

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: OHIO, Petitioner v. ROBERT D. ROBINETTE

CASE NO: 95-891

PLACE: Washington, D.C.

DATE: Tuesday, October 8, 1996

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 OHIO, :

4 Petitioner :

5 v. : No. 95-891

6 ROBERT D. ROBINETTE :

7 - - - - -X

8 Washington, D.C.

9 Tuesday, October 8, 1996

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 10:02 a.m.

13 APPEARANCES:

14 CARLEY J. INGRAM, ESQ., Assistant Prosecuting Attorney,
15 Montgomery County, Dayton, Ohio; on behalf of the
16 Petitioner.

17 IRVING L. GORNSTEIN, ESQ., Assistant to the Solicitor
18 General, Department of Justice, Washington, D.C.; on
19 behalf of the United States, as amicus curiae,
20 supporting the Petitioner.

21 JAMES D. RUPPERT, ESQ., Franklin, Ohio; on behalf of the
22 Respondent.

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1 P R O C E E D I N G S

2 (10:02 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 now in Number 95-891, Ohio v. Robert D. Robinette.

5 Mr. Ingram. Oh, pardon me. Ms. Ingram.

6 ORAL ARGUMENT OF CARLEY J. INGRAM

7 ON BEHALF OF THE PETITIONER

8 MS. INGRAM: Mr. Chief Justice and may it please
9 the Court:

10 This case involves a traffic stop, a driver's
11 consent to search, and the discovery of drugs in his car.
12 The question before the Court is whether the Fourth
13 Amendment requires a police officer to warn a motorist at
14 the end of a traffic stop that he's free to go, and that
15 if the officer fails to give that warning, any cooperation
16 by the motorist from that point on must be presumed to be
17 involuntary.

18 QUESTION: Under State law, does the officer
19 have the discretion to give or not to give a ticket after
20 he talks to the motorist?

21 MS. INGRAM: Your Honor, there is a statute
22 that -- if it is a traffic stop, the officer may simply
23 cite the motorist if he has proof of identification, which
24 doesn't have to be a driver's license.

25 QUESTION: Does -- is cite the same as giving a

1 ticket?

2 MS. INGRAM: Oh, I'm sorry, I misunderstood your
3 question. He may cite or warn at his discretion.

4 QUESTION: So he may cite or warn, and that
5 obviously takes a certain amount of time to make that
6 determination of what he's going to do? I take it the
7 officer has a certain amount of discretion.

8 MS. INGRAM: Yes, he does.

9 QUESTION: And so he has to have a certain
10 amount of time within which to exercise that discretion.

11 MS. INGRAM: That's correct, Your Honor.

12 QUESTION: Once he says, I'm not going to give
13 you a ticket, can he change his mind?

14 MS. INGRAM: He could change his mind, certainly,
15 and give the ticket.

16 QUESTION: If there's a flippant response, or a
17 response that indicates that maybe the person has less
18 regard for the law than the officer thought at first?

19 MS. INGRAM: Yes, Your Honor, that's correct,
20 and the question would then become whether or not the
21 officer's decision to change his mind when he told the
22 person he wasn't going to give him the ticket and then
23 decided to give the ticket would have an effect on whether
24 or not the person felt then that he was free to leave, or
25 he was being coerced in some --

1 QUESTION: Quite without reference to a search,
2 the officer would be entitled to detain the motorist after
3 the officer changed his mind and said, well, based on what
4 your remarks are, I've changed my mind. I'm going to give
5 you a ticket.

6 MS. INGRAM: Yes, the officer could do that.

7 QUESTION: There is no right to leave once the
8 officer proceeds in that way until the ticket is written.

9 MS. INGRAM: Right, that's correct, until the
10 ticket is written or the warning is given, yes, Your
11 Honor.

12 QUESTION: And that State law is consistent with
13 our cases, and with the Fourth Amendment?

14 MS. INGRAM: Yes, Your Honor.

15 QUESTION: Let me ask you another nuts and bolts
16 question. When he decides to give a warning, as he did in
17 this case, does he present the motorist with a document, a
18 piece of paper that says, "warning"? Do they record these
19 warnings, or is it customarily, and was it in this case,
20 just an oral statement saying, I warn you not to do it
21 again?

22 MS. INGRAM: Your Honor, it can be done both
23 ways. In this case, on reference to the video tape will
24 show that the officer handed the -- he handed Robinette a
25 written warning.

1 QUESTION: So he had given him a statement which
2 said, in effect, on its face that it was a warning before
3 he began the conversation about whether there was anything
4 improper in the car?

