

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

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ORIGINAL

DKT/CASE NO. 83-2126

TITLE OKLAHOMA, Petitioner V. TIMOTHY R. CASTLEBERRY AND
NICHOLAS RAINERI

PLACE Washington, D. C.

DATE March 20, 1985

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IN THE SUPREME COURT OF THE UNITED STATES

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OKLAHOMA, :
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 : Petitioner, :
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 : V. : No. 83-2126
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 : TIMOTHY R. CASTLEBERRY :
 :
 : AND NICHOLAS RAINERI :
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Washington, D.C.
Wednesday, March 20, 1985

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:19 o'clock a.m.

APPEARANCES:

DAVID WILLIAM LEE, ESQ., Assistant Attorney General of Oklahoma, Oklahoma City, Oklahoma; on behalf of the petitioner.

CHARLES FOSTER COX, ESQ., Oklahoma City, Oklahoma; on behalf of the respondent.

C O N T E N T S

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ORAL ARGUMENT OF

PAGE

DAVID WILLIAM LEE, ESQ.,

on behalf of the petitioner

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CHARLES FOSTER COX, ESQ.,

on behalf of the respondents

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Oklahoma against Castleberry and Raineri.

Mr. Lee, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF DAVID WILLIAM LEE, ESQ.,
ON BEHALF OF THE PETITIONER

MR. LEE: Mr. Chief Justice, may it please the Court, the issues in this case which primarily arise under the principles announced by this Court in United States versus Ross are as follows: first, whether there was probable cause to believe that the defendants' vehicle in this case contained contraband, and secondly, assuming there was such probable cause, whether the police acted properly in searching without a search warrant three suitcases in the trunk of the car and the bandaid box which was found on the dashboard of the car.

Of course, the state contends that the answer to these questions is in the affirmative.

The facts in the present case are that at noon on the day in question, Officer Taylor, a narcotics officer with the Oklahoma City Police Department, received a telephone call from a confidential informant. The informant stated that he had been within the room in question, Room 113, within the last ten

1 hours and had observed a large quantity of marijuana,
2 some cocaine, and some other white pills.

3 The informant stated that some of the drugs in
4 question were in a blue suitcase. The informant gave
5 the officer a description of the men that were in the
6 room. The informant also stated that one of the names
7 of the men who were in the room was named Tim
8 Castleberry, and that the other man was named Nick.

9 The informant stated that these men were
10 driving a blue 1980 or '81 Thunderbird with Florida
11 license plates.

12 Officer Taylor took this information and
13 immediately proceeded to the motel in question, which is
14 located on an interstate highway in Oklahoma City --

15 QUESTION: Didn't the informant add a little
16 more, that they were carrying this material in suitcases
17 that were a particular color?

18 MR. LEE: Yes, Your Honor, the informant
19 specifically told the officer that some of the narcotics
20 was in a blue suitcase which was -- which the informant
21 stated that he had observed in the last ten hours.

22 Officer Taylor drove to the motel, went in,
23 and drove through the parking lot and observed parked in
24 front of Room 113, the room which the informant had
25 referred to, he noticed parked immediately in front of

1 the room a blue 1980 or '81 Thunderbird with Florida
2 license plates.

3 Taylor parked his car, went in, and found out
4 from the room clerk that the room was registered to Tim
5 Castleberry, which is the name of the person referred to
6 by the informant. He said Castleberry had paid for only
7 the previous night, and that checkout time was at 1:00
8 p.m., and that he would be leaving at 1:00 p.m. At this
9 time, it was approximately ten minutes until 1:00
10 o'clock.

11 The officer then returned to the car, which
12 was approximately five space away from the blue
13 Thunderbird, and called for a backup. While waiting
14 there for his backup to arrive, he observed the
15 defendant Castleberry come from Room 113 carrying a blue
16 suitcase which matched the description of the one given
17 to him by the informant which stated that some of the
18 narcotics were in that particular suitcase.

19 Taylor watched him put the blue suitcase in
20 the trunk of the Thunderbird. He then saw the defendant
21 Raineri also leave Room 113 carrying two green plaid
22 suitcases, which he also observed him place these in the
23 trunk of the car. He then observed Castleberry come out
24 of the room a second time and place a blue suitcase in
25 the back seat of the car behind the driver's side.

1 At this time Officer Taylor felt like he
2 needed to take action. He got out of the car. He drew
3 his gun. He approached the two men. He advised them he
4 was an Oklahoma City police officer. He stated that --
5 he had his badge displayed and his gun pulled. He asked
6 both men to place their hands on the car.

7 It should be noted that there was a third
8 person come out of the room who at this time stated, "I
9 am not involved in any of this. I am scared. I am not
10 any good at this." In response to the request by the
11 officer -- and I need to add that Officer Taylor
12 testified that as he approached the trunk of the car, he
13 was able to detect a strong odor of marijuana coming
14 from the trunk of the car, which was open.

15 He said after he gave his command,
16 Castleberry, who was standing on the driver's side of
17 the car, near the trunk, slammed the trunk shut. He
18 said that the defendant Raineri, who was standing on the
19 passenger side of the car, immediately complied with the
20 request, but Castleberry, after slamming the trunk shut,
21 stepped back further toward the driver's side and placed
22 his hands behind his back.

23 The officer testified that he gave Castleberry
24 two more commands to put his hands on the car, and
25 Castleberry refused, and finally threw an object into

1 the car. Officer Taylor approached and attempted to
2 force him to place his hands on the car. A certain
3 amount of wrestling ensued, and they both went to the
4 ground while Officer Taylor was trying to subdue
5 Castleberry.

6 During this time, Castleberry was able to
7 reach up, lock the inside of the driver's car, and slam
8 the door shut. The car keys to the car were at this
9 time in the door on the driver's side of the car where
10 the two men were.

11 At this time the backup, Officer City of the
12 Oklahoma City Police Department arrived. He stated and
13 it was the testimony of both these men that he came up,
14 that he was given the keys to the car by Officer Taylor,
15 and advised by Officer Taylor that he had smelled an
16 odor of marijuana coming from the trunk.

17 He took the keys, opened the trunk. He, too,
18 said he smelled an odor of marijuana coming from the
19 trunk. He unzipped the two plaid suitcases that the
20 defendant Raineri had taken from the room and placed in
21 the car, and he found there a large amount of
22 marijuana. There were 25 pounds of marijuana in one of
23 the suitcases and 34 pounds of marijuana in the other.

