

ORIGINAL

In the

Supreme Court of the United States

WASHINGTON,

Petitioner,

v.

NEIL MARTIN CHRISMAN

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NO. 80-1349

Washington, D. C.

November 3, 1981

Pages 1 thru 57

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 WASHINGTON, :

4 Petitioner :

5 v. No. 80-1349 :

6 NEIL MARTIN CHRISMAN :

7 - - - - - x

8 Washington, D.C.

9 Tuesday, November 3, 1981

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 1:50 o'clock p.m.

13 APPEARANCES:

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15 Whitman County, P.O. Box 30, Colfax, Washington 99111
16 On behalf of the Petitioner.

17 ROBERT F. PATRICK, ESQ., P.O. Box 307, Pullman,
18 Washington, 99163-0307; on behalf of the Respondent

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P R O C E E D I N G S

(1:50 p.m.)

CHIEF JUSTICE BURGER: We will hear arguments next in Washington v. Chrisman. Mr. Carpenter, I think you may begin whenever you are ready.

ORAL ARGUMENT OF RONALD R. CARPENTER, ESQ.

ON BEHALF OF THE PETITIONER

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

The petitioner in this matter, the state, feels there are three principal issues which the petitioner feels necessary to discuss in detail. The first issue is whether or not exigent circumstances existed in this case that would have excused the officer of first procuring a search warrant prior to his entry into the dorm room and seizure of the marihuana seeds.

Secondly, whether or not it was proper for the law enforcement officer to accompany the arrestee, Mr. Overdahl, to the dorm room when he asked to be allowed to return to that premises to secure ID from the premises.

And thirdly, if this Court should determine that the officer acted in violation of the Fourth Amendment on the first two questions, whether or not this is an appropriate case for the Fourth Amendment exclusionary rule to be applied to. In other words, whether or not the Court

1 should look at the good faith of the officer in this
2 particular case and apply a good faith exception to the
3 exclusionary rule.

4 QUESTION: Is the basic predicate of your case
5 that if an arresting officer has probable cause to make an
6 arrest and does so, he may keep the arrested person at least
7 in sight if not in hand from that point on?

8 MR. CARPENTER: That is correct, Mr. Chief
9 Justice. Our approach is that in order to protect both the
10 officer and protect other members of society, protect the
11 arrestee himself and protect the evidence from being
12 destroyed, it is nonsensical to suggest that the officer
13 should allow the arrestee out of his immediate control and
14 presence. And in order to that, if he wants to be a
15 reasonable, polite, courteous officer, wants to do what this
16 officer tried to do, try to conduct himself in a low-key,
17 professional manner particularly on a college campus, he
18 needed to afford the arrestee the opportunity to return to
19 his premises, and that's basically what we're saying.

20 QUESTION: It was a return to the premises for the
21 benefit of the arrested person.

22 MR. CARPENTER: That's correct, it was to expedite
23 the release of the arrested person, Mr. Overdahl.

24 QUESTION: From your point of view, from your
25 position, the officer could have appropriately walked in the

1 room and stayed within two or three feet of this man at all
2 times. Is that your position?

3 MR. CARPENTER: That's correct.

4 QUESTION: Wait a minute. If a man is arrest out
5 on the street, you could carry him across town and go into
6 his room?

7 MR. CARPENTER: No. I'm not saying that. Only if
8 he requests to return to his premises.

9 QUESTION: But the man didn't invite him, did he?

10 MR. CARPENTER: Well no, that's not really true.
11 The officer asked for ID and the individual indicated, Mr.
12 Overdahl indicated that he did not have ID. He asked the
13 officer if he could return to the premises. The officer
14 indicated well, in light of your custodial status I can't
15 let you return to the premises unless I accompany you, and
16 Mr. Overdahl said okay.

17 QUESTION: Well, what else could he do?

18 MR. CARPENTER: Well, he could have said no,
19 that's not okay. Take me down to the station house and book
20 me, handcuff me.

21 QUESTION: And gone to jail.

22 MR. CARPENTER: And gone to jail. The officer was
23 trying to allow him the opportunity to --

24 QUESTION: That was his choice. It was either let
25 the officer go with him or go to jail.

1 MR. CARPENTER: That's right.

2 QUESTION: Mr. Carpenter, I gather the officer had
3 wanted the ID, did he not, to find out his age, to use as
4 evidence?

5 MR. CARPENTER: Well, that's part of the reason he
6 wanted an ID, but you have to remember --

7 QUESTION: Well, he wanted it for at least that
8 much, didn't he, for that reason?

9 MR. CARPENTER: Well, that's true.

10 QUESTION: Did he give Miranda warnings?

11 MR. CARPENTER: No, he did not.

12 QUESTION: Shouldn't he have?

13 MR. CARPENTER: No, I don't believe so.

14 QUESTION: Why, if he was going to use this as
15 evidence, wasn't he?

16 MR. CARPENTER: Well, there were three reasons.

17 QUESTION: He was going to use it as evidence,
18 wasn't he? That's why he wanted it.

19 MR. CARPENTER: Well, that may have been a
20 collateral reason. But the principal reason he needed it,
21 anytime you arrest an individual you have to ID that person.

22 QUESTION: Well, if we think he should have been
23 given Mirand warnings and he didn't have them -- you agree
24 he didn't -- wouldn't that taint everything after that?

25 MR. CARPENTER: Well, --

1 QUESTION: Well wouldn't it? Under our cases?

2 MR. CARPENTER: Not necessarily, because --

3 QUESTION: Under our cases, that he should have
4 had them?

5 MR. CARPENTER: Well, what would be Mr. Chrisman's
6 standing to complain about Mr. Overdahl's violation of his
7 Miranda rights? That would be my answer. Plus, the officer
8 had a right to be out in that public hallway, regardless of
9 whether or not he asked for his age. The dorm room and
10 public hallway of Orton Hall was public area; it constitutes
11 an unprotected area, he had a right to be there. And that's
12 where he saw the principal observations before he went in
13 under what we say was exigent circumstances.

14 QUESTION: Mr. Carpenter, before you leave the
15 point, I'm still a little uncertain. Why was the ID
16 important?

17 MR. CARPENTER: You have to remember -- and you
18 can look at pages 7, 9 and 10 of the Joint Appendix and read
19 through those pages, and you will see that the officer had
20 three violations he was aware of. He was aware of a
21 violation of being in possession of alcohol and in violation
22 of a Washington statute, not being 21 years of age.

23 QUESTION: Right, but he didn't need the ID to
24 establish that because the young man had admitted he was 19.

25 MR. CARPENTER: At the elevator before they

1 ascended to the 11th floor.

2 QUESTION: Once he admitted it, then why did he
3 need the ID?

4 MR. CARPENTER: Because he has two other
5 violations.

6 QUESTION: And what were they?

7 MR. CARPENTER: One was a violation of the
8 Washington Administrative Code which prohibits from having
9 alcohol on the campus --

10 QUESTION: Well, he's on the campus; he didn't
11 need an ID for that.

12 MR. CARPENTER: And the third one would be he had
13 an open container of alcohol, another criminal violation.

14 QUESTION: He didn't ID for that either, did he?

15 MR. CARPENTER: Well, you need it -- I would
16 gently suggest that you need an ID anytime you arrest a
17 person.

18 QUESTION: Why? If I'm arrested out on the street
19 somewhere, do I have to have an ID?

20 MR. CARPENTER: Well sooner or later, when you get
21 booked in you are going to have to identify yourself, aren't
22 you? Are we going to book him in as a John Doe and hold --

23 QUESTION: He knew his name. Do you have to have
24 an ID in writing in order to identify yourself?

25 MR. CARPENTER: Well, in 1978 there were

1 approximately 16,000 students on WSU campus.

2 QUESTION: You're not suggesting that this man
3 didn't know his own name, are you?

4 MR. CARPENTER: No, but I would suggest that it
5 would be rather foolhardy for an officer to take his word as
6 to what his name was. There are a lot of students on that
7 campus. We see a lot of John Smith's.

