

# SUPREME COURT OF THE UNITED STATES

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In the Matter of:

MICHIGAN,

No. 86-1824

Petitioner

vs.

MICHAEL MOSE CHESTERNUT

Pages: 1 through 43

Place: Washington DC

Date: February 24, 1988

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I N D E XORAL ARGUMENT OFPAGE

ANDREA L. SOLAK, ESQ.

on behalf of the petitioner

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CAROLE M. STANYAR, ESQ.

on behalf of the respondent

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MICHIGAN,

Petitioner,

v.

MICHAEL MOSE CHESTERNUT

No. 86-1824

Washington, D.C.

Wednesday, February 24, 1988

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 2:03 p.m.

APPEARANCES:

ANDREA L. SOLAK, ESQ., Assistant Prosecuting Attorney  
for Wayne County, Detroit, Michigan; on behalf of the  
petitioner.

CAROLE M. STANYAR, ESQ., Plymouth, Michigan; on behalf  
of the respondent.

P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear argument now in Number 86-1824, Michigan against Michael Chesternut.

Ms. Solak, you may proceed whenever you are ready.

ORAL ARGUMENT OF ANDREA L. SOLAK, ESQ.

ON BEHALF OF THE PETITIONER

MS. SOLAK: Mr. Chief Justice, and may it please the Court, on December 19th, 1984, at approximately 12:30 p.m., four plainclothes officers were on a routine patrol in the City of Detroit in a standard police car, black in color with markings at the side door. At a preliminary examination one officer testified that he observed a car pull to the curb and a man alight from the car and address the respondent standing on the corner. The police car continued its westward path, approaching the corner, at which time the respondent looked in the direction of the police car, turned and began to run down the street.

QUESTION: This was in the city of Detroit?

MS. SOLAK: It was, Your Honor. Yes. The police car pulled around the corner and drove parallel to the running man. There were no lights, sirens, or verbal communications directed to respondent. During this time, the respondent tossed a number of packets from his right hand pocket, proceeded about five feet further, and stopped. The officer then got out of his car and retrieved the packets



1 and found pills. Based on his experience, he believed them  
2 to contain suspected narcotics.

3 QUESTION: Where were they, on the ground?

4 MS. SOLAK: They had been tossed to the sidewalk.  
5 Yes, Your Honor.

6 QUESTION: The respondent was seen to toss them,  
7 did you say?

8 MS. SOLAK: Yes, he was observed to have tossed  
9 them from his righthand pocket. The officer then arrested  
10 the respondent for possession of narcotics.

11 The prosecutor at a motion to bind over for trial  
12 argued that there was nothing illegal in pursuing a citizen  
13 down the street. The examining magistrate rejoined, "want to  
14 bet," and we are here today to settle that bet.

15 In 1968 in Terry v. Ohio this Court faced the question  
16 of whether an actual physical restraint of a person for  
17 purposes other than a probable cause based arrest implicates  
18 the Fourth Amendment, and if so, when, if ever, is that seizure  
19 reasonable. This Court, of course, concluded that such  
20 seizures do come within the Fourth Amendment and are reasonable  
21 and justified by articulable facts demonstrating a  
22 reasonable suspicion to believe that criminal activity is  
23 afoot.

24 This Court observed in Terry that prior to the  
25 point of the actual physical restraint it need only to have

1 assumed there was no intrusion upon constitutionally pro-  
2 tected rights.

3 QUESTION: Ms. Solak, is it your position then that  
4 a police chase never implicates the Fourth Amendment until  
5 the person being chased is actually stopped or seized?

6 MS. SOLAK: That is my position, and that seizure,  
7 of course, could take place by actual physical restraint by  
8 the officer.

9 QUESTION: You mean even if the red lights were  
10 flashing and the siren was blazing and the guns were drawn?

11 MS. SOLAK: That is correct, even if there were  
12 perhaps that show of authority, unless and until the capture,  
13 if you will, takes place, there is no seizure.

14 QUESTION: You wouldn't say the same thing if you  
15 were riding in a car, would you, and a policeman came up  
16 behind you and turned on his red lights and his siren? You  
17 usually pull over then.

18 MS. SOLAK: Most citizens do usually acquiesce, and  
19 under my standard if the citizen did pull over and it was in  
20 response to an official show of authority, that would be a  
21 seizure.

22 QUESTION: Well, how about an official show of  
23 authority like red lights and a siren?

24 MS. SOLAK: And if the citizen were to have  
25 acquiesced to those red lights and a siren, I believe a

1 seizure would have taken place. If the citizen did not  
2 acquiesce and engaged in a pursuit it would be our position  
3 that is not in fact a seizure under the Fourth Amendment.

4 QUESTION: Well, this citizen in this case, he  
5 understood that the police were chasing -- she understood  
6 the police were chasing here, I guess.

7 MS. SOLAK: Yes --

8 QUESTION: She stopped, anyway, didn't she?

9 MS. SOLAK: He did ultimately stop.

10 QUESTION: Is that a he or a she?

11 MS. SOLAK: It was a he, Michael.

12 QUESTION: All right.

13 MS. SOLAK: Yes, he did ultimately stop.

14 QUESTION: He knew he was about to be seized,  
15 didn't he?

16 MS. SOLAK: He knew -- the court believed that he  
17 had reason to anticipate a capture, but he did not  
18 in fact stop.

19 QUESTION: He knew he was about to be seized. So  
20 this was a second or so before the seizure.

21 MS. SOLAK: This was seconds before the seizure.  
22 Exactly, Your Honor.

23 In cases such as United States versus --

24 QUESTION: Counsel, do you take the position that he  
25 knew he was about to be seized? Do you concede that?

1 MS. SOLAK: No, I do not. Thank you for bringing  
2 that point to the fore.

3 QUESTION: If you don't, why did he throw the stuff  
4 away?

5 MS. SOLAK: The defendant's conduct in abandoning  
6 may not have been an intelligent decision, but I would  
7 argue that --

8 QUESTION: Did he have any other reason to throw  
9 it away?

10 MS. SOLAK: Other than the presence of the police?

11 QUESTION: Yes.

12 MS. SOLAK: No, he did not. In response to  
13 Justice Kennedy's point, we do not concede that the instant  
14 case was in fact an attempted seizure. Rather, what we would  
15 suggest is that there was absolutely no entree or attempted  
16 communication by the police officer other than his mere  
17 presence on the scene and in the absence of a show of authority  
18 or an exercise of force it is improper and factually illogical  
19 to assume that the defendant would in fact have been seized.

