

In the

Supreme Court of the United States

NEW YORK,

PETITIONER,

v.

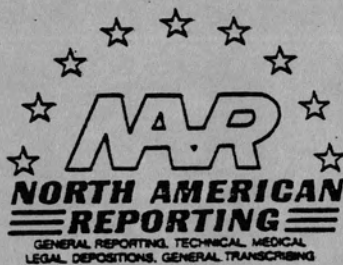
ROGER BELTON

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No. 80-328

Washington, D.C.
April 27, 1981

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NEW YORK, :
Petitioner, :
v. : No. 80-328
ROGER BELTON :
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Washington, D. C.
Monday, April 27, 1981

The above-entitled matter came on for oral ar-
gument before the Supreme Court of the United States
at 11:28 o'clock a.m.

APPEARANCES:

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in New York v. Belton. Mr. Harvey, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF JAMES R. HARVEY, ESQ.,
ON BEHALF OF THE PETITIONER

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

This case involves the legality of a search conducted by a police officer of a jacket belonging to the respondent and the admissibility of the evidence -- in this case, cocaine -- which was obtained from that jacket.

The basic issue boils down essentially to whether or not the search was permissible as a search incident to a lawful arrest which was one of the several well-recognized exceptions to the warrant requirement of the Fourth Amendment.

By way, just very briefly, of background of the case and how it got here. The respondent moved to suppress the cocaine at the trial level; that motion was denied after a hearing. The evidence was held admissible; the respondent subsequently pled guilty and appealed the case to the New York State intermediate appellate court, which unanimously held that the search was proper of the jacket in this case, as a search incident to a lawful arrest.

The respondent further appealed to the New York Court

1 of Appeals which in a divided opinion reversed the appellate
2 court, lower appellate court, and held that the officer had in
3 effect reduced the jacket to his exclusive control when he, if
4 you will, picked it up, and therefore a warrant was at that time
5 necessary under the law.

6 The facts in this case, if I could very briefly run
7 through them -- I think they're very important, and they're pret-
8 ty much -- well, they're not indispute by either counsel for the
9 respondent or myself, but I'd like to go through, and start out by
10 saying that it was on April 9, 1978, that the Trooper Nicot in
11 this case, a state policeman, was patrolling the New York
12 State Thruway, an interstate highway, and he spotted the respon-
13 dent's vehicle traveling at a high rate of speed on the highway.

14 QUESTION: What time of day was this?

15 MR. HARVEY: Mid-morning, Your Honor. And he pulled
16 over the vehicle. There were four male occupants, two in the
17 back and two in the front. When he went up to the window --
18 it was rolled down by the driver; he went to the driver's side
19 -- he smelled fresh burning marijuana and observed on the floor
20 a Supergold stamped container which he knew from his training to
21 be a container that normally contains marijuana. At that point
22 in time he directed all four occupants to leave the vehicle,
23 which was a two-door vehicle. They got out of the vehicle. He
24 at that point in time retrieved the Supergold container, which
25 did contain marijuana, in fact, and some four or five "roaches"

1 or burned marijuana cigarettes in the ashtray of the front por-
2 tion of the vehicle.

3 At that point in time he again patted down or searched
4 further all of the four occupants of the vehicle, read them
5 their Miranda rights, placed them under arrest for possession
6 of marijuana. At this time we had four defendants outside of
7 the motor vehicle there on the expressway. The officer then
8 went back into the vehicle and on the back seat there were lying
9 five jackets.

10 He picked up the jacket involved in this particular
11 case and he took ahold of it, went through it, and found cocaine
12 in an unzipped pocket as well as a \$20 bill and cocaine in a
13 zippered pocket. Not that that makes any difference. And he
14 then asked each of the four defendants, at this point, occupants
15 of that vehicle, as to who owned this particular jacket.

16 QUESTION: You say there were five jackets?

17 MR. HARVEY: I believe that's correct, Your Honor.
18 There were only four people in the car, Your Honor, but there --
19 pardon?

20 QUESTION: Five jackets?

21 MR. HARVEY: That's correct, Your Honor. I believe
22 that's what the -- as I recall the record. And none of these --

23 QUESTION: Did he search the others, too?

24 MR. HARVEY: Yes, Your Honor. None of the occupants
25 admitted to this jacket belonging to them. So he then placed

1 each and every one of the occupants under arrest for possession
2 of cocaine, obviously a more serious offense. And the defen-
3 dant --

4 QUESTION: At trial did they disclaim any ownership?
5 Or any move to suppress?

6 MR. HARVEY: Okay, Your Honor, in the jacket, in --
7 the defendant in this case, the Respondent, now Belton -- he
8 had an ID card. I believe it was either a Blue Cross or Blue
9 Shield card with his name on it. And I handled the case at the
10 grand jury, and each of the other occupants pointed the finger
11 at the respondent in this case, Your Honor. And there was never
12 any disavowal of the ownership of that jacket.

13 QUESTION: But the ID card also was in this jacket?

14 MR. HARVEY: That's correct. In the respondent's name.
15 That's correct, Your Honor. Now, it's the position of myself
16 that in this particular case Chimel v. California governs in
17 that this was a proper arrest and a search. There's no question
18 about the lawfulness of the stop, and there's no question of the
19 leadup to the arrest for the possession of marijuana, that
20 this was a lawful stop and a lawful search incident to arrest.

21 Now, Chimel, of course, pointed out you can certainly
22 search the arrestee, in this case, four arrestees, and that you
23 can also search the area under the immediate control of the
24 arrestees, and that has been construed to mean the area from
25 which an arrestee may gain, or might gain, access to a weapon

1 or destructible evidence.

2 QUESTION: Was this trooper always alone with the four?

3 MR. HARVEY: That's correct, Your Honor. He was alone
4 at the scene. There were no other officers present. It was he
5 and the four occupants of the motor vehicle.

6 QUESTION: Did he secure them in any way when they
7 were standing --

8 MR. HARVEY: No, Your Honor, they were in no way
9 secured.

10 QUESTION: Just stood outside the car -- ?

11 MR. HARVEY: They were outside of the vehicle, out-
12 side of their particular vehicle, Your Honor. He did indicate
13 that he, if you will, he segregated them outside the car, spread
14 them out a little bit, outside the vehicle. That was the extent
15 as to what he did.

16 MR. HARVEY: He couldn't secure because he didn't
17 have but one pair of handcuffs.

18 MR. HARVEY: Exactly, Your Honor. We believe that
19 under the Chimel case that we have to ask ourselves, under
20 these circumstances could any one of these arrestees or occu-
21 pants of this vehicle approach that vehicle, rush or overpower
22 the officer, and of course obtain the evidence which was on, in
23 the back seat, in the jackets, in this particular case? Now,
24 these jackets, we certainly can presume, were shed at some point
25 in time by the occupants.

1 QUESTION: Did you say it was a two-door vehicle?

2 MR. HARVEY: That's correct, Your Honor.

3 QUESTION: Then did he have to get in it and --

4 MR. HARVEY: Yes. Your Honor, he had to bend, push
5 the seat to get into the back seat, push the front seat forward,
6 and bend in. At this point in time he was certainly indisposed
7 to a certain extent in that particular area.

8 QUESTION: I take it any of the four, had he been able
9 to reach it, would have had to get in the same way, would he?

10 MR. HARVEY: Being a two-door vehicle, Your Honor,
11 they could have certainly -- my position is more that they
12 could have overpowered the officer and put him in a situation
13 where they could have obtained the evidence and taken out the
14 jackets in this particular case. And I believe that that's why
15 the search certainly is proper under Chimel, because I believe
16 he could have been overpowered by any one of the arrestees.
17 This is not a case of one arrestee --

18 QUESTION: And why did the New York Court of
19 Appeals say it was not?

20 MR. HARVEY: Okay. Your Honor, the Court of Appeals,
21 the court below in this particular case, took the position that
22 when Trooper Nicot placed these four occupants of the vehicle
23 under arrest, that there was some magic in the officer with
24 these four occupants of the vehicle, placed under arrest, that
25 automatically they were subservient to each and every command

1 of that officer at the vehicle. I think that this is quite
2 frankly absurd. I think, at this point in time, the exclusive
3 control, the Court of Appeals held, of that whole scene -- in
4 other words, now the scene is stabilized, as far as the majority
5 of the court was concerned, once he placed the individuals under
6 arrest and of course ordered them out of the vehicle. I think
7 that's not realistic --

8 QUESTION: Were any of them armed?

9 MR. HARVEY: There was no evidence in this particular
10 case of any weapons. There were no weapons, Your Honor.

11 QUESTION: Well, yes, the officer had a weapon.

12 MR. HARVEY: That's correct, which he never used, or
13 never even drew.

14 QUESTION: Well, I don't get this, he automatically
15 can be overpowered. You used the word, "automatically."
16 I don't --

17 MR. HARVEY: Well, Your Honor, I maybe misspoke.
18 He certainly could have been.

19 QUESTION: Couldn't he have called for help? Isn't
20 that usually what's done when there's a one-officer patrol --

21 MR. HARVEY: He certainly --

22 QUESTION: And they usually call for help.

23 MR. HARVEY. Excuse me, Your Honor. It could have
24 been done; certainly. At some point in time he could have gone
25 to a phone and called for help.

1 QUESTION: Gone? He could have just picked up the
2 phone right there in his car.

3 MR. HARVEY: He's outside of his vehicle at this
4 point in time, Your Honor. He could have called initially when
5 he pulled the vehicle over but --

6 QUESTION: That's what I'm --

7 MR. HARVEY: -- that's very unusual in a speeding
8 case, Your Honor, for a police officer --

9 QUESTION: With four people in the car?

10 MR. HARVEY: That's correct, Your Honor.

11 QUESTION: Mr. Harvey, Judge Gabrielli in his dissent
12 makes some point of the fact that under your state procedural
13 rules the New York Court of Appeals cannot make new findings of
14 fact where the Supreme Court and the Appellate Division have
15 made concurrent findings. Is that --

16 MR. HARVEY: That's the law. That's a correct state-
17 ment of the law, Your Honor. And in fact, they did that in this
18 particular case by finding the exclusive control of the scene
19 of the jacket in the officer at this point in time. To me,
20 that was incorrect.