5 MS. INGRAM: Yes, Your Honor, and he had also
6 returned his driver's license to him --

7 QUESTION: Yes.

8 MS. INGRAM: -- at that point.

9 QUESTION: Do you think at that point he could
10 have changed his mind and said, well, I've given you a
11 warning, but after thinking about it I'm going to give you
12 a ticket now?

13 MS. INGRAM: If he had told -- if he had told --
14 if -- it would have been very difficult, then, for the
15 officer to justify, without anything further happening,
16 giving him a ticket on just his change of mind, but --

17 QUESTION: I thought you said earlier that he
18 could --

19 MS. INGRAM: -- the question --

20 QUESTION: I thought you said earlier he could
21 change his mind.

22 MS. INGRAM: After he's given him the warning I
23 think it would be more difficult, but I think that the
24 question of the validity of what he did on that would
25 affect whether or not the speeding ticket, whether or not

1 that was -- whether or not the validity of the speeding
2 ticket was upheld, not whether or not -- it would simply
3 be a factor to be considered when trying to decide whether
4 or not he was detained or whether --

5 QUESTION: Well, I'm asking the question to
6 determine his right to detain the motorist.

7 MS. INGRAM: He had the right -- if the motorist
8 did nothing further but give the officer a flippant
9 answer, then the business of the stop is over, the officer
10 has made his decision to give a warning, the officer's
11 discretion is still controlling it, and under Ohio law,
12 there's nothing that would prevent the officer at that
13 point from issuing him the ticket. The officer has that
14 kind of discretion.

15 QUESTION: After the warning has already -- is
16 the -- it's a written warning?

17 MS. INGRAM: In this case it was, Your Honor.

18 QUESTION: So you can give them both a written
19 warning and then after that say, in addition to that I'm
20 going to give you a ticket?

21 MS. INGRAM: Yes, I --

22 QUESTION: You can do both?

23 MS. INGRAM: I'm sorry, Your Honor.

24 QUESTION: You can do both?

25 MS. INGRAM: Yes. You could void out the

1 written warning --

2 QUESTION: Okay.

3 MS. INGRAM: -- to the extent it's entered, and
4 then issue a ticket.

5 QUESTION: Is there any decisional law or
6 administrative rulings in Ohio to support what you just
7 say, or are you kind of going by, you know, what you think
8 is probably the case?

9 MS. INGRAM: To support the -- to support that
10 the officer can --

11 QUESTION: The idea that he -- the patrolman has
12 given the respondent, here, a warning. The respondent
13 gives the patrolman some indication that he has contempt
14 for the law or something like that, or something causes
15 the patrolman to change his mind. Has that ever come up
16 in any litigated case?

17 MS. INGRAM: I cannot cite you a case. I cannot
18 cite you a case, but I don't know that it hasn't come up.

19 QUESTION: Well, Ms. Ingram --

20 QUESTION: What do you base your answer on,
21 then? I -- what do you base your answer on?

22 MS. INGRAM: On consideration of Fourth
23 Amendment principles that until -- the officer has the
24 right to detain a speeding motorist until he completes the
25 business of the traffic stop, and his decision as to

1 whether or not to issue a ticket or a warning, and the
2 final issuance of a ticket even if he's already issued a
3 warning is part of the business of a traffic stop, so
4 whether or not --

5 QUESTION: No, but I'm asking you, what do you
6 base your answer on as to State law as to whether, having
7 issued a warning, you can then, in light of a flippant
8 answer or anything else, void the warning and issue a
9 traffic ticket?

10 We can't do that. I mean, when we issue a
11 judgment, if the lawyer who loses -- who wins makes some
12 flippant comment about our judgment --

13 (Laughter.)

14 QUESTION: -- we can't call or go back and say,
15 wait a minute, we've thought about it again.

16 (Laughter.)

17 QUESTION: Now, a policeman can do that, though?

18 MS. INGRAM: A policeman has the discretion to
19 decide whether to warn or cite, yes, Your Honor, and --
20 and the fact -- I'm sorry.

21 QUESTION: Well, I know he has the discretion to
22 do that. We have discretion whether to find for the
23 petitioner or for the respondent, but having done so, we
24 cannot then change our mind. What makes you say that a
25 policeman can change his mind?

1 MS. INGRAM: Because a warning is not a final
2 order. It's not -- it's not a final order. It's -- I'm
3 going to give you a warning, he's giving the person a
4 break, he's doing something he doesn't have to do.