8 QUESTION: But didn't he intend to take him to the
9 station?

10 MR. CARPENTER: Well, no, he was trying to allow
11 him to be released.

12 QUESTION: Does the record show that?

13 MR. CARPENTER: I believe it does.

14 QUESTION: The man is a man that admits he's under
15 21, with a half a gallon of liquor.

16 MR. CARPENTER: That's right, a half a gallon of
17 gin.

18 QUESTION: And the policeman is going to let him
19 go?

20 MR. CARPENTER: Well, he would issue --

21 QUESTION: Yes or no.

22 MR. CARPENTER: He would issue him a uniform
23 citation --

24 QUESTION: Is it your story that he was going to
25 turn him loose?

1 MR. CARPENTER: Sure, he would issue him a uniform
2 citation for a minor violation and then he would have to
3 appear in District Court.

4 QUESTION: I thought you said a minute ago he had
5 a choice of taking him to the room or jail.

6 MR. CARPENTER: That's right, if you don't furnish
7 some ID, you're going to jail.

8 QUESTION: Now you say he wasn't going to take him
9 to jail; he was going to give him a slip of paper.

10 MR. CARPENTER: No, let me back up and explain.

11 QUESTION: I hope so.

12 (Laughter.)

13 MR. CARPENTER: His choices are that if I can't
14 resolve this with some adequate ID so I can identify you and
15 issue you a uniform citation so you can appear in seven days
16 in Whitman County District Court to answer the criminal
17 charge of minor possession -- it's not something that they
18 routinely book people for --

19 QUESTION: When he first encountered this young
20 man, did he have any way of knowing whether the young man
21 was, in fact, a student?

22 MR. CARPENTER: No. Other than that he came out
23 of Orton Hall, he appeared to be very young, appeared to be
24 obviously under 21.

25 QUESTION: There's a great many people of that age

1 who might come out of that hall and have no connection with
2 the university.

3 MR. CARPENTER: Sure. He has no idea. As you
4 remember, Mr. Overdahl suggested that he be allowed to
5 return without the officer, and I think it would be rather
6 naive to think that a young man disappears -- now maybe this
7 young man would have come back, but I would suspect good
8 police procedure would lead one to be a little cautious
9 about letting a man on a campus with 16,000 disappear in the
10 dorm. I doubt he'd ever come back. I mean, that's just my
11 personal reaction. If I was a law enforcement officer I
12 wouldn't let him out of my sight.

13 QUESTION: Well, why didn't you give that answer
14 to me when I asked you that question?

15 MR. CARPENTER: I thought I did, but I --

16 QUESTION: Well, you didn't give it until you got
17 it from the Chief Justice.

18 MR. CARPENTER: I apologize.

19 QUESTION: Well, I thought you gave it to him, you
20 gave it very clearly in response to my question.

21 QUESTION: Mr. Carpenter, when he got upstairs,
22 did I understand you to say earlier that there were exigent
23 circumstances which justified his entry into the room?

24 MR. CARPENTER: Right.

25 QUESTION: And had there not been is the

1 implication that he could not have entered the room?

2 MR. CARPENTER: Well, I --

3 QUESTION: In the absence of exigent circumstances?

4 MR. CARPENTER: I believe he could have entered on
5 either one of the state's principal theories. Either as --
6 you have to remember, he was only at the doorway 35 to 45
7 seconds.

8 QUESTION: I know, but what I'm trying to get, Mr.
9 Carpenter, do I understand your position to be that in the
10 absence of exigent circumstances, he should not have entered
11 the room?

12 MR. CARPENTER: No, that is not my position. I
13 believe there are two ways he could have entered that room.
14 One, to accompany the arrestee, and I argue in the brief
15 that if it is not a simultaneous entry, it's a
16 contemporaneous entry. I think it's -- 35 seconds while
17 he's standing there and then walks in. It seems to me that
18 the fact that he paused at the door for 30 to 45 seconds is
19 not a great deal of constitutional significance.

20 QUESTION: And what are the exigent circumstances,
21 assuming that there --

22 MR. CARPENTER: Okay. The state would argue that
23 the exigent circumstances in this particular case are simply
24 that if the officer had left, the tray of marihuana seeds
25 which he observed approximately eight feet in the room from

1 where he was standing would have I think clearly been gone
2 when he came back. Or it's reasonable to assume that they
3 would have been gone. There were two people in the room;
4 they could have eaten them, they could have hidden them in
5 body cavities, they could have thrown them out the window,
6 and I won't speculate what the dispersion pattern from the
7 11th floor of marihuana seeds if you flip them out the
8 window.

9 But I think it's reasonable, as the trial court
10 and the Court of Appeals both concluded, that it was not
11 reasonable for the officer to leave that room to get a
12 warrant.

13 QUESTION: Now, incidentally, the officer had a
14 radio, didn't he?

15 MR. CARPENTER: That is correct.

16 QUESTION: And it was after he entered the room
17 that he summoned help on the radio.

18 MR. CARPENTER: That is correct.

19 QUESTION: Why do you suppose he didn't summon
20 help while he was at the door where he could see everything?

21 MR. CARPENTER: Well, he could have summoned
22 Lieutenant Kenny --

23 QUESTION: He could see both the people, he could
24 still see the seeds --

25 MR. CARPENTER: Then we'd have two officers

1 standing at the door if he can't enter.

2 QUESTION: What was the rationale used by the
3 court below in this decision?

4 MR. CARPENTER: Which court? The Washington
5 Supreme Court or the Court of Appeals or the trial court?

6 QUESTION: I said the court below, the one
7 immediately below is the Washington Supreme Court.

8 MR. CARPENTER: Oh, excuse me. Their rationale
9 was one that we never -- that there were not exigent
10 circumstances and we didn't argue them, which is clearly
11 erroneous because the record is replete from our trial
12 memorandum that we argued exigent circumstances.

13 The other was simply that New York vs. Payton and
14 Reddy prohibited entry without a warrant.

15 QUESTION: Would it be your position that if the
16 office was accompanying this young man down the hall and he
17 was headed from room B, which was another few steps, but he
18 walked by room A and he glanced into the room and saw the
19 very same things that he saw in this case; namely, whatever
20 it was on that stand.

21 MR. CARPENTER: Everything from that point forward
22 proceeds the same?

23 QUESTION: And then he enters that room, saying
24 these things are in plain view, I can enter this room and
25 seize them because of exigent circumstances. Is that your

1 position?

2 MR. CARPENTER: Well, you have to remember in this
3 particular case --

4 QUESTION: No, just take my facts.

5 MR. CARPENTER: Well, are the facts the same? I
6 mean, in this case Mr. Overdahl opened the door all the way.

7 QUESTION: Well, the door is standing open and
8 they are both walking by, and all of a sudden the officer
9 sees what he saw in this case sitting on the stand. Would
10 that authorize his entry into the room.

11 MR. CARPENTER: And he sees the occupant who
12 responds to him?

13 QUESTION: No, no occupant at all. He just sees
14 on the stand what he sees here.

15 MR. CARPENTER: Well, there's a lot more here.

16 QUESTION: Well, how about my question?

17 MR. CARPENTER: Okay, he walks by an open room and
18 he sees the seeds.

19 QUESTION: He sees those seeds standing there --
20 he sees what he saw in this case. He doesn't really know
21 they were seeds. He had to go over to find out.

22 MR. CARPENTER: Assuming no one associated with
23 the room or otherwise sees the officer and knows he has seen
24 something, no, there wouldn't be.

25 QUESTION: It's just like if you were walking by a

1 house and looked through the window and saw them.

2 MR. CARPENTER: That's right, you need a warrant.

3 QUESTION: Exactly.

4 (Laughter.)

5 MR. CARPENTER: But here there is an appreciable
6 distinction. Here, he looks in that room, sees the
7 contraband in plain view or open view I guess is the
8 terminology we use --

9 QUESTION: Yes, and then what?

10 MR. CARPENTER: He sees a nervous reaction of Mr.
11 Chrisman, he sees Mr. Chrisman moving the box around to the
12 medicine cabinet, and then when he sees the officer in
13 uniform gets all nervous and moves it back.

