

LIBRARY

REME COURT, U. S.

Supreme Court of the United States

OCTOBER TERM

LIBRARY
 Supreme Court, U. S.
 APR 3 1970

In the Matter of:

Docket No. 727

DONALD J. VALE,

Appellant

vs.

THE STATE OF LOUISIANA,

Appellee

Pt. 1

RECEIVED
 SUPREME COURT, U.S.
 MARSHAL'S OFFICE
 APR 2 4 26 PM '70

Duplication or copying of this transcript
 by photographic, electrostatic or other
 facsimile means is prohibited under the
 order form agreement.

Place Washington, D. C.

Date March 4, 1970

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

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

ORAL ARGUMENT OF:

P A G E

Mrs. Louise Korns, Assistant District
Attorney, on behalf of Appellee

28

Rebuttal Argument by Eberhard P. Deutsch,
Esq. on behalf of Appellant

44

#####

1 IN THE SUPREME COURT OF THE UNITED STATES

2 OCTOBER TERM

3 -----

4 DONALD J. VALE,)

5 Appellant)

6 vs) No. 727

7 THE STATE OF LOUISIANA,)

8 Appellee)

9 -----

10 The above-entitled matter came on for argument at

11 1:55 o'clock p.m. on Wednesday, March 4, 1970.

12 BEFORE:

13 WARREN E. BURGER, Chief Justice

14 HUGO L. BLACK, Associate Justice

15 WILLIAM O. DOUGLAS, Associate Justice

16 JOHN M. HARLAN, Associate Justice

17 WILLIAM J. BRENNAN, JR., Associate Justice

18 POTTER STEWART, Associate Justice

19 BYRON R. WHITE, Associate Justice

20 THURGOOD MARSHALL, Associate Justice

21 APPEARANCES:

22 EBERHARD P. DEUTSCH, ESQ.

23 Hibernia Bank Building

24 New Orleans, Louisiana 70112

25 Attorney for Appellant

LOUISE KORNS, Assistant District

Attorney for the Parish of New Orleans

Criminal Courts Building

2700 Tulane Avenue

New Orleans, Louisiana 70119

P R O C E E D I N G S

1
2 MR. CHIEF JUSTICE BURGER: Number 727, Vale against
3 Louisiana.

4 MR. Deutsch, you may proceed whenever you are ready.

5 ORAL ARGUMENT BY EBERHARD P. DEUTSCH, ESQ.

6 ON BEHALF OF APPELLANT

7 MR. DEUTSCH: Mr. Chief Justice and may it please
8 the Court: The Appellant in this case had been charged in a
9 proceedings prior to the one here at issue, with a violation
10 of the State Narcotics Law.

11 In the course of that proceedings his bond was raised
12 on the prior charge and three policemen with habeuses for his
13 arrest in connection with the raised bond, proceeded to what
14 was believed to be his home and they did what they called,
15 "staked themselves out," hid themselves near the home to watch
16 it for some reason. They said they wanted to be sure he was
17 home before they arrested him. I didn't quite understand. In
18 any event, while they were waiting in hiding an automobile drove
19 up in front of the Appellant's home and it was driven by a name
20 known to be a narcotics addict.

21 The driver sounded his horn, Appellant came out of
22 the house, talked to the driver from the other side, the
23 passenger side of the automobile, returned to his home, came
24 out again, again talked to the driver and then the police made
25 their presence known, surrounded the automobile, arrested the

1 driver who hastily put something into his mouth and presumably
2 swallowed it.

3 The police assumed that what they called a "transac-
4 tion" was taking place and the Appellant himself turned and
5 started to walk back into his home; they stopped him and
6 arrested him. There was some variation in the testimony about
7 how far he was from his home and I suppose at one point I
8 think it said he was at the front steps; at another he was at
9 the side of the car anywhere from 15 to 30 feet away.

10 In any event, he was not inside the house when
11 arrested and I think the best way to put it was that he was on
12 the sidewalk in front of his home.

13 Q I think there was some indication that the door
14 was open.

15 A The door was presumably open; yes.

16 Q And that he had come close enough so that he
17 had opened the door?

18 A No, I don't think so.

19 Q That's a misunderstanding, is it?

20 A Yes. I think he had left it open when he came
21 out, but I'm not positive.

22 In any event, they were all arrested. Now, the pl
23 police had no search warrant. They entered the home over the
24 protest of the Appellant, advised him they were going to search
25 the home for narcotics and advised him of his rights, presumably

1 in the usual fashion.

