 think that Mr. Johnson was seized at the time the pat
17 down occurred, as the court of appeals here found. The
18 other side seems to ignore the fact that there is an
19 actual determination by the court of appeals, looking at
20 the facts of the situation, that there wasn't a seizure.
21 And so--

22 JUSTICE SOUTER: Can we pursue that for a
23 minute. What -- I guess -- we -- we all start with the
24 common assumption that -- that there was at least a
25 legitimate stop to start with.

1 MR. PINCUS: Yes.

2 JUSTICE SOUTER: And my -- my question which
3 -- which goes to who was right about whether the
4 seizure, the legitimate seizure had stopped and the
5 consensual encounter had begun, my question is what is
6 it beyond the conclusory statement of the officer that
7 in effect justifies drawing that conclusion that the
8 stop was over?

9 MR. PINCUS: Well, a couple of things, Your
10 Honor. First of all, the Court has never discussed, but
11 in Wilson it actually reserved the question, of what is
12 the duration of the seizure of a passenger.

13 JUSTICE SOUTER: Do we have -- do we have
14 any evidence about duration here?

15 MR. PINCUS: We don't have any duration, but
16 the question -- I think an important question is does
17 the seizure of the passenger necessarily in all cases
18 coextend with the seizure of the driver? This stop was
19 in an urban area. It might be one thing if it's a stop
20 on a highway where there's really no place for the
21 passenger to go. This was a stop in a -- and where
22 there are concerns about the safety of a passenger who
23 is allowed to wander off and the potential liability of
24 the police. Here the stop was in an urban area, and --
25 and if the Brendlin says that initially clearly the

1 passenger was seized, the question is how long does that
2 -- that seizure last?

3 JUSTICE SOUTER: If in my -- my problem in
4 this case, I guess, in taking your position is, I don't
5 think we have got an evidentiary basis to conclude that
6 what we start by assuming is a legitimate stop has in
7 fact run its course. I don't see how we can draw that
8 conclusion. That's what I'm getting at.

9 MR. PINCUS: Let me pick up some of the
10 factors we rely on, Your Honor. First, just as a legal
11 matter, the Court has said in Caballes and other cases
12 that the scope of a Fourth Amendment intrusion turns on
13 the purpose. Here we say the scope of the seizure of
14 the passenger should turn on the ability to secure the
15 scene. If the passenger is not involved in what -- in
16 the facts that gave rise to the stop -- if it's clear,
17 for example, quickly that the passenger doesn't own the
18 vehicle, the reasons that -- the driver owns the
19 vehicle, the stop, the basis for the stop relates to the
20 passenger -- we don't see what the basis is for, in an
21 urban setting at least, for any further seizure of the
22 passenger.

23 JUSTICE SOUTER: Well, then, in other words,
24 you -- you are -- I -- I'll be candid with you. I would
25 have started with the assumption, based on Brendlin,

1 that if the stop of the car and its driver also effects
2 a stop and a seizure of the passenger, that you start
3 out with the assumption that the seizure of the
4 passenger is going to last for the same duration as the
5 seizure of the car and the driver unless you have a good
6 reason to draw some line and say, no, it doesn't. And I
7 take it that you are not making that initial assumption;
8 am I correct in that?

9 MR. PINCUS: We're not relying entirely on
10 -- on what I just said. But --

11 JUSTICE SOUTER: I think you're rejecting
12 it, aren't you?

13 MR. PINCUS: No, we're not relying -- we're
14 rejecting that assumption. We don't rest entirely on
15 the notion that the -- that the seizure of the
16 passengers as a matter of law has to end. We think
17 there are special facts here that show that -- that
18 support the idea that the seizure was over. But I think
19 one of them --

20 JUSTICE SOUTER: What are those -- what are
21 those special facts?

22 MR. PINCUS: Well, basically there was this
23 interaction separate from the interaction with the
24 driver to the extent the passenger -- Brendlin says the
25 passenger, one of the reasons the passenger would feel

1 that he or she is seized is because of his or her
2 relationship to the driver and to the stop here. This
3 interaction proceeded separately.

4 JUSTICE SOUTER: Are you saying -- are you
5 saying if there are a driver and a passenger and two
6 police officers, and one police officer is dealing with
7 the driver, saying, you know, where's your insurance
8 papers and so on, and at the same time the other officer
9 is questioning the -- the passenger -- are you saying
10 that that independent questioning of the passenger in
11 effect eliminates the -- the passenger's seizure as --
12 as following from the seizure of the driver?

13 MR. PINCUS: I think it's -- I think it's
14 part, as the lower court found here, it's part -- it's a
15 relevant circumstance. This is a totality of the
16 circumstance test. The court of appeals here looked at
17 that as one fact, looked at the officer's subjective
18 intention --

19 JUSTICE SOUTER: I -- I don't get it. Why
20 should the fact that an officer, a separate officer is
21 talking to the passenger, ultimately have anything to do
22 with the duration of the passenger's seizure, absent a
23 situation in which officer two says, "by the way, you're
24 totally free to go"? We don't have that kind of strange
25 situation. But short of a strange situation like that,

1 why does the conversation with the passenger have
2 anything much to do, have any bearing on the -- on the
3 length of the passenger's seizure?

4 MR. PINCUS: To the extent -- I think the
5 question here is what's -- one question is what's
6 communicated to the passenger.

7 JUSTICE SOUTER: Yes.

8 MR. PINCUS: If the officer had said in
9 turn, would you mind stepping out of the car so I can
10 ask you some questions unrelated to the stop about your
11 hometown, it seems to us that that statement by the
12 officer would provide some pretty strong indication that
13 the seizure was over and that this was a separate
14 investigation, having nothing to do with the seizure.

15 JUSTICE SOUTER: But we accept as hornbook
16 law when they are -- when the police are questioning one
17 individual whom they stopped, let's say for a traffic
18 violation, that during that period of seizure, the
19 reasonable period of seizure, the officer can ask
20 questions about other subjects, and that doesn't end the
21 seizure.

22 MR. PINCUS: Well, the Court has said that.

23 JUSTICE SOUTER: Like the -- passenger.

24 MR. PINCUS: The Court has said that the
25 officer can ask those questions, but the Court hasn't

1 said what the impact of that is on the seizure. And
2 Here the officer certainly believed that her conduct and
3 her words and her conversation, which we don't know how
4 long it lasted or if there were a number of questions,
5 communicated to the -- to the individual, to Mr.
6 Johnson, the idea that this was a consensual encounter.

7 JUSTICE SOUTER: I don't want to -- I don't
8 want to take up your whole argument on this hobbyhorse
9 of mine, but I mean my -- my only problem is, I don't
10 see that we have got an evidentiary basis here to say
11 that because of the duration or the mere fact of the
12 questioning, there is a reason to say that as to the
13 passenger, a reasonable passenger could say I am no
14 longer seized, and -- and this encounter is totally
15 consensual.

16 The -- the officer testified, no question
17 about it, but the test is subjective.

18 MR. PINCUS: It is subjective. And I guess
19 I would also point, Your Honor, to the Court's decision
20 in Drayton, which dealt with the question in a somewhat
21 different context, at a bus search, and whether or not
22 passengers on a bus would feel that they were seized
23 when there were officers in the front of the bus and
24 they were asking questions. And to us, although this is
25 obviously the converse, a lot of the analysis in

1 Drayton, which showed that -- which concluded that there
2 wasn't a seizure there, because of the -- because people
3 ultimately would feel free to come and go, given the
4 nature of the interaction --

5 JUSTICE GINSBURG: And then don't you lose
6 under that line of cases? This is the picture that the
7 officer was painting, or I thought was, to bring this
8 within the "Mind if I search your luggage" category of
9 cases.

10 MR. PINCUS: Right.

11 JUSTICE GINSBURG: So -- she's got consent.
12 She doesn't have to -- she says, he said okay, he would
13 get out and talk to me; he said okay when I began to pat
14 him down; it's only in the middle of it he began to
15 wriggle a little bit.

16 MR. PINCUS: I think it's quite clear,
17 Justice Ginsburg, that there's no question here that --
18 that there was a consent to the pat down. I think the
19 lower courts have concluded and the other side hasn't
20 sought review that there was no consent to the pat down
21 here.

22 I think the reason that Drayton is -- is
23 relevant is that that's a case where the question for
24 the Court was would these people feel free to terminate
25 the encounter; and the Court concluded yes, they would.

1 And we think, given the different
2 situation of the passenger, it's true that -- that
3 Brendlin found the passenger seized. To some extent
4 that was to give the passenger a shield, not to be used
5 as the sword for further interrogation of the passenger.
6 It recognized the reality that at the outset surely the
7 passenger is seized.

8 CHIEF JUSTICE ROBERTS: You're giving up a
9 shield here, I take it? If instead of a pat down, the
10 officer said, where were you last night at 10:00
11 o'clock, without Miranda warnings, you would say, well
12 that's just -- that's just fine?

13 MR. PINCUS: Well, you know, Berkemer says,
14 in the context even of a traffic seizure, Miranda
15 warnings aren't necessarily necessary. But what we are
16 saying is that, given the different basis for the
17 seizure here, it's that initial conclusion that at the
18 outset, yes, but that person, unlike the -- unlike the
19 driver, who is the target of the police activity and
20 therefore a reasonable conclusion for the driver is he's
21 seized until the end of that activity, the passenger is
22 not the target of the traffic stop.

23 JUSTICE BREYER: What are the facts that
24 show that a reasonable person in the passenger's
25 position would have believed himself free to terminate

1 the encounter?

2 MR. PINCUS: I'm sorry, Justice Breyer --

3 JUSTICE BREYER: What are the facts that
4 show that the person who was searched, which is Mr.
5 Johnson -- is that right?

6 MR. PINCUS: Yes.

7 JUSTICE BREYER: Well, what are the facts
8 that suggest that he thought he was free to terminate
9 that encounter with the police?

10 MR. PINCUS: That the -- that the
11 interaction with the officer had nothing to do with the
12 subject of the stop.

13 JUSTICE BREYER: All right. I would say
14 we've held a lot that that's just beside the point. If
15 you stop a car for a traffic stop, you can search it for
16 all kinds of things. You can do all kinds of things not
17 related. So if that's what they're relying on, I
18 suspect that that's not right, that it had to do with a
19 different subject matter.

20 MR. PINCUS: Well, I --

21 JUSTICE BREYER: Say I was lawfully stopped.
22 All right. Go ahead. I want to get all of them in
23 front of me.

24 MR. PINCUS: That the officer herself
25 believed that she had communicated the fact that the

1 interaction was voluntary.

2 JUSTICE BREYER: The question is, how did
3 she do that?

4 MR. PINCUS: Well --

5 JUSTICE BREYER: She said, "You can leave
6 whatever time you want"?

7 MR. PINCUS: She did not do it that way.

8 JUSTICE BREYER: No. No.

9 MR. PINCUS: Although the courts --

10 JUSTICE BREYER: So you're standing there
11 and the policeman is in front of you, and they have
12 stopped the car, and the woman who is the policeman
13 says, "I want to search you." Do you think you're free
14 to leave?