14 QUESTION: Well, if he saw the same thing through
15 -- if he was walking by on the street, he looked in the
16 window and he saw what he saw and he saw a man in there
17 looking nervous and was about to destroy them, could he go
18 in?

19 MR. CARPENTER: Assuming that -- are you assuming,
20 Justice, that --

21 QUESTION: I'm not assuming anything. I just tell
22 you what he sees.

23 MR. CARPENTER: Well, if it's apparent the man
24 realizes the officer has seen it, I would think so, yes.

25 QUESTION: Well, does the university dormitory

1 room necessarily occupy the same status as a single-family
2 dwelling or an apartment for purposes of the Fourth
3 Amendment?

4 MR. CARPENTER: Well I'd like to say it doesn't,
5 but I think it probably does, in the sense that it's a
6 premises, a living quarters, like --

7 QUESTION: It's his home, isn't it, for --

8 MR. CARPENTER: It is his home for all practical
9 purposes. I would like to say it isn't, but I think, to be
10 candid, sure it does.

11 QUESTION: Mr. Smith, so long as we're into
12 hypotheticals, suppose we take Justice White's hypothetical,
13 and instead of seeing some seeds in this room with which he
14 had no concern -- that is, he had no concern about the room
15 -- he saw a sawed-off shotgun. Do you mean to tell me that
16 he shouldn't do anything about it?

17 MR. CARPENTER: I'm not telling you that. I
18 think, Chief Justice, he clearly should.

19 QUESTION: Well, I just wanted to eliminate any
20 idea that a policeman should ignore that. Or suppose he saw
21 a body that appeared to be a dead body, and on reaching in
22 and feeling the pulse, thereby violating the premises to
23 that extent, he finds that the person is dead. He's
24 certainly going to do something about it, isn't he?

25 MR. CARPENTER: One would hope. I would think he

1 should be suspended or fired if he didn't do something.

2 QUESTION: Yes.

3 MR. CARPENTER: It's correct police procedure. I
4 don't think the Fourth Amendment requires officers to
5 disregard things. And all the state's position is on the
6 first issue in this case is that there were, in fact,
7 exigent circumstances.

8 QUESTION: If they see the evidence of an
9 unlawful, criminal act, they must do something, whatever
10 that something is.

11 MR. CARPENTER: Well, with the additional that
12 when the occupant or occupants of the premises appreciate
13 the officer's -- the word is out, so to speak, the know the
14 thing is up, if the officer leaves I just don't think it's
15 reasonable to expect under the Fourth Amendment that --

16 QUESTION: Well, your premise for this position is
17 that he knew what he saw.

18 MR. CARPENTER: Well, the Court of Appeals and the
19 trial court believed that. They believe there was a
20 reasonable basis --

21 QUESTION: But you think that he did know exactly
22 what he saw. He didn't have to go over and find out what
23 was there.

24 MR. CARPENTER: No, no, I think --

25 QUESTION: He may have suspected it, but did he

1 really know.

2 MR. CARPENTER: The respondent tries to argue, Mr.
3 Justice, that --

4 QUESTION: Mr. Carpenter, at that point let me ask
5 how far did you say, again, he was?

6 MR. CARPENTER: Okay, he's 8 to 10 feet from the
7 doorjamb to the black tray with the marihuana seeds and --

8 QUESTION: Which is less than the distance between
9 you and this bench.

10 MR. CARPENTER: That's right. And this is an
11 experienced officer, trained and experienced in controlled
12 substances. There's no question in my mind from reading the
13 record that the officer knew and believed that he had
14 probable cause that it was marihuana.

15 QUESTION: Mr. Carpenter, my understanding is that
16 this respondent was under arrest at the time.

17 MR. CARPENTER: That's right.

18 QUESTION: The Supreme Court of Washington so held.

19 MR. CARPENTER: That's correct.

20 QUESTION: And you've been talking now for quite a
21 while, or responding to some questions about situations
22 where officers looking through windows and standing at
23 doorways, as to what rights they may have. I would think
24 you would argue this case as to the rights of an officer
25 where he has made a lawful arrest to stay with the party

1 arrested and to observe anything that he could observe in
2 those circumstances.

3 MR. CARPENTER: I think that's correct, Justice.

4 QUESTION: Doesn't the fact that this involved a
5 lawful arrest and a search incident to arrest distinguish
6 this case from much of what we've been talking about?

7 MR. CARPENTER: I think that's correct, and that's
8 the second principal issue in this case. I think this case
9 can be decided either on the first issue or the second issue.

10 QUESTION: Mr. Carpenter, I'm confused now. I
11 have heard you talk about exigent circumstances, I have
12 heard you talk about search incident to a lawful arrest, and
13 I think I've heard you talk about plain view. What is it
14 you're really relying on? Are you relying on the fact, as
15 you allege it to be, that the officer was in a place where
16 he had a right to be and he saw items, contraband, in plain
17 view? Or are you relying on exigent circumstances, or
18 search lawful -- incident to a lawful arrest, or all three
19 or what?

20 MR. CARPENTER: Yes, Justice O'Connor,
21 unfortunately, the last court before this Court, the
22 Washington Supreme Court -- and not to criticize that court,
23 but I think it improperly labeled where the officer was as a
24 nicety, and they said we're not going to decide that issue.
25 I think it's pretty important.

1 QUESTION: Well, what are you relying on?

2 MR. CARPENTER: Our position is -- and I suppose
3 the prosecutor wants the best of both worlds -- I think we
4 can rely on both the exigent circumstances; one, what he saw
5 in open view while he was standing out in a public place and
6 the occupant's reaction to him; and two, that he had a
7 right, regardless of that, to accompany the arrestee into
8 the premises to start with. And so, pursuant to the arrest
9 status, for his protection, the protection of the public,
10 the protection of the evidence, protection of veracity, so I
11 think I'm arguing that we have the best of both worlds.

12 QUESTION: And he sees something in plain view?
13 I'm still confused what the thrust of your argument is.

14 MR. CARPENTER: Well, I guess the first argument
15 is in open view, he sees it, it's in a public place, that's
16 exigent circumstances. Now even setting that aside, I think
17 that -- the state would like to believe that answers the
18 issue.

19 But setting that aside and forgetting about
20 exigent circumstances for a moment, we also would argue that
21 if he was, in fact, in the room, or when in the room to
22 accompany the arrestee, once he got in the room, it's in
23 plain view, clearly he had a right to go into the room,
24 attendant to the arrest status of Mr. Overdahl, and that it
25 comes under, you know, proper police procedure to accompany

1 Mr. Overdahl in that room, and what he sees there is in
2 plain view.

3 QUESTION: Well, unlike Justice O'Connor, who has
4 recently joined our Court, do you think that any of the
5 courts in the country or any prosecutor or any defense
6 lawyer can be faulted for being somewhat confused about the
7 state of Fourth Amendment law?

8 MR. CARPENTER: Well, I've been practicing law for
9 ten years, and the cops always call me up at 3:00 in the
10 morning and want me to give them a precise answer to the
11 Fourth Amendment, and I can't do it. I think it's so
12 enamored with constitutional subtleties and what I like to
13 call the crafting of legal technicians that we've totally
14 confused not only the lawyers and the judges, but the police
15 officers who are supposed to be constitutional lawyers out
16 in the street and making a 15-second decision to decide what
17 the U.S. Constitution means.

18 All I'm saying in this case is that the conduct
19 was reasonable. The officer did what was reasonable under
20 the status of the law clearly in 1978, in any event. That
21 was before Mincey vs. Arizona and before Payton. It's a
22 very confusing area. This case is important maybe to
23 clarify what -- first of all, what is an exigent
24 circumstance. I, for the life of me, could not find a real
25 good U.S. Supreme Court case that clearly found an exigent;

1 I found a lot that said it wasn't and said what you should
2 be looking for.

3 QUESTION: Mr. Carpenter, on the question of
4 exigent circumstances, the Chief Justice gave you examples
5 of seeing a gun or a dead body or something like that. Is
6 it your view that the character of the crime, the degree of
7 violence associated and so forth has anything to do with the
8 exigent circumstances inquiry?