20 QUESTION: Well, Ms. Solak, what if the police had  
21 a chance to speak to the person and say stop, we want to talk  
22 to you, and he then takes off and they pursue?

23 MS. SOLAK: This Court has recognized that police-  
24 citizen encounters of the sort that you might have described  
25 are appropriate on some occasion. An officer may make an



1 -- of a citizen.

2 QUESTION: Can that be a seizure under the Fourth  
3 Amenmdent?

4 MS. SOLAK: I don't believe in Mendenhall versus  
5 Royer that merely the entre by an officer, I would like to  
6 speak to you, would constitute a seizure.

7 QUESTION: He says stop.

8 MS. SOLAK: Saying stop and asserting perhaps  
9 police presence would certainly add a factor into an assess-  
10 ment of a show of authority.

11 QUESTION: Well, is a show of authority enough to  
12 implicate the Fourth Amendment then?

13 MS. SOLAK: No, I do not believe that it is  
14 enough to implicate the Fourth Amendment. There must also be  
15 the response in response to a show of authority. Basically  
16 the test that is proffered before this Court by the petitioner  
17 has a cause and effect analysis. If the police undertake by  
18 a show of authority or exercise of force to cause the  
19 restraint of the petitioner and they effect that restraint,  
20 then there will be a seizure under the Fourth Amendment, so  
21 you therefore have the show of authority and either the actual  
22 capture or the acquiescence which is reasonably responsive to  
23 that show of authority.

24 In a survey of the cases that have been handled  
25 by this Court, most of the cases involve -- in fact all

1 of the cases involve either an actual physical restraint or  
2 a citizen's acquiescence to a show of authority. This Court  
3 has never held nor intimated that a citizen who in fact goes  
4 on his way has been seized.

5 In a related area at least two circuits, the Sixth  
6 and the Ninth, have refused to find a Fourth Amendment viola-  
7 tion so as to support a 42 USC 1983 cause of action in  
8 instances where a plaintiff ran or drove away from a police  
9 officer clearly attempting to achieve a seizure. The pursuit  
10 which ensued in those cases was not held to be a restraint on  
11 a liberty by official show of authority so as to constitute  
12 a seizure under the Fourth Amendment.

13 QUESTION: There was a seizure here, wasn't there?

14 MS. SOLAK: In this case?

15 QUESTION: Yes.

16 MS. SOLAK: In this case there was ultimately  
17 a probable cause seizure.

18 QUESTION: No, no, no, there was a seizure of the  
19 effects.

20 MS. SOLAK: The people would not -- the petitioner  
21 would not concede that in fact there was a seizure, just as  
22 we suggested --

23 QUESTION: Well, the officer picked up the packets.  
24 They seized the packets that were thrown away.

25 MS. SOLAK: The officer did pick up the --

1 QUESTION: What justified that?

2 MS. SOLAK: Pardon me?

3 QUESTION: What justified that?

4 MS. SOLAK: There was an abandonment of the packet.

5 The respondent in fact relinquished any expectations of  
6 privacy that he may well have had. Just as we submit that a  
7 seizure is a seizure when it occurs, we believe the Court  
8 of Appeals erred in finding that the abandonment was in  
9 anticipation of a potentially unlawful search.

10 QUESTION: What was held was that the abandonment  
11 was the fruit of an unlawful seizure, I guess.

12 MS. SOLAK: I believe the Court of Appeals held,  
13 the Michigan Court of Appeals held that the abandonment was  
14 the fruit of an unlawful seizure of the person by virtue of  
15 the pursuit. They did not differentiate between a search of  
16 the person from which the evidence may have been derived and  
17 a seizure of the citizen. Given the myriad of police-citizen  
18 encounters that this Court has recognized, it is simply  
19 illogical to assume that an encounter by the police and the  
20 citizen will necessarily result in an illegal detention or  
21 seizure and further an illegal search.

22 QUESTION: The decision was based on the Shabaz  
23 case, wasn't it?

24 MS. SOLAK: Yes, it was.

25 QUESTION: Which is not a federal case.

1 MS. SOLAK: No, it is indeed a Michigan case.

2 By way of information, Shabaz had cert granted by  
3 this Court, and the respondent in that case met an untimely  
4 death and the case was dismissed as being moot. The Ninth  
5 Circuit in holding that a pursuit is not a seizure stated  
6 that flight is an act of autonomy whose purpose is to avoid  
7 restraint, and I believe these two circuits teach that a  
8 seizure is a seizure and an attempted seizure is not a seizure.

9 The Court of Appeals for the District of Columbia  
10 did recently conclude that a person is seized when a pursuit  
11 begins. The Court concluded that the person pursued assumes  
12 that the object of the chase is a capture. Thus when the  
13 chase commences the stop begins. This rationale tracks  
14 the rationale employed by the Michigan courts. However, I  
15 believe it runs afoul of the teachings of INS versus Delgado.

16 In Delgado there was a factory survey wherein  
17 Immigration officers were clearly identifiable, armed, and  
18 stationed at the doors of the private factory. This Court  
19 stated, though a person may have been questioned if they had  
20 attempted to leave this did not create a reasonable  
21 apprehension of a detention, and further, that if the person  
22 may have been detained if they attempted to leave, in fact  
23 in that case the people did not attempt to leave.

24 The seizure question was simply thus not litigable  
25 on that ground as it had not occurred. This Court stated that



1 one may only litigate that which actually occurred to him.  
2 Similarly in the instant case the fact that the respondent  
3 may have been questioned had he chosen to remain does not  
4 create a reasonable apprehension of enforceable detention nor  
5 the possibility that had he attempted to leave he would have  
6 been detained means that he was detained. In fact, he was  
7 free to go about his way and he did so. He was not detained  
8 by the police.

9           There is nothing in the record to support an objective  
10 finding that a detention was contemplated or attempted. Again,  
11 there was no sirens, verbal commands, or lights that were  
12 employed by the police. The trial court admitted that he  
13 didn't know what would have happened, and the police officer  
14 stated he simply pursued the respondent to see where he was  
15 going.