21 QUESTION: Do we have any review of that issue when the
22 highest court in the state has, even if they have distorted their
23 own law? Can we correct the errors of the New York Court of
24 Appeals on error in construing state law?

25 MR. HARVEY: In redefining the factual situation,

1 Your Honor, that existed which they are not supposed to -- not
2 authorized to do under state law? I would say, yes, Your Honor.

3 QUESTION: We do? ~~That's correct, is it?~~

4 QUESTION: What's the federal issue?

5 MR. HARVEY: We're dealing here with the constitu-
6 tionality, Your Honor, of the particular search. That's correct.

7 QUESTION: They merely found us a new set of
8 facts which the dissenting judge said was wrong, but is that
9 something we can reexamine?

10 MR. HARVEY: I think, Your Honor, you can examine the
11 record of the hearing, and I think that that substantiates the
12 position --

13 QUESTION: No, but don't we have to take the facts as
14 the New York Court of Appeals said they decided the case?

15 MR. HARVEY: I submit, Your Honor, that the fact that
16 this Court should consider are the facts set forth in the record of
17 the hearing in this particular case at the initial trial court
18 below.

19 QUESTION: Do you have any authority for that? Any-
20 thing in this Court that's ever suggested we do that?

21 MR. HARVEY: We don't have any, Your Honor.

22 QUESTION: There isn't any.

23 MR. HARVEY: Now, in the respondent's brief, he makes
24 much ado about the lack of concern of the officer for his
25 safety. This case, this Court in Robinson --

1 QUESTION: Incidentally, did the officer get them to
2 the police station in his -- ?

3 MR. HARVEY: Ultimately he did, Your Honor.

4 QUESTION: He put the four of them in -- what? -- his
5 car?

6 MR. HARVEY: In his vehicle, that's correct, Your
7 Honor.

8 QUESTION: And drove them all -- ?

9 MR. HARVEY: Took them to the police station, and ul-
10 timately to the magistrate, in that particular area, that's cor-
11 rect, Your Honor. This Court in Robinson stated that it's not
12 certainly necessary for the officer to calculate at the scene,
13 to consider whether or not a weapon may be present, but rather
14 the arrest itself automatically triggers, if you will, the
15 search incident to that arrest, which includes the area of the
16 arrestee, as I stated before, as well as the person of the
17 arrestee. In Robinson, of course, it was the person of the
18 arrestee from which the cigarette container was obtained.

19 To say that the -- as I stated before -- that the
20 officer had the exclusive control of the jacket at the time
21 that he picked the same up, I think the Solicitor General in
22 his brief points out that such a construction of exclusive
23 control of this standard would in effect render Chimel mean-
24 ingless in terms of searching of portable items in the area
25 of the particular arrestee, as existed in this particular case.

1 QUESTION: When you refer to that case, you are call-
2 ing on the plain view doctrine, are you, that evidence was in
3 plain view?

4 MR. HARVEY: In which case, Your Honor?

5 QUESTION: You're referring to the Chimel case.

6 MR. HARVEY: Right, Your Honor.

7 QUESTION: That's a plain view case.

8 MR. HARVEY: In the area of the arrestee; that's cor-
9 rect. That set forth the area to be searched. I'm taking it
10 certainly a step further, Your Honor, in saying that the area
11 from which a particular defendant or accused person, arrestee,
12 may obtain a weapon or contraband, certainly should apply in
13 this particular case to anything that's in that area reachable
14 by this defendant to, should we say, assault the officer or
15 destroy the evidence.

16 QUESTION: But after he got ahold of it, the occupant
17 couldn't have gotten it, could he?

18 MR. HARVEY: Could expect the same argument, Your
19 Honor, in the Robinson case, once the cigarette container --

20 QUESTION: I'm not arguing the Robinson case.
21 I'm asking you a question.

22 MR. HARVEY: Fine, Your Honor. You could certainly
23 take that position that once he had ahold of it he certainly
24 had ahold of it, but the four individuals outside the vehicle,
25 the occupants, Your Honor, certainly could have at that point

1 in time wrestled -- or taken it from him.

2 QUESTION: So he had a right to search him?

3 MR. HARVEY: That's correct.

4 QUESTION: He had a right to search him.

5 MR. HARVEY: Incident to the arrest. We're still in a
6 fluid situation as the dissent in the court below said at this point.

7 QUESTION: While you're interrupted, where was the
8 clear view of this cocaine?

9 MR. HARVEY: Pardon me, Your Honor?

10 QUESTION: The clear view of the cocaine?

11 MR. HARVEY: There was no clear view of the cocaine
12 in this particular case, Your Honor, until the officer went into
13 the jacket and obtained the cocaine, the powdery substance
14 therefrom.

15 QUESTION: Mr. Harvey, can I ask you just one question
16 about the authority for the search? There were two offenses
17 that had been committed, one by the driver in speeding, and
18 then secondly all four, presumably, were in possession of mari-
19 juana.

20 MR. HARVEY: That's correct, Your Honor.

21 QUESTION: If you had only the former, namely, a
22 speeding offense, would you still say there would be authority
23 to search the jacket?

24 MR. HARVEY: That's an interesting question. I would
25 say at that point in time, no. In other words --

1 QUESTION: Maybe in New York a speeding offense would
2 not support a custodial arrest.

3 MR. HARVEY: Your Honor, that's correct.

4 QUESTION: That's your answer then.

5 MR. HARVEY: Fine. At that point in time there would
6 be no authority to search. Now, once the marijuana, of course,
7 which was kind of contemporaneous to the --

8 QUESTION: Assume that it was a sufficiently reckless
9 driving and maybe he smelled alcohol on the breath of the driver,
10 but no one else, so there was cause, probable cause to make a
11 custodial arrest of the driver, would that entitle you to search
12 the jackets in the back of the car?

13 MR. HARVEY: The driver alone?

14 QUESTION: Yes.

15 MR. HARVEY: At that point in time, probably not, Your
16 Honor.

17 QUESTION: What about a search for weapons at that
18 stage? Could he search for that purpose when he was one against
19 four?

20 MR. HARVEY: At the point in time where he arrested
21 the driver for driving while intoxicated?

22 QUESTION: At any time after he stopped the car, could
23 he make certain that there wasn't any weapon that might be used
24 to shoot him down?

25 MR. HARVEY: Absolutely, Your Honor.

1 QUESTION: Well, now --

2 QUESTION: He could have a right to search.

3 MR. HARVEY: He could have a right, anything that
4 looked like it may contain or could contain --

5 QUESTION: The difference between search and pat down,
6 I'm talking about.

7 MR. HARVEY: Certainly, pat down.

8 QUESTION: I thought that's what you meant.

9 MR. HARVEY: Okay. Thank you.

10 QUESTION: And anything in the car that might contain
11 a weapon.

12 MR. HARVEY: That is correct, Your Honor.

13 QUESTION: Well, I guess you've changed your answer
14 to my question, then, is that right?

15 MR. HARVEY: How is that, Your Honor?

16 QUESTION: Well, I take it, when a man is stopped for
17 speeding, maybe he's got alcohol on his breath, there are three
18 other people in the car, some of them might have a weapon,
19 there might be a weapon in the jacket. Would he have a right to
20 search the back of the car, search a jacket in the back of the
21 car?

22 MR. HARVEY: For his protection, on any arrest.

23 QUESTION: Your answer is yes or no?

24 MR. HARVEY: Yes.

25 QUESTION: So you've changed your answer to my question?

1 MR. HARVEY: Yes. We're asking, Your Honors, if you
2 will, the Court to set down a standard or guideline, if you
3 will, in these type of cases, that is, the search incident to
4 lawful arrest cases. There has been a lot of different holdings
5 in the state courts, some commentators have looked at the area of
6 search incident to lawful arrest and come forward with certain
7 criteria that we think ought to apply. That is -- and be con-
8 sidered, certainly, by the officer at the time of the arrest, as
9 well as by the courts. We would like to see this come from this
10 court and the other lower courts. That is, the number of arres-
11 tees as opposed to the number of police officers at the time
12 of the arrest. What restraint if any has been imposed upon the
13 arrestee at the time of the arrest?

14 QUESTION: This deals with the question of whether
15 the person of the arrestee can be searched?

16 MR. HARVEY: The person as well as anything within the
17 "grabbable" area of the arrestee, Your Honor.

18 QUESTION: Well, I thought in Robinson we said that
19 regardless of whether or not in a particular case all of the
20 factors might not add up to considerable danger, if it was a
21 custodial arrest, the rule was that there could be a full field
22 search?

23 MR. HARVEY: That is correct, Your Honor. Of the
24 individual, at that time. That is correct, Your Honor.

25 QUESTION: Of the individual. So that we don't want

1 consideration of individualized factors in that situation.

2 QUESTION: Anytime you've got the custodial arrest,
3 that's correct, Your Honor.

4 QUESTION: So that if this jacket, if he had had this
5 jacket on, it would have been searchable under Robinson?

6 MR. HARVEY: No question about that, Your Honor, cer-
7 tainly. And taking it off, should another rule apply?

8 QUESTION: Or even carrying it in his hand?

9 MR. HARVEY: If he were carrying it in his hand,
10 clearly, it would have been searchable under Robinson. If he
11 were seated at a park bench and arrested for a crime that were
12 two feet from the particular individual, I take the position
13 that will also be, if you would, Your Honor, certainly search-
14 able.

15 QUESTION: Well, if it's his jacket, what difference
16 would it make if it were two feet, three, or four?

17 MR. HARVEY: Any point in time at the arrest; I agree
18 with Your Honor. Certainly.

19 QUESTION: Robinson was just a one-person case, wasn't
20 it?

21 MR. HARVEY: That's correct, Your Honor.

22 QUESTION: You don't suggest that the right to make a
23 custodial arrest of the driver entitles you to search the person
24 of all passengers, do you?