15 (Laughter.)

16 MR. PINCUS: No, Your Honor, but --

17 JUSTICE BREYER: Okay, then. So now we have
18 got two of them. What's the third?

19 MR. PINCUS: Well, the third is that it was
20 in -- it was not a road stop in an abandoned area, where
21 a --

22 JUSTICE BREYER: No, it was on the highway.

23 MR. PINCUS: No, it was in an urban area,
24 actually.

25 JUSTICE BREYER: It was in an urban area.

1 Okay. You're stopped in an urban area. The policeman
2 says you are stopped, and you are stopped lawfully.
3 Will you get out of the car? Yes. The policeman begins
4 to search for the -- the gun. Fine. You think you're
5 free to leave?

6 MR. PINCUS: Well, obviously it wasn't --

7 JUSTICE BREYER: What's the fourth? What's
8 the fourth? I just want to get them all out here. Is
9 there anything else?

10 MR. PINCUS: I think we've gotten them all
11 out onto the table.

12 JUSTICE BREYER: Okay. So, what they say is
13 a reasonable person would have found -- felt that he
14 could just say good-bye, and he would have felt this
15 even though the car was stopped lawfully, she asked him
16 to get out of the car, and she began to search him for a
17 gun.

18 MR. PINCUS: Well, Your Honor --

19 JUSTICE BREYER: I say, can we not reverse
20 that?

21 MR. PINCUS: Well, Your Honor, a couple of
22 things. I don't think the question is at the moment --
23 clearly, at the moment she was conducting the pat-down
24 search, he was seized. But if that were the test, then
25 even in the -- in the Terry situation, the person is

1 obviously in fact seized at the time that the pat-down
2 search is conducted, but that's not -- the question is
3 whether there was, in the moments before, there was a
4 basis to immobilize that person.

5 JUSTICE BREYER: No, I'm saying if the
6 question is whether the person reasonably thought at the
7 time of the search he could leave, there's certainly a
8 strong claim here that he could not reasonably or he did
9 not reasonably think he could leave. As long as that is
10 so, the issue in front of us is when you stop a person,
11 a policeman in the course of your duties, and that
12 person thinks that he cannot reasonably leave, and you
13 believe reasonably that he's armed, can you pat him
14 down? Well, asked that way, certainly a strong
15 argument, the answer is yes, if you don't want to be
16 killed.

17 MR. PINCUS: Well, I guess a couple of
18 answers to that, Justice Breyer. First of all, if this
19 is just a case about whether the lower court made a
20 correct determination about whether there was a seizure
21 or not, there's not -- maybe there's not much to the
22 case. We think the lower court did make the right
23 determination for the reasons that I gave. And I should
24 say, it seems -- it does seem to me, and I was trying to
25 get at this point in response to Justice Souter's

1 question, there are two related questions here. One is
2 what a reasonable person in Mr. Johnson's position would
3 believe? One is what is the authority of an officer in
4 terms of the duration for which a passenger may be
5 seized?

6 One answer --

7 CHIEF JUSTICE ROBERTS: Well, if you look at
8 the first part of that, what somebody in Mr. Johnson's
9 position would believe, how does he tell? I mean, even
10 if the other officer goes to the window and starts
11 asking the driver, "Can I see your insurance papers,"
12 there's no representation that's why we stopped you,
13 that's all we're interested in. They may have stopped
14 him because they have reason to believe that that car
15 was involved in criminal activity. They don't have to
16 disclose immediately what's involved.

17 So how can the passenger know why the
18 officer is stopping the person in the first place?
19 Hypothesize that he has been involved in criminal
20 activity. He may think, well, they've caught me and
21 they're just going through this charade to try to get
22 information about it and make the people feel
23 comfortable, whatever. I mean, just because he says,
24 "You don't have insurance papers," that's -- I don't
25 think it's reasonable for the passenger to say, "Oh,

1 this is not about me. I can get up and leave."

2 MR. PINCUS: Well, that may not be -- by
3 itself, it may not be enough. We think, together with
4 the other factors here, the fact --

5 CHIEF JUSTICE ROBERTS: Well, what else?

6 MR. PINCUS: Well, the fact that the officer
7 believed, therefore her tone, we have to assume, the way
8 she -- that she spoke and the way her subjective intent
9 indicated, that she believed what was going on here was
10 a conversation in an effort to get gang information --

11 CHIEF JUSTICE ROBERTS: He is supposed to
12 assume that it's not about him because of her tone?

13 MR. PINCUS: No, he was supposed to assume
14 that it was consensual because of her tone, because that
15 was her intent.

16 JUSTICE BREYER: Suppose we go beyond. I
17 mean, once we go beyond, I become a little at sea as to
18 what the answers are because policemen do things other
19 than investigate crime.

20 A policeman is on protective duty. The
21 individual he is protecting is approached by a member of
22 the Crips gang, who has a bulge in his pocket. Can the
23 police, with reasonable grounds to think that that
24 person is armed, pat down that person? Or is he
25 supposed to wait until the gun comes out of the pocket

1 and the person who is being protected is shot?

2 A policeman is on a bridge. Somebody stops
3 the car in the middle of the bridge. Traffic is held up
4 in all directions. The policeman goes to try to remove
5 the car from the bridge. In the back seat is a member
6 of the Crips gang with a bulge in his pocket. Is the
7 policeman supposed to ignore that?

8 I mean, policemen do many things, and once
9 you tell me that we're going beyond the facts of this
10 case, I can think of all kinds of hypotheticals that
11 aren't so hypothetical, and I become uncertain about
12 when the policeman can and when he cannot.

13 So, how do you respond?

14 MR. PINCUS: Well, Your Honor, I think that
15 -- first of all, a couple of reactions: First of all, I
16 think that it is important, and I alluded to this
17 earlier, the sliver of cases we're dealing with here are
18 cases in which there is reasonable -- allegedly a
19 reasonable suspicion that someone is armed and
20 dangerous, but not reasonable suspicion that criminal
21 activity is afoot. Those two standards are mutually
22 reinforcing. In most cases where there is serious
23 evidence that someone is armed and dangerous, you're
24 going to have a very -- almost certainly you will have a
25 reasonable suspicion that crime is afoot because the

1 dangerousness part requires -- means you'll have
2 suspicion of assault or some other kind of activity. So
3 I --

4 JUSTICE SCALIA: Mr. Pincus, I want to go
5 back to the previous subject for a minute. We certainly
6 didn't take this case to decide whether the passenger
7 was free to leave or not. That -- that was not the
8 issue on which we took the case. And you claim that
9 that issue has already been resolved by findings of the
10 lower courts?

11 MR. PINCUS: That the court of appeals here
12 determined -- its decision rested on the fact that this
13 was a consensual encounter.

14 JUSTICE KENNEDY: But that --

15 JUSTICE SCALIA: In order to contradict
16 that, would we have to find that that's clearly
17 erroneous?

18 MR. PINCUS: Well, I think it's a mixed
19 question of fact and law, Your Honor. So I think, with
20 respect to the underlying facts, you probably have to
21 find that --

22 JUSTICE BREYER: Is there any dispute on the
23 underlying facts?

24 MR. PINCUS: No --

25 JUSTICE BREYER: No.

1 MR. PINCUS: -- I don't think the underlying
2 facts are disputed.

3 JUSTICE STEVENS: Well, there is a dispute
4 as to whether the man thought he was free to leave.
5 That's a big dispute, isn't it?

6 MR. PINCUS: That is -- that is the disputed
7 question: Whether -- or whether a reasonable person in
8 his position --

9 JUSTICE STEVENS: Did he testify?

10 MR. PINCUS: No, not at the petition --

11 JUSTICE STEVENS: So nobody asked him
12 whether he thought he was free to leave -- which would
13 have solved a lot of problems.

14 (Laughter.)

15 CHIEF JUSTICE ROBERTS: Your hypothesis
16 about why she -- why he was free to leave is because of
17 the tone of the arresting officer? The tone of the --

18 MR. PINCUS: It's the totality of the
19 circumstances: The tone of the officer, the fact it was
20 in an urban area where there were some place --

21 CHIEF JUSTICE ROBERTS: And there's no
22 finding about the tone of the officer, right?

23 MR. PINCUS: Well, the officer herself
24 testified about what her intent was. And I think most
25 people, when they -- that's their intent, it's carried

1 through in how they interact with someone.

2 JUSTICE ALITO: Well, you keep emphasizing
3 that this is an urban area, and it seems to me that's
4 going to lead to a test that's impossible to administer.
5 I can think of a lot of circumstances in which the
6 passenger in a car that is stopped will not think for
7 practical reasons that there is much alternative but to
8 wait until the driver is permitted to get back in the
9 car and drive away.

10 All of those would fall under your urban
11 category, wouldn't they? If it's night -- suppose this
12 was a dangerous area. Suppose this was in an area that
13 was the turf of a rival gang, so it really wouldn't be
14 very practical for this person to start walking down the
15 street. There are not just urban areas and rural areas;
16 there are expressways in urban areas; there are suburban
17 areas.

18 MR. PINCUS: Well, Your Honor --

19 JUSTICE ALITO: All of those things would --
20 you would have to draw a line taking all of those things
21 into account.

22 MR. PINCUS: It -- it would be a factual
23 question in every case as it is in the typical Fourth
24 Amendment arrest case about whether someone is seized.

25 JUSTICE KENNEDY: Well, we didn't think it

1 was a factual question in -- in Brendlin. In Brendlin
2 we said even when the wrongdoing -- this is at page 7 --
3 even if the wrongdoing is only bad driving, the
4 passenger will expect to be the subject of some
5 scrutiny. And his attempt to leave the scene would be
6 so obviously likely to prompt an objection from the
7 officer that no passenger would feel free to leave in
8 the first place. And that's why we held there was a
9 seizure. You're basically arguing with the premise of
10 Brendlin.

11 MR. PINCUS: Well, Your Honor, I'm
12 absolutely not. I think Brendlin clearly holds that
13 there is a seizure at the outset. The question that
14 Brendlin does not explicitly address, and it's one the
15 Court explicitly --

16 JUSTICE KENNEDY: Brendlin says no passenger
17 would like -- would feel free to leave during the course
18 of the investigation. And -- and I would have to agree
19 with that as a -- as a common-sense matter.

20 It would be amazing to me that this fellow
21 said: I'm not going to talk to you anymore; I'm
22 leaving; and -- and the -- and the police officer would
23 allow it, particularly when the police officer, we know,
24 searched the person.

25 MR. PINCUS: Well, I don't -- I mean I think

1 it -- it may depend upon the other facts in that -- in
2 that situation, Your Honor.

3 JUSTICE BREYER: What are the facts? That
4 is, this happened quite close to the beginning of the --
5 of the stop, didn't it?

6 MR. PINCUS: We don't know.

7 JUSTICE BREYER: We don't know. I -- I read
8 this. But it said -- I mean I thought, from judging it,
9 that it did happen within a few minutes of the -- of the
10 beginning. They were still talking to the driver. We
11 know that.