16           Therefore, it was the defendant -- the respondent's  
17 flight from the mere presence of the police officer which  
18 prevented any kind of encounter, consensual or otherwise,  
19 from occurring. It is also important to note that the police  
20 officers did not immediately approach the respondent. They  
21 did not leave their cars until such time as the narcotics were  
22 thrown to the sidewalk, and then only after having inspected  
23 the pills and finding them to contain narcotics did they then  
24 approach the respondent.

25           QUESTION: But in any event you say that there was

1 reason enough to -- seizure of the packets was legal wholly  
2 aside from any seizure of the person?

3 MS. SOLAK: I do indeed say that, Your Honor, that  
4 the seizure was legal.

5 QUESTION: Because they were abandoned, or because  
6 he had given up any privacy?

7 MS. SOLAK: He had given up any privacy rights as  
8 well, yes.

9 QUESTION: And the officers could not only seize  
10 them but open them?

11 MS. SOLAK: He inspected the pills, yes, and found  
12 them to be suspected narcotics.

13 QUESTION: But he had to open the packets to see  
14 the pills?

15 MR. SOLAK: He did open the packets, yes.

16 QUESTION: I don't understand what happened here.  
17 He dropped the packets and then stopped five feet away from  
18 them?

19 MS. SOLAK: Yes, he ran approximately five feet  
20 further and simply stopped.

21 QUESTION: That is very strange. Is there any  
22 explanation for why?

23 MS. SOLAK: There is no explanation. The record  
24 is scant. It was a preliminary examination. The case never  
25 did go to trial.

1 QUESTION: Does the record show that one police  
2 officer was detaining him while the other was inspecting  
3 the packets?

4 MS. SOLAK: No, in fact, I believe the record  
5 indicates that the officer who testified was the only one to  
6 have gotten out of the car, inspected the packets, and then  
7 arrested the defendant.

8 QUESTION: And the defendant just stands there while  
9 all this is happening?

10 MS. SOLAK: That's correct. That's the reflection  
11 of the record.

12 QUESTION: -- supposed to stay there, or he  
13 wouldn't have, but he just was mistaken, I guess.

14 MS. SOLAK: He was mistaken and perhaps his conduct  
15 in retrospect was not wise. It was not, however, in response  
16 to a show of authority by the police. Assuming arguendo that  
17 the pursuit of the respondent was a seizure and that his  
18 abandonment was a search, the petitioner submits that the  
19 minimal intrusion upon the individual may be justified by  
20 circumstances which would lead a reasonable person to believe  
21 that criminal activity was afoot. The reaction of the police  
22 in this case to the unprecipitated flight by the respondent is  
23 exactly the type of swift, on the spot reaction that this  
24 Court has anticipated in Terry and which is necessary to  
25 maintain the status quo.

1           The cause of the flight in this case was not wholly  
2 ambiguous. Rather, it was in direct response to the presence  
3 of identifiable -- the police. The alternative of the  
4 police in this case which respondent proposes is that the  
5 police should simply shrug their shoulders and allow either a  
6 crime to occur or a criminal to escape.

7           Such conduct in and of itself would be a dereliction  
8 of duty and unreasonable by the police officer. Respondent  
9 submits that the flight from an identifiable police officer  
10 provides reasonable suspicion to believe that criminal  
11 activity is afoot and justifies the minimum intrusion and  
12 brief temporary detention.

13           QUESTION: But if he had not dropped the packets on  
14 the sidewalk would the police have detained him at all?

15           MS. SOLAK: In this case, of course, the act of  
16 dropping the packets --

17           QUESTION: But I say, if that had not happened.

18           MS. SOLAK: Under our position, the police could  
19 have engaged in some kind of consensual encounter. We have  
20 no way of knowing exactly what they did do. They could well  
21 have engaged in a consensual encounter, simply asking the  
22 individual, why are you running, where are you going, is  
23 something amiss?

24           QUESTION: You think just running away justified  
25 a Terry stop, a forceful Terry stop?



1 MS. SOLAK: I do believe that running from the site  
2 of a police officer --

3 QUESTION: That issue isn't here, right?

4 MS. SOLAK: No, actually, that issue is not  
5 factually presented, because in fact the respondent ran from  
6 an encounter on the corner with another individual, and that  
7 flight was precipitated then by the observation of the  
8 police.

9 QUESTION: You make that argument, don't you? That  
10 is your second argument, that there was sufficient and  
11 reasonable suspicion to justify a Terry stop.

12 MS. SOLAK: That is our second argument, yes.

13 QUESTION: So you would also argue they could have  
14 pulled him over and stopped him and frisked him

15 MS. SOLAK: Yes, that is my argument. I did not  
16 make the argument relative to the frisk. If in fact that  
17 is developed that would have led the officer to believe that  
18 the respondent was armed, he may then have gone forth with  
19 a frisk, but certainly he could have pulled him over as to a  
20 brief temporary Terry stop.

21 QUESTION: I thought a Terry stop gave you  
22 authority to make a frisk for weapons. You don't take that  
23 position?

24 MS. SOLAK: I do not take the position that in  
25 and of itself he would have been subject to a frisk. No,

1 I don't.

2 QUESTION: But he would have been just subject  
3 to questioning.

4 MS. SOLAK: At best, brief questioning.

5 QUESTION: What if he had said, I am sorry, I'd  
6 rather not talk to you?

7 MS. SOLAK: At that point in time it is fish or  
8 cut bait. The officer would have had the opportunity to  
9 investigate the nature of the suspicious conduct, the flight.  
10 If he had looked about him and seen nothing discarded in the  
11 flight path of the individual, and no other reason to believe  
12 that criminal activity had gone forth, he would then have to  
13 really see the defendant, the respondent.

14 QUESTION: The flight itself would not justify it?

15 MS. SOLAK: No, what would have then found is that  
16 there was no further reason for the detention. The flight  
17 in fact justified the brief investigative detention, but  
18 prolonged or further detention at that point would no longer  
19 be justified and he would have to release the individual.

20 In sum, the petitioner submits that the respondent  
21 in this case was neither seized nor searched under the Fourth  
22 Amendment and cannot litigate the reasonableness of that  
23 which did not occur. Moreover, if the pursuit and the  
24 abandonment of the narcotics are viewed as a seizure and  
25 a search, that seizure should be viewed as justified by a

1 reasonable suspicion that criminal activity is afoot.

2 Thank you.

3 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Solak.