25 MR. HARVEY: No. The area.

1 QUESTION: Okay.

2 MR. HARVEY: Your Honor, is the position that I take.
3 The area of the arrestee. And in this case, of course, the
4 facts in this case, all the individuals, not just the driver,
5 were of course under arrest.

6 QUESTION: I understand. For marijuana?

7 MR. HARVEY: That is correct, Your Honor. The loca-
8 tion -- another criteria -- the location of the arrestees in
9 relation to the automobile and the ease or difficulty to be
10 encountered by the arrestees in gaining access again to the
11 weapon or the destructible evidence, the area, if you will, of
12 the arrest. And we believe that we're not looking for any
13 particular rigid or inflexible guidelines by this Court, but
14 rather to look at each case where there is a search without a
15 warrant under a recognized rule such as the search incident to
16 lawful arrest, which we believe is here, that we should have
17 some guidelines for the courts below --

18 QUESTION: There's my trouble. The case just before said
19 they want a bright line and you don't want a bright line. Now,
20 who shall we go with? ...?

21 MR. HARVEY: I think we should go, in the area, I
22 think -- Justice Stewart had a good point. In terms of -- the
23 officer is the person that's going to have to make the determi-
24 nation at the scene. We certainly should give him through the
25 courts and through the educational process as much of the

1 criteria, as many guidelines as possible, so that he can do his
2 job properly.

3 QUESTION: How can you have a bright line when you
4 are dealing with the word "reasonable;" if bright line means a
5 per se rule that's easy for anyone to apply?

6 MR. HARVEY: It's got to, Your Honor, apply; the cir-
7 cumstances certainly govern what's reasonable.

8 QUESTION: But here you're dealing with basically two
9 separate doctrines, aren't you, the Robinson doctrine of
10 searching as a result of a custodial arrest and the Chimel
11 doctrine of how broad an area surrounding the arrestee can you
12 search in order to make sure that he doesn't either destroy
13 evidence or pull a gun on you?

14 MR. HARVEY: That's correct, Your Honor. We're inter-
15 weaving, certainly, the two circumstances, the two cases. One,
16 of course, Chimel, is aimed at primarily the obtaining of the
17 weapon or the destructible evidence. The other is the, cer-
18 tainly the custodial arrest and the search incident to it.

19 QUESTION: Well, suppose that you make a probable
20 cause arrest in a car, and everybody concedes you're entitled
21 to search the trunk of the car. You find in the trunk of the
22 car a briefcase, a plastic sack, and a jacket with a zipper
23 pocket. I guess you would concede that you couldn't search,
24 under our cases, you couldn't search the briefcase?

25 MR. HARVEY: That's for sure, Your Honor.

1 QUESTION: And the plastic bag is involved in Belton,
2 I mean, as in Robbins?

3 MR. HARVEY: Robbins..

4 QUESTION: How about the jacket?

5 MR. HARVEY: In the trunk, Your Honor, or in the -- ?

6 QUESTION: You wouldn't argue incident to arrest there,
7 would you?

8 MR. HARVEY: Not at that point, no, sir.

9 QUESTION: And so then it would be a --

10 MR. HARVEY: Whole new criterion.

11 QUESTION: It would be a Robbins-type consideration?

12 MR. HARVEY: Yes. Our position is, in a search inci-
13 dent to a lawful arrest, you never get to the point of the
14 expectation of privacy because of the situation, Your Honor.

15 QUESTION: But you say this jacket was near enough at
16 hand that it's within Chimel?

17 MR. HARVEY: That's correct, Your Honor. We are
18 taking that Chimel, certainly, a step further.

19 QUESTION: Well, as someone suggested to you, the --
20 I think, Mr. Justice Marshall -- the cocaine was not in plain
21 view, but the jacket in which the pocket containing the cocaine
22 was in plain view.

23 MR. HARVEY: That's correct, Your Honor.

24 QUESTION: That was unzipped, if it makes any dif-
25 ference.

1 MR. HARVEY: Right. In my particular -- it's our po-
2 sition it doesn't, but it certainly was unzipped, but it was
3 not visible as a white powder substance without going into the
4 jacket; certainly, Your Honor.

5 Now, in the respondent's brief, he relies heavily on
6 Chadwick --

7 QUESTION: Suppose that jacket belonged to somebody
8 else, because it was a fifth jacket?

9 MR. HARVEY: That's correct.

10 QUESTION: He had a right to go in there?

11 MR. HARVEY: Absolutely.

12 QUESTION: And unzipper it? Even if it belonged to
13 somebody else? Listen to me, even if it belonged to somebody else?

14 MR. HARVEY: Our position is, Your Honor, that as a
15 search incident to lawful arrest, under those circumstances,
16 custodial arrest at that point in time, that the officer to
17 protect himself and destructible evidence has the duty and the
18 right, certainly, to search this particular area of the arrestee.

19 QUESTION: Including somebody else's property?

20 MR. HARVEY: If it includes someone else other
21 than is in there, certainly, Your Honor.

22 QUESTION: It's just too bad?

23 QUESTION: Did you tell us that there was an ID card
24 with his name on along with the coat?

25 MR. HARVEY: That's correct, Your Honor; yes, in one

1 of the pockets of that same jacket.

2 QUESTION: So any question about ownership, you would
3 say, is resolved by that ID card?

4 MR. HARVEY: There's no question about that, who
5 owned the jacket, Your Honor.

6 QUESTION: Just as though he had his name on it, as
7 some people do.

8 MR. HARVEY: On the outside of the jacket; correct,
9 Your Honor. The respondent relies heavily on Chadwick and
10 Sanders in this particular brief. I believe these cases cer-
11 tainly were rightly decided, properly decided. I think that
12 Chadwick clearly -- the police officers had exclusive control of
13 the 200-pound trunk some one hour and a half after they'd ar-
14 rested the defendants or taken them to the police station. And
15 I believe in Sanders the search incident argument was never made
16 under those particular circumstances and clearly these two
17 cases are distinguishable. It's our position, Your Honors,
18 that the court below should be reversed and the conviction
19 reinstated on the the theory that this was in all respects a
20 proper search incident to lawful arrest. Thank you.

21 MR. CHIEF JUSTICE BURGER: Mr. Frey.

22 ORAL ARGUMENT OF ANDREW L. FREY, ESQ.,
23 ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE

24 MR. FREY: Mr. Chief Justice, and may it please the
25 Court:

1 Respondent has asserted in his brief that we wholly
2 disagree with the arguments of the state, and I just wanted to
3 begin by making the point that we do not disagree with the
4 state in its arguments that this was within the Chimel scope,
5 focusing on the facts of the case and the reasonableness of the
6 officer's actions under the particular facts of the case.

7 We think that, however, that that kind of inquiry
8 which is amply -- the state's position is amply supported, if it
9 be made in this case, is not an inquiry that needs to be made.

10 Our argument addresses, then, the question of whether
11 a valid search incident to an arrest can be justified solely by
12 reference to the spatial limitations; that is, whether it comes
13 within the Chimel scope, and the temporal limitations during
14 the arrest process. We were concerned about the exclusive con-
15 trol notion which both the New York Court of Appeals in this
16 case and the 8th Circuit Court of Appeals in the Benson case,
17 in which we have a cert. petition pending, have imported from
18 Chadwick, where I think it had quite a different meaning and
19 intention, into this situation.

20 Our argument in this case, contrary to what respondent
21 has suggested in his brief, is not intended to undermine either
22 thoroughly, as he says, or in any way, Chimel, or Chadwick, or
23 Sanders. It doesn't call the validity of those decisions into
24 question at all. The permissible scope of the search of the
25 person of an arrestee incident to arrest has been settled in

1 Robinson and that scope is broad indeed.

2 This case concerns the aspect of a search incident
3 doctrine involving a search of containers or items of some kind
4 that are nearby but not on the person or being worn by the ar-
5 rested individual. And our position is that such nearby items
6 like the items on the person should be subject to the same test
7 for a valid search incident to arrest as long as the search is
8 made during the period of the arrest. We would not contend,
9 with respect to a separate container that may have been seized,
10 that the Edwards principle that a search incident to arrest can
11 occur later, would be applicable to such containers.

12 Now, the first question in analyzing the case is whe-
13 ther, when the officer went and seized respondent's jacket, the
14 jacket was at that time within the spatial area defined by this
15 Court's opinion in Chimel.

16 QUESTION: Mr. Frey, is this an argument that because
17 the jacket was capable of being worn, we ought to treat its search
18 as we would treat one if he were wearing the jacket?

19 MR. FREY: No, no, it would not have to be a jacket.
20 It could be a shopping bag or some other item. It's not because
21 it was capable of being worn, but because it was an area
22 from which a person could secure, possibly secure a weapon or
23 destructible evidence.

24 QUESTION: So what about a lady's purse? Say, the sole
25 sole driver in a car is a lady and there's a purse on the back

1 seat, and they have probable cause to arrest?

2 MR. FREY: Well, the questions that I would ask are
3 at the time the purse is seized, is it within the area where the
4 woman who has been arrested could possibly lunge for it and
5 grab it?

6 QUESTION: Supposing that it is, you would say, they
7 may search it?

8 MR. FREY: If it's still during the arrest process.
9 If it's been put in the back of the patrol car and then
10 they come back and start --

11 QUESTION: What about a briefcase that's on the front
12 seat beside the person you arrest?

13 MR. FREY: Yes.

14 QUESTION: The same?

15 MR. FREY: I would say the same. That is, if --

16 QUESTION: Otherwise, you would --

17 MR. FREY: To follow what the Court has held in
18 Robinson, it does not turn on the privacy expectation.

19 QUESTION: And so you would say, if you arrested on
20 the street, if you arrest a person on the street carrying a
21 briefcase, you can obviously search the briefcase?

22 MR. FREY: If it's unlocked.

23 QUESTION: If it's unlocked?

24 MR. FREY: I would have difficulty with the suggestion.
25 And one of the reasons we did not argue --

1 QUESTION: But what if it were just zippered? Draper?

2 MR. FREY: I think the question the Court has to
3 answer in this situation is whether it is something to which
4 somebody might possibly have gained access during the course
5 of the arrest.