24 He then proceeded to -- he had to forcefully
25 open the blue suitcase that the defendant Raineri had --

1 defendant Castleberry had brought from the room and
2 placed in the car first. He forcefully opened that, and
3 in that suitcase was found \$2,700 in cash and
4 approximately ten ounces of methaquaalone.

5 The state contends, of course, that the search
6 of these four containers, the three suitcases which were
7 found in the trunk and the bandaid box on the dashboard,
8 were properly conducted without a warrant.

9 QUESTION: Mr. Lee, may I ask --

10 MR. LEE: Yes, Your Honor.

11 QUESTION: -- what happened after the events
12 you have just described?

13 MR. LEE: They stated that -- their testimony
14 was that when they -- after they found the money, the
15 items were taken inside the motel room, and it was in
16 the motel room that they found that -- they counted
17 \$2,700 and found the methaquaalone.

18 QUESTION: Then what happened?

19 MR. LEE: Then they arrested the defendants
20 and they took them to the police department. They
21 testified --

22 QUESTION: What did they do with the suitcases
23 at that time? Did they take them to the police
24 department, too?

25 MR. LEE: I believe they did.

1 QUESTION: So they kept all the stuff
2 together, and took it down to the department at the time
3 they arrested them?

4 MR. LEE: I believe that is correct.

5 QUESTION: So at the time they made the
6 searches, would they have had sufficient probable cause
7 to do all that without opening the suitcases?

8 MR. LEE: At the time they made the search?

9 QUESTION: Yes.

10 MR. LEE: To arrest the defendants?

11 QUESTION: Yes.

12 MR. LEE: I believe, based particularly on the
13 information given by the informant, and particularly
14 when Officer Taylor approached the car and detected the
15 odor of marijuana coming from the trunk of the car,
16 certainly they would have had probable cause to make an
17 arrest.

18 QUESTION: And to take the suitcases to the
19 police station?

20 MR. LEE: Yes.

21 QUESTION: As they did later?

22 MR. LEE: Yes, as they did.

23 QUESTION: And the car, too, I suppose.

24 MR. LEE: Yes, the car could have all been
25 taken, and the officers testified that they made an

1 inventory search of the car at the police department.

2 QUESTION: What happened to the suitcase in
3 the back seat?

4 MR. LEE: That is not mentioned in the
5 record. I presume there was nothing found in that. The
6 record doesn't even reflect whether it was searched.

7 QUESTION: And what about the package?

8 MR. LEE: Excuse me. I forgot the part that
9 Officer Citty stated that after he found the items in
10 the suitcases, that he then looked in the interior of
11 the car, found the bandaid box, and it was located on
12 the dashboard of the car. He opened it, and found an
13 ounce of cocaine.

14 We contend that the search of the suitcases in
15 the trunk of the car and the bandaid box which was found
16 inside the car were all properly searched pursuant to
17 the principles announced by this Court in the Ross case
18 and --

19 QUESTION: What about the package that was
20 thrown in as they lay on the ground?

21 MR. LEE: Yes, we think that that --

22 QUESTION: Is that the bandaid box?

23 MR. LEE: Yes, sir.

24 QUESTION: Oh, I see.

25 MR. LEE: It is the bandaid box. We think

1 that the suitcases and the bandaid box were all searched
2 pursuant to the automobile exception rule in Ross and of
3 course the more recent case announced by this Court,
4 United States versus Johns.

5 We also feel that the bandaid box was properly
6 searched as a search incident to a lawful custodial
7 arrest under the doctrines of this Court in United State
8 versus Robinson and New York versus Belton.

9 It is the state's position that the officers
10 had probable cause to believe that the vehicle in
11 question contained contraband, and that a search of the
12 entire vehicle for drugs was justified by the facts.

13 The fact that checkout time was at hand, that
14 the baggage had been loaded into the car, that the
15 informant had stated that some -- that one of the
16 suitcases contained drugs, that a strong odor of
17 marijuana was coming from the trunk, coupled with the
18 actions of the defendant Castleberry and the third party
19 as Officer Taylopr approached the car, all support the
20 belief that the drugs had been removed from somewhere in
21 the motel room and were now somewhere in the vehicle.

22 Therefore, the entire automobile could have
23 been a hideaway for the drugs.

24 This Court specifically held in the Johns case
25 that when the officers approached the trucks in question

1 and detected the distinct odor of marijuana which was
2 around the back of the truck, they had probable cause to
3 search the entire truck.

4 The Court in Johns stated also that the
5 officers in the Ross case had probable cause to search
6 the entire vehicle in that case. The state believes
7 that the facts in this case present an even more
8 compelling case involving probable cause.

9 In this case, the convictions of the defendant
10 were reversed by the Oklahoma Court of Criminal Appeals
11 in a two-to-one decision. The court stated the reason
12 why they reversed was because they felt like if an
13 officer had tried to apply the Ross and the Sanders and
14 the Chadwick doctrine, they felt like that taking all
15 those cases together, that if an officer knows of the
16 specific location within a vehicle where contraband is
17 located, the officer should get a search warrant.
18 However, if he only knows that there is contraband
19 generally in the vehicle, the officer can go ahead and
20 search it without a warrant.

21 The court held in this case since the
22 suitcases and the bandaid box were suspected locations
23 of contraband, they should have been detained while the
24 search warrant was being obtained.

25 However, in the Johns case, the Court observed

1 that when the officers detected the odor of marijuana
2 coming from the back of the trucks, they no doubt
3 suspected that the odor was coming from the packages
4 which were in the back of the truck, but the Court, of
5 course, in that case did not require a search warrant.

6 In Ross, the police were advised of the
7 specific location of drugs in that case. In that case
8 they were advised by an informant that the drugs were in
9 the trunk, but this Court upheld the search of the brown
10 paper bag and the zippered pouch in the trunk of the car
11 without requiring a search warrant.

12 Under the same rationale, the search of the
13 suitcases found in the trunk in the present case should
14 be upheld. The rule announced by the Oklahoma Court of
15 Criminal Appeals we feel means that there would now be
16 endless litigation over whether or not the police
17 suspected of a particular location of contraband within
18 a particular container in a vehicle.

19 Furthermore, this Court in Johns specifically
20 noted that the fact that a container is involved does
21 not in itself either expand or contract the
22 well-established exception to the warrant principle
23 recognized in the Carroll case.

24 In Ross this Court stated that there was no
25 distinction between containers and compartments, and

1 that the object of the search is limited -- and that the
2 officer's search is limited only by the object of the
3 search, and the places in which there is probable cause
4 to believe that that object may be found.