12 MR. PINCUS: We -- we actually don't, Your
13 Honor.

14 JUSTICE BREYER: We don't?

15 MR. PINCUS: We don't. We know that the --
16 that the conversation seemed to be -- the interaction
17 seemed to have started shortly after the interaction
18 with the driver.

19 JUSTICE BREYER: Yes.

20 MR. PINCUS: We don't know how they -- how
21 long they --

22 JUSTICE BREYER: Well, is there any reason
23 to think it was half an hour?

24 MR. PINCUS: We just don't know. The -- the
25 record doesn't say. We don't know.

1 JUSTICE STEVENS: Do you agree that if you
2 -- if you lose on the seizure issue, you lose?

3 MR. PINCUS: Well, Your Honor, we think if
4 -- if there was a seizure, then -- then we think there
5 is a -- a second question, which is even if the person
6 was seized, it's not clear to us that the Court's
7 precedents say that -- that that automatically permits a
8 pat down on armed and dangerousness.

9 My friends rely on *Mimms*. The Court in
10 *Mimms* made very clear -- and, in fact, as we recite on
11 pages 31 to 32 of our brief -- footnote 5 in *Mimms* says
12 that the reason for the pat down there was that once the
13 driver alighted, the officer had independent reason to
14 suspect criminal activity and present danger. And it
15 was on that basis that the pat-down search was
16 permissible.

17 So the Court hasn't said that in the context
18 of a roadside stop, once you are seized in this, at
19 least for a passenger, somewhat different sense than a
20 Terry seizure based on articulable suspicion about that
21 person's criminal activity, that is enough. We think
22 the relevant standard there is supplied by the Court's
23 decisions in -- in *Summers* and associated cases, which
24 say the officer can control the scene, and that might
25 allow a pat-down search if that's what the officer is

1 trying to do.

2 JUSTICE SCALIA: I guess what about -- I --
3 I guess if we held that you could do this, this pat-down
4 search here, it would probably carry forward to any
5 other kind of seizure like a -- a roadblock to inspect
6 for drunken driving or anything like that?

7 MR. PINCUS: Well, that's -- that's part of
8 the concern, Your Honor.

9 JUSTICE SCALIA: We would say the same
10 thing: That if there is a passenger in that car, you
11 could tell the passenger to get out and conduct a
12 pat-down search.

13 MR. PINCUS: Yes, even though -- even
14 though, again, there is no particularized suspicion
15 about that passenger. So this is a pretty dramatic
16 expansion of the officer's ability to -- to search, and
17 we think it should be cabined very closely to those
18 situations in which there really is a threat of armed
19 and dangerous.

20 And as I was saying before, "armed and
21 dangerousness", "a reasonable suspicion that a crime is
22 afoot," are mutually reinforcing. If one isn't present,
23 if the State, as here, is arguing that one isn't
24 present, it tends to cast doubt on whether the other is
25 present.

1 CHIEF JUSTICE ROBERTS: Why isn't the -- why
2 isn't the "seizure" and the "consensual" aspect also
3 mutually reinforcing but kind of blurring into each
4 other? It seems to me it's an awfully difficult
5 decision for the officer to make. I stopped this
6 person. I know under Brendlin that he is seized, and
7 I'm engaged in a dialogue, and I have to worry that at
8 some point he thinks he is free to leave.

9 MR. PINCUS: I'm -- I'm not sure that I
10 understand what you are -- what you are getting at in
11 your -- in your question.

12 CHIEF JUSTICE ROBERTS: Well, you seem --
13 your argument assumes a fairly bright line between the
14 point at which the individual is seized and the point at
15 which the interaction becomes a consensual search. And
16 I'm just saying that in the running line of cases, that
17 line is going to be very blurry.

18 MR. PINCUS: As it is blurry when the -- in
19 the converse situation when the question is --

20 CHIEF JUSTICE ROBERTS: No. The converse
21 situation is that so long as the interaction continues,
22 it is a seizure, and the officer can take reasonable
23 steps, the pat down to protect, her safety. That
24 doesn't have a line-drawing issue.

25 MR. PINCUS: No, I'm talking about the

1 Drayton situation, Your Honor. When the -- when the
2 question is: Has a consensual interaction morphed into
3 a seizure, then there is also a -- a -- it's an
4 uncertain line. But the Court has said that there it's
5 a totality-of-the-circumstances test and, obviously --
6 sort of -- the shoes are all on the other feet there,
7 because the -- law enforcement doesn't want that to
8 happen. And so it's arguing that the facts don't amount
9 to a seizure, and here we're sort of in the converse
10 situation.

11 JUSTICE KENNEDY: You -- you don't concede
12 in this case, or do you, that Trevizo had a reasonable
13 suspicion that Johnson was armed and dangerous? That
14 has not been found for purposes of --

15 MR. PINCUS: Absolutely not. The lower
16 court assumed it for the purposes of decision --

17 JUSTICE KENNEDY: So even if you did not
18 prevail, we would have to remand on that point?

19 MR. PINCUS: Yes, that point would have to
20 be remanded so that the court below could address it.

21 Just to -- just to return to the final
22 point, the -- the sliver of cases we're talking about
23 here, "armed and dangerousness, but not crime afoot,"
24 it's a very small sliver. The government hasn't shown
25 that that's a real problem that has to be taken care of.

1 In fact, in this case if the officers really
2 had believed that -- that there was proof of "armed and
3 dangerousness," why wouldn't they have argued that they
4 had proof that crime was afoot, given that they knew
5 that Mr. Johnson was a felon? We think that the reason
6 that the State took that off the table was it doesn't
7 have a lot of confidence in --

8 JUSTICE BREYER: Is it lawful to possess a
9 firearm?

10 MR. PINCUS: If you're a convicted felon,
11 no?

12 JUSTICE BREYER: Was he convicted?

13 MR. PINCUS: He had admitted to the officer
14 that he had engaged in burglary. In fact, that's one of
15 the reasons to show that he's not dangerous is that he
16 was very forthcoming about the fact that he had a
17 conviction. So the fact that the State took that off
18 the table and didn't rely on it, we think, shows, (a),
19 that they don't have a lot of confidence that there's
20 real "armed and dangerousness" here. And so that the
21 "danger" in a systemic sense, as Justice Souter pointed
22 out, relying only on that prong as the basis for
23 cabining off, is discretionary. As justice Kennedy said
24 in a separate decision in Whren, it's very easy to -- to
25 conduct an unlawful search.

1 JUSTICE STEVENS: I have difficulty
2 accepting your suggestion that there is a sliver of
3 cases. It seems to me there are a multitude of cases in
4 which officers might suspect somebody is armed but not
5 think criminal activity is afoot, but decide they would
6 like to pat them down.

7 MR. PINCUS: I think it is the
8 "dangerousness" element, Your Honor. If they are "armed
9 and dangerousness," which is the test that the Court set
10 out in Terry and it is the test that my colleagues are
11 asking for, "dangerous," to me, connotes a threat to
12 someone. And it's a very small step, I think, between
13 being a threat to someone and having a reasonable
14 suspicion that an assault may be committed.

15 JUSTICE STEVENS: Do you argue in -- in all
16 of this that this guy was not dangerous?

17 MR. PINCUS: We -- we agree. We argue very
18 strenuously that he wasn't dangerous, but -- but I -- I
19 think the key point here is -- is that it -- it may well
20 be a sliver of cases, but removing the sort of mutually
21 reinforcing nature of these two tests threatens to
22 really downgrade the standard in a way that officer
23 discretion --

24 JUSTICE GINSBURG: How could he not be
25 dangerous? First, she said: I suspected him because he

1 was looking behind, but -- and then she said he was
2 wearing the clothes of a gang, and then he admits to
3 having been convicted of a burglary. Why isn't it very
4 normal for a person to be apprehensive?

5 MR. PINCUS: All right. Let me give three
6 quick answers to those. First of all, he looked -- this
7 was an unmarked car, Your Honor. I -- I think a -- a
8 very reasonable inference is he looked behind because he
9 was surprised that there were, all of a sudden, flashing
10 lights and a siren on a car.

11 The gang colors, as the lower court -- the
12 Court of Appeals here noted, although Mr. Johnson was
13 wearing blue, the driver was wearing red. If these were
14 really gang colors, it -- it -- it is not consistent
15 with the conclusion that they were gang colors to have
16 people of different colors who were rival gangs in the
17 same car.

18 And the third thing is, as lower courts have
19 found, acknowledging prior criminal convictions is a
20 basis for concluding that someone is not dangerous
21 because they were forthcoming.

22 CHIEF JUSTICE ROBERTS: Thank you.

23 JUSTICE SCALIA: Not so fast.

24 (Laughter.)

25 JUSTICE SCALIA: The "armed and dangerous"

1 requirement, does the "dangerous" requirement mean
2 endangering the policeman, or is it enough -- is it
3 enough if -- if you think this fellow is -- you know,
4 he's just a dangerous character. Is that enough, or
5 does it have to be an immediate threat to the policeman?

6 MR. PINCUS: I don't think this Court has
7 come down one way or -- or the other, Your Honor. I --

8 JUSTICE SCALIA: What do you think?

9 MR. PINCUS: It seems to me there -- there
10 is a requirement of immediate danger.

11 JUSTICE SCALIA: It's -- it's not enough if
12 you think he's -- he's Al Capone?

13 MR. PINCUS: I don't think if he's just a
14 fishy character, it's enough. I think the reason is
15 immediate threat to society.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.
17 Mr. Parkhurst, you have a minute remaining.

18 REBUTTAL ARGUMENT OF JOSEPH L. PARKHURST
19 ON BEHALF OF THE PETITIONER

20 MR. PARKHURST: This -- this case falls
21 directly under Mimms and Wilson. Mimms and Wilson both
22 hold that the officer has the authority to control the
23 occupants of an automobile with or without suspicion of
24 any wrongdoing by the occupant.

25 In this case, also, the traffic stop

1 satisfies the first prong of Terry, as we know from
2 Mimms. Also, there's no reason to suggest that this was
3 any more than the normal length of a traffic stop here.
4 In fact, the evidence was that the -- one officer was
5 still talking with the driver while Officer Trevizo was
6 conversing with Mr. Johnson.

7 JUSTICE SCALIA: What do you -- what do you
8 say about the other -- the other side's point that in
9 the case of a Terry stop there's a -- a mutually
10 enforcing -- reinforcing aspect?

11 You have a suspicion that -- there is crime
12 afoot to begin with, plus the -- the suspicion that the
13 person is armed and dangerous; whereas, here, you know,
14 it's a traffic stop is all.

15 MR. PARKHURST: The -- yes, that's true.
16 However, we --

17 JUSTICE SCALIA: So what -- what is required
18 where you think criminal activity is afoot is not
19 necessarily going to be the same as what's required when
20 you -- when there's just a traffic stop.