6 QUESTION: We've certainly sustained as an incident
7 search, a search of a zippered bag, in Draper, Draper.

8 MR. FREY: Yes, I would say a zippered container would
9 be searchable incident to arrest; yes. But I would have difficulty
10 with the locked footlocker in Chadwick. And we do not argue for --

11 QUESTION: You don't have much choice about that, do you?

12 MR. FREY: Excuse me?

13 QUESTION: You don't have much choice about that any longer.

14 MR. FREY: Well, I would have -- I don't think that
15 the Court held in Chadwick that a search then and there would
16 necessarily not have been incident to arrest. So, if we had
17 such a case it would be arguable, but I doubt that I would argue
18 it. Now, whatever the outer boundaries of the spatial area that
19 Chimel defines as incident to arrest, which is the area from which
20 you arrest, a person might gain possession of a weapon, or
21 destructible evidence, is a matter that necessarily has to be
22 delineated from case to case, and this Court has not had very
23 much occasion to do so. But I would note that if the arrested
24 individual is standing unsecured outside his automobile, I think
25 the interior of the automobile, not the trunk, but the interior

1 passenger compartment, is under Adams v. Williams, would have
2 been in the scope of search and seizure.

3 MR. CHIEF JUSTICE BURGER: We'll resume there at one
4 o'clock.

5 (Recess)

6 MR. CHIEF JUSTICE BURGER: Mr. Frey, you may continue.

7 MR. FREY: Thank you, Mr. Chief Justice. I think when
8 the Court recessed I was discussing the spatial limitations, the
9 limitations of the Chimel test. And it is our view, and I
10 think Adams v. Williams is precedent for this, that the interior
11 of a car is within the spatial grabbing area for a person who
12 is standing right outside the car at the time of arrest. But
13 the decision of the court of appeals here and of the 8th Circuit
14 in our Benson seems to go beyond that and suggests that even
15 though an item is seized from within the Chimel area, there is a
16 separate inquiry whether at the time it is searched it is within
17 the exclusive control of the officer searching it. And that
18 test, which as far as I know, is novel to our jurisprudence
19 prior to Chadwick, comes from certain language that was used in
20 Chadwick, and I think in a quite different context.

21 There are several difficulties that we perceive with
22 the exclusive control notion that has been used by the lower
23 court in several of these cases. First, I would make the point
24 that it runs afoul of the holding in Adams v. Williams, which
25 was a case where, according to the record that was the appendix

1 in this Court, Williams had been arrested. The officer then
2 waited until additional officers arrived on the scene, at which
3 point the car was searched. Now, it was not a subject of analy-
4 sis in the Court's opinion, but the Court did uphold the search
5 of the car and the seizure of the heroin found in the car as
6 incident to Williams' arrest.

7 The same is true in Draper where, I assume, at the time
8 the zipper bag was searched it was within the exclusive control
9 of the officer in this sense. And the problem with the exclu-
10 sive control test, the way it's being used, is that it essen-
11 tially eliminates searches of any item that is capable of being
12 picked up and carried away by the officer as incident to arrest.

13 QUESTION: Well, Mr. Frey, you wouldn't contend that
14 the cases from this Court that you have referred to are kind of
15 a unified whole easily applicable by any lower court or any
16 policeman, would you?

17 MR. FREY: I would say that in the area of search
18 incident to arrest the cases to date have been reasonably con-
19 sistent, and it seems to me that --

20 QUESTION: Up until they were unsettled by Chadwick
21 and Sanders, maybe?

22 MR. FREY: Well, I don't think that Chadwick -- Chad-
23 wick apparently has been the source; Sanders, I don't think, has
24 anything to do with search incident to arrest, but Chadwick has
25 been the source of some confusion for the lower courts, but I

1 don't think it's any inconsistency in this Court's treatment of
2 the subject that has prompted that.

3 QUESTION: Well, there was no claim in Chadwick, was
4 there, that that was a search incidental to arrest?

5 MR. FREY: We did not make that claim; no.

6 QUESTION: I didn't think so. That wasn't an issue
7 before the Court.

8 MR. FREY: No, but it was a point that was discussed
9 in the Court's opinion, and in just a second I will get to what
10 the Court said about it because I think it is important. But I
11 wanted to make the point first that the nature of a search of an
12 item, a parcel, a jacket, a purse, or something like that, in
13 order to be searched it really has to be within the control of
14 the officer. Presumably the officer and the arrested individual
15 are not having a tug of war over the item. So in the sense that
16 in Benson and in this case the court seemed to have used exclu-
17 sive control, it totally eliminates search incident to arrest of
18 items that are not on the person of the individual.

19 QUESTION: I take it you will take some note of the
20 fact that in Chadwick the search was not at the time or place
21 of the arrest but long after?

22 MR. FREY: Yes, Mr. Chief Justice. I was just coming
23 to that point. What was omitted in the discussion of Chadwick
24 is the language that immediately preceded the exclusive control
25 language in which the Court said that the potential danger

1 lurking in all custodial arrests make warrantless searches of
2 items within the immediate control area reasonable without re-
3 quiring the arresting officer to calculate the probability of
4 weapons --

5 QUESTION: I take it you wouldn't have suggested that
6 in Chadwick that footlocker could have been searched if the
7 arrest had taken place in the station, while they were sitting
8 on it -- right? After the dog had decided what was in the -- ?

9 MR. FREY: If the arrest had taken place in the sta-
10 tion and they had been sitting on it, I would say that it could
11 have been searched incident to arrest but for the fact that it
12 was locked and therefore it was not --

13 QUESTION: Well, "but for" is -- that's a rather big
14 "but for," is it not?

15 MR. FREY: That is the big "but for." But in
16 any event we did not make the argument. But the point
17 in Chadwick was that the Court was merely referring to
18 settled doctrine which had been settled in Preston,
19 that a search subsequent to, some hours later, after
20 the arrest has been completed, is no longer incident to the
21 arrest. It was not at all talking about a situation of a search
22 contemporaneous with the arrest. Indeed, the exclusive control
23 argument seems to me totally inconsistent with Robinson, because
24 in Robinson, as Justice Marshall pointed out in his dissent,
25 at the time the cigarette pack was searched it was in the control

1 of the officer. The officer could have taken it and put it away
2 somewhere out of the reach of the arrested individual. There-
3 fore it seems to me that once the Court has rejected that with
4 respect to items removed from the person of the individual,
5 there is precious little logical basis for treating it differ-
6 ently if the item is found nearby.

7 Earlier, during my brother's argument, the question
8 came up about whether he had been wearing a jacket, carrying a
9 jacket, had it down on the park bench, or so on. Of course,
10 once, if the jacket is removed from his person and the officer
11 is holding it and he starts looking through its pockets, he has
12 exclusive control in the sense that the lower courts were talking
13 about. So I don't see any justification in this Court's cases
14 which I think are fairly consistent in this area for saying
15 that if the item is sitting next to the person or sitting five
16 feet away, that the scope of a permissible search incident to
17 arrest is any different from --

18 QUESTION: Well, you don't think that there's any inference
19 to be drawn from Chadwick that the search in that case could not
20 have been justified as a search incident to arrest?

21 MR. FREY: What Chadwick held was that the search at
22 the station house, an hour and a half later, after the people
23 were presumably locked in cells someplace else, could not be
24 justified as incident to the arrest. We don't question that
25 holding here. But --

1 QUESTION:, You think that you would be making the
2 argument you would be making now if when they arrested the
3 people, just as they were, while the footlocker was in the
4 stationwagon, that they could have searched the footlocker in-
5 cident to arrest except for the fact it was locked?

6 MR. FREY: Except for the lock. Except for the lock-
7 ing. And I wanted to make the point that there is talk about
8 the privacy interest, and the high privacy interest in the
9 pockets of the jacket and so on. And I think when we are deal-
10 ing with -- that argument would be very pertinent to the Robbins
11 case which was argued earlier today, where the question is whe-
12 ther or not a warrant is required. That argument is either wholly
13 irrelevant or at least not very significant when we are talking
14 about a search incident to arrest, because the search incident
15 to arrest is not justified by probable cause. There is no ques-
16 tion of a warrant. I think the Court made the point in a foot-
17 note in Chadwick that when you are dealing with a type of search
18 like an inventory search, which is not justified by probable
19 cause, cases dealing with the warrant requirement are not really
20 apposite. The argument is particularly inappropriate, it seems
21 to me, when you're dealing with a jacket, because a jacket is,
22 of course, the very kind of thing that is most likely to be
23 subject to a search incident to arrest, since a person will
24 usually be wearing it or carrying it at the time of arrest.

25 The fortuitous fact that he had put it down in the car

1 does not matter as long as at the time it was seized it's still
2 within the Chimel geographical scope of the area within which a
3 search incident is permissible.

4 QUESTION: If -- I suppose what you're driving at is
5 that, conceivably, the officer might have said to the four of
6 them, you get in your car, and don't get more than two car
7 lengths ahead of me and go to the station?

8 MR. FREY: That is one of the important reasons for
9 the search incident, when you have a number of items like this.
10 The officer may have to know what disposition can be appropri-
11 ately made, which ones of them are dangerous, might -- you know,
12 he has to locate weapons or --

13 QUESTION: But now you're going to destruction of the
14 evidence if that had happened without any preliminary search.
15 He could have dropped the cocaine out the window of the car.
16 Is that your point?

17 MR. FREY: That would be a risk, yes. I mean, that's
18 one of the reasons why you permit the search incident to arrest
19 is that you have these items of property that are in the area
20 of the arrested individual and as part of the process of stabil-
21 izing the situation you have to determine which items are dan-
22 gerous or contain evidence, so that you know how to handle them.

23 Now, I wanted to mention --

24 QUESTION: In this case, instead of doing that, they
25 put all four of them and their jackets in the car with the

1 policeman, in the same car.