5 In both Ross and Johns and in Justice Powell's
6 concurring opinion in the Robins case it was noted that
7 in neither Sanders nor in the Chadwick case did the
8 police have probable cause to search the vehicle or
9 anything in it other than the footlocker in the Chadwick
10 case and the suitcase in the Sanders case.

11 QUESTION: Mr. Lee, may I ask one other
12 question about the facts?

13 MR. LEE: Yes, Your Honor.

14 QUESTION: In addition to searching the
15 suitcases and the bandaid box in this case, how
16 extensive was the search of the vehicle. Did they tear
17 open the upholstery and things of that kind?

18 MR. LEE: There is no record of that. Of
19 course, we think that on the basis of the Carroll
20 search, where, as you pointed out in the Ross case, the
21 police ripped open the upholstery in the back seat of
22 the car, that that would have been proper, but there is
23 no record there was anything like that done. The
24 suitcase in the trunk was forceably opened.

25 QUESTION: Was there anything found any place

1 except in these various containers?

2 MR. LEE: The record doesn't reflect that,
3 Your Honor. We are talking about really four containers
4 where something was found, three suitcases in the trunk
5 and the bandaid box found on the dashboard.

6 QUESTION: What would your view be if they had
7 brought all these things out and set them down right
8 beside the vehicle, and the officer then accosted them?
9 Would you agree that they could not have opened them and
10 had to wait until they at least put them in the
11 vehicle?

12 MR. LEE: That is a question that is going to
13 fall somewhere between the cases of this Court, in the
14 Place case, and the Mendenhall, and the Jacobson case,
15 where --

16 QUESTION: I just wondered what your view is
17 in your submission to the Court in connection with
18 this. Is it critical to your case that these materials
19 had first been placed into the vehicle before the search
20 began?

21 MR. LEE: Yes, I think the fact that it was
22 placed into an automobile is the critical distinction
23 there.

24 QUESTION: And would you therefore concede
25 that under Chadwick and Sanders, had they not been

1 placed in the vehicle, they could not have been opened
2 and searched?

3 MR. LEE: Yes. Yes, I think that if the
4 officer had known nothing more than these were
5 individuals who were carrying suitcases, the airport
6 cases, that kind of thing would apply.

7 QUESTION: Well, suitcases which they had
8 probable cause to believe contained a lot of drugs.

9 MR. LEE: Yes, I think the Court made clear in
10 Place that they have got to get a search warrant.
11 However, when they were placed into the car, that
12 coupled with the fact that when they approached the rear
13 end of the car the officer detected a strong odor of
14 marijuana coming from the trunk, that changes --

15 QUESTION: Let me ask you another question.
16 Stick with my hypothetical for a minute, where they put
17 everything down before they throw anything into the
18 car. Could they have then searched the car, in your
19 view?

20 MR. LEE: No, I don't believe so, because --

21 QUESTION: In other words, the justification
22 for searching the car rests entirely on placing these
23 containers in the car?

24 MR. LEE: Yes. All the facts in this
25 situation show that there were drugs in the motel room

1 parked on the interstate highway in Oklahoma, in a
2 room. All the facts that were observed by the officer
3 showed that the drugs were being moved from the room to
4 somewhere in the car. The informant made his
5 observations within the last ten hours.

6 We think it is clear that there was at least
7 probable cause to believe that the individuals with
8 those drugs were going to place them from the motel room
9 that they were just checking out of into the car. That
10 is why we think it is an automobile case.

11 QUESTION: How do you distinguish this case
12 from Sanders?

13 MR. LEE: In Sanders there was no probable
14 cause to believe that the drugs were in any other place
15 other than the suitcase which the police had surveilled
16 and watched them place --

17 QUESTION: You just agreed that was true here
18 also.

19 MR. LEE: No, I think we have a lot more in
20 Sanders. I think we have a situation where the
21 individuals could have removed the drugs from the room
22 to the car any time within the last ten hours.

23 QUESTION: Those are two inconsistent
24 answers. That is inconsistent with what you have
25 already said.

1 MR. LEE: Well, I don't think it is. I am
2 saying if the officer had come up and observed nothing
3 more than individuals with the suitcases, and that
4 was --

5 QUESTION: There would still have been the
6 possibility you have just mentioned that meanwhile they
7 have removed some of the drugs to the car.

8 MR. LEE: It is possible, but here we have a
9 situation where the officer observed the individuals
10 place four containers in the car.

11 QUESTION: You think we should judge this case
12 then on the basis that there was no probable cause to
13 search the car other than the fact that these suitcases
14 were in the car?

15 MR. LEE: Well, plus the odor of marijuana
16 coming from the trunk of the car, plus the actions of
17 the defendant Castleberry and the third party as the
18 officers approached the car.

19 QUESTION: You can't have it both ways. You
20 can't say that there is probable cause to search the car
21 because of the smell, and that there wasn't probable
22 cause if the suitcases were just sitting outside.

23 MR. LEE: Well, I am saying that -- and I
24 believe Justice Stevens' hypothetical was, if the only
25 thing he would have known was, he pulls up and sees

1 Castleberry with a suitcase getting ready to get into
2 the car, I am saying that would probably fall more into
3 the Place, and in your concurring opinion in the
4 Jacobson situation.

5 Here we have much more. We have him putting
6 four suitcases in the car, one of which the informant
7 had specifically told him within the last ten hours he
8 had seen narcotics in the suitcase. We have him
9 approaching the car, detecting a strong odor of
10 marijuana coming from the trunk, which I think puts it
11 right on point with the Johns case, where the officers
12 approached the trucks and detected the odor of
13 marijuana, and the Court in that case said there was
14 probable cause to search the entire trucks everywhere,
15 and the Court specifically stated that contraband could
16 have been concealed anywhere in the trucks.

17 QUESTION: How much do you rely on the
18 resistance and flight of the people involved?

19 MR. LEE: Certainly resistance generally
20 reflects a consciousness of guilt, and we think that the
21 actions of Castleberry -- we don't think a law abiding
22 citizen who was not doing anything would react this way
23 when he was approached by a police officer.

24 We think the fact that at gunpoint he refused
25 two commands to place his hands on the car, that he

1 finally threw the item, the bandaid box in the car, that
2 he struggled with the police officer, that he locked the
3 car and slammed the door shut in the process of this, he
4 obviously didn't want the police to get the bandaid box,
5 and he obviously didn't want them to get in the car.

6 He didn't want them to get in the trunk of the
7 car, too, because the actions of Castleberry in slamming
8 the trunk shut as he approached, as the officer
9 approached the car, should also be considered, I think,
10 to be a probable cause fact.