2 A few minutes later his mother and brother came home
3 and they were also told that the house was to be searched and
4 protested; at first the mother protested and they proceeded
5 with the search. They also arrested the brother and in the
6 course of the search in a closed locker in a bedroom, hidden
7 in clothing which the Appellant admitted was his, were found
8 narcotics and in the course of further search and perhaps his
9 even helping them with the search; it is not entirely clear,
10 they found some narcotics paraphernalia in the bathroom.

11 Q Does the record show how many rooms this house
12 had?

13 A I believe it had three rooms, on the first
14 floor, a kitchen and a bathroom.

15 Q Three downstairs rooms?

16 A All on one floor.

17 Q All one floor. And, since I've already inter-
18 rupted you, they, of course, did not have a search warrant.

19 A Had none whatever.

20 Q They had an arrest warrant; did they, or --

21 A They had the arrest warrants, but not for this
22 offense. They had arrest warrants under a prior charge, on
23 which they staked themselves out, presumably to find him.
24 They had no arrest warrant for this particular offense.

25 Q But we can assume, I guess, in this case that

1 this was a lawful arrest?

2 A I think you would have to assume that, al-
3 though it's very difficult to say whether -- they came out
4 there to make a lawful arrest with an arrest warrant. Instead
5 of doing that, they hid themself out and watched what they
6 presumed, what they called a "transaction," taking place.

7 They went into the house and on their search, found
8 the narcotics, following which they charged him with possession
9 of narcotics.

10 Q Well, do you begin to complain before they
11 began the search?

12 A No, sir. Well, as a matter of fact, this
13 Court has confined me to the matter of search and seizure.

14 So that --

15 Q Inconsidering the matter of search and seizure
16 it's important to know whether we can assume, proceed on the
17 hypothesis that this was a lawful arrest.

18 A I would have to assume --

19 Q Because, I suppose that a search incident to
20 an unlawful arrest could never be a reasonable search.

21 A Well, I so understand the law exactly.

22 Q Whatever the scope of the search.

23 A I would say this was a lawful arrest on the
24 basis of the offense which they believed to have seen taking
25 place and that thereafter they found the evidence on the basis

1 of which they met the charge on which they had arrested him.
2 Now, that's about as close as I can come to it on the record,
3 which is all that I have under all the circumstances.

4 Now, he had counsel appointed for him. He moved to
5 suppress this evidence in a separate sort of proceeding, as I
6 understand it, typical in this type of case. He also objected,
7 according to the record, to the introduction of the evidence
8 on the ground that it was obtained by an unconstitutional
9 search and seizure. He pleaded the Fourth and 14th Amendments.
10 The case was appealed to the Supreme Court of the State and
11 they cited the statute, the arrest statute that permits the
12 officers to take from the person arrested all weapons and
13 incriminating articles which he may have about his person.
14 They cited that statute in justification of this search and
15 held that there was no violation of the cited constitutional
16 belief.

17 I think that is a fair statement of the facts of the
18 purposes of this case.

19 Q Do you see a difference in the language of that
20 statute as between saying, "about his person" and "on his
21 person?"

22 A I don't; no, sir.

23 Q It means the same thing.

24 A I think for practical purposes it doesn't
25 mean --

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

Q It doesn't mean "about," in the sense of "lying about?"

A Perhaps, but I don't think that's involved in this situation. In any event, this says in so many words, "from the person arrested or weapons which he may have about his person."

Now, as far as I am concerned, that means on his person. I think making a difference on a word of that sort, in any event, it going too far in statutory --

Q I wondered if you were emphasizing --

A I do not take that position.

Now ---

Q Did you ever come to the point of whose house this was?

A I don't think that's really important. He said the clothing was his; his mother denied it was his home.

Q That's what I thought.

A And they had arrested him at other premises on prior occasions, but I can't quite see the relevance of that position which did arise in the trial court and the trial judge said --

Q I'm talking about --

A -- he knew the cases of this court were the other way, but he didn't --

Q I just wanted to know; it was just unclear.