2 MR. FREY: I'm not sure. I don't remember from my
3 reading of the record --

4 QUESTION: Well, that's what -- that's what the lawyer
5 who tried the case said.

6 MR. FREY: Well, but it's -- I don't think he put the
7 cocaine in any place where Mr. Belton could reach it.

8 QUESTION: Well, they were all in the same car.

9 MR. FREY: Well, I -- but if he knew that --

10 QUESTION: Weren't they? Weren't they in the same car?

11 MR. FREY: The part of the record that's in the appen-
12 dix, I don't recall that it shows. But I think the point is that
13 it obviously was very valuable for him to know that there was
14 this quantity of cocaine, so that he could take whatever precau-
15 tions were feasible under the circumstances to prevent it being
16 destroyed.

17 QUESTION: Well, whatever car they were in, the police-
18 man had possession, I take it, of the cocaine while he was driv-
19 ing them to the station?

20 MR. FREY: I assume so. Thank you.

21 MR. CHIEF JUSTICE BURGER: Very well. Mr. Cambria.

22 ORAL ARGUMENT OF PAUL J. CAMBRIA, JR., ESQ.,

23 ON BEHALF OF THE RESPONDENT

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

1 I would like to begin with what I think is a critical
2 point. Chief Judge Cooke, below, for the court of appeals,
3 very clearly pointed out that at no time, at any time in this
4 record was there proof that these materials were within the
5 grabbable reach of these individuals. There was never a finding
6 to that effect by the trial court, there was never a finding to
7 that effect by the appellate division --

8 QUESTION: You mean, after they got out of the car?

9 MR. CAMBRIA: Yes, Your Honor. After they get out of
10 the car.

11 QUESTION: Obviously, they were, while they were in
12 the car, initially.

13 MR. CAMBRIA: That's correct. They started off and
14 the sequence of events were as indicated by Mr. Harvey except
15 for one thing left out. They were taken out and first patted
16 down. The officer then went back into the car and discovered
17 a small quantity of marijuana. Then he went out and thoroughly
18 searched them and spread them out, and he said, at the back of
19 the car. He then went into the car and patted the jacket down
20 first, and indicated that he felt nothing that would indicate
21 a weapon at all. And the point made by the court of appeals,
22 which I think has to be emphasized, is that the record simply
23 does not support a Chimel exception which it is certainly the
24 burden of the petitioners to support from the record.

25 QUESTION: Well, do you read it as saying that there's

1 nothing that could possibly support that exception because in
2 fact they were outside the car?

3 MR. CAMBRIA: In fact, they were outside the car --

4 QUESTION: I mean, is that the way you read your court
5 of appeals?

6 MR. CAMBRIA: Yes, and that's the proof. That was
7 conceded here, that they were outside the car.

8 QUESTION: And you argue in agreement that therefore
9 the exception cannot apply under this set of facts?

10 MR. CAMBRIA: It does not apply under Chimel. If I
11 might, Chimel indicated that it's not everything in a room, to
12 use Justice Stewart's language, not everything in a room which
13 would be subject to search, only those things in the examples
14 used were, perhaps, a gun in front of the individual; perhaps a
15 drawer in front of the individual; but certainly not the entire
16 room. That was the Rabinowitz standard, which was rejected by
17 this Court 12 years ago in Chimel. And that's the point that
18 happens here. We have to bear deference to the officer's de-
19 scription of the event and to the ringside seat that he had of
20 the event, where he indicates that there was no reason for him
21 whatsoever to draw his gun; he felt absolutely no danger to
22 himself, which is one of the twin prongs of Chimel.

23 QUESTION: Maybe he's a fast-draw policeman and there-
24 fore didn't have to draw it.

25 MR. CAMBRIA: I might indicate that when the question

1 was asked of him he was quick to respond, as the record shows,
2 there was just no need for that at any time. He had certainly
3 separated them, as he indicated, he had patted them down, he had
4 searched them totally, and then he went back into the car.

5 QUESTION: How about the possibility of them not with
6 weapons but simply with their own bodies overpowering him while
7 he was looking in the back seat?

8 MR. CAMBRIA: I think that we have to deal with the
9 record the way it exists. And under the record the way it exists
10 the car acted as a barrier between these individuals and the
11 jacket which was on the back seat at the time, and not as an
12 open area. For example, it's not even as good as being in the
13 open room described in Chimel, where the Court said you couldn't
14 search all of the various drawers. It's better, in this situa-
15 tion, because the cubicle in which the officer was is different
16 than where the individuals were standing. There was, in fact, a
17 barrier created here, and to demonstrate --

18 QUESTION: Well, but how long would it have taken four
19 of them, acting in unison, to have frustrated the officer's
20 search?

21 MR. CAMBRIA: I think that the only thing we could do
22 is hypothesize that that perhaps could be possible. If we were
23 to do that, I respectfully submit, Justice Rehnquist, there would
24 never be a Chimel exception, because in every set of circum-
25 stances we could say, under some conceivable set of facts someone

1 would be able to go into, let's say, the entire room. Or if it
2 were in one room of the house, maybe all the other rooms, they
3 could bolt out the door and go into the other rooms. So there-
4 fore we ought to be able to search all of the rooms in the
5 house. I don't think we've ever had that.

6 QUESTION: But Chimel was at least a one-on-one
7 situation, not a four-on-one situation.

8 MR. CAMBRIA: I think that that's true. That would be
9 a factor for consideration. But if I might, if we were to
10 decide --

11 QUESTION: Why don't you remind Justice Rehnquist that
12 the man himself said he had a gun and he wasn't worried.

13 MR. CAMBRIA: He indicated that he had no reason for
14 it.

15 QUESTION: He was the only one that was there.

16 MR. CAMBRIA: But I think that the point is, if we
17 were to decide the strength or the weakness of the protection of
18 the Fourth Amendment based upon the number of officers, or the
19 number of weapons, or the number of handcuffs, then an officer
20 without any weapons, without any handcuffs, all alone, would be
21 able to do much more searching without a warrant than an officer
22 who was armed with a shotgun, or two officers --

23 QUESTION: Mr. Cambria, does this record show anything
24 about these four? Were they students or something like that on
25 their way to school or what were they?

1 MR. CAMBRIA: The only thing indicated, Your Honor,
2 was that they were on their way home to Buffalo, and they were
3 at all times cooperative with the officer. There's nothing
4 else biographical about them.

5 QUESTION: Were they young men?

6 MR. CAMBRIA: They were all young men and that was re-
7 vealed in the record, that they were young men.

8 QUESTION: Late teenagers or something?

9 MR. CAMBRIA: Your Honor, it's not revealed in the
10 record. In fact, they were, but it's not in the record.

11 QUESTION: I see.

12 MR. CAMBRIA: The point that I think again, the
13 appellate division here, and, I submit, the Government is
14 attempting to say by citing Adams v. Williams and the other
15 cases, that we should scrap Chimel, that we should adopt the
16 Robinson standard for the area, as opposed to what it stands for
17 which is the person. Robinson says that we find that the arrest
18 itself is enough of an intrusion so that those matters imme-
19 diately associated with the body are subsumed in the invasion of
20 privacy. But that's not --

21 QUESTION: Under your view, could the officer open the
22 glove compartment?

23 MR. CAMBRIA: I believe that the officer could open
24 the glove compartment. I do not believe --

25 QUESTION: Why?

1 MR. CAMBRIA: Well, because I believe that under South
2 Dakota v. Opperman and the other cases around the car exception,
3 that those areas traditionally do not enjoy the expectation of
4 privacy that private receptacles do. That's what the court said
5 in Opperman. So that if we're talking about, specifically,
6 Opperman, the glove compartment or the trunk or the common areas
7 of the car, the car, since it's highly regulated, since it is
8 an area with windows and so on, does not enjoy the same expecta-
9 tion of privacy as their private garments.

10 QUESTION: But Opperman was an inventory search of an
11 abandoned car. Isn't that somewhat different from this?

12 MR. CAMBRIA: I think that if we then go to inventory,
13 we're talking of something other than the Fourth Amendment.
14 We're talking of something that certainly wasn't done here, and
15 something that under Opperman could be done. The question would
16 then be, how far could you go with the inventory? Would it be
17 enough to simply list the jacket without going into the pocket?
18 Each pocket was zippered. The testimony is, one was in fact
19 closed. They were all closed. The testimony was one was
20 zippered and had to be opened.

21 QUESTION: The purpose of an inventory search is in
22 part, at least, to protect the officers from claims of possible
23 theft or disappearance of the materials, so they would go into
24 the pockets if they were going to make an inventory, would they
25 not?

1 MR. CAMBRIA: I'm not sure if they would, and it would
2 depend upon --

3 QUESTION: Well, what good would it do them to make an
4 inventory search if they didn't look in the pockets?

5 MR. CAMBRIA: My recollection of Opperman is that it
6 depends upon their local rules and regulations as to what they
7 can do and what they can't do in the inventory situation. Now,
8 in this case, I think that it bears emphasis that the officer
9 did exactly what this Court indicated in Sanders and in Chadwick
10 should be done, and that is, he took the jacket with him. He
11 stated clearly, I had it in my possession. This was after the
12 arrest.

13 QUESTION: Mr. Cambria, there never was any finding in
14 this case, was there, that there was probable cause to search
15 the jacket?

16 MR. CAMBRIA: No.

17 QUESTION: And the claim is that it should be searched
18 just incident to arrest, whether there is probable cause or not?

19 MR. CAMBRIA: That was the claim that was first made --

20 QUESTION: Yes. And it is still is, isn't it?

21 MR. CAMBRIA: Yes.

22 QUESTION: It still is. On that basis, if it isn't
23 searchable incident to arrest, it wouldn't be searchable at all,
24 because unless somebody found there was probable cause?

25 MR. CAMBRIA: I would say that probable cause wouldn't

1 make the difference as it did not in Sanders.

2 QUESTION: Well, I know, I know, but in this case
3 you would still have the problem of proving probable cause, if
4 you went for a warrant.