11 So here we have much more than just an
12 individual who happens to be standing on a curb with a
13 suitcase next to a car. Here we have all these facts
14 which I think and which we contend places it clearly
15 within the Johns situation.

16 QUESTION: Do you think the officers had
17 probable cause to search the vehicle had the suitcases
18 not yet been put inside it in this case?

19 MR. LEE: If they had not been placed inside
20 the car, and if there had not been a detecting odor of
21 marijuana by the officer --

22 QUESTION: Well, let's say they do detect the
23 odor of marijuana, and all the other facts that exist in
24 this case.

25 MR. LEE: I think that your decision in the

1 Johns case would allow them to search the entire
2 vehicle, because in that case all they had was a
3 situation 50 miles from the Mexican border where there
4 was a plane that landed, and trucks pull up to the
5 plane, and then as the officers approach the trucks,
6 they stated that they detected the odor of marijuana,
7 and then your holding in that case was that the officers
8 had probable cause to search. Well, they also observed
9 packages in the back of the truck, but you stated all
10 these facts together said there was probable cause to
11 make a search.

12 So, I think, yes, the odor of marijuana is a
13 very critical fact, but in this case we have much more
14 we feel like than the officers did in the Johns case.

15 QUESTION: Mr. Lee, will you tell me once
16 again what you think you answered to Justice Stevens.

17 MR. LEE: In response to his hypothetical, if
18 the police had had nothing more than if they had arrived
19 at that motel and seen Castleberry with the suitcases,
20 and he had not placed the suitcases in the car, and he
21 had not taken any evasive action, and they had not
22 detected the odor of marijuana coming from the trunk, I
23 think this case would require them to get a search
24 warrant for the suitcase, just as though they are always
25 required to get a search warrant any time there is a

1 handbag or suitcase at an airport, like in the Place
2 case.

3 I think that all those facts move it
4 completely into the automobile exception case, all those
5 additional factors. The fact that he saw him loading
6 four suitcases into the car, the fact that it was
7 checkout time, the fact that there was marijuana odor
8 coming from the trunk.

9 QUESTION: Mr. Lee, may I just refresh my
10 recollection? I think you also said that before
11 anything was put in the car -- and of course until the
12 suitcases were put in the trunk there was no odor of
13 marijuana from the trunk, as I understand it, at least
14 there was no testimony there was -- before they put
15 anything into the car there was no probable cause to
16 search the car.

17 MR. LEE: That's correct. Yes. I may have
18 misunderstood you. I am sorry. I thought you asked if
19 they could search the suitcases.

20 QUESTION: I asked both sides, and I think you
21 are entirely consistent in your answer.

22 QUESTION: Mr. Lee, is there anything in the
23 record that indicates whether the smell of marijuana
24 coming from the car had any independent source other
25 than the suitcases?

1 MR. LEE: No, Your Honor, Officer Taylor just
2 testified that he detected a strong odor of marijuana
3 coming from the trunk. He didn't specify whether he
4 could determine whether or not it was coming from a
5 particular package or not.

6 QUESTION: Did this odor become apparent to
7 him after the suitcases were in the trunk?

8 MR. LEE: Yes, Your Honor.

9 QUESTION: So you simply can't tell from his
10 testimony as to whether it was necessarily traceable to
11 the suitcases?

12 MR. LEE: That's correct, Your Honor. He
13 stated that he detected an odor of marijuana coming from
14 the trunk of the car.

15 This was after the three suitcases had been
16 placed in the trunk, but it is unclear whether he was --
17 he probably wasn't able to detect, be able to specify
18 which of the suitcases the odor of marijuana came from.

19 QUESTION: Well, however all this might be,
20 what you really also want us to perform a small
21 operation on Ross. Is that it?

22 MR. LEE: No, I think this falls flat within
23 the holding of Ross, Your Honor.

24 QUESTION: Well, I know you do, but do I
25 understand you to -- is that all you are asking in your

1 brief?

2 MR. LEE: No, I think that the case of Ross
3 controls this case, and it is reaffirmed by what this
4 Court said in the Johns case.

5 QUESTION: You don't want either one of those
6 modified to any extent?

7 MR. LEE: I think that they control this. I
8 don't think we need to expand them or anything. I think
9 that the officer had probable cause to believe that
10 somewhere in this vehicle, in one of more than four --

11 QUESTION: You don't agree with -- aren't
12 there some amici in this case that suggest we modify
13 Ross/

14 MR. LEE: Well, I think that it is right on
15 point with Ross, Your Honor, and Johns. I think you
16 have a situation in Ross where the informant told the
17 police that the individual was selling drugs out of the
18 trunk, and the Court in Johns and in Ross said that when
19 the officers opened the trunk and saw the brown paper
20 bag and the zippered pouch, they had probable cause to
21 search both those containers, and then the Court came
22 along in Johns and said they could have searched the
23 entire car, and I think Ross also said that, too,
24 although maybe not as directly as the Court did in
25 Johns.

1 I think clearly in our case we have much more
2 than the police officer did in Ross to believe that the
3 trunk --

4 QUESTION: Mr. Lee, though, you just answered
5 Justice Stevens' questions in a way to put this squarely
6 within the statement in Ross distinguishing Chadwick and
7 Sanders on the ground that in those cases the police did
8 not have probable cause to believe the entire vehicle
9 contained contraband, and you said here they didn't have
10 probable cause to believe that. All they had was what
11 focused on the suitcases.

12 So, it seems to me that your own responses
13 today bring this within Chadwick and Sanders.

14 MR. LEE: No, Your Honor. I may have misspoke
15 myself. I believe --

16 QUESTION: Well, you have been asked about it
17 two or three times, and everything I have heard
18 indicates that you have focused exclusively on the
19 suitcases, and therefore Ross wouldn't save you.

20 MR. LEE: The fact is that the officer
21 suspected of locations of contraband does not mean that
22 they should be -- that there is not probable cause to
23 believe that there is contraband outside those
24 suitcases. Besides, the police were --

25 QUESTION: Well, we asked you that question,

1 whether there was probable cause to search the entire
2 vehicle if the suitcases had been outside.

3 MR. LEE: Yes, I was assuming there was
4 nothing more other than the suitcases being outside.

5 QUESTION: Assuming the facts of this case,
6 but the suitcases hadn't been put in the vehicle.

7 MR. LEE: With or without the smell of
8 marijuana, Your Honor? I think the smell of marijuana
9 is critical to our case, too. I think that if the
10 officer had pulled up and seen nothing more than
11 Castleberry --

12 QUESTION: I am talking about the facts of
13 this case, everything they knew from the informant, the
14 timing, everything they knew except the suitcases hadn't
15 been put in the vehicle.