1 A I don't think it's really relevant. He admits
2 that the clothing was his; he admits that the narcotics were
3 taken from his clothing. He never disputed that, and while
4 his mother said "He doesn't live here; it's his brother who
5 lives here," then they were both arrested and both tried. I
6 don't think that that's really at issue at this point.

7 Now, some 200 years ago or more William Pitt the
8 elder, in the House of Commons, or the Earl of Chatham, said
9 "The poorest man may, in his cottage, give defiance to all the
10 forces of the crown. It may be snow on the roof and the roof
11 may leak, the wind may blow through it, and the storm and the
12 rain may enter, but the King of England may not enter, all his
13 forces dare not cross the threshold."

14 That's, I think, the fundamental, the beginning of
15 the principle which we now have embodied in the 4th Amendment.
16 At about that same era Lord Halifax was what was called in
17 England, one of the Secretaries of State, issued a general
18 warrant for the arrest of the publishers of the seditious
19 libel stated to have appeared in the "North Britain."

20 On moving about the so-called "messengers," and I
21 suppose equivalent to constables, learned that it was John
22 Wilkes who was the publisher of the libel and under that same
23 general warrant, not naming him or anyone else, Wilkes was
24 arrested; his house was ransacked; his papers were seized, they
25 called the blacksmiths that broke the locks, and so on -- and

1 he sued the messengers and others and Lord Halifax, for libel,
2 or rather for the issuance of the unlawful writ and the
3 seizure, I should say. He recovered a thousand pounds against
4 Lord Halifax, and lesser amounts against others in a famous
5 opinion written at that time by Lord Chief Justice Pratt and
6 followed very shortly within the same few years, the same
7 decade, by the famous case of John Entic, who had been arrested
8 and his papers all seized under a somewhat similar warrant,
9 except that it named him. It was for seditious libel in the
10 British Freeholder, another publication.

11 And in that case, Lord Camden held: "That if this
12 practice which had originated in the Star Chamber should be
13 sanctioned. The secret cabinets and bureaus of every subject
14 in this kingdom will be thrown open to search and inspection
15 whenever the Secretary of State shall see fit, to charge or
16 even suspect a person.

17 "And this power so assumed, is an execution on all
18 a party's papers, his house, his rifle, his most valuable
19 papers are taken out and so on," and then May in his con-
20 stitutional history of England, that empty cases, only
21 covering perhaps 100 pages of fine print; it's a long-winded
22 thing, but May in his constitutional history of England, sums
23 it up: "That with the unanimous concurrence of Lord Mansfield
24 and the other judges of the Court, this eminent magistrate now
25 finally condemns this dangerous and unconstitutional practice."

1 Now, very interestingly, just before those two
2 famous English cases arose, a situation arose in the Massa-
3 chusetts Bay Colony. The British Ministry sent orders to
4 issue general warrants which there were called "writs of
5 assistance," to search for merchandise on which the duties
6 imposed by Parliament had not been paid. There were no names;
7 there were no places; they were simply to go out and it gave
8 them the right, presumably, to go into any warehouse, shop or
9 other place to search for these papers.

10 James Otis was the Attorney General of the Colony
11 of Massachusetts under Crown appointment at that time. He
12 refused to support the writs, resigned his office, took
13 employment on the other side without fee, and fought the
14 issuance of these writs from the Superior Court of Massa-
15 chusetts, and the case was reported actually by John Adams,
16 whose notes of the case are published.

17 He said in the first instance that the court ex-
18 pressed great doubts to the legality of such a writ and the
19 authority of the court to grant it.

20 And Otis said in his argument: "The writ prayed for
21 in this petition, being general, is illegal. It is a power
22 that places the liberty of every man in the hands of every
23 petty officer." In not more than one instance he went on and
24 he talked about the case in the Star Chamber.

25 Now, these writs were never issued, but at the

1 conclusion of his notes, John Adams said "American independence
2 was then and there born."

3 At the end of his argument, and I think this is very
4 significant language, Otis said: "That special writs only may
5 be granted on oath and probable suspicion. The acts of
6 William and Anne are confined to this sense, that an officer
7 should show probable grounds, should take his oath of it,
8 should do this before a magistrate and that such magistrate,
9 if he thinks proper, should issue a special warrant to search
10 the place."