5 MR. CAMBRIA: No question about that, that there
6 wouldn't be any probable cause for this specific jacket. That
7 would be the argument made. But even if there were, assuming
8 arguendo were the same as Sanders, it was considered by this
9 Court in the footnote, as indicated to be dicta by the Government,
10 but the fact remains that the individuals in Sanders were there
11 in close proximity to this unlocked attache case, and the same
12 argument could have been made with regard to that case. But it
13 wasn't made. And I submit it wasn't made because it wasn't sup-
14 ported by the record in that case. Like in this case, there is
15 absolutely no pronouncement at all that these materials were
16 within the grabbable reach of these individuals. If we try to
17 uphold this on Adams v. Williams, which I think is totally irre-
18 levant to this consideration for this reason: in Adams v. Wil-
19 liams there is probable cause to believe, as a result of a
20 reliable tip, that there is an armed and dangerous individual
21 seated in an automobile, and the officer approaches the indi-
22 vidual, asks him to get out; he doesn't get out, he rolls the
23 window down. The officer reaches in, pats in the area, and
24 finds a weapon -- immediately finds a weapon. Then he takes him
25 out and searches -- no containers -- searches the common

1 areas of the car.

2 QUESTION: Well, Mr. Cambria, you wouldn't -- if he
3 had patted down this jacket, which he did, and he had discovered
4 something that it felt like a gun, you still wouldn't suggest
5 that he could search it, would you?

6 MR. CAMBRIA: Not under the -- no, for two reasons; no.

7 QUESTION: Well, yes. Well, you'd make the same argu-
8 ment you're making now: if you want to get into the jacket, you
9 go get a warrant.

10 MR. CAMBRIA: I think that's exactly correct.

11 QUESTION: Then you would have probable cause, maybe,
12 to believe there's something in the jacket.

13 MR. CAMBRIA: The difference is that in Adams v. Wil-
14 liams the gun is immediately --

15 QUESTION: I understand.

16 MR. CAMBRIA: -- associated with the person.

17 QUESTION: I understand.

18 MR. CAMBRIA: And in our case, at no time -- and that's
19 why there's been an allusion to the Draper standard; Draper is
20 different. There the piece searched was immediately associated
21 with the individual's taking from it. And another day, I'm sure --

22 QUESTION: Well, it was taken from him, and once it
23 was taken from him, it was in complete control of the officer.

24 MR. CAMBRIA: Yes.

25 QUESTION: So how could he get in the zipper bag?

1 MR. CAMBRIA: That question, which certainly is not
2 here at this point --

3 QUESTION: Well, I don't know. Draper said that that
4 was a good search incident to arrest.

5 MR. CAMBRIA: Yes. I understand that. I would say
6 this. First of all --

7 QUESTION: On your argument, could the outcome in
8 Draper be the same? Once the officer arrests a man and takes
9 the bag from him and he's got it in his hands?

10 MR. CAMBRIA: Yes -- in my argument it was never taken
11 from any of the defendants. He had it in his hand without the
12 defendants' presence. They were outside the car. It was never
13 taken from any of the defendants after the time of the arrest.

14 QUESTION: You mean, if one of these persons, as he
15 was getting out of the car, he was carrying a jacket in his
16 hand, the officer took it from him --

17 MR. CAMBRIA: And separated --

18 QUESTION: Patted it down, didn't feel anything like a
19 weapon or anything, and then he searched it, just like he did
20 here. Wouldn't you say he could not do that?

21 MR. CAMBRIA: I would say this, that he could not do
22 that if he's --

23 QUESTION: No, now, wait a minute, Mr. Cambria, why
24 isn't that Draper?

25 QUESTION: It is Draper.

1 QUESTION: He walks out of the car with it on his
2 arm and the officer takes it from him. How does that differ
3 from the case that was taken from Draper?

4 MR. CAMBRIA: I would submit this, that Draper may be
5 qualified by Chadwick and Sanders; it may be, because of the --

6 QUESTION: Oh, well, frankly, I thought what you were
7 arguing was the difference between, distinction between Draper
8 and this case and between the hypothetical my brother White has
9 just given you, and this case; is that they were not within
10 grabbable distance --

11 MR. CAMBRIA: Yes.

12 QUESTION: Of the coat.

13 MR. CAMBRIA: As to my case, yes. They were not in
14 the Draper situation in my case.

15 QUESTION: Well, I guess it's wise not to continue to
16 argue that rather than to debate whether this was --

17 MR. CAMBRIA: I was trying to answer the hypothetical --

18 QUESTION: And suggest that Draper has been qualified
19 by Chadwick.

20 QUESTION: I just was trying to find out what your
21 argument is, and it sounds to me like you would qualify Draper,
22 that your argument would qualify Draper.

23 MR. CAMBRIA: No. I think that my argument does not
24 have a key Draper ingredient which I believe --

25 QUESTION: Well, wouldn't the court below, on its

1 argument, the exclusive control test, wouldn't it qualify
2 Draper?

3 MR. CAMBRIA: No, because I think in this case the
4 court below, the decision below was, that at no time were these
5 materials within the Chimel standard. They talk of Chimel,
6 talk about Chimel, and specifically distinguish their decision
7 from a case called People v. DeSantis. People v. DeSantis was
8 a Draper case where a briefcase was in the hand of an individual
9 and taken from him at that time. And the court of appeals made
10 it quite clear, below, we are not talking about that, we are
11 talking about the facts before us, which are that there's never
12 any immediate association between the jackets and the individ-
13 uals after the arrests, so --

14 QUESTION: So you suggest that there's no need to de-
15 part from Draper in this case?

16 MR. CAMBRIA: I suggest in my case there's no need to
17 depart from Draper because the facts are not there.

18 QUESTION: Nor in any Draper case?

19 MR. CAMBRIA: Well, I'm not sure whether or not
20 Chadwick, now, and Sanders --

21 QUESTION: Well, suppose, in this very case, instead
22 of the jacket lying on the seat he'd been wearing it, one of
23 the four, this defendant, when he walked out. The police
24 officer asked him to take it off, he did, and handed it to him.
25 That would be Draper, wouldn't it?

1 MR. CAMBRIA: I think that that --

2 QUESTION: Wouldn't that be Draper?

3 MR. CAMBRIA: No. The difference in Draper is that
4 they had probable cause there for the particular item involved.
5 They were told ahead of time that this briefcase that Draper was
6 carrying was where the narcotics were, and there was a specific
7 situation and probable cause which we don't even have here.
8 Assuming we did, that would be Draper, except there's one other
9 fact in our case that's not present in Draper --

10 QUESTION: You mean it wasn't enough that they had
11 probable cause to arrest him?

12 MR. CAMBRIA: With regard to Draper?

13 QUESTION: Yes.

14 MR. CAMBRIA: I think that the difference is this.
15 In this case there is no Draper fact. We don't have it in the
16 hands of the individuals. And that's this case.

17 QUESTION: Well, he was arrested for speeding, wasn't
18 he? I mean that's part of --

19 MR. CAMBRIA: Yes.

20 QUESTION: You don't challenge the probable cause for
21 that arrest?

22 MR. CAMBRIA: For the arrest for speeding? No.

23 QUESTION: How about the arrest for marijuana?

24 MR. CAMBRIA: Not for the arrest for the marijuana.
25 As to the interior of the car, not for the packages in the car.

1 QUESTION: Well, the issue in this case is bottomed
2 upon the premise that the arrest was a lawful custodial arrest.

3 MR. CAMBRIA: That's -- yes.

4 QUESTION: Is it not?

5 MR. CAMBRIA: Yes.

6 QUESTION: And the only issue is whether or not the
7 search and seizure were within the permissible scope of a search
8 and seizure incident to that lawful custodial arrest?

9 MR. CAMBRIA: Yes. And I think that it is. It falls
10 into two categories. As to the petitioners, it falls into whe-
11 ther or not it comes within Chimel, which is grabbable reach.
12 As to the Government, it falls within whether or not you are
13 going to expand Robinson and in effect subsume Chimel by saying,
14 as long as you're arrested, the police have the right to search
15 the area, whether or not the materials in the area are within
16 the grabbable reach of the individual.

17 QUESTION: Now, did Chimel speak in terms of "grabba-
18 ble reach" or "reach"?

19 MR. CAMBRIA: Yes. It said --

20 QUESTION: Or was the emphasis on plain view, first?

21 MR. CAMBRIA: No. The emphasis, I believe, Your Honor,
22 with all due respect, was the area immediately associated with
23 the arrestee into which he could reach.

24 QUESTION: And in plain view? But --

25 MR. CAMBRIA: No, there wasn't -- I do not believe

1 there was a mention of plain view.

2 QUESTION: Plain view comes first. You
3 don't know whether it's within reach, grabbable or otherwise,
4 until you see it.

5 MR. CAMBRIA: No, I might indicate that in Chimel
6 the opinion covered closed drawers, open drawers; plain view,
7 not in plain view; many areas. What I'm suggesting is that if
8 we were to adopt the government's side of this, we would be
9 extinguishing Chimel, because we wouldn't have to concern our-
10 selves anymore with whether or not there was a grabbable reach
11 problem; we would simply say, in the vein of Robinson, are you
12 arrested? Does that in fact cause a breach of your privacy?
13 If so, is it just incidental to search the matters around you?
14 That was what was rejected by the court of appeals below be-
15 cause that was the finding of the appellate division here.
16 There has never been a finding that these materials came within
17 the Chimel grabbable reach. As a matter of fact, the --

18 QUESTION: Well, that's the issue before us.

19 MR. CAMBRIA: Yes, it was never argued at the time of
20 the trial.

21 QUESTION: Is this within the permissible geographic
22 scope of a search incident to a lawful custodial arrest?

23 MR. CAMBRIA: Yes.

24 QUESTION: There's no question, is there, about the
25 permissible temporal scope?

1 MR. CAMBRIA: I don't think so at all here; no, not
2 in this particular --

3 QUESTION: There is no question, at least by hypothe-
4 sis, that this was a lawful custodial arrest?

5 MR. CAMBRIA: That's true.

6 QUESTION: So the only issue is whether or not this
7 is within the permissible geographic scope of such a search --

8 MR. CAMBRIA: Yes, and I --

9 QUESTION: -- and seizure.

10 MR. CAMBRIA: What I am suggesting is that we should
11 not -- and the Court has not, in the past -- adopted a place
12 or area requirement, but has in fact employed this grabbable
13 reach element. And if we take the precedent of this Court sim-
14 ply from the Chimel standpoint, it's not only not established
15 by the petitioners in this case, it's not even remotely estab-
16 lished by the facts in this case, since, as indicated, the
17 officer did something that would show that by following the
18 procedure here, he's certainly not deprived of any law enforce-
19 ment activity, because he in fact took the jacket with him;
20 had the people to such a degree of control that they first
21 stopped at the police barracks, then they went on to the court;
22 the same individuals are with him. He had it, as he said, in
23 his possession and secured. So we're not in any way attempting
24 to frustrate law enforcement. We're simply saying when you're
25 not within the Chimel confines, then you have it in your

1 possession; take it to a magistrate.

