

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-889

TITLE COLORADO, Petitioner V. STEVEN LEE BERTINE

PLACE Washington, D. C.

DATE November 10, 1986

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IN THE SUPREME COURT OF THE UNITED STATES

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COLORADO, :

Petitioner :

v. : No. 85-889

STEVEN LEE BERTINE :

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Washington, D.C.

Monday, November 10, 1986

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

APPEARANCES:

JOHN M. HARRIED, ESQ., Boulder, Colo.; on behalf of
Petitioner.

RICHARD J. LAZARUS, Washington, D.C.; on behalf of
the United States as amicus curiae, supporting
Petitioner.

CARY C. LACKLEN, ESQ., Boulder, Colo.;
on behalf of Respondent.

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1 interlocutory appeal to the Colorado Supreme Court.

2 QUESTION: Why not? Do you think it would
3 have been?

4 MR. HARIED: Yes, I do think it would have
5 been, if it had been done at the time of Mr. Bertine's
6 arrest. The facts were that it was done some 15 minutes
7 or so after his arrest, after a dog control officer had
8 come and taken the dog out of Mr. Bertine's vehicle.

9 QUESTION: Well, wasn't there a case from
10 Arizona that dealt with a delay, that recognized the
11 concept of Belton, from this Court?

12 MR. HARIED: I do not know if there was. I'm
13 not familiar with it.

14 QUESTION: I was just very curious to know why
15 the state didn't pursue that.

16 MR. HARIED: It was basically a decision of
17 the facts of this case, that the intent and the whole
18 thrust of the search was an inventory, and that's the
19 grounds on which we sought to justify it.

20 The facts in this case are that the defendant
21 was stopped because of his erratic driving, and he was
22 eventually arrested for drunken driving. He was taken
23 to the Boulder police department for the booking
24 procedure and for a blood alcohol test.

25 The police impounded his vehicle because where

1 it was left when he was arrested it was blocking traffic
2 on a busy street in the city of Boulder. The Boulder
3 police department regulations provide for routine
4 inventory searches of impounded automobiles and their
5 contents.

6 And during the search in this case, the police
7 officer found Mr. Bertine's backpack on the floor,
8 picked it up and could tell that it contained personal
9 items, and he opened it to look for valuable or
10 dangerous items for inventory purposes.

11 And inside he found a hair brush, a heavy
12 metal flashlight, clothing, and he also found cocaine,
13 cocaine paraphernalia, Quaaludes, and \$700 in cash in
14 one container and \$200 in cash in a separate container
15 on a pound on the outside of the backpack.

16 The trial court in this case made several
17 factual findings that are particularly important because
18 they help focus the issue on appeal. The trial court
19 found as a matter of fact that the decision to impound
20 this vehicle was made in good faith, and that it was
21 made for the purposes of protecting Mr. Bertine's
22 property, protecting the police from false claims of
23 theft, and protecting the police from dangerous items
24 that might have been inside of the backpack.

25 And the trial court found that the officer

1 followed the standard inventory procedures and,
2 importantly, the trial court found that this search was
3 not a pretext for an investigative search.

4 QUESTION: Were there procedures in place for
5 when containers would be opened or whether they would or
6 anything of that sort?

7 MR. HARRIED: The Boulder police department
8 regulations provide that if a vehicle is impounded it
9 shall be inventoried, and the trial court made a finding
10 that that meant opening closed containers.

11 QUESTION: Is there anything in the record
12 that tells us what the policy is, other than that
13 general conclusion? Was that conclusion of the trial
14 court supported by a written policy of any kind?

15 MR. HARRIED: There is a written policy. It is
16 found in the joint appendix at page 88, and it speaks --
17 the language of it says that the vehicle and its
18 contents shall be inventoried.

19 There was testimony, which is in the record,
20 that the usual practice of the Boulder police department
21 was to open closed containers in that situation.

22 QUESTION: Was there any testimony by the
23 officers in question here to the effect that they had a
24 slightly different policy about whether to open
25 containers or not? It just wasn't all that clear to me

1 that there was a clearcut policy on this.

2 MR. HARIED: I think that the Boulder police
3 department regulations don't spell out in detail the
4 word "inventory." I think if you read them as a whole,
5 as the trial court did, you reach the conclusion, which
6 was the factual finding of the trial court, that
7 inventory means opening closed containers.

8 QUESTION: Mr. Haried, what is the policy with
9 regard to locked containers?

10 MR. HARIED: It's the same policy.

11 QUESTION: You break the lock in all cases and
12 open the briefcase or whatever it might be?

13 MR. HARIED: That's correct.

14 QUESTION: Does the record show that?

15 MR. HARIED: I don't believe that it does. It
16 wasn't an issue in this case.

17 The trial court considered the search here
18 under the Fourth Amendment and found that it was a
19 lawful search under this Court's ruling in Illinois
20 versus Lafayette. But nonetheless, it suppressed the
21 search on the basis of the Colorado constitution.

22 On an interlocutory appeal to the Colorado
23 Supreme Court, that court affirmed the trial court's
24 suppression of the evidence, but did not base its
25 decision on the Colorado constitution. Instead, it

1 based it solely and squarely on the Fourth Amendment.
2 The Colorado Supreme Court specifically said that it did
3 not reach or decide the state constitutional issue.

4 In Illinois versus Lafayette, this Court held
5 that in the course of an otherwise lawful -- that during
6 an otherwise lawful inventory search at the booking
7 desk, it was permissible for police officers to open and
8 inventory closed containers.

9 And our position is that the same reasons that
10 supported the inventory of closed containers at the
11 booking desk in Lafayette apply with equal force here.
12 In both contexts, both at the booking desk and on the
13 street when a vehicle is impounded, the same basic thing
14 is happening.

15 The police in the exercise of their caretaking
16 function are taking physical custody of a citizen's
17 property. And as a result, they are charged with
18 responsibility for that property, responsibility to
19 safeguard it, to keep it from being stolen or destroyed,
20 and the responsibility to protect against the risk of
21 harm from dangerous things that may be inside the
22 property.

23 QUESTION: How would that justification apply
24 to a locked briefcase?

25 MR. HARIED: I'm going to start from the

1 premise that locked briefcases -- not all locked
2 briefcases are totally secure. In other words, many
3 types of locks and briefcases can be picked or
4 combinations can be opened, so that no container is
5 secure. And there is --

6 QUESTION: Yes, but if the police officer
7 noted on it it was a locked briefcase, presumably if it
8 was picked later, why, there wouldn't be any -- I don't
9 understand.