11 That language was almost copied verbatim 25 years
12 later into the Fourth Amendment. It's perfectly astounding
13 how closely that language that he used in the argument as
14 reported by John Adams, tracks, or vice versa, the language of
15 the Fourth Amendment to the Constitution of the United States.

16 Q Now, may I ask you a question, Mr. Deutsch,
17 that relates that to the present situation. I take it from
18 what you have just said that probably you would agree that the
19 information which the police had up to the time they went in to
20 make the search and had presented that to the magistrate on
21 oath, they could have got a warrant?

22 A Yes. The state makes the contention that this
23 was one of the hot pursuit cases that had to be done immediately
24 and if they had tried to go for a warrant, why, the evidence
25 would have disappeared, as usual and that short of thing, they

1 say, they flush it down the toilet and all that sort of
2 thing.

3 Q I suppose you agree with those practicalities,
4 too?

5 A Pardon?

6 Q I suppose you would agree with those practi-
7 calities.

8 A Not in this case, but I do in principle, of
9 course, if that type of thing takes place.

10 Q Well, you do believe that they could have
11 gotten a warrant?

12 A Oh, I don't think there is any question about
13 that. I think -- there were three officers; two of them
14 could have stayed there while the other one went to get a
15 warrant.

16 Q And if they stayed there -- they had already
17 placed this man under arrest?

18 A Yes.

19 Q And they had placed his brother under arrest.

20 A And the driver of the car.

21 Q Would they then have --

22 A The only one there was the mother. They would
23 have no trouble watching the place.

24 Q They could make them sit in a chair under
25 arrest and wait until the warrant got back; is that it?

1 A I think they could have.

2 Q Without invading their privacy?

3 A I think so. That is without unlawfully invading their privacy, under all the circumstances. I don't
4 think that would have been an unlawful invasion to wait there
5 and watch the house.

6
7 Q You think they were lawfully in the house,
8 then?

9 A I can't say that; no, sir. No, sir. They
10 might have to wait outside, but if he had done it on the basis
11 of a warrant to be obtained, he might have gone in to prevent
12 that; yes, sir. Lawfully.

13 Q Well, then he could not, on the hypothesis I
14 gave you you would not agree that he could have made the two
15 brothers sit down in chairs and await the return of the warrant.
16 They would have to take them out on the porch or outside.

17 A I think what he could have done before they
18 entered, with the three officers, one of them could have gone
19 back for a warrant and the other two could then have said:
20 "While we wait for the warrant we will come in here; we will
21 not conduct a search; we will simply sit here and make sure
22 that no evidence that might be here would disappear.

23 Now, there is another principle involved here and
24 that's the question of as to whether you can search just
25 generally in the hope of finding evidence, even under a search

1 warrant. I don't have that situation and I'm not prepared to
2 discuss it, but I know there is that question that even with a
3 search warrant they couldn't necessarily have gone into the
4 place and said: "We hope we are going to find some evidence on
5 which we can convict you on this arrest that we made, on the
6 suspicion that you have something hidden in this house which
7 you are not allowed to have.

8 That's another question.

9 Q What -- I thought you conceded they could get
10 a warrant. What should they get a warrant for?

11 A Well, now, that's another question, a hypothe-
12 tical question. They could go down and say: "We saw what we
13 believe to be a transaction. They would say that to the judge
14 directly under oath; a narcotics transaction. We believe there
15 are narcotics hidden in this house. We ask for a warrant on
16 the basis of which to search for these narcotics under these
17 circumstances."

18 Now, that would bring up a set of facts that does
19 not exist here, that I can't possibly, can't go into all the
20 tangential aspects that might arise under that type of hy-
21 pothesis.

22 Q Part of your case is that they had an alter-
23 native, namely: to get a search warrant, and I'm exploring
24 your alternatives.

25 A Well, I understand that, of course, is in the

1 picture, but the truth of the matter is that didn't happen.
2 Whether they could have done it or not, it is my position that
3 they had no right to do what they did.

4 Q Well, what if there was someone else in the
5 house and the police could have gotten a warrant; assuming
6 they had probable cause to get a warrant. Could you leave the
7 police in the house and do what?

8 A Simply sit there and wait for the warrant to
9 come back.

10 Q Well, what if there is another person in the
11 house and the other person is wandering; can you follow that
12 person all over the house to make certain he doesn't destroy
13 evidence?