9 MR. CARPENTER: No, I don't --

10 QUESTION: You would treat this case involving --

11 MR. CARPENTER: I don't prescribe to the theory
12 that it has to be a serious crime --

13 QUESTION: -- involving the use of marihuana as
14 equally as serious as a murder or anything else.

15 MR. CARPENTER: And particularly when we get into
16 the second issue in this case about arrest, I just don't
17 think it's reasonable to say a officer can only take
18 reasonable precautions to protect himself when it's a
19 serious offense. It's not uncommon for officers to be shot
20 on a minor traffic stop. All kinds of minor things.

21 As the amicus points out in their brief, arrest
22 status sort of brings out the worst in some people, and in
23 the most low-key-looking situation, an officer may find
24 himself in a very precarious position.

25 QUESTION: I guess it's not uncommon to find

1 marihuana in college dorms, either.

2 MR. CARPENTER: Oh, no, very common. It's a way
3 of life at WSU, I believe.

4 QUESTION: Mr. Carpenter, are you familiar with a
5 case we decided last June, I think the title of it was New
6 York against Belton?

7 MR. CARPENTER: Yes, I am. And I think you
8 decided Robbins or something like that the same day.

9 QUESTION: Yes. But the Belton case, as I recall,
10 involved an officer who stopped an automobile and made a
11 lawful arrest and the Court held that the officer was
12 entitled, without a warrant, to search anything in the
13 driver's compartment of the car -- passenger compartment of
14 the car.

15 MR. CARPENTER: That's right. And I believe that
16 case made --

17 QUESTION: Anything that he could find there.
18 Now, the plain view doctrine certainly applies -- I've
19 always understood it -- when an officer makes a lawful
20 arrest. Why do you avoid relying primarily on that issue?
21 Am I overlooking something?

22 MR. CARPENTER: I excuse myself. I don't mean to
23 -- I guess like I said, I'm trying to have the best of both
24 worlds. I think this case can be decided on both issues.

25 QUESTION: You're trying to argue three cases at

1 one time.

2 MR. CARPENTER: Well, I suppose if you can find
3 three ways to hang your hat on it, I -- you know, in
4 Washington state, the prosecutor loses 80% of the time on
5 all issues before the Washington Supreme Court in the last
6 two or three years, so we try to cover the issues. We try
7 to find some way to sustain our -

8 (Laughter.)

9 QUESTION: I guess you can hang your hat on
10 whichever one you want.

11 MR. CARPENTER: I'd like to have my convictions
12 sustained.

13 QUESTION: Now, there is a difference between the
14 Belton case and this. There we had the mobility of an
15 automobile, which had a special character. Here you have an
16 immobile place.

17 MR. CARPENTER: But the language I find particular
18 significant maybe to this case and Belton and maybe the
19 Robinson and Gustafson cases, are the Court's observations
20 that arrested people are very unpredictable. You know, an
21 officer has to do enough to protect himself.

22 QUESTION: Well, this officer might reasonably be
23 reprimanded for not having gone in and followed him around
24 to be sure he wasn't going to come out to the door with a
25 sawed-off shotgun in his hand.

1 MR. CARPENTER: I would not have done what this
2 officer did. I would have gone in immediately. Because if
3 you look at the record you will see that the young man gets
4 into a drawer or a closet or something. Who knows there's
5 not a pistol or something in there? I just think that he
6 should have done a little more to protect himself than he
7 did, but like I said, they're trying to act lowkey on the
8 campus. They don't want to get a lot of bad publicity.
9 That's pretty clear from the Joint Appendix.

10 QUESTION: Counsel, does the record show when this
11 man was given his Miranda warning?

12 MR. CARPENTER: Okay, he was first given his
13 Miranda warnings after the officer seized the tray of
14 marihuana. At that point, he gave both the occupants their
15 Miranda warnings, and at that juncture asked if there was
16 anything else in the room, and at that point Mr. Chrisman
17 went ahead and volunteered the little box the officer had
18 seen him carrying around. It had \$112 and some marihuana in
19 it.

20 QUESTION: So he wasn't given Miranda warnings --

21 MR. CARPENTER: Not prior to the entry.

22 QUESTION: -- until he was arrested for the
23 marihuana.

24 MR. CARPENTER: That's correct.

25 QUESTION: He wasn't given Miranda warnings about

1 the liquor.

2 MR. CARPENTER: That's correct.

3 QUESTION: And yet, the purpose of the ID was for
4 the liquor.

5 MR. CARPENTER: Well, the purpose of the idea, the
6 state would like to say is that you have to ID anybody that
7 you arrest.

8 QUESTION: Where did you get that idea that you
9 have to get an ID everytime you arrest a man?

10 MR. CARPENTER: Well, I believe it's correct
11 police procedure. You have to ultimately book them under a
12 name, and you have to verify them, and when you have -- we
13 do have a problem with people even appearing in our district
14 court under phony names. I prosecuted a couple young men a
15 couple months ago on just that. They went clear through the
16 conviction stage using a phony name.

17 QUESTION: Is there a requirement that you
18 identify yourself?

19 MR. CARPENTER: Well, I think it's reasonable for
20 an officer to ask them; I don't know if you can force
21 somebody to identify himself, but I think it's reasonable
22 police procedure --

23 QUESTION: Is it reasonable to take a man back to
24 his home after you arrest him?

25 MR. CARPENTER: If he wishes to go, whether it's

1 for a coat or drugs or ID, you know, prescription medicine,
2 why ever he wants to go back. I think it's the humane thing
3 to do.

4 QUESTION: But you don't have a right to go there,
5 do you?

6 MR. CARPENTER: Well, I think he doesn't have a
7 right to go home, either, unless he allows you to accompany
8 him. And if he says okay, I want to go back --

9 QUESTION: But you don't have a right to accompany
10 him unless --

11 MR. CARPENTER: That's right, that's our
12 argument. It seems that if he's going to go back, then he
13 has to have a modified right there. It's not reasonable to
14 let him go back by himself. At least, that's the state's
15 position.

16 QUESTION: Mr. Carpenter, can we be certain the
17 Washington court based its decision on the Fourth Amendment
18 to the federal Constitution rather than on the Washington
19 constitutional provision?

20 MR. CARPENTER: Justice O'Connor, that's one issue
21 the respondent argues in their brief, and, of course, we
22 argue that there's absolutely no discussion of Article I,
23 Section 7 in the Washington state constitution in our
24 decision. They talk about the Fourth Amendment and they
25 talk about Payton and Rettig, and it seems to me clear that

1 that's what they decided the case on.

2 Now, looking at the Simpson case cited by the
3 respondent, we argue that's really just a limited case on
4 standing in response to this Court's case *Racus*. Looking
5 at, I think it's *State vs. Smith*, it's in my reply brief,
6 the Court clearly a couple years ago in Washington said that
7 the two sections, Article I, Section 7 of the Washington
8 constitution and the Fourth Amendment of the U.S.
9 Constitution should be substantially interpreted the same.
10 And so, it's the state's position that they should be, and
11 that's what was done. I think it's mere speculation on
12 respondent's part that it could have been. Whether it could
13 or couldn't, it doesn't appear that they ever talked about
14 the Washington state constitution in this case.

15 If there are no further questions, I would like to
16 reserve the remainder of my time for rebuttal.

17 CHIEF JUSTICE BURGER: Very well, Mr. Carpenter.
18 Mr. Patrick?

19 ORAL ARGUMENT OF ROBERT F. PATRICK, ESQ.

20 ON BEHALF OF THE RESPONDENT

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

23 If this case is to be decided on federal
24 constitutional grounds, I would submit to the Court that a
25 fundamental precept of the Constitution, that possibly this

1 case should be considered in conjunction with or determined,
2 is a portion of the Constitution which is seldom cited and
3 neither counsel has cited, frankly, but seldom cited because
4 it's part of the Preamble, and that part of the Preamble
5 says "to secure the blessings of our liberty to ourselves
6 and our posterity."