2 QUESTION: Well, the issue is whether or not this was
3 within the Chimel confines. That's the only issue before us.

4 MR. CAMBRIA: Yes. And I think that that is true
5 unless we were to attempt to argue the Government's version,
6 which is, forget about Chimel.

7 QUESTION: Mr. Cambria, may I ask you a question?

8 MR. CAMBRIA: Yes, sir, Justice Powell.

9 QUESTION: If this jacket had been on the seat beside
10 the driver, it would have been reachable before the driver got
11 out of the car. Under the right to search incident to arrest,
12 if the driver was still sitting at the steering wheel the officer
13 I take it could then have searched the jacket, if it lay on
14 the seat beside him.

15 MR. CAMBRIA: At the time of arrest the occupant was
16 outside of the car.

17 QUESTION: I know. But my question assumed he was --

18 MR. CAMBRIA: If it was within his grabbable reach,
19 under Chimel, I think that I would be foolish to argue other-
20 wise.

21 QUESTION: So that the difference really is whether
22 or not the officer asked for the jacket before or after the
23 driver stepped out of the car?

24 MR. CAMBRIA: No, I don't think that that's the dif-
25 ference. I think the difference is that at the time the people

1 were placed under arrest and again, recognizing the two bases
2 for Chimel, was there a basis for believing destruction of evi-
3 dence or a danger to the officer? And was that manifested by
4 the jacket being within the grabbable reach of the arrestee?
5 That was the actual issue.

6 Because the Court has never said that for any type of
7 arrest, when it's not within the Chimel reach, that you can
8 simply search the entire area, search all of the possessions,
9 or even the car, for that matter. So what I'm indicating is,
10 the critical time, as this Court has repeatedly said and most
11 recently in Sanders is at the time of the arrest and at the
12 time of the search; that's when we measure the facts. And as
13 I'm indicating, here when we measure the facts, as the court
14 below obviously interpreted the record -- and the record itself
15 is clear, the state has not carried their burden.

16 QUESTION: Do you not draw any distinction between a
17 residence, a home, and an automobile?

18 MR. CAMBRIA: I don't think that there is a distinc-
19 tion between articles within an automobile and articles in a
20 residence, or articles anywhere else, if they are private re-
21 ceptacles, and I don't think there's much argument here that
22 these are not, then the question is, as it was in Sanders and
23 the other cases, that we don't give up the privacy simply be-
24 cause they happened to be in an automobile or because they're
25 somewhere else.

1 QUESTION: What do you do with our Edwards case then,
2 which said that although the search took place an hour and a
3 half after the arrest or two hours after the arrest, since it
4 could have been done at the time of the arrest, it was good at
5 two hours afterwards?

6 MR. CAMBRIA: I think that there is a vast difference
7 between Edwards and this case, because in Mr. Edwards' situation
8 we're talking about his clothes, which were totally immediately
9 associated with him because he was wearing them. There was,
10 therefore, a great jeopardy that the paint flakes which were
11 on the clothes could have been destroyed by him, which was the
12 very evidence that they were attempting to preserve in the case.
13 So there was a vast difference between this case and that case.
14 In that case, if we take one of the two forks of Chimel, which
15 is preservation of evidence immediately associated with the
16 person, Edwards falls directly within that. If we take my case,
17 where the material is immediately associated with the police
18 officer and at no time after the arrest and search associated
19 with my client, then we have none of the two-pronged basis for
20 Chimel.

21 QUESTION: You certainly have the temporal disparity
22 in Edwards that you do not have here and that you don't have in
23 Chimel.

24 MR. CAMBRIA: Well, I don't think we have a temporal
25 difference in Edwards since, one is he was wearing the garment,

1 it was always in danger of having whatever evidence was con-
2 tained on it being destroyed. So it was a contemporaneous
3 search, no matter what had happened, until you separated the
4 individual from the clothing.

5 QUESTION: Well, so then it makes no difference when
6 the person is arrested?

7 MR. CAMBRIA: No, it would make a difference under
8 Preston, certainly. That would be an additional factor, one
9 that's not involved here but one that was involved in Preston,
10 which was also involved in Edwards. I mean, I would say that
11 that is another ground upon which to invalidate a search and
12 seizure, if there's a temporal variation, difference; which
13 we don't have.

14 QUESTION: Except in Edwards, it was held that it
15 would not invalidate it.

16 MR. CAMBRIA: No, it did not invalidate it, and I
17 submit, because of several unique factors. One was, apparently
18 they didn't have any clothes for the man until sometime -- it
19 was late at night, and they had taken him down to the cell;
20 that was their normal procedure to do that. And again, the evi-
21 dence was apparently clinging to his very outer garments at all
22 times, and they -- at least the way I read that case -- acted
23 as quickly as possible under the circumstances. So the time was
24 really not a factor because it was a constant jeopardy, whereas,
25 certainly, here there is nothing like that at all. As we have

1 indicated, maybe with regard to these facts the officer had the
2 jacket, readily admitted it, at all times.

3 QUESTION: Mr. Cambria, maybe this is too trivial a
4 question, but you have used the term "grabbable reach" repeat-
5 edly.

6 MR. CAMBRIA: Yes.

7 QUESTION: Is a grabbable reach a greater or a lesser
8 area than a just plain reach?

9 MR. CAMBRIA: Well, I think that grabbable reach, in
10 the sense of being able to reach the materials, that's the way
11 I interpret Chimel; readily reach the materials immediately.
12 The words are used, immediately, ready at reach, ready to hand,
13 are some of the other words that have been used, which I think
14 is much different than this situation, but there's never been
15 a claim, by proof, that any of this was ready to hand, at any
16 time. And of course, that's the way the court of appeals saw
17 it below, and it is my contention that based upon the record
18 that we have here, not very -- pardon me?

19 QUESTION: Well, have we got to go through the record
20 to find out if it was reachable or not?

21 MR. CAMBRIA: I think that the record certainly shows
22 in all ways and fashions that it was not, and there is no affir-
23 mative proof that it was.

24 QUESTION: Was there any findings?

25 MR. CAMBRIA: Never. There was never any findings in

1 this case that it was within the grabbable reach. It was never
2 mentioned at one time by any court that it was within the
3 grabbable reach.

4 QUESTION: Well, but that's not -- in a sense, a con-
5 stitutional fact, if we're talking about a Fourth Amendment
6 claim. If there was no finding, we are entitled to make our
7 judgment on that.

8 MR. CAMBRIA: Well, I think that -- it seems to me
9 that in this particular case you couldn't make a judgment of
10 fact, that the Court would not be in a position to make a judg-
11 ment of fact as opposed to a judgment of law based upon the
12 record as found by the highest court of the State of New York.

13 QUESTION: Well, if the Court of Appeals of New York
14 said, this was not within grabbable reach --

15 MR. CAMBRIA: It did.

16 QUESTION: Whereabouts in the record?

17 MR. CAMBRIA: The opinion was to the effect that in the
18 last footnote of the chief judge's opinion he said, we search the
19 record in vain in an attempt to find the facts which support,
20 the dissenting justice is Gabrielli, his statement that this was
21 ready to hand or within their reach. It isn't there; nowhere.

22 QUESTION: Well, do you regard that as a finding of
23 fact?

24 MR. CAMBRIA: Yes. I think that when it appears in a
25 majority opinion and they -- as perhaps this Court in its

1 majority opinion in talking of certain things mentioned in dis-
2 sents, when you say, we have in essence construed the record and
3 we find no proof whatsoever that this is within the grabbable
4 reach, I think that's a finding of fact. Because on the other
5 hand, if they would have found to the contrary, then I feel they
6 would have been bound by Chimel, and they have discussed Chimel,
7 clearly, and said that it simply did not come within the confine
8 of Chimel. I think it is most certainly a finding of fact in
9 this case.

10 QUESTION: Mr. Cambria, I take it that when you arrest
11 someone in connection with a car, if you want to go beyond your
12 grabbable reach range, you'll have to rely on the automobile
13 search, the automobile theory, which requires probable cause to
14 believe that where you are searching you may find what you're
15 searching for?

16 MR. CAMBRIA: And then only as to those items listed
17 by this Court in Opperman, which would be items immediately
18 associated with a car: trunk, glove compartment, wheel wells,
19 fender wells, and so on.

20 QUESTION: Well, I think you also have to have proba-
21 ble cause to believe you're going to find something in those
22 areas.

23 MR. CAMBRIA: No question about it. I think there's
24 no doubt about it. There has to be a pleading situation, plus
25 there has to be the limited expectation of privacy as to the

1 areas being searched, and certainly not packages which are with-
2 in the car itself.

3 QUESTION: Mr. Cambria, when you -- as I understand
4 the facts here, after the officer stopped the car, the driver
5 rolled down the left window of the car, and the officer when
6 he went into the back seat was on one side of the car and the
7 four individuals were on the other side. Were they on the left
8 side or the right side of the car?

9 MR. CAMBRIA: No, the only testimony here is that he
10 took the individuals out to the rear of the car, that he first
11 split them up and patted them all down. He went back into the
12 car, found some minor --

13 QUESTION: Which door did he go in, do you know?

14 MR. CAMBRIA: He, I believe, indicated the driver's
15 door.

16 QUESTION: He went in the driver's door? I see.

17 MR. CAMBRIA: Then he came back out --

18 QUESTION: But if the window was open, I suppose it's
19 conceivable, even though they're outside the car, they could
20 have reached in and grabbed the jacket.