21 MR. PARKHURST: She -- Officer Trevizo
22 testified repeatedly at the hearing that she did not
23 believe he was actually about to commit a crime. She
24 could not put her -- put her finger on exactly what it
25 was that he was doing at the moment.

1 However, we believe that in the context of a
2 traffic stop we -- the State has satisfied the first
3 Terry prong here because traffic stops frequently don't
4 involve any kind of criminal activity, just as -- as in
5 this case, a civil violation. However, that was enough
6 to put the officer and the individual in close
7 proximity, and if she noticed enough indicia of -- that
8 he was dangerous, she certainly was authorized to
9 conduct a pat-down search.

10 CHIEF JUSTICE ROBERTS: Thank you, counsel.
11 The case is submitted.

12 (Whereupon, at 11:07 a.m., the case in the
13 above-entitled matter was submitted.)

14
15
16
17
18
19
20
21
22
23
24
25

A				
abandoned 42:20	56:23 57:4 58:5 61:12,18	apart 14:8	Arizona 1:3 3:4 18:2 19:11	46:13
ability 34:14 54:16	afraid 17:10,10	appeals 18:2 19:12 32:17,19	armed 3:18 4:2 4:11 5:25 6:13	assumed 56:16
able 14:23 15:1 22:12 24:11	agree 4:14,24 19:24 20:3,12	36:16 48:11 59:12	6:17,20 7:19 7:23 12:13,23	assumes 55:13
above-entitled 1:11 62:13	22:9 24:22 51:18 53:1	APPEARAN... 1:14	14:4 15:10 18:15 19:22	assuming 34:6
absent 36:22	58:17	appendix 29:13	21:12,16 24:13	assumption 27:16 32:24
absolutely 21:2 21:21 24:6	agrees 24:25	application 26:3	24:19,21 29:6	34:25 35:3,7
51:12 56:15	ahead 21:13 26:10 41:22	apply 3:11,23 25:16	29:11 30:4,21	35:14
accept 24:4 37:15	Al 60:12	apprehensive 59:4	32:1,3 44:13	attempt 51:5
accepting 58:2	Alito 8:20 9:3,10 50:2,19	approach 8:14	46:24 47:19,23	Attorney 1:15
accessible 16:11	allegedly 47:18	approached 46:21	53:8 54:18,20	authority 9:15 15:19 45:3
account 50:21	allow 14:9 51:23 53:25	approaches 30:10	56:13,23 57:2	60:22
acknowledging 17:22 59:19	allowed 33:23	approaching 30:8	57:20 58:4,8	authorized 8:14 62:8
action 6:5 8:10	allows 25:23	appropriate 8:18 25:24	59:25 61:13	automatically 53:7
actions 6:9	alluded 47:16	area 14:10 15:13 33:19,24 42:20	arrest 14:10,12 16:19 17:6	automobile 16:8 60:23
activity 3:16 6:7 6:10,14 8:1,23	alternative 50:7	42:23,25 43:1	50:24	avoid 9:17 11:3 17:13 26:17,19
9:5 23:6,13	altogether 5:23	49:20 50:3,12	arrested 15:13 16:18	27:17
29:2 30:23	amazing 51:20	50:12	16:18	aware 26:23 27:3,5
31:11 32:2	Amendment 3:20 5:9 8:21	areas 50:15,15 50:16,17	arresting 49:17	awfully 55:4
40:19,21 45:15	9:24 24:23	50:16,17	articulable 5:20 6:12,17 7:7,17	a.m 1:13 3:2 62:12
45:20 47:21	25:21 34:12	argue 5:13 58:15,17	12:22 13:17	
48:2 53:14,21	50:24	58:15,17	15:3 21:17,19	B
58:5 61:18 62:4	amicus 1:19 2:6 19:5	argued 57:3	28:1,19 29:2,5	back 47:5 48:5 50:8
actual 32:19	amount 56:8	arguing 17:19 17:23 32:1,1	32:6,7 53:20	bad 51:3
add 9:7 28:8	analogous 11:15	51:9 54:23	articulate 26:8	based 17:8,23 34:25 53:20
addition 6:16 8:24	analysis 6:4 16:6 38:25	56:8	articulation 28:21	basically 12:19 15:18 22:11
address 51:14 56:20	ANDREW 1:21 2:8 29:21	argument 1:12 2:2,10 3:4,7	asking 8:16 9:22 26:25 38:24	35:22 51:9
administer 50:4	answer 7:19 19:16 25:9	9:1 18:10 19:3	45:11 58:11	basis 13:15,17 24:18 28:21
admits 59:2	26:2 32:15	20:22 21:3	asks 3:11 12:6	31:19 34:5,19
admitted 57:13	44:15 45:6	26:15 29:21	aspect 55:2 61:10	34:20 38:10
affiliations 10:8	answered 23:25	30:1 31:23	assault 17:1 48:2 58:14	40:16 44:4
afoot 6:7 7:18 7:22 28:22	answers 44:18 46:18 59:6	32:14,15 38:8	Assistant 1:15 1:17	53:15 57:22 59:20
30:4,12,23	anybody 7:1	44:15 55:13	associated 53:23	bear 16:8
31:11 32:2,8	anymore 51:21	60:18	assume 46:7,12	bearing 37:2
47:21,25 54:22	anyway 20:22	arises 18:19		bears 16:6
		Ariz 1:16		

began 39:13,14 43:16	42:2,5,8,10,17 42:22,25 43:7	case 3:4,21 4:21 6:8 9:10,18,19	20:21 21:2 29:19,23 30:7	comment 31:22
beginning 52:4 52:10	43:12,19 44:5 44:18 46:16	9:22 13:7 15:15 16:22	30:15,24 31:2 31:12 40:8	commit 26:6 61:23
begins 4:15,16 43:3	48:22,25 52:3 52:7,14,19,22	18:2,20 19:9 19:23 22:20	45:7 46:5,11 49:15,21 55:1	committed 6:1,2 6:25 8:5 31:20
begun 33:5	57:8,12	23:1 24:8 25:1 25:3,8,9 26:13	55:12,20 59:22 60:16 62:10	58:14
behalf 1:16,19 1:21 2:4,6,9,12	bridge 47:2,3,5	26:14 27:4,5 29:7 31:13	choose 26:18	common 3:22 32:24
3:8 19:4 29:22 60:19	brief 24:9 31:25 53:11	34:4 39:23 44:19,22 47:10	chooses 26:7	commonsense 3:22
belief 13:18	bright 55:13	48:6,8 50:23 50:24 56:12	circumstance 36:15,16	common-sense 51:19
beliefs 10:14	bring 39:7	57:1 60:20,25 61:9 62:5,11	circumstances 12:20 15:16	communicated 37:6 38:5
believe 6:18 8:24 13:12,14	broad 5:8	62:12	21:21 49:19 50:5	41:25
15:14 18:18,20 27:12,14 44:13	broader 8:1	cases 14:8,8,20 23:5,6 29:8	cited 17:9	community 8:13
45:3,9,14 61:23 62:1	bulge 7:11 8:8 11:22 12:2,7	30:20,20 33:17 34:11 39:6,9	cites 28:14	concede 56:11
believed 9:21 17:8 24:12	12:25 13:7,10 13:13,20,23	47:17,18,22 53:23 55:16	civil 62:5	concern 54:8
38:2 40:25 41:25 46:7,9	26:9 30:9,10 31:14,16 46:22	56:22 58:3,3 58:20	claim 44:8 48:8	concerned 21:1 28:25
57:2	47:6	cast 54:24	clear 20:19 29:25 30:19	concerns 33:22
believes 4:10 8:16 18:14	burglary 57:14 59:3	category 39:8 50:11	34:16 39:16 53:6,10	conclude 8:7 34:5
31:8	bus 38:21,22,23	caught 45:20	clearly 25:10 32:2 33:25	concluded 39:1 39:19,25
Benjamin 28:4	<hr/> C <hr/>	caused 19:13	43:23 48:16 51:12	concluding 59:20
Berkemer 40:13	C 2:1 3:1	ceased 11:13	close 9:20 52:4 62:6	conclusion 33:7 34:8 40:17,20
beyond 33:6 46:16,17 47:9	Caballes 34:11	certainly 9:10 10:19 11:10	62:6	59:15
big 49:5	cabined 54:17	20:3 27:8 28:8 38:2 44:7,14	closely 54:17	conclusory 33:6
bit 31:22 39:15	cabining 57:23	47:24 48:5 62:8	clothes 59:2	conduct 4:25 5:4 13:1 25:21
blank 8:7	candid 34:24	change 25:18	clothing 16:11 31:16	30:12 38:2 54:11 57:25
blue 59:13	Capone 60:12	changed 4:17	coextend 33:18	62:9
blurring 55:3	car 10:2,12 15:20 16:1	changes 20:1	colleagues 58:10	conducted 44:2
blurry 55:17,18	20:17 23:3 32:10,10 35:1	changing 21:10	colors 31:14 59:11,14,15,16	conducting 14:9 43:23
Brendlin 9:11 10:16 14:22	35:5 37:9 41:15 42:12	character 60:4 60:14	come 16:15 39:3 60:7	confidence 57:7 57:19
20:16 23:22,24 24:4,5 25:7	43:3,15,16 45:14 47:3,5	charade 45:21	comes 31:7 46:25	confused 16:21
33:25 34:25 35:24 40:3	50:6,9 54:10 59:7,10,17	Chief 3:3,9 4:14 4:19,23 19:1,7	comfortable 45:23	connotes 58:11
51:1,1,10,12 51:14,16 55:6	care 56:25	19:24 20:3,6	coming 31:13	consensual 4:18 4:22 5:10 10:3
Breyer 40:23 41:2,3,7,13,21	caretaking 8:13		command 14:23 25:20,23	10:4,20 11:3 11:18,21 16:23
	carried 49:25			
	carry 12:17,18 14:1 54:4			