7 QUESTION: Well, the Preamble has never been
8 considered part of the Constitution for adjudication
9 purposes, has it?

10 MR. PATRICK: No, Your Honor, no, it has not. But
11 I think that the Fourth Amendment was adopted in part to
12 give rise or life to that portion of the Preamble; that is,
13 "to secure the blessing of liberty", and part of the
14 blessing of liberty would be the right to be free from
15 unreasonable search and seizure.

16 QUESTION: Well, are you suggesting that, Mr.
17 Patrick, to negate the thought that the policeman, once
18 having placed this man under arrest, had a right, if not a
19 duty, to keep him within arm's length at all times until he
20 had completed all the formalities? Any question about that
21 in your mind?

22 MR. PATRICK: I have to say to Your Honor that it
23 is my judgment that the police officer probably had, as long
24 as he had placed the individual under arrest, that the
25 police officer could be with him as he went wherever this

1 individual went.

2 I do not believe, however, that the police officer
3 had the right to accompany this -- to have this individual
4 go to his room to secure the identification.

5 I also would submit to the Court that the police
6 officer did not have the right to accompany him specifically
7 into the room --

8 QUESTION: Whose idea was it to go to the room?
9 The officer's or the arrested persons's?

10 MR. PATRICK: I believe it was, in essence, the
11 officer because the officer left the individual no choice.

12 QUESTION: Isn't it ambiguous from the Supreme
13 Court of Washington where it says at page 35 of the Petition
14 for Certiorari, "The officer noticed the bottle of gin and
15 suspected that Overdahl was under the age of 21. He stopped
16 Overdahl and requested his identification. Overdahl stated
17 that he would have to go upstairs to his room to get the
18 identification. Officer Daugherty required that he would
19 have to accompany him to his room." It's kind of hard to
20 say from that description, isn't it, who -- whether there
21 was insistence on one party or the other?

22 MR. PATRICK: Not from our standpoint, Your
23 Honor. I submit that the insistence was for ID, and the
24 officer wanted that ID. Not having advised Mr. Overdahl of
25 his Miranda rights, he did not have the right to insist on

1 ID.

2 QUESTION: Was the arrest lawful, do you concede,
3 even though he had no Miranda rights?

4 MR. PATRICK: Your Honor, I'll be frank with you
5 in this. I have vacillated back and forth in my own mind on
6 it. The officer --

7 QUESTION: It makes a difference, doesn't it?

8 MR. PATRICK: The officer -- I believe at that
9 point, at that point, --

10 QUESTION: What point is that?

11 MR. PATRICK: The point where the police officer
12 said, I will have to go with you to the room --

13 QUESTION: At the elevator? Was that near the
14 elevator or something?

15 MR. PATRICK: Yes. He was in the lobby. He
16 motioned Mr. Overdahl over and he said, I'll have to see
17 some ID for that gin, or words to that effect. Mr. Overdahl
18 then I said I don't have it with me, I'll have to go up to
19 my room and get it. If you'll wait for me, I'll bring it
20 back. And the officer said no, under these circumstances I
21 will have to go with you.

22 And later on during cross examination --

23 QUESTION: Well, at what point was he arrested?

24 MR. PATRICK: I believe at that point.

25 QUESTION: That was a lawful arrest, even though

1 there were no Miranda warnings?

2 MR. PATRICK: No, I do not believe at that point
3 that the arrest was lawful, Your Honor, because the police
4 officer at that point knew that he could not get past
5 basically a motion to dismiss at the trial if all he came
6 before the judge was -- if all he brought before the judge
7 -- was I've arrested this individual and this individual
8 looks like he's under 21, to me.

9 QUESTION: Wasn't he charged for just having
10 liquor on the campus?

11 MR. PATRICK: I beg your pardon?

12 QUESTION: Wasn't one of the charges just being in
13 possession of liquor on the campus?

14 MR. PATRICK: That was in violation of a
15 Washington Administrative Code, Your Honor, but the police
16 officer indicated that he would not have arrested that
17 individual, in essence, for that; there would be no criminal
18 actions.

19 QUESTION: What the officer's subjective intent
20 was I don't know is controlling. He had, in fact, committed
21 a violation of that regulation.

22 MR. PATRICK: Of the Washington Administrative
23 Code apparently, yes.

24 QUESTION: And was that not a violation for which
25 he could have been issued a citation of some kind?

1 MR. PATRICK: He could have -- frankly, I'm not
2 really sure that he could be issued a citation.

3 QUESTION: Pardon me?

4 MR. PATRICK: I'm not really sure that he could be
5 issued a citation as such. He would certainly go to -- it
6 would go to the office of the dean of students, and there
7 would have been initiated -- I do not believe there would
8 have been initiated any criminal sanctions for that. They
9 would have gone to the dean of students and he may have been
10 disciplined through whatever university disciplinary
11 procedures.

12 QUESTION: On page 35, the Supreme Court of
13 Washington again says, as they were waiting for the
14 elevator, the officer asked Overdahl how old he was.
15 Overdahl responded that he was 19.

16 MR. PATRICK: Yes. At that point I believe he now
17 had the probable cause to arrest. But I believe that the
18 custody of Mr. Overdahl --

19 QUESTION: What about Miranda warnings?

20 MR. PATRICK: I believe the custody of Mr.
21 Overdahl --

22 QUESTION: No. What about when he conceded, I am
23 19. Was he entitled to Miranda warnings if --

24 MR. PATRICK: Yes, Your Honor, he was entitled to
25 the Miranda warnings.

1 QUESTION: Well, do you make any point of the fact
2 he didn't get them?

3 MR. PATRICK: Yes, Your Honor.

4 QUESTION: Even though he conceded he was 19,
5 without the Miranda warnings you suggest, or you argue, that
6 the arrest was still unlawful?

7 MR. PATRICK: Yes, Your Honor. I am arguing that
8 when the officer said, I will accompany you to the room,
9 that he now had put -- he had so restricted Mr. Overdahl's
10 freedom of movement that he was now under arrest. And at
11 that time he had a duty to advise Mr. Overdahl of his rights
12 under Miranda. I believe it happens that that arrest may --

13 QUESTION: I'm sorry, but how can the respondent
14 take advantage of the failure to give Miranda warnings to
15 his roommate?

16 MR. PATRICK: Because it is the --

17 QUESTION: The failure to give Miranda warnings
18 doesn't viciate the arrest, does it?

19 MR. PATRICK: But that's what led directly to --
20 as indicated in our brief, that's what led directly to the
21 opening of the door, which was a giving up of the right of
22 privacy to the room. And under -- then that brings into
23 play Bumper and, I believe, Crewes that --

24 QUESTION: I simply don't follow this argument.
25 If the arrest is valid, it doesn't matter whether he gave

1 Miranda warnings or not, does it?

2 MR. PATRICK: I believe that -- yes, Your Honor, I
3 believe it does because he wanted to get that ID for proof
4 of an element of the offense.

5 QUESTION: Well, you would infer that; your
6 opponent infers something different on that. But regardless
7 of his motive, if he made a valid arrest, as Justice Powell
8 has suggested, what difference does it make whether -- I
9 just don't follow your argument.

10 MR. PATRICK: The reason that it becomes
11 important, Your Honor, is that the sole reason for going to
12 that room was for identification. The identification would
13 have --

14 QUESTION: Done two things. He could have
15 ticketed him without taking him to the station, and he would
16 have had written as well as oral proof of age.

17 MR. PATRICK: Yes.

18 QUESTION: Granted all that, still, now what's
19 your argument?

20 MR. PATRICK: I believe that at that point, not
21 having advised him of his rights to Miranda, he did not have
22 a right to, in essence, insist that the individual goes to
23 his room, or even, there was no need for the individual to
24 go to his room. And I believe that the police officer then
25 took advantage of the situation to get the individual to his

1 room.

2 QUESTION: I still don't follow. The failure to
3 give Miranda warnings makes subsequent statements
4 inadmissible in evidence. Is there any doctrine that says
5 that failure to give Miranda warnings makes it wrong for a
6 police officer to take a person in custody to his room?