21 MR. CAMBRIA: However, the record doesn't support
22 that. The record has them at the back of the vehicle and in no
23 way supports going into the car.

24 QUESTION: I see.

25 MR. CAMBRIA: No way -- in fact, the officer puts

1 himself back into the car.

2 QUESTION: I thought the four individuals were sepa-
3 rated from one another.

4 MR. CAMBRIA: That's so.

5 QUESTION: Are they all behind the car?

6 MR. CAMBRIA: That's what the record states, Your
7 Honor, yes.

8 QUESTION: Mr. Cambria, let me go back to the footnote
9 that you have referred to in Chief Judge Cooke's opinion, at
10 A-81 of the Appendix. He says, "One searches the record in vain
11 for support of the dissenter's claim that at the time of arrest --
12 the point from which the predicate for the warrantless search
13 is measured -- 'the jackets were within reach of the four sus-
14 pects and had not yet been reduced to the exclusive control of
15 the officer.' (dissenting opinion...)." --

16 Then he goes on, "Indeed, the facts, as found at the
17 suppression hearing and affirmed by the Appellate Division, were
18 to the effect that the jacket was searched after the defendant
19 was removed from the vehicle and then placed under arrest."

20 MR. CAMBRIA: Yes.

21 QUESTION: Now, that suggests more the exclusive con-
22 trol type of thing that the Government is arguing against, rather
23 than the grabbable reach thing.

24 MR. CAMBRIA: I think, in this case, that the court
25 of appeals decision can be read to say, since it was in the

1 exclusive control of the officer and it was not within the grab-
2 bable reach of the defendants, then it doesn't fit within the
3 Chimel doctrine. And I think that's exactly what that footnote
4 stands for, by saying, we have it in the police officer's posses-
5 sion which, under Chadwick and Sanders, he should therefore take
6 it down to and have the magistrate examine it.

7 QUESTION: So you agree with the United States, I
8 gather, if the court of appeals, if the opinion below is read as
9 establishing a control test, you don't defend that?

10 MR. CAMBRIA: That established a control -- if there
11 would have been testimony in this case that the material was
12 within the grabbable reach of the individuals, it would be a
13 different case.

14 QUESTION: Well, I know. But if a man is carrying his
15 jacket when he gets out of the car and they arrest him and the
16 officer takes his jacket from him, then it's under the complete
17 control of the officer.

18 MR. CAMBRIA: Of the officer.

19 QUESTION: Now, if the court below meant that you
20 couldn't search that jacket, you do not defend that view?

21 MR. CAMBRIA: I see this -- I see no reason to defend
22 it on this record. I believe that it could be defended under
23 Chadwick and Sanders, but I do not see the reason to do it here.

24 QUESTION: Neither Chadwick nor Sanders involved, and
25 I think you'll agree with this, a claim that the search was

1 incident to a lawful custodial arrest, did it?

2 MR. CAMBRIA: It was discussed.

3 QUESTION: It was discussed in Chadwick.

4 MR. CAMBRIA: Yes.

5 QUESTION: And the findings were made -- and discussed
6 in a footnote, I guess, in Sanders?

7 MR. CAMBRIA: Yes.

8 QUESTION: And the finding was made that the statement
9 was made in Sanders that the argument could not have been
10 validly made because this was a locked trunk in a
11 locked trunk.

12 MR. CAMBRIA: I believe it was unlocked, but it was
13 in a trunk and the trunk was opened and the individuals were
14 outside.

15 QUESTION: Therefore it was not within the geographic
16 vicinity.

17 MR. CAMBRIA: It was not within the Chimel reach; yes.

18 QUESTION: Right. And that in Chadwick the state-
19 ment was made that it was not within the temporal --

20 MR. CAMBRIA: Yes.

21 QUESTION: Confines of Chimel, so the argument could
22 not have been -- or the search and seizure could not have
23 been supported as a search incident to a lawful arrest. But
24 neither case involved the claim that it was, did it?

25 MR. CAMBRIA: Well, I think that it does

1 not -- they did not, they do and they don't -- they do from the
2 standpoint of the fact that it was a consideration which was
3 available, it certainly gave pause to this Court --

4 QUESTION: The argument was not made in either case.

5 MR. CAMBRIA: I submit that it wasn't made because
6 it wasn't a valid argument to be made.

7 QUESTION: Well, the opinions of the court indicate
8 that the various arguments --

9 MR. CAMBRIA: That it was not a valid argument.

10 QUESTION: -- would not have been valid.

11 MR. CAMBRIA: We are in a better position than that
12 case. There we have the arrestees standing by the trunk at the
13 time, two of them, and this unlocked briefcase is pulled out of
14 an open trunk, at that time. My case is entirely different than
15 that. We have people outside and he's inside, and so on. And
16 so that's why. But I say this, Sanders and Chadwick are in-
17 volved to the degree that we have to deal with the Government's
18 argument which is, just the arrest alone gives you the area or
19 the zone of search. I say it does not because under Chadwick
20 and Sanders we have a privacy expectation in these articles.

21 The petitioner's case, of course, deals with Chimel
22 squarely. And as I've indicated, the record does not support
23 their claim at all.

24 QUESTION: If we were to deal with the consent issue,
25 that was not decided by, or treated by the court of appeals in

1 New York, was it?

2 MR. CAMBRIA: No, it was not raised, and it finds no
3 support in the record. One of the clarifications I might make
4 is that it was after the time of the discovery of the cocaine
5 that the officer then said, whose jacket is this? And that's
6 when there was a disclaimer. But he had already conducted his
7 search prior to the time he elicited --

8 QUESTION: Search of what?

9 MR. CAMBRIA: Search of the jacket itself.

10 QUESTION: Yes, yes.

11 MR. CAMBRIA: Then, later on, of course, there's a
12 direct claim of ownership.

13 QUESTION: What was the statement made about the back?

14 MR. CAMBRIA: The back, Your Honor?

15 QUESTION: The trunk.

16 MR. CAMBRIA: No, there was no statement. In the
17 Robbins case there was a statement made about --

18 QUESTION: Any comparable statement like that here?

19 MR. CAMBRIA: Nothing at all in this case. At all.
20 Nothing at all. Thank you very much, Your Honors.

21 MR. CHIEF JUSTICE BURGER: Mr. Harvey.

22 ORAL ARGUMENT OF JAMES R. HARVEY, ESQ.,
23 ON BEHALF OF THE PETITIONER -- REBUTTAL

24 MR. HARVEY: Since I still have a couple minutes,
25 Your Honor, if it please the Court:

1 The only point I would make is that the Chimel cri-
2 teria as set forth by the Court defines the area as the area
3 that the arrestee might reach in order to grab a weapon or evi-
4 dentiary material. And I think that's here, certainly, in this
5 case on the record on certainly one of two theories. Either
6 the overpowering theory, and I think quite frankly that's the
7 theory that's here clearly on the record below --

8 QUESTION: If we take your view, I take it that any
9 container in a car, any piece of evidence in a car, or in the
10 interior of the car, or anything in any container in the car,
11 is searchable and seizable incident to the arrest?

12 MR. HARVEY: My position, Your Honor, under the facts
13 of this case, where you've got four individuals exiting the
14 vehicle, all being placed under arrest for possession of mari-
15 juana, that anything --

16 QUESTION: It wouldn't have made any difference -- to
17 you it wouldn't have made any difference whether the jacket
18 was on the floor, or the back seat, or anywhere in the interior
19 of the car, or whether what the officer seized was a briefcase?

20 MR. HARVEY: If it were within the area of gaining
21 access by any of these arrestees, Your Honor, then it should be
22 subject to --

23 QUESTION: If it was a briefcase in exactly the same
24 position as the jacket, you would say it could be searched?

25 MR. HARVEY: A briefcase that could be gotten into,

1 yes, Your Honor. Thank you.

2 QUESTION: Well, wait a minute, you've said, under
3 the overpowering theory, or you said, under --

4 MR. HARVEY: Well, Your Honor, also they could have
5 reached in through the -- that it's tied in.

6 QUESTION: The overpowering theory would depend, I sup-
7 pose, if I understand your shorthand for the theory, upon how
8 many arrestees there were and how many policemen there were
9 arresting them, and which ones were --

10 MR. HARVEY: I think that's certainly the criteria,
11 and the area that's being searched, in this case the inside of
12 an automobile, Your Honor, that is, on the back seat of the --

13 QUESTION: The overpowering theory depends at least
14 in part, I suppose, upon the fact that there was one arresting
15 officer and four arrestees. Doesn't it?

16 MR. HARVEY: The facts of this case; that's correct.

17 QUESTION: And therefore if there were only one
18 arrestee, then he might --

19 MR. HARVEY: You're getting into a different factual
20 situation.

21 QUESTION: And there's a possibility of overpowering
22 when you leave four of them in the back of the car? Behind
23 the car? You're going to get in the car.

24 MR. HARVEY: You're certainly in the car looking through
25 the vehicle in this case, Your Honor.

1 QUESTION: Yes, but I mean, that's a danger of being
2 overpowered? You left four of them back there all by them-
3 selves.

4 MR. HARVEY: In fact --

5 QUESTION: And you got in the car and got back out,
6 and nothing happens.

7 MR. HARVEY: In fact, the --

8 QUESTION: Then you've got to worry about overpowering?

9 MR. HARVEY: In fact, the officer was not overpowered
10 in this particular case, but he certainly, under the Chimel -
11 Robinson rules had the opportunity and the right to search the
12 interior of those jackets, Your Honor. Thank you.

13 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The
14 case is submitted.

15 (Whereupon, at 1:47 o'clock p.m., the case in the
16 above-entitled matter was submitted.)
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CERTIFICATE

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North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 80-328

NEW YORK

V.

ROGER BELTON

and that these pages constitute the original transcript of the proceedings for the records of the Court.

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