14 A I can't quite conceive of that. I think the
15 police simply --

16 Q Well, I suppose it would be the most normal
17 thing in the world if a confederate or a member of the family
18 or something was in the house and the police were waiting there
19 to keep evidence from being destroyed, I suppose if they were
20 going to achieve that they would have to follow the person
21 all over the house.

22 A Either that or ask the person to stay there.
23 If the person said, "You go to the devil; I won't do it;" I
24 don't know what would happen.

25 Q Where has your privacy gone then, if you leave

1 the policeman there and he follows you around all over?

2 A Where does your privacy go when --

3 Q How long does it take to get a search warrant
4 in your state?

5 A I have no idea, but I should imagine --

6 Q Five or six hours or two hours or two days or
7 what?

8 A I would imagine maybe that driving from this
9 area it would take 15 or 20 minutes to go to a courthouse and
10 15 to 20 minutes -- I'd say within an hour easily.

11 Q You mean to get the warrant typed up and
12 affidavit drafted and --

13 A You will have a tremendous advantage over me,
14 sir. I have never tried a criminal case in my life and I don't
15 know. I can just imagine that, as a practical matter, it would
16 take an hour or so. Now, I could very well be wrong. I have
17 never seen a search warrant.

18 Q Excuse me.

19 A Pardon me.

20 Q I didn't mean to interrupt.

21 A Oh, no.

22 Q What time of the day or night was this -- did
23 this occur?

24 A It was in broad daylight, around noon or so.

25 Q It was on a week day?

1 A Oh, yes.

2 Now, as this case has said in the Court's opinions,
3 especially the recent ones, that the law on this subject has
4 moved from side-to-side any number of times. Mr. Justice
5 White, I think, in the last opinion, said five times and there
6 isn't any question about it, yet in my reading of all of this
7 law I think there is a thread of an effort to live up to the
8 constitutional history to which I have referred.

9 I think it is well-summed up in the dissenting
10 opinion of Mr. Justice Murphy in the Harris case, which has
11 since been overruled, and also in his majority opinion in the
12 Trupiano case involved in this still --

13 I am not here to argue the question of retroactivity
14 of the Chimel case, decided some eight or ten months ago. I
15 don't think it's necessary to do so; I know that Mr. Justice
16 Harlan's statement in one of the other cases, that it should
17 be applied to cases still subject to direct review by this
18 Court, but I have not approached the matter from that point of
19 view.

20 I might refer for ammoment to the case of James
21 versus Louisiana, in which a man was arrested two blocks from
22 his house and this Court held in a unanimous decision pro
23 curiam that his home could not be searched under those circum-
24 stances without a warrant.

25 I might mention ---

1 Q Do you think this case just turns on James,
2 Mr. Deutsch?

3 A No; I'd go further: Shipley, which is the one
4 you decided on the same day as the Chimel case.

5 Q You mean you think they govern this?

6 A I just can't see any difference and the only
7 reason I have put my case on the basis of which I have,
8 especially in this oral argument, is that I can't understand
9 why you would ask for a hearing.

10 Q Why we didn't do this one summarily, too?

11 A Well, I go further than that. Exactly the
12 same as the Chimel case. It's open; it involves a similar
13 situation except it goes back one step because he wasn't in
14 the home when arrested.

15 Q Well, not, I mean then you would have to assume
16 that Chimel was retroactive, but the other case decided with
17 Chimel was what? Shipley?

18 A Shipley and Von Cleef, but Shipley is very
19 closely in point, because he was arrested as he was getting
20 out of his automobile near his home.

21 Q Shipley wasn't decided on the basis of the
22 Chimel rationale; was he?

23 A Oh, no. It was decided on more prior --

24 Q Pre-Chimel.

25 A Chimel.

1 Q So, it's in the line with James, Shipley is?

2 A Exactly. And I just want to mention, if I may,
3 as a little interesting sidelight, that the James case -- I
4 have talked about James Otis who was the father of the 4th
5 Amendment. This man's name was Otis James.

6 Now, in Shipley, very frankly, what this Court said,
7 not referring to the Chimel case at all: "The constitution has
8 never been construed," and that statement I cannot find any
9 exception; I can't find that that's wrong; "by this Court to
10 claim, to allow this belief in the absence of an emergency,
11 to arrest a person outside his home and then take him inside
12 for the purpose of conducting a warrantless search. On the
13 contrary it has always been assumed that one's house cannot
14 unlawfully be searched without a search warrant except as an
15 incident to a lawful arrest therein."