17:18,24 20:13 20:23,25 25:5 33:5 38:6,15 46:14 48:13 55:2,15 56:2 consent 11:12 16:7 39:11,18 39:20 consideration 27:25 consistent 59:14 consistently 27:8 constitutionally 19:18 27:10 contact 17:12,15 31:6 context 3:24 4:9 9:3 11:12 12:1 23:19 27:9 29:4 38:21 40:14 53:17 62:1 continues 5:2 20:23 55:21 continuing 20:9 contradict 48:15 control 9:15 15:19,20 53:24 60:22 conversation 10:20 11:18 26:7 37:1 38:3 46:10 52:16 converse 38:25 55:19,20 56:9 conversing 61:6 convicted 57:10 57:12 59:3 conviction 57:17 convictions 59:19 convinces 12:8 corner 21:24 correct 4:13 11:5,5,14 14:17 18:4	24:6,23 35:8 44:20 counsel 19:1 29:19 60:16 62:10 couple 33:9 43:21 44:17 47:15 course 6:2,11 8:15 12:12 24:6 34:7 44:11 51:17 court 1:1,12 3:10,11 18:2 18:24 19:8,12 20:15 22:5,13 22:24 23:1,11 23:13,21,23 24:2,24 25:11 29:3,9,15,16 29:24 32:17,19 33:10 34:11 36:14,16 37:22 37:24,25 39:24 39:25 44:19,22 48:11 51:15 53:9,17 56:4 56:16,20 58:9 59:11,12 60:6 courts 39:19 42:9 48:10 59:18 Court's 19:17 25:6 38:19 53:6,22 covers 15:12 credit 10:13 11:9 crime 6:1,24 7:18,21 8:5 26:6,17 28:21 30:3,12,23 31:15,16,19 32:6,8 46:19 47:25 54:21 56:23 57:4 61:11,23	criminal 3:16 6:7,10 8:1,23 9:5 29:2 30:23 31:10,10 32:2 45:15,19 47:20 53:14,21 58:5 59:19 61:18 62:4 Crips 31:14 46:22 47:6 cruise 16:4 curiae 1:19 2:7 19:5 custody 11:17 16:25 <hr/> D <hr/> D 3:1 danger 5:7 7:9 9:8 10:24 13:25 14:5 17:2,5,8 27:12 53:14 57:21 60:10 dangerous 3:19 4:2,11 5:21,25 6:13,17,20 7:19,23 8:17 8:25 12:23 13:12 15:10 17:15 18:15 19:22 24:13,19 24:21 26:18 27:18 29:12 30:4 32:3 47:20,23 50:12 54:19 56:13 57:15 58:11,16 58:18,25 59:20 59:25 60:1,4 61:13 62:8 dangerousness 29:6 30:22 32:1 48:1 53:8 54:21 56:23 57:3,20 58:8,9 dangers 25:13	day 21:4 22:10 25:20 26:12 dealing 15:23 29:4 30:20 36:6 47:17 dealt 38:20 December 1:9 decide 24:25 48:6 58:5 decided 29:3 decision 19:9 29:9 38:19 48:12 55:5 56:16 57:24 decisions 19:17 23:24 53:23 defendant 28:18 30:17 Department 1:18 26:21 depend 52:1 descended 17:17 detected 9:20 determination 32:19 44:20,23 determined 48:12 dialogue 55:7 difference 17:5 different 21:23 21:25 22:4 29:6 38:21 40:1,16 41:19 53:19 59:16 difficult 55:4 difficulty 58:1 directions 47:4 directly 60:21 dirty 8:8 26:9 disagree 5:3 23:16,21 disclose 45:16 discretion 58:23 discretionary 57:23 discuss 31:24 discussed 33:10	dispute 20:14 48:22 49:3,5 disputed 49:2,6 distinctions 25:2 distinguish 23:14 doing 5:22 7:15 8:6 61:25 doubt 54:24 downgrade 58:22 dramatic 54:15 draw 14:15 15:4 30:17 34:7 35:6 50:20 drawing 33:7 Drayton 38:20 39:1,22 56:1 drive 50:9 driver 3:17,18 4:11 9:5,18 16:2,4,7 21:9 23:15 33:18 34:18 35:1,5 35:24 36:2,5,7 36:12 40:19,20 45:11 50:8 52:10,18 53:13 59:13 61:5 driver's 13:23 drives 27:23 driving 28:7,7 51:3 54:6 drunken 54:6 duration 33:12 33:14,15 35:4 36:22 38:11 45:4 duties 44:11 duty 46:20 D.C 1:8,18,21 <hr/> E <hr/> E 2:1 3:1,1 earlier 26:2 47:17 easier 22:21,23
---	--	--	---	---

easy 9:19 24:8 57:24	3:14,16 4:1	factors 5:5 7:16 13:8,8,10 17:9 34:10 46:4	61:1 62:2	gang 10:8,8 31:14 46:10,22 47:6 50:13 59:2,11,14,15
effect 8:9 26:8 28:20 33:7 36:11	establishes 4:9	evidence 4:20 12:9 16:9 33:14 47:23 61:4	flashy 60:14	gangs 59:16
effects 35:1	eviction 34:5 38:10	facts 5:20 15:15 16:21 18:20 22:11 28:14 32:20 34:16 35:17,21 40:23 41:3,7 47:9 48:20,23 49:2 52:1,3 56:8	flat 21:10 22:2,2	General 1:15,18 16:13,20
effort 46:10	evolution 4:22	factful 50:22 51:1	following 36:12	getting 34:8 55:10
element 58:8	exactly 13:2,2 61:24	fairly 20:19 24:8 55:13	footnote 53:11	Ginsburg 5:22 6:4 7:15,25 9:25 10:6,13 15:25 16:14 24:9,22 27:13 32:4,14 39:5 39:11,17 58:24
eliminates 36:11	example 22:3,25 34:17	fall 15:15 50:10	forthcoming 57:16 59:21	give 11:16 22:25 40:4 59:5
emphasizing 50:2	exchange 20:25	falls 60:20	forward 54:4	given 10:17 16:7 39:3 40:1,16 57:4
encounter 4:22 5:10 10:4 11:21 15:18 16:23 17:18,24 18:21 19:25 20:4,7,7,9,13 20:23 21:6,9 22:5 25:6 26:4 33:5 38:6,14 39:25 41:1,9 48:13	excuse 25:1 27:13	far 27:24	found 32:17 36:14 40:3 43:13 56:14 59:19	gives 7:10,11
encounters 22:8 24:13	exercise 14:23	fast 59:23	fourth 3:20 5:9 8:21 9:23 24:23 25:21 34:12 43:7,8 50:23	giving 40:8
endangering 60:2	expansion 54:16	feel 35:25 38:22 39:3,24 45:22 51:7,17	Franklin's 28:4	gloss 24:4
ended 18:1	expect 51:4	feet 56:6	free 10:15,22,23 20:18,20 36:24 39:3,24 40:25 41:8 42:13 43:5 48:7 49:4 49:12,16 51:7 51:17 55:8	go 15:11 20:20 21:12 26:10 33:21 36:24 39:3 41:22 46:16,17 48:4
ends 16:3	explain 26:14	fellow 51:20 60:3	frisks 27:11	goes 7:2 24:10 27:15 31:22 33:3 45:10 47:4
enforcement 56:7	explicitly 51:14 51:15	felon 57:5,10	frisk 19:11,15 19:20 22:12	going 6:23 12:6 14:3,5 15:17 27:6 28:14 35:4 45:21 46:9 47:9,24 50:4 51:21 55:17 61:19
enforcing 61:10	expressly 26:16 29:9	felt 10:22 43:13 43:14	friends 53:9	good 7:5 35:5
engaged 55:7 57:14	expressways 50:16	final 56:21	frisk 19:11,15 19:20 22:12	good-bye 43:14
ensue 14:6	extend 26:2 27:24,25	find 28:12 48:16 48:21	frisks 27:11	gotten 43:10
ensure 15:1	extendible 14:20	finding 49:22	front 38:23 41:23 42:11 44:10	government 5:13 56:24
enter 10:20	extent 28:25 35:24 37:4 40:3	findings 48:9	full 16:10	government's 5:12
entire 18:21	eye 17:12	fine 40:12 43:4	function 8:14	
entirely 35:9,14	F	finger 61:24	functions 17:14	
entitled 10:19	face 12:2	firearm 57:9	fundamental 20:15	
entitlement 9:23	fact 17:11 20:5 22:16,17 28:14 32:18 34:7 36:17,20 38:11 41:25 44:1 46:4,6 48:12 48:19 49:19 53:10 57:1,14 57:16,17 61:4	first 3:4,15,25 5:23 6:3 7:16 7:20,25 8:3 19:10 21:14 24:20 25:4 30:17 31:23 32:11 33:10 34:10 44:18 45:8,18 47:15 47:15 51:8 58:25 59:6	fundamentally 24:7 27:19,22	
equivalent 32:6 32:7,11	factor 5:23 7:16		further 18:12 24:10 32:9 34:21 40:5	
erred 19:12			G	
erroneous 48:17			G 3:1	
ESQ 1:15,17,21 2:3,5,8,11				
established 3:12				

granted 29:16	26:12,23 27:3	5:20 8:17	insurance 36:7	judged 25:22
grants 29:15	28:8,24	16:11 45:16	45:11,24	judging 52:8
gray 5:14,16	he'll 31:11	immobilize 44:4	intent 46:8,15	justice 1:18 3:3
great 28:5	highly 23:10	impact 38:1	49:24,25	3:9,25 4:6,12
ground 23:14	highway 33:20	important 25:2	intention 36:18	4:14,19,23
grounds 46:23	42:22	30:19 33:16	interact 50:1	5:11,22 6:4,11
guards 11:16	hip 7:12 8:9	47:16	interaction 4:15	6:20,22 7:10
guess 10:25	hobbyhorse	impose 15:16	4:17,18 5:1	7:15,20,24 8:2
21:14 22:13	38:8	impossible 50:4	35:23,23 36:3	8:12,20 9:3,9
23:20 28:24	hold 23:21 60:22	inception 6:5	39:4 41:11	9:25 10:6,13
32:23 34:4	holding 23:17	incident 16:18	42:1 52:16,17	10:25 11:7,11
38:18 44:17	25:6	incidentally	55:15,21 56:2	11:19 12:4,14
54:2,3	holds 23:1 51:12	11:3	interest 23:7	12:21,25 13:4
gun 8:9 11:21,24	hometown	independent	interested 45:13	13:9,13,17,20
12:8,17,18,19	37:11	19:10 36:10	interrogation	14:7,14,19,25
13:24 14:15	Honor 5:4 17:25	53:13	11:2 40:5	15:8,11,25
16:16,18 23:8	30:14 31:9,21	indicated 18:11	intrusion 34:12	16:13,14,20
43:4,17 46:25	33:10 34:10	46:9	investigate	17:4,16,21
guy 7:1 23:8	38:19 42:16	indication 8:5	46:19	18:3,6,9,14
25:18 58:16	43:18,21 47:14	10:21 11:8	investigation	19:1,7,24 20:4
guy's 21:12	48:19 50:18	37:12	15:23 37:14	20:6,21 21:2,8
31:13	51:11 52:2,13	indicia 62:7	51:18	21:15,18,23
	53:3 54:8 56:1	individual 5:6,6	involve 62:4	22:2,7,9,15,18
	58:8 59:7 60:7	6:15,16,24 7:4	involved 34:15	22:23 23:4,9
H	hornbook 37:15	7:10 8:5,10,15	45:15,16,19	23:16,20 24:3
half 52:23	hour 52:23	9:17 10:17	irrelevant 10:23	24:9,22 25:16
happen 4:20	hypo 21:22	19:20,21 26:5	issue 22:14 27:5	25:20 26:1,12
52:9 56:8	hypothesis 8:2,7	37:17 38:5	44:10 48:8,9	26:20,21,24,25
happened 5:25	49:15	46:21 55:14	53:2 55:24	27:13,13,21
11:8 25:8 52:4	Hypothesize	62:6		28:9,13,24
happens 5:9	45:19	inference 59:8	J	29:19,23 30:7
20:25	hypothetical	information	J 1:17,21 2:5,8	30:15,24 31:2
hard 29:8	27:7,15 31:3	11:16 45:22	19:3 29:21	31:12,22 32:4
harder 26:13	47:11	46:10	jacket 13:23	32:14,22 33:2
hear 3:3,25	hypotheticals	initial 5:1 10:6	job 27:20	33:13 34:3,23
hearing 61:22	47:10	19:13 20:22	Johnson 1:6 3:5	35:11,20 36:4
heightened		23:23 35:7	9:19 10:20	36:19 37:7,15
25:13	I	40:17	25:5,7 29:11	37:23 38:7
held 19:12 41:14	idea 35:18 38:6	initially 33:25	32:16 38:6	39:5,11,17
47:3 51:8 54:3	identify 24:2	initiate 8:10	41:5 56:13	40:8,23 41:2,3
help 25:17	ignore 32:18	26:7 31:6	57:5 59:12	41:7,13,21
Heytens 1:17	47:7	initiated 19:25	61:6	42:2,5,8,10,17
2:5 19:2,3,7	illegal 23:13	inmate 11:15,17	Johnson's 45:2	42:22,25 43:7
20:3,12 21:2	immediate 5:7	inspect 54:5	45:8	43:12,19 44:5
21:14,20,25	7:9 9:21 17:8	instance 8:19	JOSEPH 1:15	44:18,25 45:7
22:4,9,17,20	60:5,10,15	9:16 12:11	2:3,11 3:7	46:5,11,16
23:9,20 24:5	immediately	14:1	60:18	48:4,14,15,22
24:22 25:19				