10 MR. HARIED: Well, he'd have no way of showing
11 that it was picked later. But more importantly, there
12 is --

13 QUESTION: But at the time he made the
14 inventory, he inventoried it as a locked briefcase. So
15 if it was picked it would have to be picked later.

16 MR. HARIED: But he could still be unjustly
17 accused of being the person who picked it, and he'd have
18 no way of protecting against that.

19 But there's still in that situation the
20 important governmental interest in not bringing into the
21 policy station containers that may hold valuable -- I'm
22 sorry -- that may hold particularly dangerous items, and
23 have to store them there, because then the police would
24 have no way of knowing what it is they're storing.

25 If we get into an analysis that draws -- tries

1 to draw a line between locked and unlocked containers,
2 we really are getting into a worthy versus unworthy
3 container analysis. And I think that it's important in
4 this type of search to have a bright line that the
5 police officers can follow in each case, so that they
6 don't have to make that kind of a judgment and they're
7 not subject to later accusation or being second guessed
8 about that.

9 QUESTION: What happens to all these materials
10 after they're inventoried, assuming that it's a case
11 like this where there's a truck that's going to be towed
12 somewhere?

13 MR. HARRIED: The truck --

14 QUESTION: Do they bring everything that's
15 inventoried to the station, only the valuable things to
16 the station?

17 MR. HARRIED: Only the valuable things or
18 particularly dangerous things. For example, an old
19 shirt that's lying on the floor they don't bring in. A
20 backpack that they weren't able to open and know whether
21 it contained something valuable or dangerous, they would
22 then as a practical matter and probably so that they
23 aren't negligent have to take that in.

24 The Respondent has argued, as the Colorado
25 Supreme Court did, that in the booking inventory context

1 there's a greater governmental interest in opening
2 closed containers simply because of the need to prevent
3 weapons or contraband from getting into the jail
4 population.

5 And the Respondent seems to say that the only
6 way that the police can prevent that from happening is
7 to open closed containers. His argument ignores the
8 fact that the governmental interest in the security of
9 the jail could be adequately served simply by taking the
10 container away from the arrested person, sealing it in
11 some fashion, and storing it in a safe place outside of
12 the jail population.

13 CHIEF JUSTICE REHNQUIST: We'll resume there
14 at 1:00 o'clock, Mr. Haried.

15 (Whereupon, at 12:00 o'clock noon, argument in
16 the above-entitled matter was recessed, to reconvene at
17 1:00 p.m. the same day.)
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1 AFTERNOON SESSION

2 (1:00 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll continue, Mr.
4 Haried, where you left off.

5 ORAL ARGUMENT OF

6 JOHN M. HARIED, ESQ.

7 ON BEHALF OF PETITIONER - Resumed

8 MR. HARIED: Thank you.

9 Before lunch I was saying that the defendant's
10 argument about the security of the jailhouse could -- I
11 was saying that that interest in a secure jailhouse
12 could adequately be served simply by taking closed
13 containers from an arrested person and sealing them and
14 putting them in a safe place outside of the jail.

15 However, in Illinois versus Lafayette this
16 Court refused to impose such a less intrusive means
17 requirement on jail personnel. And there is no reason
18 to impose such a requirement in this case.

19 It's significant to note also, as was raised
20 in Justice Scalia's question, the fact that when
21 containers are found in impounded and inventoried
22 automobiles that if they're going to be kept for
23 safekeeping they have to be taken to the police
24 department, and as a result there is a situation that is
25 substantially the same as that in Illinois versus

1 Lafayette.

2 In both the booking inventory context and the
3 automobile inventory context, closed containers are
4 coming into the jail. And in both situations, it's just
5 as important, it's imperative that the police know what
6 it is that they are taking custody of so that they can
7 take proper measures to safely store it.

8 The Respondent has also argued that closed
9 container inventory searches during inventories of
10 automobiles will lead to a parade of horrible results.
11 This is not true because there is already criteria in
12 the case law that would limit the application of the
13 inventory exception to particular facts and situations.

14 And lower courts have been in the past and
15 will continue to be fully able to apply those criteria
16 to separate the lawful inventory search from the
17 unlawful pretext search.

18 QUESTION: Where was the car put, the van put,
19 afterwards? Where was it stored?

20 MR. HARIED: It was taken to a private storage
21 and impound lot.

22 QUESTION: Owned by the government?

23 MR. HARIED: No.

24 QUESTION: Does the government have a lot?

25 MR. HARIED: No.

1 QUESTION: Well, where do they keep their
2 policy cars?

3 MR. HARIED: They keep them under the building
4 that houses the police department. It's a small parking
5 area.

6 QUESTION: Well, couldn't they have put it
7 down there?

8 MR. HARIED: Physically, they could have done
9 it. As a practical matter, there's not nearly enough
10 space to handle all the impounded automobiles that are
11 taken in.

12 QUESTION: Well, could they have locked it?

13 MR. HARIED: They could have locked it, yes.

14 QUESTION: Couldn't they have secured the
15 pack?

16 MR. HARIED: They could have secured the
17 pack. They would have had to have made a decision about
18 whether to leave it in the car or not or to move it into
19 the police station.

20 QUESTION: Well, why did they open it?

21 MR. HARIED: They opened it because the police
22 officer didn't know if there was anything particularly
23 valuable that needed safekeeping or anything
24 particularly dangerous that also needed safekeeping,
25 because from the outside of the pack there was no way of

1 knowing.

2 QUESTION: Well, what was worrying them about
3 something dangerous?

4 MR. HARIED: What do I mean?

5 QUESTION: Yes. How would that hurt them?

6 MR. HARIED: Well, for example, if there were
7 a loaded gun inside the pack --

8 QUESTION: Well, the man couldn't get to it,
9 could he?

10 MR. HARIED: No, he could not.

11 QUESTION: What danger would it be?

12 MR. HARIED: The danger would have been, if by
13 some accidental means, for example, a loaded gun were
14 triggered to go off as the police officer is handling it
15 or throwing it into his police car or giving it to the
16 property custodian or something like that.