16 MR. LEE: I think there is still probable
17 cause to search the car, based on the odor of marijuana
18 coming from the trunk of the car, Your Honor. I think
19 that was the holding of the Court in the Johns case, and
20 should be the holding here. I don't think there's any
21 distinction.

22 QUESTION: Can you really give that dogmatic
23 an answer, that positive an answer? Because as I
24 understand it the officers' smell of marijuana coming
25 from the trunk of the car was after the suitcases had

1 been put in, and really you have to -- if you address
2 the situation then, you have to deal with all those
3 facts, and you say there was probable cause then.

4 You don't really know on this record whether
5 an officer, a hypothetical officer standing near the car
6 at the moment the suitcases were outside but not in the
7 trunk would have smelled marijuana coming from the
8 trunk. Is that a correct statement of the facts at any
9 rate?

10 MR. LEE: The officer would not have known
11 specifically which container contained the marijuana.
12 The officer had only information that he had been told
13 the blue suitcase contained some of the narcotics, which
14 I take to mean that some of the other narcotics were
15 moved from somewhere in the motel room to -- placed
16 somewhere in the car.

17 I mean, the car was an instrumentality of the
18 criminal process in this case. This is a car with
19 Florida license plates. It was checking out of a motel
20 on an interstate highway, a major interstate highway in
21 Oklahoma. Drugs were removed from the motel room to
22 somewhere in the car. The police suspect the location
23 of some of those drugs.

24 QUESTION: Don't you have a lot more than the
25 smell of marijuana in this case?

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MR. LEE: Yes, Your Honor.

QUESTION: Maybe I am arguing your case, but you seem to me to be putting your entire case on that smell. You have an informant saying there are drugs in the room. You have the informant saying that some were in the blue suitcase, not all, but some, and you have the bandaid box incident.

I am trying to buttress your position and to take you off complete reliance on the smell of marijuana from the trunk.

QUESTION: If you have probable cause to believe these people are dealing in drugs, wouldn't there be a pretty good chance you would get a warrant to search the car, because that is just one of the normal places people keep drugs?

MR. LEE: Well, of course, the question --

QUESTION: Or not?

MR. LEE: -- in Ross is, you balance the privacy interests of the individual versus the administrative inconvenience to the police in getting a warrant. Here we have a situation where the police, I presume, would have been required to get a warrant for five different containers plus any other, as Justice Powell in the Robbins case said, any other trivial containers. There could have been a beer can, a

1 crumpled up cigarette pack in the car, a wastebasket, a
2 rolled up floormat, any other container they would have
3 had to get a search warrant for.

4 We think that in Ross the Court made it clear
5 that they are not required to take all these containers
6 out of the car, try and guard them and safeguard them,
7 and get a search warrant for who knows how many
8 containers might be in a car.

9 QUESTION: Mr. Lee, you said you have no
10 quarrel with Ross. I take it whatever obstacles are in
11 your way here are created by the Sanders and Chadwick
12 cases.

13 MR. LEE: Yes, Your Honor.

14 QUESTION: I take it you wouldn't have any
15 great objection if those were even further cut back than
16 they have been.

17 MR. LEE: No, Your Honor. I am attempting to
18 do what the Court did in the Johns case, distinguish
19 Chadwick and Sanders.

20 QUESTION: But how many times can they be
21 distinguished and still have --

22 MR. LEE: Well, I think if there was a
23 situation where there was no reason to believe that the
24 contraband could have been anywhere other than in the
25 suitcases, and the suitcases are placed immediately

1 right in the car, I think that Ross and Sanders still
2 apply.

3 But this case, we have -- contraband could
4 have -- we all know that narcotics traffickers are
5 liable to place narcotics anywhere in a car, in the
6 hubcaps. In Carroll, the individual put it in the back
7 seat, in the upholstery.

8 QUESTION: I take it you wouldn't say that if
9 you had independent probable cause to search the car,
10 every hubcap, every piece of upholstery in it, if you
11 also had probable cause to search a specific suitcase
12 that was in the car, I take it your position is, you
13 couldn't search the suitcase.

14 MR. LEE: No, you could.

15 QUESTION: Under Ross?

16 MR. LEE: No, I think Ross allows that. Even
17 -- in Ross they knew the specific location of the
18 drugs. They had been told by the informant that the
19 drugs were in the trunk, and that is what we are
20 arguing, that just because they suspected a particular
21 location in a car or in a particular container in a car,
22 they are not limited to that if probable cause supports
23 the search of the entire vehicle.

24 Here we have a situation which for all the
25 reasons I have stated, and I might add that the fact

1 that the car has Florida license plates I think is
2 relevant. The Court in the Gates case said that Florida
3 is a well-known source of narcotics. I think that all
4 these things, if they had been placed in an affidavit
5 and presented to a magistrate, the magistrate would have
6 issued a search warrant for the entire car to search for
7 contraband anywhere in that car.

8 Therefore, under the principles announced by
9 this Court in the Ross case, the police were not
10 required to resort to the warrant process. We think
11 that the bandaid box in the car also should be upheld on
12 the basis of it being a search incident to a lawful
13 arrest under the Robinson case and the New York versus
14 Belton case.

15 CHIEF JUSTICE BURGER: Mr. Cox.

16 ORAL ARGUMENT OF CHARLES FOSTER COX, ESQ.,

17 ON BEHALF OF THE RESPONDENTS

18 MR. COX: Mr. Justice Burger, and may it
19 please this honorable Court, respondents' position in
20 this matter is that the Oklahoma Court of Criminal
21 Appeals was entirely correct in their analysis of the
22 law and their application of the law to the facts of the
23 case.

24 This quite simply is not an automobile
25 exception case. This is quite simply a container case

1 that can be disposed of on the basis of Arkansas versus
2 Sanders and Chadwick.

3 The government would argue that Johns and the
4 Court's decision in Johns is analogous to the facts of
5 the case at bar. I would only remind the Court that in
6 Johns the police had probable cause to search that truck
7 long before they ever knew there were any packages
8 around. They discovered the packages only as a result
9 of the search based on probable cause of the truck.