48:25 49:3,9 49:11,15,21 50:2,19,25 51:16 52:3,7 52:14,19,22 53:1 54:2,9 55:1,12,20 56:11,17 57:8 57:12,21,23 58:1,15,24 59:22,23,25 60:8,11,16 61:7,17 62:10	52:11,15,20,24 52:25 55:6 60:3 61:1,13 knows 14:4	lines 12:16 line-drawing 55:24 little 16:21 31:22 39:15 46:17 long 6:14 34:1 38:4 44:9 52:21 55:21 longer 4:17 16:24,25 20:2 20:8,11 38:14 look 26:9 45:7 looked 36:16,17 59:6,8 looking 5:14 24:10 32:19 59:1 looks 7:1,4,11 8:8 lose 39:5 53:2,2 lot 38:25 41:14 49:13 50:5 57:7,19 low 32:3 lower 36:14 39:19 44:19,22 48:10 56:15 59:11,18 luggage 39:8	45:9,23 46:17 47:8 51:25 52:8 60:1 means 15:20 48:1 meant 16:24 meeting 12:4 21:24 meets 12:5 member 46:21 47:5 mere 38:11 met 28:3 middle 39:14 47:3 Mimms 3:12,14 3:23 4:1,8 13:22 15:21 19:17 23:14 24:4 53:9,10 53:11 60:21,21 61:2 mind 16:9 37:9 39:8 mine 38:9 minute 32:23 48:5 60:17 minutes 52:9 Miranda 40:11 40:14 missed 4:3,7 mixed 48:18 moment 31:2 43:22,23 61:25 moments 44:3 MONTREA 1:6 morning 3:4 morph 20:13 morphed 56:2 multitude 58:3 mutually 31:24 47:21 54:22 55:3 58:20 61:9	nature 4:16 27:20 39:4 58:21 necessarily 10:14 18:5,19 33:17 40:15 61:19 necessary 18:11 40:15 need 5:24 6:12 7:20,21 8:20 9:4,5 10:13 24:20,25 needs 22:14 neutral 8:16 never 18:1 33:10 night 40:10 50:11 normal 15:17 16:5 59:4 61:3 noted 59:12 notice 5:6 noticed 62:7 notion 26:16 35:15 number 38:4 numerous 17:9
justification 8:21 justified 3:17 4:9 6:5,6,9 13:23 20:2,11 justifies 14:11 32:8 33:7 justify 12:3 13:5 28:20 32:9	<hr/> L <hr/> L 1:15 2:3,11 3:7 60:18 lasted 38:4 Laughter 42:15 49:14 59:24 law 6:8 11:20 23:5 24:16 35:16 37:16 48:19 56:7 lawful 3:14 8:4 10:21 19:20 24:14,18 57:8 lawfully 12:18 13:24 41:21 43:2,15 law-enforcem... 17:14 lead 50:4 leave 10:15,18 10:22,23 20:18 42:5,14 43:5 44:7,9,12 46:1 48:7 49:4,12 49:16 51:5,7 51:17 55:8 leaving 51:22 legal 18:7 34:10 legitimate 9:11 32:12,25 33:4 34:6 LEMON 1:6 length 37:3 61:3 let's 31:12 37:17 liability 33:23 light 5:5 18:9 lights 59:10 limited 25:24 line 14:8,19 35:6 39:6 50:20 55:13,16,17 56:4	<hr/> M <hr/> making 15:22 35:7 man 5:14,16 12:5 49:4 marijuana 16:15 matter 1:11 12:19 13:7,11 14:18,21 17:11 28:14 34:11 35:16 41:19 51:19 62:13 matters 21:4 mean 7:11 20:7 24:16 38:9	met 28:3 middle 39:14 47:3 Mimms 3:12,14 3:23 4:1,8 13:22 15:21 19:17 23:14 24:4 53:9,10 53:11 60:21,21 61:2 mind 16:9 37:9 39:8 mine 38:9 minute 32:23 48:5 60:17 minutes 52:9 Miranda 40:11 40:14 missed 4:3,7 mixed 48:18 moment 31:2 43:22,23 61:25 moments 44:3 MONTREA 1:6 morning 3:4 morph 20:13 morphed 56:2 multitude 58:3 mutually 31:24 47:21 54:22 55:3 58:20 61:9	<hr/> O <hr/> O 2:1 3:1 objection 51:6 obviously 38:25 43:6 44:1 51:6 56:5 occupant 19:19 60:24 occupants 15:20 15:22 60:23 occurred 32:17 offering 11:15 officer 3:17 4:10 4:25 5:4,5,7,14 5:19,21 6:6,23 8:9,14,16,18 8:20 9:8,14,17 9:19,25 10:17 10:19,24 11:20
keep 50:2 Kennedy 3:25 4:6,12 5:11 10:25 11:7,11 18:9,14 23:16 23:20 24:3 48:14 50:25 51:16 56:11,17 57:23 key 58:19 killed 44:16 kind 4:21 14:20 36:24 48:2 54:5 55:3 62:4 kinds 41:16,16 47:10 knew 57:4 know 6:8 9:11 10:16 13:14 25:4,6 28:4,16 29:3 36:7 38:3 40:13 45:17 51:23 52:6,7				
			<hr/> N <hr/> N 2:1,1 3:1	

<p>12:2,5,8,9,15 14:1,4 15:18 15:19 16:15 18:14,23 19:11 19:19,21,22 20:19,24 21:10 21:16 22:11 23:2 24:13,14 24:17,18 25:17 26:4,7,17 27:15,17 28:10 28:13,16 29:10 30:8,11,11,18 31:3 33:6 36:6 36:8,20,20,23 37:8,12,19,25 38:2,16 39:7 40:10 41:11,24 45:3,10,18 46:6 49:17,19 49:22,23 51:7 51:22,23 53:13 53:24,25 55:5 55:22 57:13 58:22 60:22 61:4,5,21 62:6</p> <p>officers 14:9,22 17:12,13 25:13 25:23 27:10 36:6 38:23 57:1 58:4</p> <p>officer's 6:5,8 8:13 10:14 11:9 23:7 24:12 25:21 27:20 36:17 54:16</p> <p>off-duty 14:1</p> <p>oh 28:18 45:25</p> <p>okay 13:11,13 18:6 21:12,15 21:20 39:12,13 42:17 43:1,12</p> <p>Old 30:16</p> <p>once 16:17 46:17 47:8 53:12,18</p>	<p>ongoing 19:14 23:19</p> <p>open 28:23</p> <p>opening 4:1 18:10 32:5</p> <p>oral 1:11 2:2 3:7 19:3 29:21</p> <p>order 19:19 23:2 48:15</p> <p>ordering 15:21</p> <p>original 24:1</p> <p>outer 16:11</p> <p>outset 17:11 40:6,18 51:13</p> <p>outside 25:14</p> <p>overcoat 5:14,16</p> <p>overriding 25:20,23</p> <p>owns 34:18</p> <p>o'clock 40:11</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 3:1</p> <p>page 2:2 24:10 51:2</p> <p>pages 29:12 53:11</p> <p>painting 39:7</p> <p>papers 36:8 45:11,24</p> <p>Parkhurst 1:15 2:3,11 3:6,7,9 4:4,8,13,19 5:3 5:19 6:3,18,21 7:6,13,24 8:12 9:2,9 10:5,11 11:5,10,14,25 12:11,15,24 13:2,6,11,16 13:19,22 14:13 14:17,21 15:6 15:9,14 16:5 16:13,17,20 17:3,7,19,25 18:4,7,13,18 22:24 32:5 60:17,18,20</p>	<p>61:15,21</p> <p>part 10:1 31:23 36:14,14 45:8 48:1 54:7</p> <p>particular 4:21 9:10</p> <p>particularized 54:14</p> <p>particularly 51:23</p> <p>passenger 3:13 9:4,12,13,15 9:18 11:1,2,2 18:23 21:6 23:3,12,17,18 23:22,25 24:6 33:12,17,21,22 34:1,14,15,17 34:20,22 35:2 35:4,24,25,25 36:5,9,10,21 37:1,6,23 38:13,13 40:2 40:3,4,5,7,21 45:4,17,25 48:6 50:6 51:4 51:7,16 53:19 54:10,11,15</p> <p>passengers 3:24 16:2 32:10 35:16 38:22</p> <p>passenger's 36:11,22 37:3 40:24</p> <p>pat 3:17,21 4:9 4:25 5:4,8,18 5:18 6:12,15 7:5,14 8:10 9:24 11:4 12:3 13:1,5,24 14:5 14:11 18:16,23 20:1,10 23:18 24:19 26:10 28:20 30:12 31:6 32:9,16 39:13,18,20 40:9 44:13</p>	<p>46:24 53:8,12 55:23 58:6</p> <p>pats 7:5</p> <p>patting 15:2 23:7</p> <p>pat-down 3:13 8:18 16:9 30:2 30:6 43:23 44:1 53:15,25 54:3,12 62:9</p> <p>Pennsylvania 3:12</p> <p>people 15:2 26:18 27:18 39:2,24 45:22 49:25 59:16</p> <p>perceive 14:4</p> <p>perceived 28:17</p> <p>perform 22:12 27:11</p> <p>performed 19:11</p> <p>period 37:18,19</p> <p>permissible 53:16</p> <p>permission 10:18</p> <p>permit 12:16,18</p> <p>permits 53:7</p> <p>permitted 50:8</p> <p>person 5:16,18 5:20,24 6:13 7:8,9,18,23 8:17,24 9:6 11:21,24 12:12 12:17 13:12,24 13:25 14:11 15:13 17:15 18:15 20:17 21:6 24:12,14 28:5,9,11 30:10 40:18,24 41:4 43:13,25 44:4,6,10,12 45:2,18 46:24 46:24 47:1 49:7 50:14</p>	<p>51:24 53:5 55:6 59:4 61:13</p> <p>person's 53:21</p> <p>petition 29:12 49:10</p> <p>Petitioner 1:4 1:16,20 2:4,7 2:12 3:8,11 19:6 60:19</p> <p>pick 34:9</p> <p>picture 39:6</p> <p>Pincus 1:21 2:8 29:20,21,23 30:13,18 31:1 31:8,21 32:13 33:1,9,15 34:9 35:9,13,22 36:13 37:4,8 37:22,24 38:18 39:10,16 40:13 41:2,6,10,20 41:24 42:4,7,9 42:16,19,23 43:6,10,18,21 44:17 46:2,6 46:13 47:14 48:4,11,18,24 49:1,6,10,18 49:23 50:18,22 51:11,25 52:6 52:12,15,20,24 53:3 54:7,13 55:9,18,25 56:15,19 57:10 57:13 58:7,17 59:5 60:6,9,13</p> <p>place 24:14,17 33:20 45:18 49:20 51:8</p> <p>placed 9:20</p> <p>please 3:10 19:8 29:24</p> <p>plus 61:12</p> <p>pocket 12:7 30:9 30:10 31:15,17 46:22,25 47:6</p>
---	--	--	--	---