17 QUESTION: This was the pack I'm talking
18 about.

19 MR. HARIED: That's correct, it was a
20 backpack.

21 QUESTION: You could have put it in a garment
22 bag and that would have been it, wouldn't it?

23 MR. HARIED: It would have been it in terms of
24 holding it for safekeeping. But the other government
25 interest --

1 QUESTION: I don't see why you had to open it
2 up.

3 MR. HARIED: That's correct.

4 QUESTION: I don't understand why you had to
5 open it up.

6 MR. HARIED: The reason is because --

7 QUESTION: Couldn't you just inventory it, one
8 pack?

9 MR. HARIED: That is -- it could be done that
10 way, but it would not serve the governmental interest
11 because the police would have no way of establishing
12 what it is they had initially taken custody of, and they
13 would have no way of knowing how to store that item or
14 how to handle it.

15 QUESTION: How do we know that the search was
16 for the purpose of inventory or the purpose of obtaining
17 evidence?

18 MR. HARIED: How do we know that it was not
19 for those purposes?

20 QUESTION: How do I know the difference?

21 MR. HARIED: Well, the trial court in this
22 case made a factual finding that the search was not a
23 pretext for an investigative search, that it was done in
24 furtherance of the governmental caretaking interest.

25 QUESTION: It was a finding. But it's not a

1 fact, it's a finding of law.

2 MR. HARIED: I agree, it involves a finding of
3 law.

4 QUESTION: Mr. Haried, as I understand it the
5 officer would have left the backpack in the truck if it
6 didn't contain any valuables, right?

7 MR. HARIED: That's right.

8 QUESTION: But he wouldn't want to leave it in
9 the truck if it contained a loaded pistol, would he?

10 MR. HARIED: That's correct.

11 QUESTION: Because somebody might come along
12 and get it and obtain a loaded pistol, someone who
13 shouldn't have a loaded pistol.

14 MR. HARIED: Absolutely.

15 QUESTION: So that's the reason he had to look
16 at it, to decide whether to take it to the station or
17 not?

18 MR. HARIED: That's correct.

19 QUESTION: Was it in a place where anybody
20 could get in it?

21 MR. HARIED: It was -- the car was moved to an
22 impound lot, which in this case --

23 QUESTION: Was it secure?

24 MR. HARIED: It was secure to the extent that
25 a fence makes any area secure, but it's not totally

1 immune from trespassers or vandals.

2 QUESTION: Is the police department safe from
3 trespassers and vandals? No. No place is safe from
4 it.

5 MR. HARIED: I would say that the property
6 room where things are kept is about as safe a place as
7 you can get.

8 QUESTION: Well, couldn't you have put the
9 pack in the property room?

10 MR. HARIED: You could, and this pack was
11 eventually put there after it was inventoried.

12 QUESTION: It was put in after in was
13 searched.

14 MR. HARIED: That is correct.

15 QUESTION: Did you need to search it to put it
16 in the property room?

17 MR. HARIED: We did not need to search it to
18 put it into the property room, no. But you did need to
19 search it in order to know whether it was the kind of
20 thing that needed to be put into the property room.

21 If the Court doesn't have any other questions,
22 I'd like to reserve the balance of my time.

23 CHIEF JUSTICE REHNQUIST: Very well, Mr.
24 Haried.

25 We'll hear now from you, Mr. Lazarus.

1 ORAL ARGUMENT OF RICHARD J. LAZARUS, ESQ.,

2 ON BEHALF OF THE UNITED STATES

3 AS AMICUS CURIAE, SUPPORTING PETITIONER

4 MR. LAZARUS: Mr. Chief Justice, may it please
5 the Court:

6 It is our position that this case is
7 controlled by this Court's decisions in Lafayette and
8 Opperman. Respondent's claim that the search of his
9 backpack violates the Fourth Amendment rests at bottom
10 on the proposition that a routine inventory search
11 cannot validly extend to the contents of containers
12 located inside a lawfully impounded motor vehicle.

13 According to Respondent, the scope of such an
14 inventory search is per se unreasonable even if
15 performed pursuant to standard police department
16 procedures, as the district court found was the case
17 here, and not a mere pretext for an investigatory
18 motive, as the district court found was not the case
19 here.

20 We believe that Respondent's proposed
21 limitation on the scope of valid, routine, inventory
22 searches is not supported by the Fourth Amendment.
23 Indeed, we believe that Respondent's view has in
24 principle, if not in fact, already been squarely
25 rejected by this court in Lafayette and in Opperman.

1 No doubt for this reason, since this Court's
2 decision in Lafayette the Colorado Supreme Court stands
3 virtually alone in upholding the limitation on routine
4 inventory searches urged by Respondent here.

5 Most importantly, as Petitioner has already
6 emphasized, justifications for the administrative
7 practice of inventory searches apply with full force to
8 the inventorying of containers taken into police
9 custody, including those located in motor vehicles.
10 Such searches may on a categorical basis be needed:
11 first, to protect the owner's property; second, to
12 protect the police from false claims of theft; and third
13 and finally, to protect the police and their employees
14 from the dangers associated with taking into custody
15 containers the contents of which are unknown -- virtual
16 Trojan horses.

17 In Opperman, this Court recognized that these
18 needs --

19 QUESTION: Mr. Lazarus, do you think the
20 rationales apply equally to locked containers?

21 MR. LAZARUS: Yes, we do, Your Honor. As a
22 matter of fact, it is the policy of both the DEA, the
23 Drug Enforcement Agency, and the FBI in their inventory
24 procedures to include locked containers. The basic
25 reason is the distinction --

1 QUESTION: Unlock them, break into them?

2 MR. LAZARUS: To break in, doing minimum
3 damage.

4 The basic reason for that is, although one
5 could draw a line there, it's not unreasonable not to.

6 QUESTION: Well, supposing they had the
7 equipment they had at airports, where they just run it
8 through to see if there's a gun in there or anything
9 like that. Would there be any need to go beyond that?

10 MR. LAZARUS: Well, we think it would be a
11 mistake to require that kind of case by case inquiry. I
12 mean, they could use a different method, but the
13 question here, as in Lafayette, is whether the
14 Constitution requires them to use a specific less
15 intrusive means.

16 QUESTION: I understand. So the reason is
17 just one of administrative convenience when it comes to
18 locked containers, when they could find out otherwise?

19 MR. LAZARUS: Right, administrative
20 convenience and the advantage of having routine
21 procedures --

22 QUESTION: Right.

23 MR. LAZARUS: -- opposed to trying --

24 QUESTION: Break into everything is the
25 routine.

1 MR. LAZARUS: Right, but the basic point is
2 that the category of locked containers itself would
3 involve such a wide variety of containers, many of
4 which, like suitcases and briefcases, are so easily
5 susceptible to being opened that it's reasonable for the
6 police to have a procedure which takes away that
7 discretion to try to decide which ones are easily
8 openable and which ones are not and just say all locked
9 containers should be open.