4 We will hear now from you, Ms. Stanyar.

5 ORAL ARGUMENT OF CAROLE M. STANYAR, ESQ.

6 ON BEHALF OF THE RESPONDENT

7 MS. STANYAR: Mr. Chief Justice, and may it please  
8 the Court, this case concerns the parameters of Fourth Amend-  
9 ment protection where an individual's invocation of the right  
10 to go on his way is met by a police chase by four officers in  
11 a marked police cruiser. My argument will be divided into  
12 three parts.

13 First of all, we contend that this chase would have  
14 led a reasonable person to believe that he was not free to  
15 leave. That is the seizure question. Secondly, that this  
16 intrusion was not justified by a reasonable suspicion of  
17 criminal activity. And thirdly, this was an unreasonable  
18 seizure in terms of its method and scope.

19 Briefly as to the facts relevant to the show of  
20 authority seizure question, these officers were driving in a  
21 black marked Detroit police cruiser. It had markings on the  
22 side door. According to the officer, "Everybody knows what  
23 it is." Counsel has suggested that all four officers were in  
24 plain clothes. I believe the record only indicates the dress  
25 of the officer who testified, and he was in plain clothes.

1 In terms of whether or not the officers activated  
2 their lights or sirens, the officer was never asked whether  
3 or not he activated his sirens, nor was he asked whether or  
4 not his vehicle had that type of equipment. When Mr.  
5 Chesternut ran from the corner, these officers pursued him  
6 around the corner, chased him down the street --

7 QUESTION: Ms. Stanyar, you use the word "pursue."  
8 Is that any different than followed

9 MS. STANYAR: Well, Your Honor, is purused any  
10 different than following?

11 QUESTION: Yes, are you using it in any different  
12 sense than followed? The reason I ask is, some of our cases  
13 the Knotts case and the Caro case, say that the police can  
14 follow you all day on a public street and there is no Fourth  
15 Amendment issue.

16 MS. STANYAR: Your Honor, I am using the term  
17 "pursue" as being synonymous with following and as distinct  
18 from chasing. What occurred next was the chase. They chased  
19 him down the street and they overtook him, and instead  
20 of simply continuing on down the block, these officers had to  
21 slow down the cruiser in order to run it parallel with Mr.  
22 Chesternut. In that position, Mr. Chesternut was alone. He  
23 was isolated from assistance. He was pitted between the  
24 apartment structure and a police cruiser. In that spot he  
25 could certainly see that there were four police officers here,



1 and this in fact was a police cruiser. His next actions  
2 occurred almost simultaneously He dropped the packets, and  
3 within five feet, one running stride, he stopped.

4 In terms of whether or not the officers all got out  
5 or all stayed in the car, the record only reflects what officer  
6 Peltier did, and after the dropping of the packets and  
7 stopping, Officer Peltier then got out and opened up the  
8 packets. We submit that under these circumstances a reasonable  
9 person would feel that he was not free to leave, and that the  
10 objective characteristics of this police case meet the  
11 standards that this Court has set forth to define a seizure  
12 by show of authority.

13 This police chase was a seizure because at the  
14 very least it indicated to Mr. Chesternut that these officers  
15 were going to detain him immediately.

16 QUESTION: At what point did it become a seizure?

17 MS. STANYAR: At the very latest, Your Honor,  
18 respondent contends that this became a seizure after these  
19 officers had chased him and overtaken him and were running  
20 the cruiser parallel with him, because at that point you have  
21 conveyance, or the officers convey a message to Mr. Chesternut  
22 that, Number One, they are going to stop him immediately, that  
23 he has done something wrong to warrant being stopped.

24 We contend that this police chase was a seizure  
25 because it implicated every basic interest under the Fourth

1 Amendment, his right to be secure in his person, his right  
2 to privacy, his right to be left alone by government, and his  
3 right to go on his way. This Court decided in United States --

4 QUESTION: Ms. Stanyar, can I ask some more about the  
5 circumstances before you get any further? You said that there  
6 was nothing in the records, that the lights weren't on or that  
7 the car didn't have lights. Was there anything that they were?

8 MS. STANYAR: No.

9 QUESTION: We have to take this case on the  
10 assumption that there were no sirens going, no lights flashing,  
11 because there is no indication that there were.

12 MS. STANYAR: There is no record refeence to it  
13 either way.

14 QUESTION: You say the car had to slow down. I  
15 don't know how you can call it a case if it slows down -- that  
16 is a queer sort of a chase, if you understand what I mean.

17 MS. STANYAR: Your Honor, once they caught him,  
18 they slowed down. It is our position that in order to -- what  
19 happened was, they had to gain ground on him by accelerating,  
20 and in order not to continue on past him they had to slow  
21 down. That was my only point.

22 QUESTION: And they were cruising next to him  
23 for some --

24 MS. STANYAR: The record doesn't indicate how long  
25 they would have been cruising next to him, but the officer

1 indicated -- the term he used was, they were "running parallel  
2 with him." It doesn't indicate how long.

3 QUESTION: And again, we don't know that they said  
4 anything to him, that they said stop or --

5 MS. STANYAR: The record doesn't indicate either way.

6 QUESTION: So we assume for purposes of the case  
7 that they didn't.

8 MS. STANYAR: Correct.

9 QUESTION: Ms. Stanyar, what if I am driving my  
10 automobile on the public highway and a police car marked as  
11 such and containing four officers gets behind me and follows  
12 me on the highway, or perhaps catches up with me and drives  
13 alongside me along the highway, and I don't like it. It  
14 makes me nervous. Have I been seized?

15 MS. STANYAR: I don't know necessarily, Justice  
16 O'Connor, that that would be a seizure. It strikes me --

17 QUESTION: How would it differ from your case do  
18 you think?

19 MS. STANYAR: It strikes me as being less intimi-  
20 dating because you have two vehicles that are already  
21 traveling along the highway. You have the person in the  
22 vehicle being at least a little more protected than a person  
23 who is running on foot. And it seems as though you just have  
24 a person, you just have the --

25 QUESTION: It intimidates me to have a police car

1 following me and going alongside me on the highway.

2 MS. STANYAR: In order for your example to be a  
3 seizure under the Fourth Amendment, your feelings of being  
4 intimidated must be reasonable, objectively.

5 QUESTION: And you think that is not objectively  
6 reasonable?

7 MS. STANYAR: I don't think it is as intimidating  
8 as a chase by a police cruiser after a pedestrian.

9 QUESTION: But if I were jogging along the parkway  
10 and the police cruiser comes up along side and keeps up with  
11 me, that would be different?