10 Here there was nothing, I submit, absolutely
11 nothing to suggest to this police officer that there was
12 any probable cause to search that automobile at any
13 time. The information provided to this police officer
14 was from a confidential informant who had never been
15 used before, who the officer did not know, who did not
16 even identify himself to the officer, whose only --

17 QUESTION: Then how do you know he has never
18 been used before?

19 MR. COX: Because the officer admitted so on
20 the stand, Your Honor. That is in the record. He had
21 never been used before. It also said in the record that
22 he had been referred -- that was the way the officer put
23 it -- had been referred to him by another police
24 officer.

25 I think it is significant to note that in that

1 referral, the confidential informant never gave his name
2 or mentioned the other officer, Officer Joe Smith or
3 whatever told me I could call you.

4 The informant is unidentified. There is no
5 basis whatsoever to believe he even has any idea what he
6 is talking about.

7 QUESTION: Weren't the results rather perfect,
8 the color of the car, the two different colors of
9 suitcases, the time of the checkout, the location of the
10 man, and his name? How could you get a more accurate,
11 more completely accurate piece of information in
12 advance?

13 MR. COX: The clerk of the motel knew every
14 one of those facts, and the clerk may never have been in
15 the hotel room. Those facts were perfectly obvious to
16 anyone who knew that they were there.

17 QUESTION: What fact that was given by the
18 informant to the police was not corroborated as the
19 picture unfolded?

20 MR. COX: I am not saying, Your Honor, that
21 the facts were not corroborated, but I am saying that
22 those facts by themselves --

23 QUESTION: Isn't that quite important in the
24 probable cause area?

25 MR. COX: It is our position there was never

1 sufficient probable cause even to justify the officer
2 taking out his weapon and placing the defendants under
3 arrest.

4 QUESTION: Then you don't agree with the
5 Oklahoma Court of Appeals' analysis of the case?

6 MR. COX: Not entirely as to probable cause.
7 If there was probable cause, then it most certainly went
8 to the suspected locus of the contraband, that being the
9 suitcases and the bandaid box.

10 QUESTION: For purposes of this argument,
11 don't you concede that there was probable cause to
12 search the suitcases?

13 MR. COX: I have never conceded probable
14 cause, Your Honor.

15 QUESTION: Okay.

16 QUESTION: I am wondering whether there wasn't
17 probable cause to search the entire vehicle, given the
18 information the officer had and the fact that the
19 defendants who were suspected on the basis of the tip of
20 dealing in narcotics had been loading the vehicle and on
21 the sight of one of the defendants tossing a package
22 inside the car and trying to lock it and trying to put
23 evidence out of the way.

24 Did that give rise to probable cause to search
25 the entire vehicle?

1 MR. COX: I think not, Your Honor, and the
2 reason for my answer is that in the very practical
3 context of police enforcement, and particularly drug
4 enforcement, very seldom do you see a police officer
5 dressed in uniform step out of a marked vehicle and say,
6 I am a police officer, pay me heed. That doesn't
7 happen.

8 As a practical fact, you have some guy in
9 bluejeans with a beard and scruffy appearance who gets
10 out of an unmarked vehicle which may be a '54 Dodge with
11 a gun drawn and says, I'm a police officer.

12 The defendants' actions are entirely
13 consistent with trying to protect their property from
14 being robbed as opposed to protecting it from police
15 officers. I know police officers always say, and on
16 television they always do draw their badge and their gun
17 at the same time --

18 QUESTION: Now, what you are telling us, is
19 that the testimony of Castleberry and his friend?

20 MR. COX: Castleberry and Raineri did not
21 testify at trial, Your Honor.

22 QUESTION: I did not think they had. So what
23 you are telling us is sort of a scenario from a
24 television program, not the record of this case.

25 MR. COX: I am suggesting, Your Honor, that

1 those are common facts in law enforcement, and although
2 the record in this particular case does not speak to
3 those issues, and perhaps I should not go that far --

4 QUESTION: Well, as Justice O'Connor
5 suggested, were not the immediate responses of
6 Castleberry and his friends exactly the responses of
7 criminals engaged in drug trafficking, if you want to
8 engage in speculation?

9 MR. COX: I think they were equally consistent
10 with, one, he wanted to protect his privacy interests
11 and property.

12 QUESTION: What is your position if there was
13 probable cause to search the car but also probable cause
14 to search specific containers?

15 MR. COX: I think that under Ross --

16 QUESTION: That you could search the car but
17 not the containers? Is that it?

18 MR. COX: Well, I think under Ross, under the
19 decision in Ross, if they had probable cause independent
20 of any other matter to search that vehicle for
21 contraband, under Ross they could search that vehicle
22 and anything they found there --

23 QUESTION: Even if they had probable cause to
24 search also a container?

25 MR. COX: Yes.

1 QUESTION: Mr. Cox, does the record tell us
2 whether the officer, Taylor, I guess his name was, was
3 in uniform or not?

4 MR. COX: I am sure it does, Your Honor. I
5 can't specifically --

6 QUESTION: Was he or wasn't he then?

7 MR. COX: Pardon?

8 QUESTION: Was he in uniform?

9 MR. COX: No, sir, he was not in uniform.

10 QUESTION: Oh, he was not?

11 MR. COX: Neither of the officers who were in
12 uniform -- who were there were in uniform.

13 QUESTION: How about the backup crew?

14 MR. COX: Neither of the officers were in
15 uniform, Your Honor. They were all members of the
16 Oklahoma City Special Projects Unit, which was a special
17 narcotics unit which has no uniforms. They wear very
18 scruffy street clothes.

19 QUESTION: On the information that the police
20 had when they saw Castleberry come out of the motel
21 room, loading the precisely described suitcases into the
22 precisely described car, would a reasonable officer had
23 a reasonable basis to think that they were about to take
24 off?

25 MR. COX: I think it is reasonable to assume

1 anyone leaving a motel room and loading their luggage is
2 about to leave that location, certainly. However, just
3 because they placed the suitcases into the automobile,
4 and the only information they had regarding narcotics
5 was either the motel room or the containers does not
6 turn this into an automobile exception case.

7 The automobile, as the state of Oklahoma
8 mentioned, was parked in a parking lot, and that parking
9 lot of a motel was adjacent to an interstate highway,
10 but it must be emphasized that the automobile was never
11 entered by the defendants. They never had that
12 opportunity to get into the automobile as if they wanted
13 to drive off.

14 QUESTION: Was there a finding in the lower
15 courts as to whether there was probable cause to search
16 the car independent of the containers?

17 MR. COX: The only finding of a lower court,
18 the Court of Criminal Appeals, was that the suspected
19 locus of the contraband was the suitcases and the
20 bandaid box, and did not run to the vehicle in general.
21 That was the specific holding of the Court of Criminal
22 Appeals of Oklahoma, and the specific holding that we
23 agree with.