10 QUESTION: It's to avoid the problem of
11 deciding whether a container is locked or not, in other
12 words?

13 MR. LAZARUS: Well, whether it really is
14 susceptible to being opened.

15 QUESTION: Well, you also want to know what's
16 in the suitcase, don't you? Is there any other way of
17 really knowing without looking?

18 MR. LAZARUS: No, and if you don't open it up
19 you cannot be sure in terms of --

20 QUESTION: You might be able to use a scanner
21 that would tell you the shape of something or whether
22 it's metal or not, but --

23 MR. LAZARUS: That's right, Your Honor.

24 QUESTION: -- you wouldn't know what's in some
25 bag.

1 MR. LAZARUS: That's right. And it would be
2 -- the continuing needs of the inventory searches apply
3 even when the container is locked.

4 QUESTION: Now, here I understood there were
5 packages of \$700 and \$200 found. So that quite apart
6 from whether a metal detector would have detected that,
7 there is a need to inventory in order to safeguard it.

8 MR. LAZARUS: The facts of this case
9 illustrate that quite well, how a container that was
10 giving no outward indication that it might contain a
11 valuable in fact did.

12 In Opperman this Court recognized that the
13 legitimate needs of the inventory search justified the
14 routine inventory search of a motor vehicle in police
15 custody. In Lafayette, this Court recognized that these
16 same needs justified the routine inventory search of a
17 backpack taken into police custody at the station
18 house.

19 We see no reason to suppose that these same
20 needs don't justify an inventory search of basically the
21 equivalent of the Lafayette shoulder bag in the Opperman
22 vehicle. The legitimate and fully reasonable need for
23 the police to learn what is in the contents of a
24 container taken into custody does not magically end once
25 a container is found within a motor vehicle, nor begin

1 only when the container is itself physically located at
2 the station house.

3 The facts of this case we believe illustrate
4 both principles. In this case the police were in lawful
5 custody of Respondent's motor vehicle and its contents
6 in the field, and had to determine there what to do with
7 its contents. They faced a purely administrative
8 function.

9 It was plainly reasonable, we believe, for the
10 police in deciding what property in the car to take for
11 safekeeping in the property room in the station house to
12 inventory the contents of containers they found, as long
13 as the search was performed, as it was here, in a manner
14 that was reasonably confined and subject in scope to
15 those limited ends.

16 The contrary view, which is what Respondents
17 propose here, we believe, would inevitably lead to
18 undesirable judicial management of routine
19 administrative procedures and, even more fundamentally,
20 it would likely lead to procedural rules that would be
21 incompatible with efficient and prompt police
22 administration of their caretaking, non-investigative
23 function.

24 For example, Respondents propose that the
25 validity of a routine inventory search should turn on a

1 case by case inquiry into the availability of less
2 intrusive means. Such a requirement would be
3 fundamentally incompatible with the notion of a routine
4 administrative procedure.

5 Inquiry into the needs of the police in a
6 particular case, such as that undertaken by the Colorado
7 Supreme Court here, into the subject of suspicions about
8 the contents of specific containers, the availability of
9 certain towing companies, the relative records of
10 various towing companies, the privacy expectations that
11 owners might have with respect to an infinite variety of
12 containers, would inevitably convert a routine
13 administrative procedure into an ad hoc process.

14 Both the purposes of the inventory search and,
15 ironically, the rationale of this Court's acceptance of
16 such searches would both be defeated.

17 Respondent also proposes that consent should
18 be a prerequisite to a valid inventory search. Of
19 course, requiring consent would be tantamount to saying
20 that inventory searches are not entitled to any special
21 Fourth Amendment analysis, because consent is already an
22 exception to the Fourth Amendment probable cause and
23 warrant requirements.

24 In any event, as this Court has recognized
25 already in *Opperman*, consent does not recognize or

1 address the legitimate needs of the police to protect
2 themselves.

3 No doubt for these reasons, both in Opperman
4 and in Lafayette this Court has already squarely
5 rejected the constitutional requirement of consent. In
6 our view, the sole inquiry in each case should be
7 threefold:

8 First, whether the property is lawfully in
9 police custody for non-investigative reasons;

10 Second, whether there exist routine inventory
11 procedures that are reasonable in scope and subject;

12 And finally, whether the police have followed
13 those routine procedures in the case at hand.

14 In this case, all three inquiries support the
15 reasonableness of the search and were supported by
16 findings of the district court. Accordingly, we believe
17 that the decision of the Colorado Supreme Court should
18 be reversed.

19 If there are no further questions.

20 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
21 Lazarus.

22 We'll hear now from you, Mr. Lacklen.

23 ORAL ARGUMENT OF
24 CARY C. LACKLEN, ESQ.,
25 ON BEHALF OF RESPONDENT

1 MR. LACKLEN: Mr. Chief Justice and may it
2 please the Court:

3 I think it's important for the Court to
4 understand the facts of this case before it rules on the
5 law that it will apply. When Mr. Bertine was arrested
6 for driving under the influence, he was handcuffed and
7 placed into the police car and removed from the scene.
8 A backup officer, a trained narcotics officer, had been
9 called to the scene by the arresting officer.

10 Officer Reichenbach, who was put in control of
11 Mr. Bertine's car, waited for a dog impound officer to
12 remove Mr. Bertine's animal from the car and, long after
13 Mr. Bertine had left the scene, he started what he
14 called an inventory search.

15 He testified at the hearing that that
16 inventory consisted of him going into the truck to see
17 if anything of interest was there. He checked the glove
18 compartment, as in Opperman, and then he immediately
19 went to the backpack that he found behind the front
20 seat.

21 He had no inventory sheet with him. He didn't
22 begin an inventory of that backpack, and the trial court
23 found that the inventory of the backpack was done some
24 time later, after the search of the backpack. He
25 removed the backpack from the truck, took it back to his

1 patrol vehicle, and opened the backpack.

2 But that wasn't the end of his search. He
3 opened a nylon opaque pouch inside the backpack, and
4 inside that found four containers. Those containers
5 were metal, opaque, lock-sealed tin cannisters, four by
6 one by three inches.

7 He opened each of these locked containers,
8 clip-locked containers, individually and found the
9 contraband in question.