7 MR. PATRICK: Yes, Your Honor, when going to the
8 room is to obtain that evidence. I believe that having put
9 the individual under arrest, having failed to advise the
10 individual of the rights under Miranda --

11 QUESTION: And so the evidence is inadmissible.

12 QUESTION: Even though it's not the person who was
13 ultimately charged.

14 MR. PATRICK: Yes, the concept, from my view
15 anyway, Your Honor, the concept is that the police officer
16 could not have stood outside the door and beaten Mr.
17 Overdahl to a pulp and said open the door, and Mr. Overdahl
18 finally opens the door. I believe that Mr. Chrisman could
19 argue and just as effectively would have standing to assert
20 the manner in which that door was opened.

21 Because his privacy to the room was invaded
22 because of a violation of his co-tenant's right to privacy.
23 I believe that's in essence what Bumper ruled when the
24 mother allowed the police officer to come in.

25 QUESTION: But what about this expression that was

1 raised by the Chief Justice a little while back. Under all
2 the circumstances you say he comes in the room and finds a
3 loaded, double-barreled, sawed-off shotgun.

4 MR. PATRICK: I believe, Your Honor, at that
5 juncture there is, in fact, I believe, a difference in the
6 quality of the item; not -- at that point the officer is at
7 least is interested in his personal safety and the personal
8 safety of the people around as he would be evidence. And I
9 believe that the sawed-off shotgun could just as easily be
10 confiscated under exigent circumstances --

11 QUESTION: But he wouldn't have seen if, to quote
12 you, he hadn't violated the roommate's rights.

13 MR. PATRICK: That is correct, that assumes that
14 he is properly at the door.

15 QUESTION: Well, doesn't that cut back on your
16 point a little bit?

17 MR. PATRICK: Yes, Your Honor.

18 QUESTION: It's not absolute, is it?

19 MR. PATRICK: No, it is not, Your Honor. I
20 believe he would have a better case to go in to seize it for
21 his own protection. But still and all, it was there because
22 of a violation of constitutional rights.

23 QUESTION: Well, suppose it was poison there.

24 MR. PATRICK: I beg your pardon?

25 QUESTION: Poison, which can kill just as easily

1 as a shotgun. And which can also be poured down the toilet
2 and disposed of.

3 MR. PATRICK: In this case, there was no toilet in
4 the room, Your Honor.

5 QUESTION: Was there a window in the room?

6 MR. PATRICK: There was a window in the room.

7 QUESTION: It could be thrown out of the window.

8 MR. PATRICK: Yes, if they wanted to break the
9 window.

10 QUESTION: No, they could raise the window; they
11 weren't crippled, were they?

12 MR. PATRICK: I believe at that point, once the
13 window was raised --

14 QUESTION: I just don't understand how you can
15 bootstrap these arguments. Even if you admit that you -- if
16 the prosecutor here admits that he had no right to follow
17 the man but he did follow him, that he should have given him
18 Miranda warnings but he didn't. I don't see how that helps
19 your client. That's my problem.

20 MR. PATRICK: Your Honor, --

21 QUESTION: Even if I think it helps the other guy,
22 I don't think it helps your client. Now, does that make it
23 clear?

24 MR. PATRICK: Yes, Your Honor, but as I indicated,
25 I believe that the police officer, as far as my client, Mr.

1 Chrisman, is concerned, if the police officer secured the
2 opening of the door by beating up on Mr. Overdahl until he
3 finally, through an act of submission, opened the door, --

4 QUESTION: Which is not here.

5 MR. PATRICK: No, but the principle I think is
6 going to be the same. A violation of a constitutional right
7 should give the co-tenant the right to object to the manner
8 in which the privacy was given up.

9 QUESTION: You mean the right -- looking into an
10 open door is the same as breaking the door down.

11 MR. PATRICK: For constitutional --

12 QUESTION: There's a little bit of difference.

13 MR. PATRICK: Well, Your Honor, if you --

14 QUESTION: Mr. Patrick, I wonder if even that
15 follows. Supposing he lawfully arrested him downstairs, and
16 on the way up he beated him up in the elevator and violated
17 his constitutional rights. And then said, I still am going
18 to follow you into the room. If he has a right to follow
19 him into the room, the fact that he beat him up in the
20 elevator wouldn't destroy that right, would it? I mean,
21 there would be remedies for what he did, but I'm not sure
22 one of the rememdies is that he has to turn him loose.

23 MR. PATRICK: I don't believe he has to turn him
24 loose, Your Honor, but I'm not sure that he can --

25 QUESTION: Well, if he can keep him under arrest

1 and if you can stay with your arrestee and go into a room,
2 it doesn't seem to me that if you did something else that's
3 very wrong on the way in has changed the legal posture at
4 all.

5 MR. PATRICK: I think that if you fail -- if you
6 violate the individual's rights and in violating those
7 rights of that individual, the constitutional rights of that
8 individual --

9 QUESTION: Beat him up in the elevator.

10 MR. PATRICK: Right, Your Honor. If that goes to
11 the validity of the consent to go to the room --

12 QUESTION: Under the theory, at least the one
13 Justice Powell has been suggesting, he didn't need consent.
14 He had the man under arrest, and the man goes in the room,
15 he has a right to follow him in. And I'm just suggesting
16 that he doesn't lose that right because he did something
17 terrible in the elevator; if he has the right.

18 MR. PATRICK: You may be right, Your Honor, unless
19 it goes to the consent of the individual to go to the room,
20 and then I have to go back to the proposition --

21 QUESTION: But see, if you have the arrest
22 situation, then you don't need the consent.

23 MR. PATRICK: Except that, Your Honor, just simply
24 because an individual is under arrest doesn't mean that the
25 police officer has to take him to the room.

1 QUESTION: I see what you're saying.

2 QUESTION: One more hypothetical. He does
3 everything you say to one of the men, and as he gets to the
4 door, the wind blows the door open and he sees all of that.
5 He can't seize it. Do you want to bet?

6 MR. PATRICK: Where the wind has blown the door
7 open?

8 QUESTION: Yes. Just as he got there. Fortuitous
9 wind.

10 MR. PATRICK: I think that's a fortuitous event
11 all right, Your Honor, but constitutionally -- well again,
12 we go back to the proposition -- I have to go back to the
13 proposition that the police officer was there because, under
14 our theory of the case, he had not adequately advised the
15 individual of his rights under Miranda, and therefore --

16 QUESTION: Well the police officer employed by the
17 university sure had a right to be standing in that hallway.

18 MR. PATRICK: He had a right to be in the hallway,
19 that's true.

20 QUESTION: And the door blew open, on my
21 hypothetical.

22 MR. PATRICK: I think, Your Honor, that when the
23 doorway was blown open, it has not now come open by an event
24 which one of the defendants was in control of. None of the
25 parties was in control of. It's a little bit like the Chief

1 Justice's question I think where the police officer is
2 bringing Mr. Overdahl down the hall and the police officer
3 sees some marihuana in another room. And in that case, I
4 would say he could go in.

5 QUESTION: But the Chief Justice says you might
6 have to get a warrant, but you said he doesn't even have to
7 get one.

8 MR. PATRICK: No, no, I'm sorry, Your Honor, I
9 don't mean to infer that he didn't have to get a warrant.

10 QUESTION: I thought that you just said that that
11 would be a different case and the officer could do it.

12 QUESTION: But failure to give Miranda warnings
13 does not viciate an otherwise lawful arrest, does it? It
14 just means that a motion to suppress may be granted, but
15 we'll suppress items that were surrendered by the victim
16 under the -- because of the failure to advise him of his
17 rights. It doesn't mean that the state can't prove its case
18 by other evidence.

19 MR. PATRICK: That's my understanding, Your Honor,
20 that is correct. I do not believe that the state can prove
21 its case by evidence that would arise from the individual.