<p>point 4:7,15 16:3 19:25 20:4,12,24 22:18 23:11 25:1,1 28:15 30:11 38:19 41:14 44:25 55:8,14,14 56:18,19,22 58:19 61:8</p> <p>pointed 57:21</p> <p>police 11:9 14:1 16:4,25 19:18 20:19 24:11 25:13,21,23 26:4,17 27:10 27:17,20 28:10 33:24 36:6,6 37:16 40:19 41:9 46:23 51:22,23</p> <p>policeman 42:11 42:12 43:1,3 44:11 46:20 47:2,4,7,12 60:2,5</p> <p>policemen 46:18 47:8</p> <p>pose 25:12</p> <p>posed 10:24 17:8</p> <p>position 26:21 26:24 27:2,4,9 28:12 34:4 40:25 45:2,9 49:8</p> <p>possess 7:7 13:24 57:8</p> <p>possesses 5:19 6:6</p> <p>possession 12:18</p> <p>possibly 17:15</p> <p>post-seizure 17:17</p> <p>potential 33:23</p> <p>practical 28:2 50:7,14</p>	<p>preceded 23:5</p> <p>precedents 53:7</p> <p>predicate 29:14</p> <p>predicated 26:16 27:16 29:10</p> <p>premise 51:9</p> <p>prescribed 30:2</p> <p>present 53:14 54:22,24,25</p> <p>presented 18:11</p> <p>presently 19:22</p> <p>presents 5:7</p> <p>presume 15:18</p> <p>presumption 9:14</p> <p>presupposes 29:16</p> <p>pretty 11:20 15:15 28:2,22 37:12 54:15</p> <p>prevail 56:18</p> <p>previous 23:24 27:4 48:5</p> <p>principal 30:1</p> <p>principle 3:23 29:5</p> <p>principles 3:12 3:23 5:9</p> <p>prior 59:19</p> <p>prison 11:15,16</p> <p>probable 8:9</p> <p>probably 27:22 31:9 48:20 54:4</p> <p>problem 27:14 27:23 34:3 38:9 56:25</p> <p>problems 49:13</p> <p>proceeded 36:3</p> <p>prompt 51:6</p> <p>prong 3:15 6:3 7:25 8:3 57:22 61:1 62:3</p> <p>proof 11:23 57:2 57:4</p> <p>proposed 18:17</p>	<p>proposing 15:5 15:6</p> <p>protect 14:9 24:11 25:24 55:23</p> <p>protected 47:1</p> <p>protecting 46:21</p> <p>protective 46:20</p> <p>provide 37:12</p> <p>proximity 9:20 62:7</p> <p>prudent 7:8 12:12</p> <p>prudently 7:7</p> <p>pub 24:17</p> <p>public 5:8</p> <p>pulls 20:17</p> <p>purely 17:23,23</p> <p>purpose 34:13</p> <p>purposes 56:14 56:16</p> <p>pursue 32:22</p> <p>put 61:24,24 62:6</p> <p>putting 32:2</p> <hr/> <p>Q</p> <p>quality 20:10</p> <p>question 4:24 10:7 11:17 18:22 19:17 20:9 23:25 25:8,10 29:4 29:14,15 33:2 33:5,11,16,16 34:1 37:5,5 38:16,20 39:17 39:23 42:2 43:22 44:2,6 45:1 48:19 49:7 50:23 51:1,13 53:5 55:11,19 56:2</p> <p>questioning 27:24 36:9,10 37:16 38:12</p> <p>questions 8:16</p>	<p>18:25 28:7 37:10,20,25 38:4,24 45:1</p> <p>quick 59:6</p> <p>quickly 34:17</p> <p>quite 39:16 52:4</p> <hr/> <p>R</p> <hr/> <p>R 3:1</p> <p>raised 27:6</p> <p>raises 27:5</p> <p>random 12:13</p> <p>reach 22:14</p> <p>reactions 47:15</p> <p>read 24:16 52:7</p> <p>real 28:23 56:25 57:20</p> <p>reality 20:15 40:6</p> <p>really 10:18 18:22 29:5 31:1 33:20 50:13 54:18 57:1 58:22 59:14</p> <p>reason 23:12 25:11 27:11 28:6,10,11 35:6 38:12 39:22 45:14 52:22 53:12,13 57:5 60:14 61:2</p> <p>reasonable 3:18 3:21,22 5:5,8 5:24,25 7:4,17 9:7 13:15 19:18,21 20:17 23:2 27:10 28:5,9,11,12 29:11,17 30:3 30:4,21,22 31:10,17 37:19 38:13 40:20,24 43:13 45:2,25 46:23 47:18,19 47:20,25 49:7</p>	<p>54:21 55:22 56:12 58:13 59:8</p> <p>reasonableness 25:22</p> <p>reasonably 7:8 7:18,22 8:24 9:12 10:22,23 24:12 31:4,8 44:6,8,9,12,13</p> <p>reasons 7:7 19:10 34:18 35:25 44:23 50:7 57:15</p> <p>REBUTTAL 2:10 60:18</p> <p>recite 28:10 53:10</p> <p>recognized 7:17 20:16 22:5,25 25:12 40:6</p> <p>record 52:25</p> <p>red 59:13</p> <p>refused 10:12</p> <p>regard 23:10</p> <p>regardless 19:16 25:14 29:8</p> <p>regards 23:14</p> <p>reinforcing 31:24 47:22 54:22 55:3 58:21 61:10</p> <p>rejecting 35:11 35:14</p> <p>related 41:17 45:1</p> <p>relates 34:19</p> <p>relationship 36:2</p> <p>release 10:19</p> <p>released 9:13</p> <p>relevant 36:15 39:23 53:22</p> <p>rely 22:15,17 34:10 53:9 57:18</p> <p>relying 35:9,13</p>
--	--	---	---	---

<p>41:17 57:22 remaining 60:17 remand 56:18 remanded 56:20 remark 28:5 remember 10:9 16:22 remove 47:4 removing 58:20 repeatedly 61:22 rephrase 4:24 representation 45:12 required 30:5 61:17,19 requirement 60:1,1,10 requires 48:1 reserve 18:25 reserved 33:11 resolve 25:1 resolved 48:9 respect 48:20 respond 47:13 Respondent 1:22 2:9 29:22 response 30:24 31:3 44:25 rest 18:25 26:18 35:14 rested 48:12 result 8:8 9:6 20:24 return 56:21 reverse 43:19 reversed 19:9 review 29:15,16 39:20 reviewing 29:9 revised 30:5 revisited 30:1 right 11:10 12:24 13:16,18 24:14,18 32:13 33:3 39:10 41:5,13,18,22</p>	<p>44:22 49:22 59:5 rise 34:16 risk 29:3 rival 50:13 59:16 road 42:20 roadblock 54:5 roadside 21:6,9 22:5,7 53:18 ROBERTS 3:3 4:14,23 19:1 19:24 20:6,21 29:19 30:7,15 30:24 31:2,12 40:8 45:7 46:5 46:11 49:15,21 55:1,12,20 59:22 60:16 62:10 route 15:12,12 routine 9:12,15 rule 18:12,16,19 24:24 25:14,17 26:3 27:24 30:16 run 34:7 running 55:16 rural 50:15</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 safety 15:1 21:1 24:12 25:25 27:12 33:22 55:23 satisfied 7:8 62:2 satisfies 3:15 61:1 satisfy 8:3 13:21 saw 5:17 6:23 saying 4:5 9:9 10:25 16:25 17:5 24:24 27:12 28:16,18 36:4,5,7,9</p>	<p>40:16 44:5 54:20 55:16 says 5:15,16 6:19 7:3 12:14 14:22 20:19 33:25 35:24 36:23 39:12 40:13 42:13 43:2 45:23 51:16 53:11 SCALIA 6:11 6:20 12:21,25 13:4,9,13,17 13:20 14:7,14 14:19,25 15:8 15:11 17:16,21 18:3,6 48:4,15 54:2,9 59:23 59:25 60:8,11 61:7,17 scene 34:15 51:5 53:24 scope 34:12,13 scrutiny 51:5 se 23:2 sea 46:17 search 3:13 14:10 15:12 16:7,9,10,10 16:10,18 21:13 30:3,6 38:21 39:8 41:15 42:13 43:4,16 43:24 44:2,7 53:15,25 54:4 54:12,16 55:15 57:25 62:9 searched 41:4 51:24 searches 3:20 seat 47:5 second 10:16 19:16 21:3 22:18 25:11 30:6 32:14 53:5 secure 34:14</p>	<p>see 11:22 13:20 34:7,20 38:10 45:11 seen 5:16 sees 12:7 seized 3:13 9:6 9:12 16:2 18:23 21:4,5 23:18,22 24:1 24:7 25:5 32:16 34:1 36:1 38:14,22 40:3,7,21 43:24 44:1 45:5 50:24 53:6,18 55:6 55:14 seizure 4:16 5:1 8:22 10:1,7,21 16:3 17:17,18 17:20 18:1,11 18:21 19:12,14 20:13,20,23 23:19 25:7 32:10,20 33:4 33:4,12,17,18 34:2,13,21 35:2,3,5,15,18 36:11,12,22 37:3,13,14,18 37:19,21 38:1 39:2 40:14,17 44:20 51:9,13 53:2,4,20 54:5 55:2,22 56:3,9 sense 21:25 53:19 57:21 separate 14:7 20:8 35:23 36:20 37:13 57:24 separately 36:3 serious 47:22 set 58:9 setting 34:21 sheriff 30:16 shield 40:4,9</p>	<p>shoes 56:6 shoot 14:15 15:4 short 36:25 shortly 52:17 shot 31:5,9 47:1 show 35:17 40:24 41:4 57:15 showed 39:1 shown 56:24 shows 57:18 side 26:9,15 29:25 32:18 39:19 sidearms 14:2 sidewalk 26:4 28:20 side's 61:8 significant 23:10 simple 31:5 simply 26:4 siren 59:10 situation 14:20 14:24 16:5 20:15 28:19 31:4,18 32:20 36:23,25,25 40:2 43:25 52:2 55:19,21 56:1,10 situations 54:18 sliver 30:20 47:17 56:22,24 58:2,20 small 56:24 58:12 society 60:15 Solicitor 1:17 solved 49:13 somebody 14:11 21:24 30:8 31:7 45:8 47:2 58:4 somewhat 31:24 38:20 53:19 sorry 41:2</p>
--	--	---	--	--