10 QUESTION: Well, what use is there in opening
11 the backpack if all he can do when he opens the backpack
12 is to note, there's a nylon bag in the backpack? That's
13 not very informative, is it? I mean, if there is some
14 purpose in examining the backpack it's to find out
15 what's in there.

16 Simply to know that there's a nylon bag in
17 there is not very helpful, right? So he opens the nylon
18 bag and he sees tin cannisters, giving no indication of
19 what's in them. It's not very helpful to know that
20 there are tin cannisters, any more than it is to know
21 that there's a backpack.

22 MR. LACKLEN: The Colorado Supreme Court found
23 that the scope of the intrusion in this case was more
24 than what was required by the governmental interest of
25 protecting Mr. Bertine's property or protecting claims

1 against --

2 QUESTION: I understand, but I'm asking why
3 that's so? Why is it beyond the scope? Apparently the
4 scope would consist of only looking in the backpack and
5 seeing that it contains another pack. What possible
6 interest of the state does that protect, to know that
7 there's a bag within a bag?

8 I mean, ultimately the state wants to know
9 what is in the backpack. You don't know what's in it
10 simply to know that there's another container.

11 MR. LACKLEN: Clearly, from the prosecution's
12 point of view the police have to know what's in every
13 small container. Our argument is that that has to be
14 balanced against the defendant's legitimate Fourth
15 Amendment privacy interests in those containers.

16 QUESTION: I'm saying from anybody's point of
17 view. Never mind just the prosecutor's point of view.
18 It seems to me if there is any sense in the exception
19 that we've made for an inventory search, it's rationale
20 is that the police are entitled to know what's there.

21 Now, you could say that they aren't. If you
22 want us to strike down the inventory rule entirely, that
23 may be sensible. But if you have an inventory rule,
24 surely it doesn't make any sense unless you can find out
25 what is there, and "what" does not consist of a nylon

1 bag or of a tin can. You want to know what is in it.

2 MR. LACKLEN: Well, we would argue that the
3 scope of the inventory search has to be reasonable in
4 and of itself. In this case, the officer testified --

5 QUESTION: Well, what's your principle? The
6 first container you come to you stop at? You stop at
7 the backpack?

8 MR. LACKLEN: Clearly, the backpack could have
9 been intruded upon to see if there were any weapons or
10 dangerous instrumentalities.

11 QUESTION: But you can't tell if all you see
12 in it is a nylon bag.

13 MR. LACKLEN: I understand. And the officer
14 went beyond the nylon bag to small tin cannisters in
15 this case that he said he didn't suspect contained
16 dangerous instrumentalities and didn't suspect contained
17 anything particularly valuable.

18 He said he went into the cannisters because he
19 was curious. And I think the Fourth Amendment clearly
20 protects against the curiosity of an investigating
21 officer.

22 QUESTION: It did contain valuables, though,
23 didn't it? \$700 or so one of them contained?

24 MR. LACKLEN: It did contain money and
25 contraband, and if you take the prosecution's argument

1 to its logical extension there is no container of
2 whatever size in an inventory that the police cannot
3 search.

4 QUESTION: Like a cigarette pack?

5 MR. LACKLEN: That's correct.

6 QUESTION: But we've upheld that in one of our
7 cases, at a station house to be sure. But the principle
8 as to the size of the container, surely we've overcome
9 that obstacle already.

10 MR. LACKLEN: Clearly, the exigencies of the
11 search of the cigarette pack in Lafayette were greater
12 than in this case. We're arguing that the Court has to
13 balance the privacy interests that have been upheld in
14 Chadwick and Arkansas versus Sanders against the
15 governmental interest to learn what's inside these
16 containers.

17 QUESTION: The balance should be struck at a
18 point where the government may have opened one
19 container, but learned absolutely nothing? When they
20 opened the backpack, as Justice Scalia says, it seems to
21 me they're no further ahead than before they opened the
22 backpack.

23 MR. LACKLEN: Well, I think that a
24 reasonableness test on the nature of the container is
25 what this Court should judge the intrusion against.

1 QUESTION: So it's reasonable to open the
2 backpack, but not reasonable to open the nylon bag?

3 MR. LACKLEN: I would submit yes, because --

4 QUESTION: Well, why?

5 MR. LACKLEN: Because the nylon bag could not
6 have contained -- or the cannisters that were actually
7 the last layer of container opened could not have
8 contained anything dangerous.

9 QUESTION: Well, but it isn't just
10 dangerousness. Part of the rationale for the inventory
11 search is valuable.

12 MR. LACKLEN: I understand, and we feel that
13 there are less intrusive alternatives of storage.

14 QUESTION: Well, but since when have we
15 applied the less intrusive alternative to this
16 particular kind of search?

17 MR. LACKLEN: Clearly there's language in
18 Lafayette that says that the Court in the abstract is
19 not going to be governed by a less intrusive
20 alternative. But I think an analysis of the cases, of
21 the less intrusive cases cited in Opperman and in
22 Lafayette, make it clear that that's one of the factors
23 the Court should consider.

24 And clearly the state court in this case
25 considered that there were less intrusive alternatives.

1 QUESTION: Yes, but that's a correct inquiry
2 only if the authorities support it.

3 MR. LACKLEN: I would agree, and on the facts
4 of this case the Colorado Supreme Court found that there
5 were less intrusive alternatives balanced against this
6 governmental interest to find out what was in the
7 cannister.

8 QUESTION: Well, does that mean that every
9 single inventory search then has this kind of ad hoc
10 analysis? I mean, that was part of the reason, I
11 thought, for the Opperman decision and part for the
12 Lafayette decision, was to get away from this case by
13 case inquiry and set up some -- have bright line rules
14 that the police could follow.

15 MR. LACKLEN: We would agree, and I think our
16 argument is that the bright line rule here should be
17 that closed containers should not be inventoried in a
18 situation where the police have no reason to believe or
19 no reasonable suspicion to believe that the container
20 contains anything dangerous.

21 The mere possibility of something dangerous or
22 something valuable being inside a container shouldn't
23 vitiate the Fourth Amendment interest in the sealed
24 container.

25 QUESTION: Well, what do you do with these tin

1 cans or these containers? Do you just leave them in the
2 car?