24 QUESTION: Does this record reflect that as
25 the police officers approached they held out their badge

1 and said that they were police officers?

2 MR. COX: Yes, it does.

3 QUESTION: The absence of a uniform isn't
4 really all that critical, then, is it?

5 MR. COX: I think it is, Your Honor.

6 QUESTION: Do you think that would have -- do
7 you think they could acquire a uniforme illegally just
8 as they could acquire a badge or a gun illegally?

9 MR. COX: Certainly, but I just think as a
10 practical matter if someone points a gun at you in a
11 uniform, it carries a bit more authority than if he
12 points a gun in bluejeans and a dirty sweatshirt.

13 QUESTION: Even with a badge in his other
14 hand?

15 MR. COX: From a distance, I am not sure a
16 badge could be recognized anyway. Of course, I am
17 speculating here, but I think it is important.

18 QUESTION: But -- closeness to a gun, isn't
19 it?

20 CHIEF JUSTICE BURGER: We will resume there at
21 1:00 o'clock, counsel.

22 (Whereupon, at 12:00 o'clock noon, the Court
23 was recessed, to reconvene at 12:59 o'clock p.m. of the
24 same day.)

25

1 AFTERNOON SESSION

2 CHIEF JUSTICE BURGER: Mr. Cox, you may
3 continue.

4 ORAL ARGUMENT OF CHARLES FOSTER COX, ESQ.,
5 ON BEHALF OF THE RESPONDENTS - RESUMED

6 MR. COX: Mr. Justice Burger, Chief Justice
7 Burger, members of the honorable Court, if I may
8 continue, I would like to begin once again by going back
9 to a question, I think, from Mr. Justice White which I
10 think I misinterpreted earlier, before our lunch break.

11 I believe you asked if I felt that if there
12 were probable cause to search the automobile and also
13 probable cause to search the containers therein, did I
14 still feel that there was a warrant necessary to search
15 those containers. I think I answered in the negative
16 this morning, and that is not my feelings at all. It is
17 my feeling --

18 QUESTION: I thought your brief indicated to
19 the contrary.

20 MR. COX: Well, it does indicate to the
21 contrary, Mr. Justice White, and I merely was flustered
22 and didn't understand your question.

23 I would like to go on with the argument and
24 address the point raised by the state of Oklahoma
25 regarding the smell or odor of marijuana which the

1 officer testified to, and it has been brought up in
2 relationship to the Johns case.

3 I think it is particularly significant that
4 the officer did not mention any odor of marijuana until
5 after the trunks were placed in the trunk of the
6 vehicle, the suitcases placed in the trunk of the
7 vehicle. The record is absent of any smell of marijuana
8 prior to the time those containers were placed in the
9 vehicle.

10 QUESTION: Doesn't that go to the credibility
11 of whom the jury was going to believe? You are
12 questioning whether that is true or not, I take it. The
13 testimony is --

14 MR. COX: I am not questioning, Mr. Chief
15 Justice, whether it is true that he smelled marijuana or
16 not. I am saying that it is significant that the only
17 smell that after the suitcases were placed in the
18 vehicle, and that prior to that time there is nothing in
19 the record to indicate that he smelled any marijuana.

20 QUESTION: How long was he on the scene before
21 the suitcases were placed in the vehicle?

22 MR. COX: The record reflects five to ten
23 minutes, Your Honor. And I think that is significant,
24 because that would further show an absence of probable
25 cause to search the vehicle independent of the

1 containers contained therein.

2 The state of Oklahoma mentioned at the very
3 end of its argument that they thought that the search
4 could be justified under Belton as a search incident to
5 lawful arrest. It is the respondents' position that the
6 decision in Ross so effectively undermines Belton as to
7 render it virtually ineffective.

8 We think that the facts of Belton could be
9 decided under the automobile exceptions as delineated in
10 Ross.

11 QUESTION: Is it not clear now, whatever the
12 law had been, that when there is probable cause to
13 search a car, the search may be what could be called the
14 French Connection search? Justice White's question
15 suggested that this morning.

16 You can take off the hubcaps, you can take off
17 the tires, and you can tear the upholstery apart and see
18 if the drugs are hidden in those places. Now, of
19 course, if it turns out that you don't find anything,
20 someone has got quite a bill to repair the car, but that
21 is a totally different matter.

22 You say there is no probable cause to search
23 the car in the first place.

24 MR. COX: Yes, sir. Your statement, Mr. Chief
25 Justice, is correct.

1 QUESTION: Even though -- do you agree that it
2 would be a reasonable inference to draw for the police
3 to think that this was going to be used to facilitate a
4 criminal act, the car was?

5 MR. COX: I think based on the information
6 that the officer had, there was no probable cause to
7 believe that, Your Honor.

8 QUESTION: No probable cause to believe that
9 the car would be part of the transferring, transporting
10 the drugs?

11 MR. COX: Well, certainly if the container --
12 they have probable cause to believe a container contains
13 contraband, and that contraband, that container is then
14 placed in a vehicle, then the logical extension of that
15 is that if the vehicle moves, it is used to transport
16 the contraband. So, to that extent, Mr. Chief Justice,
17 I would agree with you.

18 QUESTION: As you have pointed out, they did
19 not testify that they were certain about the marijuana
20 until they detected the odor emanating from the trunk.

21 MR. COX: That is correct.

22 QUESTION: Whether that testimony is true or
23 not is not the question. That is the record, is it
24 not?

25 MR. COX: It is the record, Your Honor, Mr.

1 Chief Justice.

2 QUESTION: At that point, was there not before
3 the officers probable cause to believe there was
4 marijuana in the trunk of the car?

5 MR. COX: I think at that time, Your Honor, if
6 there were probable cause, there was probable cause to
7 believe that there was marijuana in the suitcases.

8 QUESTION: Where were the suitcases?

9 MR. COX: They had fortuitously been placed in
10 the trunk of that vehicle.

11 QUESTION: Then what about the observation of
12 throwing a package into the car and locking the door?
13 What inference should the policeman draw from that?

14 MR. COX: The only inference that I think can
15 be logically drawn from that is that the respondent was
16 displaying an increased expectation of privacy in that
17 container by further separating it from whoever this
18 person might have been.

19 QUESTION: Are you going to address the
20 question concerning the contents of the bandaid box
21 during the course of your argument?

22 MR. COX: I am, Your Honor. I address that
23 from the standpoint of Belton, the decision in Belton
24 which is based on and further follows the rationale of
25 Chimel.