<p>sort 27:23 56:6 56:9 58:20 sought 39:20 Souter 6:22 7:10 7:20 8:2,13 26:1,13 27:14 27:21 28:9,13 28:24 32:22 33:2,13 34:3 34:23 35:11,20 36:4,19 37:7 37:15,23 38:7 57:21 Souter's 31:22 44:25 special 35:17,21 spin 5:18 spoke 46:8 standard 15:7 25:22 28:1,2 28:23 30:6 53:22 58:22 standards 31:23 47:21 standing 42:10 start 32:23,25 34:6 35:2 50:14 started 34:25 52:17 starts 45:10 State 31:25 54:23 57:6,17 62:2 statement 33:6 37:11 States 1:1,12,19 2:6 19:4 step 58:12 stepping 37:9 steps 25:24 55:23 Stevens 11:19 12:4,14 16:13 16:20 17:4 21:8,15,18,23 22:2,7,10,15</p>	<p>22:18,23 23:4 23:9 25:16,20 26:20,24,25 49:3,9,11 53:1 58:1,15 stop 3:14,15,24 4:10,16,20 6:9 6:15 8:4,21 9:4 9:6,11,13,16 9:17 11:1,12 12:1 13:1 14:8 14:22 15:1,16 19:13,20 20:1 22:16,21 23:23 24:1 25:15 32:5,8,12,12 32:25 33:8,18 33:19,21,24 34:6,16,19,19 35:1,2 36:2 37:10 40:22 41:12,15,15 42:20 44:10 52:5 53:18 60:25 61:3,9 61:14,20 62:2 stopped 15:2 16:1 23:17 25:17 33:4 37:17 41:21 42:12 43:1,2,2 43:15 45:12,13 50:6 55:5 stopping 6:16 45:18 stops 5:15 21:10 25:12 27:9 47:2 62:3 strange 36:24,25 street 5:15 6:23 12:5,6 15:17 21:24 22:12 24:17 27:6,16 30:9 50:15 strenuously 58:18 strong 37:12</p>	<p>44:8,14 subject 10:15 41:12,19 48:5 51:4 subjective 10:14 36:17 38:17,18 46:8 subjects 37:20 submitted 62:11 62:13 substantial 17:4 substantially 22:21 suburban 50:16 sudden 59:9 suddenly 5:17 21:11 sufficient 9:8 11:23 12:2 suggest 41:8 61:2 suggesting 7:24 8:12 18:1 suggestion 58:2 suggests 7:20 Summers 53:23 supplied 53:22 support 7:14 35:18 supporting 1:20 2:7 19:6 suppose 5:12 20:21 21:8 46:16 50:11,12 supposed 46:11 46:13,25 47:7 Supreme 1:1,12 sure 4:6 11:20 15:22 55:9 surely 40:6 surprised 59:9 surrounding 14:10 suspect 7:22 23:12 41:18 53:14 58:4 suspected 7:19</p>	<p>58:25 suspicion 3:16 3:18 5:24 6:1,7 6:13,14,17,24 7:4,17,21 8:1 8:23 9:5,7 12:22 15:3,9 19:21 21:17,19 23:15 24:19 26:5,8,17 28:1 28:20 29:2,6 29:11,17 30:3 30:4,12,21,22 31:10,17 32:6 32:7 47:19,20 47:25 48:2 53:20 54:14,21 56:13 58:14 60:23 61:11,12 sword 40:5 systemic 57:21</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 2:1,1 table 43:11 57:6 57:18 take 18:5 25:23 26:1,24 27:25 35:7 38:8 40:9 48:6 55:22 taken 26:21 27:4 27:8 56:25 talk 7:3 21:11 26:5 39:13 51:21 talking 30:8 36:21 52:10 55:25 56:22 61:5 target 40:19,22 tell 45:9 47:9 54:11 tends 54:24 terminate 39:24 40:25 41:8 terms 28:2 45:4 Terry 5:23 6:4</p>	<p>6:11,12,18 7:16,25 8:4,6 13:1 14:8 15:7 15:11,15 24:20 27:11 30:1,2,6 32:11 43:25 53:20 58:10 61:1,9 62:3 Terry's 3:15 test 15:7 36:16 38:17 43:24 50:4 56:5 58:9 58:10 testified 10:1 38:16 49:24 61:22 testify 10:9 49:9 testimony 11:9 16:22 17:9 tests 30:2 58:21 Thank 4:12 19:1 29:18,19,23 59:22 60:16 62:10 thing 10:16 21:14 29:1 33:19 54:10 59:18 things 9:20 10:12 33:9 41:16,16 43:22 46:18 47:8 50:19,20 think 5:23 10:3 14:14 21:4,16 21:21,21 22:11 22:13,20 23:9 24:5,6,7 25:9 25:19,22 26:13 27:1,13,14,19 27:23 28:6,21 29:25 30:13,14 30:18,19 31:21 32:13,16 33:16 34:5 35:11,16 35:18 36:13,13 37:4 39:16,18</p>
---	--	--	---	---

<p>39:22 40:1 42:13 43:4,10 43:22 44:9,22 45:20,25 46:3 46:23 47:10,14 47:16 48:18,19 49:1,24 50:5,6 50:25 51:12,25 52:23 53:3,4 53:21 54:17 57:5,18 58:5,7 58:12,19 59:7 60:3,6,8,12,13 60:14 61:18 thinking 31:19 thinks 8:15 21:11 23:8 31:4 44:12 55:8 third 42:18,19 59:18 thought 8:25,25 10:1 12:21 16:23 17:1,24 18:17 39:7 41:8 44:6 49:4 49:12 52:8 threat 9:21,22 12:9 54:18 58:11,13 60:5 60:15 threatening 31:18 threatens 58:21 three 59:5 ticketed 16:4 time 5:4 18:25 19:10,15 20:16 32:16 36:8 42:6 44:1,7 tire 21:10 22:2 25:18 TOBY 1:17 2:5 19:3 tone 46:7,12,14 49:17,17,19,22 totality 12:19</p>	<p>36:15 49:18 totality-of-the... 56:5 totally 36:24 38:14 traffic 3:14,15 3:24 4:10,16 4:20 6:9 8:4,22 9:3,13,16,16 12:1 14:22,25 15:16,23 19:13 19:20 20:1 22:8,16,21 23:23 24:1 25:12,14 27:9 32:5 37:17 40:14,22 41:15 47:3 60:25 61:3,14,20 62:2,3 transforms 20:10 Trevizo 9:19,25 10:19 18:23 19:11 29:10 56:12 61:5,21 trouble 7:1,5 8:15 true 18:19 24:3 29:1 40:2 61:15 try 45:21 47:4 trying 44:24 54:1 Tucson 1:16 Tuesday 1:9 turf 50:13 turn 34:14 37:9 turns 34:12 two 7:16,18 10:12 19:10 25:2 30:2 31:23 36:5,23 42:18 45:1 47:21 58:21 type 31:15 typical 50:23</p>	<p style="text-align: center;">U</p> <p>ultimately 24:23 36:21 39:3 uncertain 47:11 56:4 unconstitutio... 4:25 underlying 48:20,23 49:1 understand 13:9 20:17 26:3 29:5 55:10 understood 26:2 unique 25:13 United 1:1,12,19 2:6 19:4 unknowns 12:1 unlawful 6:14 57:25 unmarked 59:7 unquestioned 14:23 unrelated 37:10 unseize 25:9 uphold 3:13 urban 33:19,24 34:21 42:23,25 43:1 49:20 50:3,10,15,16 use 11:24 usually 12:2 16:6</p> <p style="text-align: center;">V</p> <p>v 1:5 3:4,12 valid 16:7 vehicle 3:13 19:19 21:7 34:18,19 view 5:11,12,13 6:22 11:19 16:24 26:11,13 29:10 violation 8:22 22:8 23:5 37:18 62:5 virtue 23:22</p>	<p>24:1 voluntary 10:10 42:1</p> <p style="text-align: center;">W</p> <p>wait 30:17 46:25 50:8 walking 50:14 wander 33:23 want 7:3 17:13 18:10 21:15 27:25 38:7,8 41:22 42:6,13 43:8 44:15 48:4 56:7 wanted 10:7 18:12 wants 21:10 26:5 warnings 40:11 40:15 Washington 1:8 1:18,21 wasn't 4:6 28:18 32:20 39:2 43:6 58:18 way 6:6,8 17:11 20:1 23:11,23 36:23 42:7 44:14 46:7,8 58:22 60:7 weapon 16:12 wear 31:15 wearing 31:14 59:2,13,13 weigh 13:9 weighing 13:8 went 23:11,23 West 30:16 we'll 26:9 we're 9:22 17:19 17:25 24:24 30:20 35:9,13 35:13 45:13 47:9,17 56:9 56:22 we've 30:7 41:14</p>	<p>43:10 white 18:9 Whren 57:24 wide 28:22 Wilson 15:21 19:18 23:1,1 23:10,11 33:11 60:21,21 window 45:10 woman 42:12 word 10:3 18:5 words 11:11 34:23 38:3 world 28:23 worry 55:7 worth 29:3 wouldn't 14:19 50:11,13 57:3 wriggle 39:15 wrong 27:19,22 wrongdoing 51:2,3 60:24</p> <p style="text-align: center;">X</p> <p>x 1:2,7</p> <p style="text-align: center;">Y</p> <p>Yeah 28:13</p> <p style="text-align: center;">0</p> <p>07-1122 1:5 3:4</p> <p style="text-align: center;">1</p> <p>10:00 40:10 10:02 1:13 3:2 11:07 62:12 13 29:12 14 29:12 19 2:7</p> <p style="text-align: center;">2</p> <p>2008 1:9 29 2:9</p> <p style="text-align: center;">3</p> <p>3 2:4 31 53:11 32 53:11</p>
--	--	---	--	---

<hr/> 5 <hr/>				
5 53:11				
<hr/> 6 <hr/>				
60 2:12				
<hr/> 7 <hr/>				
7 51:2				
<hr/> 9 <hr/>				
9 1:9 24:10				