3 MR. LACKLEN: The Colorado -- yes. The
4 regulations --

5 QUESTION: So you just ignore the fact that
6 they might contain valuables?

7 MR. LACKLEN: Well, clearly in an Opperman
8 situation, where the storage lot where the car or truck
9 was being taken, that would be unreasonable for the
10 police to have to do that. But in this case, the
11 storage lot was surrounded by six foot fence --

12 QUESTION: So your answer to my question is
13 yes, leave them there?

14 MR. LACKLEN: Well, there's an alternative.
15 You can leave them in the truck and take them to a
16 secure facility. If the facts of the particular case
17 indicated that the facility was not secure, such as in
18 Opperman, then the police could remove the backpack as a
19 unit and take it to the police station and store it in
20 their property room until Mr. Bertine or the arrestee is
21 released.

22 QUESTION: What do you think the rule is in
23 the police station when you arrest somebody?

24 MR. LACKLEN: Clearly, in the Lafayette
25 situation, where the person is being booked into the

1 jail, you can search anything that's on his person.

2 QUESTION: Why? Why?

3 MR. LACKLEN: We would submit that the --

4 QUESTION: Suppose you open a backpack in the
5 police station after arrest and you see these very
6 containers. Now, under Lafayette you can search them.

7 MR. LACKLEN: Clearly you can.

8 QUESTION: Why?

9 MR. LACKLEN: Clearly, the exigencies in the --

10 QUESTION: Exigency about what?

11 MR. LACKLEN: Of danger in the jail --

12 QUESTION: Well, I don't accept your statement
13 that there's no reasonable suspicion or no reasonable
14 possibility that these containers contained anything
15 dangerous. So why can you get into them?

16 MR. LACKLEN: Well, clearly in Lafayette,
17 which we think is a correct decision, in the jail
18 setting the exigencies of the possibility --

19 QUESTION: What exigency?

20 MR. LACKLEN: The possibility of a prisoner
21 getting a hold of a dangerous instrumentality that's in
22 a container.

23 QUESTION: Well, I know. But let's just posit
24 that there's no real possibility of having anything
25 dangerous in this tin can or this tin container.

1 MR. LACKLEN: Well --

2 QUESTION: Then what? Is there an interest in
3 knowing what's in it so you can take care of it properly
4 or not?

5 MR. LACKLEN: We would submit that the
6 interest in taking care of property doesn't outweigh the
7 Fourth Amendment interest in --

8 QUESTION: I think you really are suggesting
9 that Lafayette ought to be kind of chewed up.

10 MR. LACKLEN: No, we're in total agreement
11 with Lafayette, because it's in a jail setting. The
12 prosecution argues that --

13 QUESTION: Well, I know, but you take this
14 briefcase into the -- or you take this backpack or the
15 cannisters into the police station. There you are in
16 the police station.

17 MR. LACKLEN: Clearly the --

18 QUESTION: Along with him.

19 MR. LACKLEN: Clearly, if Mr. Bertine had
20 taken his backpack with him when he was arrested by
21 Officer Toporek, it would be covered by Lafayette. But
22 those aren't the facts of this case.

23 Mr. Bertine was removed, separated from his
24 backpack. The backpack became as the luggage in
25 Chadwick and Sanders.

1 QUESTION: It seems to me it cuts just the
2 other way. I would think that there's less reason to
3 worry about what's in the backpack when it's deposited
4 in the station and is going to be put in a secure safe
5 in the station than there is to worry about what's in
6 the backpack if you're going to leave it out on the
7 public streets or in some lot that is easily accessible
8 to thieves.

9 If there is a loaded gun in it, when it's
10 locked up in the station there won't be any trouble.
11 But if you leave it out in some parking lot, it'll get
12 in the hands of the criminal.

13 I think it cuts just the opposite way. I see
14 less reason to worry about it in the police station
15 situation.

16 MR. LACKLEN: Well, we would submit that in
17 this case the Colorado Supreme Court found that the
18 storage lot was fenced, lighted, patrolled, and there
19 had never been a theft from any of the vehicles stored
20 in this particular --

21 QUESTION: But it's not inside a police
22 station, either.

23 MR. LACKLEN: No. Clearly if the car had been
24 towed to the basement of the police station it would be
25 more secure.

1 QUESTION: So it's clearly less secure than
2 the place where the cigarette pack is going to go in
3 Lafayette.

4 MR. LACKLEN: I think the problem in
5 Lafayette, the way we would analyze that case, is that
6 the purse was in the police station and the police had
7 an obligation to deal with it.

8 Part of our argument here is that there is no
9 need for an inventory if -- unless the defendant
10 consents to it. If the defendant says, I'll waive the
11 inventory and waive whatever liability there may be,
12 then the governmental interest in finding out what's in
13 that container is minimal.

14 QUESTION: They were arresting this person
15 because he was intoxicated, correct?

16 MR. LACKLEN: That's correct, he was arrested
17 for driving while --

18 QUESTION: And you want to ask him in his
19 intoxicated state whether he minds whether they leave
20 his valuables on the street?

21 MR. LACKLEN: Clearly --

22 QUESTION: And you're going to hold him to
23 whatever he says?

24 MR. LACKLEN: Clearly, the waiver of the
25 liability, if he would be doing that, could be done even

1 in an intoxicated state. There may be situations where
2 the defendant is comatose or not available, as in
3 Opperman, and clearly the police have an obligation at
4 that point to perform their caretaking function and
5 secure the property.

6 In this case, because of the secure nature of
7 the storage facility, the police clearly would have been
8 acting reasonably to store the car with the backpack in
9 the storage facility.

10 It's clear that the interests in this case are
11 different than the interests in Opperman and in
12 Lafayette. The balancing of those interests must be
13 weighed in the context of what this case represents, a
14 field inventory.

15 In this case, as was not present in Opperman,
16 the defendant was present to make other arrangements for
17 his truck and for the contents of the backpack. When
18 the Court is drawing up a doctrine in this case, I think
19 it's important, as Professor LaFave has pointed out, to
20 be cognizant of the pretext danger of developing a
21 doctrine where the police can avoid a Chadwick or
22 Sanders or even a Belton and Ross analysis by delaying
23 the search until the car or the backpack is in the hands
24 of the impound officer.

25 This invites the police to delay their

1 searches to bring it under the rubric of the inventory,
2 and I think the Court has to be cognizant of the threat
3 of abuse in this type of setting.

4 QUESTION: That's a good reason for not
5 adopting an inventory rule. I mean, you might say that
6 as a prophylactic measure, since it's subject to abuse,
7 we won't have any. But we have one, and what I don't
8 understand is what is the intelligent line that you want
9 us to draw in the inventory rule that will exclude the
10 abuse, but allow the permissible activity.