22 QUESTION: Well, that's -- but this isn't the same
23 individual.

24 MR. PATRICK: But it is an individual who is in
25 the same position, as I indicated earlier -- at least I

1 would submit to the Court that when the individual has --
2 when a co-tenant has given up the privacy of the premises
3 because of a violation of that co-tenant's rights, the
4 non-consenting co-tenant should, I submit, stand in the same
5 shoes, because it is the protection of the privacy of the
6 premises that I believe is at stake. And this Court has on
7 several occasions indicated that it will certainly assert
8 and recognize the rights of the people who are -- who have
9 possessory interest in the property, although that is not
10 necessarily the key.

11 But again I believe that Bumper handles the
12 standing question in which the mother, I believe it was, who
13 owned the premises gave -- acceded to the request of the
14 police officers to come in under the proposition that they
15 had a search warrant. And it was the defendant then who was
16 given standing to assert that the entry was invalid because
17 it was under the mistaken hypothesis that the police officer
18 did have a search warrant.

19 QUESTION: Tell me, Mr. Patrick, assuming there is
20 no infirmity whatever in the arrest of Overdahl and they
21 went up to the room, as they did, might not -- or do you
22 think the officer could accompany Overdahl into the room?

23 MR. PATRICK: Under the facts of this case, Your
24 Honor --

25 QUESTION: No, I suggested them. If there is no

1 infirmity whatever in the arrest of Overdahl. You go up to
2 the room because Overdahl has said, I want to get the ID for
3 you. Could not the officer accompany him into the room?

4 MR. PATRICK: The Washington Supreme Court said no.

5 QUESTION: What do you think?

6 MR. PATRICK: Ah --

7 QUESTION: And why not, if you're going to answer
8 he couldn't? I would suppose the officer would be able to
9 be sure that he wasn't going to be attacked or assaulted.

10 MR. PATRICK: That's why I said I didn't think so
11 under the facts of this case. I can understand why a police
12 officer would want to be in a position where he could
13 protect himself from an attack or an assault.

14 The problem is, in this case, a police officer's
15 actions did not give any indication that he had any concern
16 about that.

17 QUESTION: Because he stood in the doorway instead
18 of entering, is that it?

19 MR. PATRICK: He stood in the doorway, he had not
20 frisked the individual before he got there, at least the
21 record doesn't disclose that he did.

22 QUESTION: Let's suppose, however, that he had
23 entered. Would there be anything wrongful about that entry?

24 MR. PATRICK: If he had gone into the room?

25 QUESTION: Yes. If he had gone in with Overdahl.

1 MR. PATRICK: Under our Supreme Court's decision,
2 which we submit could be supported under the Washington
3 constitution, and under State vs. Seiss, a New Jersey
4 decision we cited in our brief, the theory is that there are
5 some types of arrests which are so insignificant that it is
6 not valid for the police officer to accompany the individual
7 into the room.

8 QUESTION: Incidentally, there is no suggestion
9 that the Washington Supreme Court decided this case under
10 the Washington constitution, is there?

11 MR. PATRICK: The Washington Supreme Court cited
12 State vs. Daugherty, which is a Washington case.

13 QUESTION: Well, do you think they rested this on
14 the state constitution rather than the federal?

15 MR. PATRICK: I think that they could have and I'm
16 not 100% sure.

17 QUESTION: Well, did they?

18 MR. PATRICK: I'm not really sure, frankly,
19 whether they did or did not.

20 QUESTION: If they did, we would have no
21 jurisdiction over this case, obviously.

22 MR. PATRICK: That is correct, Your Honor.

23 QUESTION: Well, do you suggest they did?

24 MR. PATRICK: Yes, I'm suggesting that this Court
25 -- if this Court believes that the search could be upheld

1 under federal constitutional grounds, I believe that the
2 case should be remanded back to the State Supreme Court to
3 see if the State Supreme Court decided the case under the
4 state constitution.

5 QUESTION: Why did the State Supreme Court cite
6 all the federal constitutional cases if it was deciding it
7 under the Washington constitution?

8 MR. PATRICK: I believe, Your Honor, that the
9 concept that the states can interpret their own constitution
10 and can grant additional rights over and above those granted
11 to the federal Constitution frankly is of relatively recent
12 origin, and I don't think it's been thoroughly thought out,
13 frankly. I believe in Mr. Justice Brennan's Law Review
14 article he propounded that proposition.

15 And I think that frankly, part of the reason would
16 be, although it's up to the state supreme court to say for
17 themselves, but I would think that part of the reason is
18 that the state supreme courts have grown so accustomed to
19 examining questions in light of what they think the United
20 States Supreme Court is going to rule, that they are very
21 used to taking precedent from the U.S. Supreme Court.

22 And I believe, however, that in the future, as
23 this theory is -- we all have more experience with this
24 theory, it would not surprise me to see state supreme court
25 decisions resting their decision on their state

1 constitutional grounds where it is their view that
2 additional rights are granted under their respective
3 constitutions.

4 QUESTION: But we're reviewing a judgment here
5 that's not in the future but was rendered in the past.

6 MR. PATRICK: That is correct, Your Honor. But
7 one of the authorities cited by the state supreme court was,
8 as I say, the State vs. Daugherty. Now, State vs. Daugherty
9 itself cited some federal cases and some state cases, and I
10 did review some of those state cases and again, those cases
11 cited are also state and federal cases.

12 I believe that the state supreme court could have
13 decided this case under the state constitution, and as I
14 indicated earlier, if this Court feels that the state
15 constitution -- or rather, that the federal Constitution was
16 not violated by the search, then I would request the Court,
17 again, to remand it back to the state supreme court for a
18 determination as to whether or not the search could be
19 sustained under the state constitution.

20 QUESTION: Isn't the test whether it did decide it
21 rather than whether it could have decided it, under Privda
22 and Minnesota vs. National Tea and those cases?

23 MR. PATRICK: Your Honor, I think that may well
24 be, but I think that where the supreme court, or where the
25 case -- if the case were to be reversed and go back to the

1 trial court, I would think that if the trial court then were
2 to sentence the individual and impose a sentence, that
3 again, we would probably be faced with trying to go back up
4 to the state supreme court and give the state supreme court
5 an opportunity to rule on the constitutionality of -- under
6 the state constitution. And I believe it would avoid a lot
7 of circular action if it were simply to go back to the state
8 supreme court.

9 QUESTION: Of course, this business of deciding
10 cases on state constitutional principles rather than federal
11 is nothing new. We've been doing it up here for a long time.

12 MR. PATRICK: Yes, Your Honor, that is true. But
13 I think in the -- I believe certainly in recent history
14 under the state court -- under the constitutional
15 principles, the state supreme courts have -- particularly
16 after Mann -- have become accustomed to following the
17 precedent of the U.S. Supreme Court, and feel -- I believe
18 for a time felt pretty much locked in by the precedents set
19 by this Court. And the state supreme court then should be
20 allowed, I submit, to decide this case on state
21 constitutional principles, if the Court determines that this
22 case should not be decided as incorrect under federal
23 constitutional principles.

24 QUESTION: Mr. Patrick, on that point, did you
25 tell us -- I want to be sure I understood what you were

1 saying -- that there is a state constitutional doctrine that
2 more or less classifies certain offenses as very petty
3 offenses and that if this offense is in that category, that
4 as a matter of state law, the entry into the room might not
5 have been justified by the fact that the man was under
6 arrest.

7 MR. PATRICK: That's my -- the state supreme court
8 said that this type -- an arrest for this type of offense
9 did not justify the police officer accompanying the
10 individual into the room.

11 QUESTION: That's in the -- is that the Daugherty
12 case the courts have found that --

13 MR. PATRICK: No, that's my understanding of the
14 Chrisman case.

15 QUESTION: Of the holding in this case, I see, all
16 right.

17 MR. PATRICK: Yes. The Simpson case, which we
18 cited for the proposition that the state court can interpret
19 its own constitution and indeed has interpreted in some
20 instances the state constitution to give the additional
21 rights than those given under the federal Constitution, we
22 submit was not simply standing, because standing is not a
23 constitutional interpretation, as I see it.