16 Now, that's a pro curiam decision. The statement, as
17 I said, the position of the state in this Court at any rate,
18 is that this was, in effect, a hot pursuit and this wasn't
19 really a general search, that it lasted only two or three
20 minutes.

21 Now, I dispute that. As a matter of fact on the
22 record, and I'll take only a moment to mention that the brief
23 for the State says: "At approximately a minute or two, no more
24 than three minutes" -- No; I'm sorry; that's the facts there.

25 "Within minutes," says the brief, "after entering

1 the house, the officers found the heroin and dilaudid and so
2 on." Now the reference there is to page 12 of the transcript,
3 the appendix which says: "That approximately a minute or two;
4 no more than three minutes, Officer Loman had walked into the
5 back bedroom and while I was standing in the front room,
6 James Vale and his mother came into the front room of the
7 house. At this time I identified myself to them and told them
8 Donald Vale was under arrest and we were going to conduct a
9 search of the house." That's where the two or three minutes
10 came in. He told them they were going to search.

11 We simply submit, may it please the Court: that
12 Appellant was convicted upon the basis of evidence obtained in
13 violation of the Fourth and 14th Amendments; that conviction
14 was affirmed and should here be reversed.

15 Thank you.

16 Q Mr. Deutsch, could I ask you a moment --

17 A Certainly.

18 Q I noted that the Court postponed jurisdiction
19 in this case, rather than noting jurisdiction.

20 A Yes.

21 Q Is there some jurisdictional question in here
22 or is it only a question of whether it should have been an
23 appeal or a cert?

24 A Well, that could be the only question. Actually,
25 the State filed a motion to dismiss for want of jurisdiction.

1 And the court postponed that to the merits. The State has not
2 raised the question of jurisdiction in its brief to this Court.

3 Q Well, what was the question raised in the
4 motion to dismiss?

5 A The State Supreme Court cited the statute
6 permitting the search on making arrest, and then held, not
7 very specifically or clearly, that there was nothing violative
8 of the constitution in the arrest made -- in the search made
9 under that statute, which I construe to mean that they held
10 that the statute as so applied, does not violate the Fourth
11 and 14th Amendments. If so, this is a good appeal; if not,
12 it belongs here on cert in any event. That would be my
13 construction.

14 They held the statute not to be violative; the
15 statute as so applied not to be violative of the Fourth and
16 14th Amendments.

17 MR. CHIEF JUSTICE BURGER: Thank you.

18 Mrs. Korns.

19 ORAL ARGUMENT BY LOUISE KORNS, ASSISTANT
20 DISTRICT ATTORNEY FOR THE PARISH OF ORLEANS,

21 ON BEHALF OF RESPONDENT

22 MRS. KORNS: Mr. Chief Justice and may it please the
23 Court: The State of Louisiana certainly agrees with everything
24 that Mr. Deutsch has said about the inviolability of homes and
25 the constitutional prohibition against the search of a house

1 without a warrant.

2 However, as the State of Louisiana sees this case,
3 it -- the issue is much smaller and sort of confined to the
4 facts of this case.

5 This Court has held continually and it even, as late
6 as Chimel, that while --

7 Q We all have trouble with that and it might
8 interest you that counsel for that side was here not long ago
9 and he told us that was pronounced: "Kimel."

10 A Even as late as Your Honors' decision in
11 Chimel it was taken to be settled jurisprudence of this Court
12 that following a valid arrest an incidental search can be made.

13 Now, the way I understand -- the State of Louisiana
14 certainly argues that a valid arrest without warrant was made
15 in this case, at the -- right at the front door of the house,
16 steps of the house. We concede that it was not in the house;
17 Vale was returning to his house.

18 Now, if a valid arrest was made, an incidental
19 search contemporaneous with this arrest, under the jurispru-
20 dence of this Court, an incidental search was permissible.
21 And as the State of Louisiana sees it, the only issue before
22 this Court is whether the scope of that incidental search was
23 also permissible.