12 MS. STANYAR: In terms of your use of the phrase  
13 keeps up with you, I think that is different than what we have  
14 here, because we have an individual who is unequivocally  
15 running away from a police officer. That is what the lower  
16 courts held. And these officers chase after him. There is  
17 an admission in the lower court record that this was a chase.  
18 The officer was asked by defense counsel, did you pursue the  
19 defendant on foot, and in the course of his answer he corrects  
20 her by saying, no, Officer Keller "chased him with the car."  
21 He is later asked by the judge, is that what you said, you  
22 chased him with the car? His answer, right.

23 QUESTION: How did he know he was being chased?

24 MS. STANYAR: How did he know he was being chased?

25 QUESTION: Yes.



1 MS. STANYAR: According to the record, Mr. Chesternut  
2 had looked in the direction of the police cruiser before  
3 beginning to run. He then goes down the side street, and I  
4 think the critical fact here is that the police cruiser  
5 accelerated to catch up with him, and then it was running  
6 parallel with him, so I think it is clear that --

7 QUESTION: It didn't have its siren on, according  
8 to you.

9 MS. STANYAR: Well, Your Honor, I think that --

10 QUESTION: How did he know it was chasing him and  
11 not me?

12 MR. STANYAR: Well, Your Honor, he was the only one  
13 on the side street that day. He was alone, and the officer  
14 said --

15 QUESTION: The car might have just been going down  
16 the same way.

17 MS. STANYAR: Well, the record reflects --

18 QUESTION: Suppose it was going to get a pizza.

19 (General laughter.)

20 MS. STANYAR: The officer or Mr. Chsternut

21 QUESTION: The officer.

22 (General laughter.)

23 MS. STANYAR: Okay. I think --

24 QUESTION: They do at times.

25 MS. STANYAR: They do, Your Honor.

1 I think the way this chase evolved here --

2 QUESTION: Could it be he had a guilty conscience?

3 MS. STANYAR: My client?

4 QUESTION: Yes.

5 MS. STANYAR: Whether or not he believes -- whether  
6 or not his subjective feelings make him believe he is nervous  
7 or whatever, Your Honor, I think that the critical factor here  
8 is the objective circumstances as viewed by the individual,  
9 and the objective circumstances here are that Mr. Chesternut  
10 ran and these officers chased after him, overtook him, and  
11 then proceeded to run parallel with him, and I think that  
12 conveys to him that, Number One, that this is the man that  
13 we are after.

14 QUESTION: Would you be worried if a cruiser went  
15 beside you walking down the street?

16 MS. STANYAR: If I had run from them.

17 QUESTION: I didn't add anything to it.

18 MS. STANYAR: Okay, if I were walking down the  
19 street and a cruiser came --

20 QUESTION: On your way to church.

21 MS. STANYAR: No, I don't think I would be --

22 QUESTION: You wouldn't be worried at all, would  
23 you?

24 MS. STANYAR: No, I wouldn't.

25 QUESTION: Aren't there some situations in which

1 you might be mighty glad to see the cruiser come up  
2 alongside you?

3 MS. STANYAR: Yes, Your Honor.

4 QUESTION: And you might be running at the time, too.

5 MS. STANYAR: Yes, Your Honor.

6 QUESTION: Yes.

7 MS. STANYAR: I think those would present a different  
8 fact situation. This Court decided --

9 QUESTION: May I ask a question? This doesn't go to  
10 whether there was a seizure, but to the other justification  
11 alleged here, that if there was it was a proper one, and I  
12 don't know what things are like in Detroit, but I know in my  
13 neighborhood if there is a police car patrolling and this  
14 police car sees someone observe the car, do a double-take, and  
15 start running, I would like that police car to follow that  
16 person. And what you are saying here is that there have to  
17 be instructions issued to police cars that if you see somebody  
18 who sees the car, his eyes bug out, and he starts running,  
19 don't pursue that person. That is essentially the instructions  
20 you want our police officers to have.

21 MS. STANYAR: No, Your Honor. Our position in  
22 this case --

23 QUESTION: Well, why is this any different?

24 MS. STANYAR: All right. Our position in this case  
25 is that if the officer's true purpose was to see where Mr.

1 Chesternut was going or to see where the individual in your  
2 example was going, if that is their true purpose here, they  
3 can do that--

4 QUESTION: No, the purpose I want them to chase  
5 them is to ask them, what are you running from us for? Or,  
6 you know, this is something suspicious, it seems to me. A  
7 fellow sees a police car and immediately starts running.  
8 Don't you think that sound law enforcement would say, you  
9 know, you don't have to frisk the guy necessarily, but at  
10 least, you know, cruise along a little and see what is up.  
11 What is bad about that?

12 MS. STANYAR: I think that if all the officers were  
13 going to do in your example was to cruise along and see what  
14 is up by seeing where he was going, they could have done that  
15 in a number of less intrusive ways. I think they could have,  
16 in our case here, they could have simply continued along and  
17 watched the man. They could have followed a little bit behind.  
18 They could have gone past him and stopped. Remember that they  
19 had a police cruiser, and they had four officers here, and I  
20 think that gives them a number of options in this case. They  
21 could have dropped officers off and circled the block. I  
22 think they could have done a number of things to continue  
23 surveillance to follow, to continue to observe Mr. Chesternut.  
24 I think what they should not be doing, it would be our  
25 position where the line should be drawn is, they should not be



1 acting in a manner which intimidates the individual and which  
2 leads him to believe that he is going to be detained imminently  
3 and that is our position, that what occurred here was not an  
4 attempted seizure, it was the functional equivalent of a  
5 seizure, because clearly if these officers had jumped from the  
6 cruiser, and had searched Mr. Chesternut in order to find  
7 these packets, there would be no question.

8 How is it any less offensive to the Fourth Amendment  
9 for them to force him to do himself what they are expressly  
10 prohibited from doing?

11 QUESTION: Well, suppose in the hypothetical  
12 I gave you this police car in my neighborhood just cruises  
13 alongside the person running and rolls down the window and  
14 says, is something the matter, I saw you, you know, lighting  
15 out, what is going on? Is there anything wrong with that?