24 So I believe the state constitution could
25 vindicate the holding of the state court.

1 QUESTION: Mr. Patrick, may I review with you just
2 a moment to be clear, are you now willing to concede that
3 Mr. Overdahl had been lawfully arrested before the officer
4 accompanied him to his room?

5 MR. PATRICK: I believe that when -- yes, Your
6 Honor, when the police officer found out that he was under
7 the age of 19, I believe that at that point --

8 QUESTION: The answer is yes?

9 MR. PATRICK: Yes.

10 QUESTION: And do you concede that the officer was
11 lawfully at the doorway of the room with Mr. Overdahl?

12 MR. PATRICK: No, Your Honor, because I do not
13 believe that the police officer had given Mr. Overdahl his
14 Miranda rights, and therefore, did not have the right to
15 accompany him to get evidence against Mr. Overdahl. And
16 that if anything --

17 QUESTION: But you would concede there are
18 circumstances which would justify an officer in accompanying
19 the person arrested to his dwelling, into the dwelling.

20 MR. PATRICK: I believe the case authority is that
21 the police officers, on certain occasions where there -- and
22 all the cases cited by the state indicate that the request
23 was for a purpose of the accused rather than a purpose of
24 the police officer, where that is permitted.

25 I believe that -- I haven't touched yet on the

1 knock and announce rule, and I would like to just touch very
2 briefly on the knock and announce rule. If the police
3 officer were outside the room and had accompanied Mr.
4 Overdahl to the room and were at that point outside the
5 room, now the nature of the situation when he determines to
6 enter the room, it seems to me, has been changed. He has
7 now -- he was at the room for one purpose and is outside
8 that room and has now decided for whatever reason to go into
9 the room, and I submit at that point, under the knock and
10 announce rule, he should -- while he might not have had to
11 knock; I don't think he would have had to knock, but I do
12 believe that he should have announced his purpose to enter
13 the room.

14 QUESTION: Well, Ker in California held that the
15 knock and announce rule was not a constitutional rule,
16 didn't it?

17 MR. PATRICK: It was my understanding that it was
18 of constitutional proportion, or at least it's my
19 understanding that the state --

20 QUESTION: That's what the dissent said in Ker and
21 California.

22 MR. PATRICK: I believe that our state supreme
23 court has determined that it is of constitutional
24 proportions.

25 In summation, if I could simply say to the Court

1 that in this case, if the police officer were outside the
2 room, and if the Court finds exigent circumstances, he
3 created his own exigent circumstances. He could have
4 maintained the status quo and did not. He could have
5 maintained with his radio a guard at the door while a search
6 warrant was obtained, and we submit that where we are
7 talking about protection to the dwelling, the protection in
8 maintaining the right to privacy, that where a reasonable
9 opportunity exists to obtain a search warrant and preserve
10 the status quo, that this Court will require that the status
11 quo be maintained and that a search warrant be obtained and
12 that the entry be made pursuant to a search warrant.

13 Thank you, Your Honors.

14 CHIEF JUSTICE BURGER: Do you have anything
15 further, Mr. Carpenter?

16 ORAL ARGUMENT OF RONALD R. CARPENTER, ESQ.

17 ON BEHALF OF THE PETITIONER -- REBUTTAL

18 MR. CARPENTER: Mr. Chief Justice, and may it
19 please the Court, --

20 QUESTION: Do you think that opinion can be read
21 as resting on your statement?

22 MR. CARPENTER: Which, the Chrisman opinion?

23 QUESTION: Yes.

24 MR. CARPENTER: No, I believe it cannot. And I
25 particularly believe it cannot because of State v. Smith.

1 QUESTION: Do you think it's even ambiguous --

2 MR. CARPENTER: No, I don't think there's anything
3 ambiguous. It's true that it did cite a state case, State
4 v. Daugherty, which cites a whole series of other state
5 cases, but those state cases are talking about
6 interpretation of the U.S. Constitution primarily; they're
7 not talking about the U.S. Constitution.

8 The only case of recent times that is helpful to
9 underline any disparity in the two constitutions is State v.
10 Simpson which talks about the standing problem. State v.
11 Smith decided in 1977 clearly makes the point that the two
12 constitutional provisions should be given the same effect.
13 And it's only that point of departure on standing that our
14 court made a difference.

15 I think the record is helpful in some of the
16 things we've been talking about. I'd ask the Court when it
17 has a chance to look at the Joint Appendix Page 35, and I
18 think that clearly shows the trial court's findings of fact,
19 which show that it was Mr. Overdahl's desire to go back to
20 the room, and that his response to the office was okay, he
21 could accompany him.

22 Also, a fact that got maybe lost in the wash a
23 little bit here is that the third violation, also a criminal
24 violation, was that -- and it's replete in the Joint
25 Appendix references -- is that it's a violation of criminal

1 law and Washington law to have an open container out in
2 public, and that's another reason the officer could have
3 arrested him, and one of the reasons he cites at the
4 suppression hearing in the trial court.

5 QUESTION: An open container of gin?

6 MR. CARPENTER: Of alcoholic beverage. The gin --

7 QUESTION: In this case, gin.

8 MR. CARPENTER: Yes.

9 QUESTION: However old you are.

10 MR. CARPENTER: However old you are, if you're 65
11 it doesn't matter.

12 QUESTION: Mr. Carpenter, what about --

13 QUESTION: That isn't old.

14 (Laughter.)

15 MR. CARPENTER: I didn't imply it was old.

16 QUESTION: What about Mr. Patrick's suggestion
17 that there are certain very minor offenses with respect to
18 which when an arrest is made, the arresting officer could
19 not follow the man into the room?

20 MR. CARPENTER: No, I don't subscribe to that
21 theory and I don't think our court said that. I think our
22 court just felt that the U.S. Constitution required -- I
23 think they may have thought in their principal opinion that
24 the U.S. Constitution made some distinction between serious
25 and non-serious cases. I think that is sort of ludicrous

1 because the officer is threatened, his protection is just as
2 much at stake.

3 QUESTION: Well, in the opinions last spring,
4 Justice Stewart referred to custodial arrests. Do you
5 remember that in one of the cases?

6 MR. CARPENTER: Yes, I remember.

7 QUESTION: Do you think that was kind of
8 nonsensical?

9 MR. CARPENTER: Well, let me just say it this way
10 in the most diplomatic way I can, I think that it is
11 unrealistic to say that officers have to articulate some
12 specific threat to them. Because by the time they find out
13 about the threat, they are probably either going to be dead
14 or severely injured. Maybe that's a very callous look at
15 society, but we have some bizarre things going on in today's
16 society. It's not the peaceful society of 200 years ago.

17 QUESTION: So your view would be all arrests are
18 considered --

19 MR. CARPENTER: All arrests. There's jeopardy, as
20 the amicus points out in their brief, in all arrests.

21 QUESTION: Until you get on bail.

22 MR. CARPENTER: That's correct.

23 The other thing is I really don't think this
24 Miranda issue, the question at the elevator -- I would
25 suggest is somewhat of a red herring. You have to remember

1 that they were already going back to the room to get ID when
2 he asked him about his age and he said it was 19. Now, what
3 effect does the fact that he may have violated his Miranda
4 rights at that point? They were still going back to the
5 room, that's where they started, that's where they were
6 headed when they went into the elevator and ascended to the
7 11th floor. So it doesn't add or subtract anything. He was
8 never prosecuted, the state never attempted to use that
9 statement against him for any criminal prosecution. I think
10 it just doesn't naturally follow that that somehow affects
11 the arrest in this case.

12 As the Court of Appeals aptly observed on page 24
13 through 26 of our Petition for Certiorari, the section where
14 the Court of Appeals talked about that, and they say it's
15 just of no constitutional significance.

16 I see my time is up. Thank you.

17 CHIEF JUSTICE BURGER: Thank you, gentlemen, the
18 case is submitted.

19 (Whereupon, at 2:50 p.m. the oral argument in the
20 above-entitled matter ceased.)

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WASHINGTON v. NEIL MARTIN CHRISMAN

80-1349

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