1 QUESTION: Do you think that if the bandaid
2 box had been kept on Castleberry's person, in a pocket,
3 at the time he was arrested, could it have been
4 searched?

5 MR. COX: I think under the current decisions
6 of this Court probably so.

7 QUESTION: Do you think that the result should
8 be different if he throws it into the front of the car
9 and locks it to try to prevent that from happening?

10 MR. COX: I do.

11 QUESTION: He should be rewarded for
12 disobeying the police officer's instructions?

13 MR. COX: I don't think of it in terms of
14 being rewarded. I think that it was no longer within
15 the area with which he could reasonably gain control of
16 it, possession of it --

17 QUESTION: You don't think that his actual
18 exercise of control and possession over the box in
19 putting it in the passenger compartment and locking it
20 is enough control to extend Belton to it in any event?

21 MR. COX: No, I don't.

22 There are arguments in the brief by the state
23 of Oklahoma and also in the brief filed by amici, the
24 various amici, friends of the Court, which ask this
25 Court to further expand the decision in Ross to

1 eliminate any distinction between containers and
2 automobiles.

3 I would only submit to the Court that I think
4 this Court's decision in Ross is sufficiently clear that
5 no further expansion or delineation is necessary. The
6 argument is made in the briefs that it is difficult to
7 teach the principles, the teachings of Ross to police
8 officers.

9 I think the decision in Ross is perfectly
10 clear that if you have probable cause independently of
11 anything, any containers, to believe that an automobile,
12 not knowing whether it has any packages in it or not,
13 any containers in it or not, contains contraband, that
14 is the situation that Ross applies to, and it authorizes
15 a search of that vehicle and any container found
16 therein.

17 The contrary is true, that if you have
18 knowledge of the suspected locus of contraband, that
19 being in containers, then a warrant is required under
20 the Fourth Amendment, the warrant clause of the United
21 States Constitution.

22 I don't think that the argument made in the
23 briefs by both the state of Oklahoma and amici that the
24 police are encouraged to share less of their probable
25 cause information with an examining magistrate according

1 to Ross because they would be rewarded by sharing less
2 is a valid argument.

3 I think that if officers cannot be trusted to
4 tell the truth, and to tell what they know exactly about
5 their probable cause information, then they should not
6 be rewarded by an expansion of Ross to eliminate any
7 distinctions whatsoever.

8 In total, I think the Court of Criminal
9 Appeals of the state of Oklahoma was exactly correct in
10 its application of the law, that this was a Chadwick,
11 Sanders type case, a container case, and not in fact a
12 Ross case. This case falls on the Chadwick, Sanders
13 side of the line as opposed to Ross.

14 QUESTION: On whichever side, once he smelled
15 the marijuana in the back of the car, it is your theory
16 that he should have gone for a search warrant?

17 MR. COX: Yes, Your Honor.

18 QUESTION: How long would it have taken him to
19 get the search warrant, about?

20 MR. COX: I could only speculate based on my
21 experience in Oklahoma County, but probably within the
22 hour.

23 QUESTION: And where do you think that car
24 would be in that hour? A Thunderbird?

25 MR. COX: It could very easily have remained

1 right exactly where it was.

2 QUESTION: Oh, he is going to leave it right
3 there?

4 MR. COX: It was very possible to do that.

5 QUESTION: Don't you think they could have
6 held the car and the suitcases until a warrant was
7 obtained?

8 MR. COX: Yes, they could have.

9 QUESTION: They could have held the car?

10 MR. COX: I think they could have held the car
11 if they had probable --

12 QUESTION: And the suitcases.

13 MR. COX: And the suitcases.

14 QUESTION: If they had probable cause?

15 MR. COX: If they had sufficient probable
16 cause.

17 QUESTION: Well, did they?

18 MR. COX: I don't think they had sufficient
19 probable cause.

20 QUESTION: Then how could they hold it?

21 MR. COX: My statement was prefaced on if they
22 did.

23 QUESTION: Take one or the other. They either
24 had probable cause or they didn't.

25 QUESTION: I think if they had known that,

1 they couldn't get the warrant either. They couldn't get
2 a warrant if they don't have probable cause.

3 MR. COX: But at least a neutral and detached
4 magistrate would have made the decision that a warrant
5 would not have issued.

6 QUESTION: Are you telling us that this man
7 could have driven the car off because you see no
8 probable cause? If he had not been forcibly detained,
9 he could have just driven away?

10 MR. COX: As a very practical matter, I know
11 that he would not have been allowed to.

12 QUESTION: Well, but then what would your
13 position be if they did get a warrant after that? Would
14 you say that the car was --

15 MR. COX: I think that they could have been
16 detained, Your Honor.

17 QUESTION: Yes, but then what would you say
18 about the warrant? If they had forcibly detained them,
19 are you saying that they had no right to forcibly detain
20 them?

21 MR. COX: I think they had a right to forcibly
22 detain them to present this evidence to a magistrate.

23 QUESTION: Well, Judge Cornish concurred in
24 this judgment below, didn't he?

25 MR. COX: That is correct.

1 QUESTION: But he said, "Although probable
2 cause existed with regard to the containers, no exigent
3 circumstances were shown as to justify a warrantless
4 search."

5 Did the majority also say there was probable
6 cause to search the containers?

7 MR. COX: The opinion of the Court of Criminal
8 Appeals specifically states that the suspected locus of
9 the contraband was the containers.

10 QUESTION: And so there was probable cause to
11 search them.

12 MR. COX: That is what the Court of Criminal
13 Appeals said, Your Honor.

14 QUESTION: And obviously the trial court
15 thought so.

16 MR. COX: That is correct. The trial court
17 didn't think much of my argument.

18 QUESTION: So you are asking us to overturn --

19 MR. COX: I am not asking this Court to
20 overturn the Court of Criminal Appeals. I may not
21 agree --

22 QUESTION: So that if we accept the fact that
23 there was probable cause, the suitcases and the
24 automobile could have been held pending getting a
25 warrant?

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MR. COX: Yes.

QUESTION: And by that, he could have held the car and Castleberry and his friend?

MR. COX: Yes.

QUESTION: Could have held them all.

MR. COX: Yes.

I have nothing further.

CHIEF JUSTICE BURGER: Very well. Thank you, gentlemen. The case is submitted.

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

CERTIFICATION

Anderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

83-2126 - OKLAHOMA, Petitioner V. TIMOTHY R. CASTLEBERRY AND

NICHOLAS RAINERI

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