16 MS. STANYAR: That strikes me as somewhat less  
17 intimidating than the case that we have here because you have  
18 some sort of reassurance to the individual, but I still  
19 believe that you have the same problem in terms of the  
20 individual is exercising his right to go on his way, and these  
21 officers are not allowing him to do that.

22 QUESTION: Well, we don't know what would have  
23 happened here. And that is your opponent's point. We really  
24 don't know what might have happened if your client hadn't  
25 dropped the packet and stopped. Had he continued running, the

1 police officers, for all we know, might have rolled down the  
2 window and say, what seems to be the trouble, you know, I saw  
3 you taking off like that. That would be proper if they had  
4 done that, wouldn't it?

5 MS. STANYAR: I don't believe that it would be, and  
6 secondly, Your Honor --

7 QUESTION: Just in my neighborhood it is okay, but  
8 not in this neighborhood?

9 MS. STANYAR: Well, Your Honor, I think that the chas  
10 which occurred in this case, the way the aggressive and  
11 confrontational action the police officers took in this case  
12 belie any reasonable inference that their only purpose was to  
13 question Mr. Chesternut.

14 QUESTION: Why? The only thing that might belie  
15 that is his knowledge that he had these packets in his pocket,  
16 and you have told us we shouldn't take that into account.

17 MS. STANYAR: Correct, and I think that --

18 QUESTION: We should assume that he is on the way to  
19 church, as Justice Marshall said.

20 MS. STANYAR: Your Honor, I believe that the correct  
21 standard is to take the objective circumstances as they  
22 appear to a reasonable individual, and I think that the way  
23 this occurred, we have a four on one situation. We have a  
24 police cruiser chasing after a pedestrian. These officers  
25 have overtaken him and have slowed down for the purpose of

1 confronting him. These officers -- it is clear that -- well,  
2 Mr. Chesternut would know that he was not armed. If I can  
3 just briefly go for a moment and --

4 QUESTION: Let me ask you a question, Ms. Stanyar,  
5 about one of your responses to Justice Scalia's question.  
6 You say that the police were forcing him to do what he did.  
7 Are you saying that the presence of the cruiser and its  
8 "pursuit" of the defendant forced him to dispose of those  
9 packets?

10 MS. STANYAR: Our position is that what occurred  
11 here was more than their mere presence on the street. Their  
12 approach to the intersection would have been comparable --

13 QUESTION: Okay, whatever the police did, that that  
14 not only ultimately resulted in a seizure of the defendant,  
15 but that just before that it forced him to get rid of those  
16 packets.

17 MS. STANYAR: Right.

18 QUESTION: Why do you say it forced him to?

19 MS. STANYAR: As a factual matter, Your Honor, I  
20 think those two questions merge for the individual, the question  
21 of whether or not these officers are going to stop him and  
22 whether or not they are going to search him, because a  
23 detention is really a euphemism for what the individual really  
24 thinks is going to happen to him out there. I think that --

25 QUESTION: Well, it isn't a totally subjective

1 thing at all. None of our cases that that detention is just  
2 a euphemism for what the individual things is going to  
3 happen to him.

4 MS. STANYAR: What this Court, I believe, has said  
5 is that the objective standard of what a reasonable person  
6 would believe that is going to happen. My point in terms  
7 of the two issues coming together is that if an individual has  
8 been chased by four officers in a police car, I think it would  
9 be reasonable for him to assume that when they catch him,  
10 they are going to see what he has on his person. They have  
11 a reason for catching him. And so detention in this situation  
12 I think in terms of -- in real terms means that these officers  
13 are going to put him up against the car when they do catch  
14 him and are going to search him. In terms of the legal  
15 analysis here --

16 QUESTION: And find the dope.

17 QUESTION: That doesn't to my mind make this any  
18 less of an abandonment on his part. He has voluntarily  
19 parted with the stuff.

20 MS. STANYAR: All right. In terms of the legal  
21 analysis on the abandonment question, our primary position is  
22 that because this was an aggressive and confrontational  
23 admitted police chase it violated the Fourth Amendment, and  
24 that unless there is some evidence to indicate that Mr.  
25 Chesternut's discarding of the packets was an act of free will,



1 under Brown versus Illinois, under Wong Sun versus United  
2 States, unless there are some intervening circumstances, some  
3 time delay which would suggest that his abandonment was an  
4 act of free will, there is still an involuntary abandonment.

5 QUESTION: Have we ever applied the Brown versus  
6 Illinois or Wong Sun standards to abandonments?

7 MS. STANYAR: I don't know -- that you have, Your  
8 Honor. The Michigan courts have understood that analysis to  
9 apply. If I could just briefly -- this Court decided in  
10 United States versus Mendenhall and Florida versus Royer that  
11 mere questioning was not constitutionally intrusive because  
12 the individual retained two choices. He could either remain  
13 and cooperate with the police officer, or he could go on his  
14 way, and it is that choice that separates a first tier  
15 questioning encounter from a second tier Terry type seizure.  
16 It is that choice which is the sole reason for excusing a  
17 police officer from a requirement of reasonable suspicion.

18 In this case, the Court has asked for the first time  
19 to enforce the right it defined in Mendenhall and to  
20 reaffirm that the individual still has two viable choices.  
21 Michael Chesternut asserted his right to choose, and he chose  
22 to go on his way, and unless this Court protects his right  
23 to make that choice, the central premise which justified the  
24 first tier questioning encounter in the first place would  
25 be destroyed.

1           Petitioner is asking this Court to exclude all but  
2 a literal detention from the parameters of the Fourth  
3 Amendment, and by literal detention they define either a  
4 forceable physical restraint or in essence a surrender to  
5 a show of authority. That approach would exclude a huge  
6 category of police-citizen confrontations from this Court's  
7 scrutiny, and that approach presumes that this Court's scrutiny  
8 is not necessary because police officers will not overreach  
9 and will not abuse their discretion when they confront  
10 individuals on the street, and in fact petitioner considers  
11 that possibility as, and I quote, "beyond serious considera-  
12 tion." For 20 years since Terry versus Ohio this Court has  
13 disagreed. Since Terry, this Court has recognized that while  
14 a police officer needs a flexible response on the street,  
15 there must be some limits on his actions. The Court recog-  
16 nized then that the reality of what occurs on the street  
17 between a police officer and an individual requires some  
18 constitutional protection.

19           QUESTION: What would the normal police officer  
20 in your mind do if he drove up beside a man and the man all  
21 of a sudden looked and saw the police car, and took off?