24 In other words --

25 Q What were you searching for?

1 A The police officers testified, Mr. Justice,
2 that they were sure that there were narcotics in that house,
3 because as they watched the house to be sure Donald Vale was
4 there before going forward with these prior arrest warrants
5 they had, that what they saw convinced them -- Donald Vale had
6 gone back in the house to get the narcotics which he brought
7 out and sold to Saucier --

8 Q Well, they weren't looking for weapons, were
9 they?

10 A No, sir; they were looking for narcotics.

11 Q They weren't looking for anything that might
12 injure them; were they?

13 A No, sir; they were looking, and the State of
14 Louisiana concedes, because, from the record the State of
15 Louisiana has to concede that the police officers testified
16 that they were sure there were narcotics in that house in which
17 James Vale -- Donald Vale had gone in. They were sure that
18 was where his supply was. If he could come out of that house
19 and sell to the people who would come out to the house, like
20 Saucier in the instant case.

21 So, when they saw him go back in the house, come
22 back out within minutes, look up and down the street as he
23 went down the steps and put his head in the car in what they
24 were convinced was a narcotics sale. And then when they
25 approached the house Saucier swallowed the narcotics and they

1 frisked down Donald Vale and Saucier and found nothing on them,
2 they testified that they were convinced that the source of
3 those narcotics were in the house.

4 So, there is no doubt about it, the issue in this
5 case, as the State of Louisiana sees it, is a very narrow one:
6 was the scope of their search incident to Donald Vale's legal
7 arrest, constitutionally permissible in scope?

8 Now, there is no doubt about it, under the juris-
9 prudence of this Court they had the right, following this
10 valid arrest, without a warrant in front of the house, to
11 frisk down Saucier and Vale; no doubt about that under the
12 settled decisions of this Court.

13 Now, the State of Louisiana and under the -- rather,
14 under the Chimel decision, the incidental arrest has been
15 confined to the area in which the accused could reach. Well,
16 there is no doubt about it that the search in the instant case
17 went beyond an area into which Donald Vale could have reached,
18 because it was inside the house.

19 Now, it's Louisiana's position that this was an
20 emergency situation and that it was impossible to get a search
21 warrant -- impossible to get a search warrant in advance, be-
22 cause they didn't know that they were going to be confronted
23 with this emergency sale which took place before their eyes.
24 They thought they were going there to arrest this man on prior
25 narcotics charges.

1 They couldn't have brought along a search warrant;
2 there is no doubt about that.

3 Is it time for the Court to recess, Your Honors?

4 MR. CHIEF JUSTICE BURGER: Not quite. You have two
5 more minutes.

6 MRS. KORNS: Well, they couldn't have gotten a
7 search warrant in advance of going to this house, and --

8 Q How long had they been staked out there?

9 A Apparently, about 15 minutes, Mr. Justice.
10 The reason they were watching this house was that Donald Vale
11 operated from three or four addresses.

12 Q Yes.

13 A They had arrested him at other addresses,
14 previously, and they just testified that they, before approach-
15 ing the house and letting James Vale, his brother, and Mrs.
16 Vale, his mother, know that they were looking for Donald with
17 an arrest warrant, they didn't want him to be alerted to this
18 fact and therefore, they wanted to be -- they had gotten a tip
19 that he was selling from this address that day, that he was
20 at this address that day, I would say, or that they could pick
21 him up at this address that day.

22 Q Does the record show that the information that
23 had come to them indicated that he was selling?

24 A No, no; that's a mistake. They just said they
25 had been told that he was at this address.

1 And they testified that they took up their position
2 to watch because they wanted to be sure he was there before
3 they -- they wanted to see him when they approached him to
4 serve the arrest warrants, because they didn't want him to
5 duck again, because this was an alias capias that had been
6 issued for him when he had failed to appear. So they watched
7 -- actually I was completely wrong when I said that they
8 thought he was selling there. They didn't. They watched to
9 be able to serve the arrest warrant.

10 MR. CHIEF JUSTICE BURGER: I think we will suspend
11 until morning. I'm sorry to hold you over until tomorrow,
12 Mr. Deutsch, and Mrs. Kornes.

13 MRS. KORNS: Thank you, Your Honor.

14 (Whereupon, at 2:30 o'clock p.m. the argument in the
15 above-entitled matter was recessed, to resume at 10:00 o'clock
16 a.m. the following day.)