11 Take a glove compartment in a car. You would
12 allow them to open the glove compartment?

13 MR. LACKLEN: Yes.

14 QUESTION: Why is there any reason to believe
15 that there are valuables in the glove compartment?
16 People don't usually leave valuables in their glove
17 compartment, or they're very foolish if they do.

18 MR. LACKLEN: We would submit that the glove
19 compartment is part of an integral part of the vehicle
20 and can't be separated from the vehicle itself. The
21 glove compartment goes with the car to the storage
22 unit.

23 The backpack can be removed and taken to the
24 station.

25 QUESTION: So anything that can be taken and

1 removed to the station must be taken to the station?
2 That's the line you draw? If it's integral to the car,
3 you have to leave it with the car, but if you can remove
4 it to the station it has to be taken to the station?

5 You'd have pretty crowded stations around the
6 country if every loose piece of equipment that you can't
7 examine in all these cars are going to be stored there.
8 That can't be the rule, can it?

9 MR. LACKLEN: Well, I think that the police
10 have an option, depending on what is reasonable under
11 the circumstances. And in this case, the Colorado
12 Supreme Court found that it was reasonable to leave the
13 backpack in the car and take it to a secure storage
14 facility.

15 QUESTION: I'm still not sure. That's not
16 your line, then? The line is not that you have to take
17 to the station whatever is removable? What is your
18 line? You have to have -- if it's removable, it has to
19 look as though it contains something valuable, is that
20 it?

21 MR. LACKLEN: Our argument is that if it looks
22 like it contains something valuable, it should be
23 removed and stored at the police station.

24 QUESTION: Okay. Only that? Even though most
25 people who leave things valuable in the car certainly

1 wouldn't put it in a container that looks as though it's
2 valuable?

3 You wouldn't leave something in a car in a
4 gold box, would you? You'd put it in a tin can, just as
5 this person did. That doesn't strike me as a very
6 sensible rule.

7 MR. LACKLEN: Clearly, the police can protect
8 the defendant's Fourth Amendment privacy interests and
9 protect their own interests against false claims or
10 property by either storing the backpack or the container
11 at the police station for the short period of time that
12 someone arrested for a minor traffic offense, such as in
13 this case, would be in custody.

14 The argument that the prosecution makes has no
15 limits. Locked containers, locked suitcases, double
16 locked footlockers in Chadwick and Sanders, would not be
17 taken away from the scene without being searched. In
18 order for the Court to adopt the prosecution's
19 rationale, we wipe away the doctrine that's been
20 carefully constructed under Lafayette, under Chadwick,
21 Belton, Ross, Sanders.

22 This search may very well have been
23 permissible under a Belton analysis. The arresting
24 officer said he wasn't searching incident to an arrest.
25 The trial court found he wasn't searching incident to an

1 arrest. And the prosecution has abandoned that argument
2 both in the Colorado court and in its briefs in this
3 court.

4 The limitless --

5 QUESTION: May I just -- what do you think is
6 really at stake in this case? If Belton would have
7 justified the search anyway, how many cases are there
8 going to be like this?

9 Does it really just apply to abandoned
10 vehicles, do you suppose?

11 MR. LACKLEN: Well, there are many, many
12 different types of circumstances where the police come
13 into contact with someone's personal property.

14 QUESTION: Yes, but are there many cases where
15 they take a vehicle in without arresting its driver?

16 MR. LACKLEN: I think there's a footnote in
17 Opperman that 100,000 cars were towed for parking
18 violations, traffic violations, in New York City in one
19 year. I think it's clear overtime parking --

20 QUESTION: Really, we're talking about
21 abandoned vehicles as the category of cases we're
22 concerned with, I guess?

23 MR. LACKLEN: Well, the facts of this case
24 clearly are limited to someone being arrested for a
25 minor traffic offense. But inventories clearly apply

1 across the board to all sorts of situations, and that's
2 the problem.

3 The problem is is that people who do no more
4 than park overtime on Constitution Avenue after 4:00
5 o'clock, Joe and Mary Tourist, are going to have their
6 car towed and their personal luggage examined under this
7 rationale of the police, that we have to look into
8 locked suitcases and every container to find out what is
9 there.

10 QUESTION: The question is whether Joe and
11 Mary Tourist would prefer to have their valuables taken
12 out rather than left somewhere. I expect they would.

13 MR. LACKLEN: Well, clearly that's something
14 that should be left to the individual's discretion and
15 his consent.

16 QUESTION: How do you leave it to the
17 individual's discretion if the individual isn't around
18 the vehicle at the time they tow the vehicle in? How do
19 you find out the answer?

20 MR. LACKLEN: Well, clearly that rule doesn't
21 apply in the facts of this case, and I think Opperman
22 was a --

23 QUESTION: You see, the thing that puzzles me
24 is the facts of this case, everybody seems to agree,
25 would have been covered by Belton anyway. And I don't

1 know how we're going to get many cases like this
2 involving arrests where you've got a fight.

3 The only case it seems to me that may be
4 relevant is the overtime parker, and I don't know how
5 you find out whether you get a consent or not in that
6 case. I guess you search everything.

7 MR. LACKLEN: Clearly, the overtime parker or
8 the comatose accident victim is an exception to our
9 prerequisite --

10 QUESTION: I guess the rule is that people who
11 are concerned about their briefcases in the car better
12 carry plenty of change.

13 MR. LACKLEN: Well, not overpark.

14 I think it's important for the Court to
15 understand the procedural context that this case came up
16 to this Court. The trial court found that the search
17 was unlawful under state constitutional grounds. That
18 was the only issue appealable in the interlocutory
19 nature of this case when it reached the Colorado Supreme
20 Court.

21 The defense was not able to argue that the
22 trial court was wrong in its findings of law regarding
23 pretext, and there's clearly at least the suggestion of
24 pretext in this case.

25 Officer Reichenbach searched the backpack in

1 this case and then took his inventory form back to the
2 vehicle and inventoried the vehicle.

3 QUESTION: But that's not open to us here, is
4 it? The trial court did make the finding and we're
5 ordinarily bound by the trial court's findings of that
6 sort.

7 MR. LACKLEN: I agree, but this Court is
8 operating in a vacuum because that finding has never
9 been reviewed by the Colorado Supreme Court. I think
10 that if this Court finds that this case is --

11 QUESTION: Did you make this argument to the
12 Colorado Supreme Court that you're making here, that
13 they should disregard the trial court's finding that it
14 was good faith?