22           MS. STANYAR: What could he do under those  
23 circumstances?

24           QUESTION: What do you think he should do?

25           MS. STANYAR: I think he could continue to

1 investigate, Your Honor.

2 QUESTION: Should what?

3 MS. STANYAR: He could continue to investigate  
4 in a variety of --

5 QUESTION: By doing what?

6 MS. STANYAR: He could follow the man. He could  
7 watch him. He could watch to see where he is going.

8 QUESTION: That is what they did here.

9 MR. STANYAR: The officer admitted in this case,  
10 and I think it is critical that the officer describes this  
11 as a chase, and I think -- I am asking the Court to credit  
12 that characterization because it probably --

13 QUESTION: Does it become a chase because of what  
14 the officers did or what he did?

15 MR. STANYAR: Well, I think that --

16 QUESTION: Who started the movement?

17 MS. STANYAR: That's correct, we don't claim that  
18 Mr. Chesternut's running in the first instance was preceded  
19 by any police illegality. What we claim here is that when  
20 these officers chose an escalated response --

21 QUESTION: Well, when somebody in the street starts  
22 running, shouldn't an officer be interested in why he is  
23 running?

24 MS. STANYAR: Yes. And I think that is a legitimate  
25 purpose, Your Honor. What happened in this --

1 QUESTION: That's what happened here.

2 MS. STANYAR: What happened in this case was, I  
3 think that they may have had a legitimate purpose in terms of  
4 to see where he was going, but when they chose to chase him,  
5 aggressively confronting him to find out --

6 QUESTION: What is the difference between seeing  
7 where he is going and chasing him?

8 MS. STANYAR: I think the act of following -- the act  
9 of seeing where he is going is inherently different than the  
10 act of chasing. Following is investigation by observation. It  
11 precedes direct action.

12 QUESTION: Ms. Solak, I really don't care where he  
13 is going. I want to know where he is coming from. Do you  
14 really think they are chasing him to see where he is going?  
15 They want to know where he lives?

16 MS. STANYAR: No, I don't believe that was  
17 their purpose.

18 QUESTION: They are chasing him because they think  
19 he has done something, and what they want to catch up with  
20 him for is to ask him, what are you running from? Isn't  
21 that what an intelligent police officer would do, at least,  
22 at least that, if not do a Terry stop?

23 MS. STANYAR: If Your Honor were -- if the Court  
24 were to take that position the Court would then have to say  
25 that chasing -- excuse me, that flight in and of itself,



1 standing alone, constitutes ---

2 QUESTION: Invites pursuit. Yes, I would --

3 MS. STANYAR: -- constitutes a reasonable  
4 suspicion of criminal activity. I believe that this Court  
5 has said at least implicitly on two occasions that flight  
6 simply is not enough. The Court suggested in United States  
7 versus Sharpe where the Court looked at a number of factors  
8 in that case which came together to justify the stop of a  
9 marijuana truck. Flight was among those factors, and this  
10 Court said in a footnote, "Perhaps none of these factors  
11 standing alone would give rise to reasonable suspicion,"  
12 and earlier in Wong Sun versus United States this Court  
13 acknowledged that flight just as a general proposition is not  
14 a reliable indicator of criminal activity. People run from  
15 police for a variety of reasons, and virtually every court  
16 that has addressed this issue below has found that people run  
17 from police for a variety of reasons. they may be past  
18 victims of brutality or harassment. They may have been  
19 stopped and searched in the past for no reason. They may  
20 not want to be arrested as a guilty party falsely. They may  
21 not want to be a witness in a case. They may not like  
22 police officers. They may feel, for whatever reason, that they  
23 simply cannot hold their own --

24 QUESTION: Flight alone is not enough for what,  
25 for probable cause to arrest, or for a reasonable articulable

1 suspicion to make a Terry stop?

2 MS. STANYAR: The latter, Your Honor. If flight  
3 is deemed to constitute reasonable suspicion, then every  
4 police chase would be deemed a reasonable seizure, because  
5 every police chase involves someone running away. Further-  
6 more, a rule allowing a second tier seizure, a Terry type  
7 seizure on flight alone in effect punishes the individual for  
8 exercising his right to go on his way.

9 QUESTION: Excuse me. Every police chase does not  
10 involve somebody running away in the sense that occurred here,  
11 that is, someone who only starts running after he sees the  
12 policeman. I mean, this isn't the police picking on somebody  
13 and saying let's chase that fellow for some reason. This  
14 is the fellow, the policemen observed him run only after he  
15 saw them. That is not every chase.

16 MS. STANYAR: I agree, Your Honor. My point is  
17 that if flight, let's call it flight from a police officer,  
18 flight from an identifiable police officer. Still you have  
19 a situation where if that constitutes reasonable suspicion,  
20 then every chase is a reasonable seizure in terms of no other  
21 suspicion is necessary, no other sort of suspicious gestures,  
22 furtive actions, nothing else would be required, and I think  
23 that that at least would be a retreat from this Court's  
24 suggestion in those cases that flight is not enough.

25 In terms of the other point, I believe that that

1 holding would in effect punish the individual for exercising  
2 the right that this Court defined in Mendenhall. The  
3 individual has two choices. He can remain and cooperate with  
4 the police officer, or he can go on his way. In this case  
5 we had an emphatic expression of the individuals' right  
6 to go on his way. Reasonableness under the Fourth Amendment  
7 also requires a balancing of societal interests, and in this  
8 context the government must show what legitimate law enforce-  
9 ment interest is served by allowing a police officer to chase  
10 after an individual in this way and under these circumstances.

11 In the decisions of Martinez, Fuerte, INS versus  
12 Delgado, Florida versus Royer, this Court has called upon  
13 government in the first instance to articulate the specifics  
14 of the crime problem that is being addressed. Secondly, it  
15 has required that the means used to achieve a crime solution  
16 be carefully tailored to the underlying justification.  
17 And thirdly, it is required that the investigative methods  
18 employed should be the least intrusive means reasonably  
19 available to accomplish that end.

20 We submit simply that the chase which occurred in  
21 this case failed under this analysis. In terms of the precise  
22 objective that was offered here by this officer, the officer  
23 explained that he saw Mr. Chesternut run, and he wanted to see  
24 where he was going, but instead of simply following him,  
25 instead of simply observing him, which would have accomplished

1 his objective, these officers chased after him with a  
2 police cruiser.

3 QUESTION: Ms. Stanyar, are you going to abandon  
4 the point or do you just don't recognize the point that the  
5 court decided this on ~~state~~ grounds and not federal grounds?

6 MS. STANYAR: Your Honor, in my reading -- no, I  
7 haven't abandoned it. It is just that it is my reading of the  
8 opinions below that although the courts decided all on state  
9 cases, the origin of the doctrine in Michigan came from  
10 Terry versus Ohio; so --

11 QUESTION: Are you abandoning it?

12 MS. STANYAR: No, I don't abandon it. Defense  
13 counsel below --

14 QUESTION: Have you abandoned it or not?

15 MS. STANYAR: I don't abandon it, Your Honor.

16 QUESTION: You just leave it.

17 MS. STANYAR: Your Honor --

18 QUESTION: Unsupported.

19 MS. STANYAR: Well --

20 QUESTION: It is all right with me. It is not my  
21 case.

22 MS. STANYAR: I understood the lower court's  
23 decision as resting totally on an interpretation of the  
24 federal Constitution. David Crump, who pursued the case  
25 below, did raise a state constitutional ground but the decision



1 was decided purely on federal constitutional grounds.

2 QUESTION: I regret I brought it up.

3 MS. STANYAR: By defining a seizure exclusively as  
4 a detention, petitioner is offering the Court another litmus  
5 paper test that bears no reasonable relation to the issue to  
6 be decided or to the realities of the situation. What we  
7 should be looking at here is whether this chase was an  
8 intimidating and unreasonable show of authority, because if  
9 it was, then it offended the basic principle under the Fourth  
10 Amendment. I think we ought to consider the possible ramifi-  
11 cations in the extreme of counsel's position. In this case --  
12 excuse me.

13 Police officers could conceivably rush up or chase  
14 up to a stationary crowd, and if an individual seeing police  
15 then ran, police officers could then chase after that person  
16 and use deadly force, fire shorts after that person, and  
17 unless the bullet takes effect under petitioner's approach  
18 there would be no Fourth Amendment intrusion.

19 That is precisely where petitioner's approach  
20 has taken the Sixth Circuit, and I would hope that this Court  
21 would agree that that is an outrageous result, and one that  
22 simply cannot be countenanced under the Court's decisions  
23 either in United States versus Mendenhall or Tennessee versus  
24 Gardner or the Fourth Amendment.

25 Chases on less than a reasonable suspicion are

1 going to affect a percentage of innocent people. The more  
2 prevalent this activity becomes, the more tension it  
3 generates in the community. The police chase instantly  
4 escalates, the police-citizen confrontation, and in terms of  
5 a final cost to society, as a matter of public safety the  
6 police chase is dangerous. It poses a hazard to the police,  
7 to the individual, and to innocent bystanders as well, as I  
8 have indicated in my brief, as I have documented in my brief.

9 In conclusion, we have never suggested here that a  
10 police officer has to sit by, has to shrug his shoulders and  
11 do nothing. We have asked only that when he chooses to act  
12 and when he chooses to confront the individual on the street,  
13 that he must stand ready to explain why, and that he must  
14 choose a measured response. These officers failed to do that  
15 here. By chasing Michael Chesternut they deprived him in a  
16 very real way of his right to --

17 QUESTION: (Inaudible) if they hadn't pulled up  
18 alongside of him, if they had just stayed 25 yards behind  
19 him?

20 MS. STANYAR: I think it would have been. I think  
21 it would have been different, Your Honor. I think that the  
22 finale, if you will, of confronting him and of running  
23 the cruiser parallel --

24 QUESTION: If they had to stay 25 yards behind him  
25 and then he had thrown away the packets and then stopped just

1 like he did here, thinking that the police were really after  
2 him, that would have been a different case?

3 MS. STANYAR: I believe that it would be. I think  
4 at some point their following him even from a distance behind  
5 could be intimidating. I just don't think under your example  
6 it seems as intimidating as their confronting him and running  
7 parallel with him. I guess that is my answer.

8 QUESTION: How much of a chase was it? How far did  
9 he run before he stopped?

10 MS. STANYAR: In terms of his running, I think the  
11 record reflects that it is somewhere around a half a block.  
12 In terms of their chasing him, they had to go down the first  
13 block and halfway up the second block. So in terms of  
14 time, I would guess, although the record doesn't --

15 QUESTION: But he only ran a half a block --

16 MS. STANYAR: That's correct, Your Honor.

17 QUESTION: -- before he threw away the packets  
18 and stopped?

19 MS. STANYAR: Yes, Your Honor. It is our position  
20 that at that point it had already -- it had instantly become  
21 clear to him --

22 QUESTION: Not much of a chase.

23 MS. STANYAR: Well, Your Honor, I think  
24 that it was enough of a chase to convey to Mr. Chesternut  
25 that these officers were going to detain him immediately. I

1 think that we are not relying on a prolonged confrontation in  
2 support of our seizure argument. What we are relying on here  
3 are other factors, the factor that this was an aggressive and  
4 confrontational situation, a four on one, a police cruiser,  
5 chase of a pedestrian. I think that by doing that these  
6 officers conveyed to him that he was not going to be allowed  
7 to leave.

8           These officers failed to explain why they proceeded  
9 in this case and they have failed to choose a measured  
10 response. By chasing they deprived Michael Chesternut in a  
11 very real way of his right to feel secure and of his right  
12 to go on his way, and for those reasons we would ask that this  
13 Court affirm the judgment of the Michigan Court of Appeals.

14           CHIEF JUSTICE REHNQUIST: Thank you, Ms. Stanyar.

15           Ms. Solak, you have eleven minutes remaining.

16           MS. SOLAK: I thank the Court. I have no further  
17 comments.

18           CHIEF JUSTICE REHNQUIST: Very well, the case is  
19 submitted.

20           (Whereupon, the case in the above-entitled matter  
21 was submitted at 2:59 p.m.)  
22  
23  
24  
25



REPORTER'S CERTIFICATE

DOCKET NUMBER: 86-1824  
CASE TITLE: Michigan v. Michael Mose Chesternut  
HEARING DATE: February 24, 1988  
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence  
are contained fully and accurately on the tapes and notes  
reported by me at the hearing in the above case before the  
United States Supreme Court.

Date: 3/1/88

Margaret Daly  
Official Reporter

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