15 MR. LACKLEN: The interlocutory nature of that
16 appeal prevented the defense from raising any findings
17 that went against us. The only findings that we can
18 argue on interlocutory appeal in Colorado are findings
19 that go against the DA that he certifies to the court.
20 So we were left without a remedy in the Colorado court
21 for the findings that went against us in the state
22 court.

23 So the pretext comes to this Court -- the
24 pretext nature of this search comes to this Court in a
25 vacuum. There has been no review of those findings of

1 fact and law by the trial court in the Colorado Supreme
2 Court.

3 And clearly there's evidence, at least the
4 suggestion, of a pretextual search in this case. The
5 officer didn't start his inventory until after the
6 search of the backpack in his police car. In fact, the
7 contents of the backpack were not even listed on the
8 impound form. They were listed on an evidence form that
9 was filed in the case itself for the criminal case for
10 possession of cocaine.

11 We submit to the Court that on the facts of
12 this case the doctrine that this Court should apply is
13 that a consent to inventory is a prerequisite for a
14 valid inventory search. That alleviates the need to
15 balance the container issue.

16 If the Court decides to reach the container
17 issue, we would ask the Court to fashion a doctrine that
18 properly balances in the field inventory context, not in
19 the automobile exception context and not in the
20 incarceration jailhouse context, properly balances the
21 defendant's Fourth Amendment interests that have been
22 upheld in luggage in Chadwick and Sanders against the
23 governmental interests -- protect themselves against
24 false claims, loss of property, or the possibility of
25 dangerous instrumentalities.

1 The mere possibility of dangerous
2 instrumentalities in these kind of containers clearly
3 argues too much. If you adopt the prosecution's
4 argument, then the police can search containers in any
5 situation, even in investigative situations such as
6 Chadwick, because you don't know if the double-locked
7 footlocker contains a dangerous instrumentality when you
8 take it into your possession to store it at the police
9 station.

10 QUESTION: Mr. Lacklen, on this point of
11 whether the Colorado Supreme Court got into the
12 pretextuality issue, what does that suggest, that if we
13 were to reverse the Colorado Supreme Court we would have
14 to remand for them to consider that issue? Is that what
15 you're suggesting?

16 MR. LACKLEN: Well, I would suggest that this
17 Court could send this case back to the state court as
18 certiorari improvidently granted, because this case can
19 clearly be analyzed under Belton and, although that has
20 not been briefed and we don't think that Belton applies,
21 clearly the inventory nature of this case is somewhat
22 muddled by the way that the case came to this Court.

23 QUESTION: Well, the Colorado Supreme Court
24 clearly held that this was not a proper inventory
25 search, that even if the inventory aspect of it was not

1 pretextual you couldn't have an inventory search.

2 MR. LACKLEN: That's correct.

3 QUESTION: So I don't see why granting
4 certiorari on that issue was improvident. Now, let's
5 assume we disagree with you on the outcome of that
6 issue. What do you suggest the disposition should be?

7 MR. LACKLEN: Well, the case clearly has to be
8 remanded to the state court, because the state court
9 didn't rule on the state constitutional grounds on which
10 the evidence was originally suppressed. If the DA were
11 to go back to trial today, after a reversal of the
12 Colorado Supreme Court, he still wouldn't have any
13 evidence, because the trial court suppressed the
14 evidence on state constitutional grounds.

15 And we would disagree with the district
16 attorney on the clearness of the Colorado state ruling.
17 It would be our submission that the Colorado court,
18 although citing the Fourth Amendment, said that the
19 Colorado constitution may exclude this evidence also.
20 And so it's not clear that the prosecution wins even if
21 this Court issues what may be an advisory opinion on
22 this issue to the Colorado Supreme Court.

23 QUESTION: Isn't it rather unusual that
24 Justice Erickson didn't take up the state constitutional
25 issue?

1 MR. LACKLEN: Well, we're still trying to
2 figure that one out in Colorado.

3 QUESTION: He's a very states rights conscious
4 judge.

5 MR. LACKLEN: Yes, and we would submit that
6 the wording of his ruling is ambiguous. It's clearly
7 not the kind of clear and adequate state ground
8 statement that we would have liked under Michigan v.
9 Long.

10 But we think that what he says is we need not
11 decide the issue of whether the Colorado constitution
12 provides greater protection than the Fourth Amendment,
13 because we find that the Fourth Amendment provides
14 sufficient protection to hold this search unreasonable.

15 QUESTION: Well, you may win the case, whether
16 we expressly remand or not. Our mandates normally say
17 that the case is going to go back to the court from
18 which it came. And anything that's still open there I
19 suppose is still open.

20 MR. LACKLEN: It would be. And all I'm
21 suggesting is that because of the search incident to an
22 arrest possibilities in this case, because of the
23 pretextual vacuum of the facts regarding the regulations
24 themselves, and because of the state, possible separate
25 state constitutional grounds, that certiorari may have

1 been improvidently granted in this case.

2 Thank you.

3 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
4 Lacklen.

5 Mr. Haried, do you have anything more? You
6 have four minutes remaining.

7 MR. HARIED: No, Your Honor.

8 REBUTTAL ARGUMENT OF
9 JOHN M. HARIED, ESQ.,
10 ON BEHALF OF PETITIONER

11 QUESTION: Could I ask you one question, since
12 you were kind enough to stand up. Supposing the
13 container was -- say you had a jewelry salesman and the
14 container had a label on it: "This contains valuables.
15 If the car happens to be impounded, please take it to
16 the police station."

17 Could you open it and search it?

18 MR. HARIED: Yes.

19 QUESTION: For what reason?

20 MR. HARIED: Several reasons. One, because to
21 prevent against the risk that the police may be falsely
22 accused of having taken something out of the container.
23 In other words, if there were say two pieces of jewelry
24 in the container and someone coming back later and
25 saying, well, there was only one, or there were three

1 when I originally gave it to the police, something like
2 that.

3 And also for the purposes of having a line, a
4 clear line for the police to follow, so they don't have
5 to get into those worthy and unworthy container types of
6 decisions.

7 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
8 Haried.

9 The case is submitted.

10 (Whereupon, at 1:43 p.m., oral argument in the
11 above-entitled case was submitted.)
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CERTIFICATION

Alderson 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:

85-889 - COLORADO, Petitioner V. STEVEN LEE BERTINE

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BY Paul A. Richardson

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