5 QUESTION: All right, but you don't base this on
6 any case law that you know of. This is just your own --

7 QUESTION: Well, common sense.

8 QUESTION: Ms. Ingram, is that what happened
9 here, or did he just get a warning and then we went into
10 this business about, may I search?

11 MS. INGRAM: That is not what happened here. It
12 just was the warning, and then the question of, are you
13 carrying any illegal drugs or contraband.

14 QUESTION: Okay, and do you mind telling me, at
15 the traffic stop, did the officer order Robinette to get
16 out of the car before he checked the driver's license, do
17 you know?

18 MS. INGRAM: Your Honor, he checked the driver's
19 license, then ordered him out of the car, then returned
20 the driver's license and gave him a lecture on speeding.

21 QUESTION: Mm-hmm.

22 MS. INGRAM: This was also captured on video
23 tape from the time of the -- from the time he gave him
24 the lecture on speeding and gave him his license back, so
25 an interesting fact about this case is that there's no

1 real dispute about what happened between Robinette and the
2 officer during that actual encounter.

3 QUESTION: May I suggest that your answer about
4 whether he could have changed his mind and all is based on
5 the common sense notion that as long as the two people are
6 standing there together, the officer retains control of
7 the situation?

8 MS. INGRAM: That's correct, yes, Your Honor.
9 Yes, Your Honor.

10 What the Ohio --

11 QUESTION: Is that so even after the ticket is
12 issued?

13 MS. INGRAM: Unless the --

14 QUESTION: You'd say the officer is still in
15 control and the person can't leave, even after he gives
16 him a final ticket? They're still standing there.

17 MS. INGRAM: And --

18 QUESTION: Is the officer in control?

19 MS. INGRAM: If the officer -- if the officer
20 gives him the final ticket, and that is the last thing
21 that has to do with the business of the traffic stop, and
22 nothing further has happened to give the officer any more
23 justification to hold him, then the person is free to go.

24 QUESTION: And the officer isn't in control in
25 that sense.

1 MS. INGRAM: Well, that's correct, and the
2 question, if the person --

3 QUESTION: But he's not free to go when all
4 that's been issued is a warning, is that what you say?

5 MS. INGRAM: If all he's been issued is a
6 warning, and the officer is still acting in such a way to
7 cause this person to believe that his continued presence
8 is required, that he can't leave, then he is detained.

9 QUESTION: Well, so was Robinette still detained
10 here, after the warning was issued? He was not free to
11 go?

12 MS. INGRAM: He was free to go when the --

13 QUESTION: But that contradicts what you've been
14 saying.

15 MS. INGRAM: He was -- I'm sorry, Your Honor.
16 He was free to go in this case when the warning was
17 issued, and when the police officer gave him back his
18 driver's license.

19 In fact, at the suppression hearing he testified
20 that at that point, when the officer then asked him, did
21 you believe you were free to go at that point, he said
22 yes, I did, and he answered that way twice under
23 exam/cross-examination, so not only is their objective,
24 from looking at the video tape evidence, that the officer
25 did nothing coercive, this person himself testified that

1 he believed at that point he was free to go.

2 QUESTION: Was he --

3 QUESTION: Can we go back a little bit in time,
4 because the Ohio supreme court, which is the one thing
5 that we have before us, seemed to say that the lawful stop
6 had ended before the officer commanded Robinette to get
7 out of the car.

8 Under the Ohio supreme court's opinion, once the
9 police office checked Robinette's license, every aspect of
10 the speeding violation had been investigated and resolved.
11 These are the words of the Ohio supreme court. Hence, the
12 Ohio supreme court concluded that the detention stopped
13 being lawful and became unlawful when the officer
14 commanded Robinette to get out of the car. Is that not an
15 accurate statement of what the Ohio supreme court said?

16 MS. INGRAM: Your Honor, that's an accurate
17 statement of the text of the opinion. However, in Ohio --

18 QUESTION: It's the syllabus that counts, and
19 isn't that an accurate statement of the first point in the
20 syllabus?

21 MS. INGRAM: No, Your Honor, it isn't. The
22 first syllabus depends on the resolution of the question
23 of what is continued detention, and if this Court -- and
24 is based and relies on the Court's holding that unless
25 these words are spoken, detention will be presumed, so if

1 this Court were to rule in my favor --

2 QUESTION: But that's the second point in the
3 syllabus. The first point says nothing about the -- the
4 first point just says that the detention -- the extension
5 of the detention was illegal. There's nothing in that at
6 all in that first point about the warning that you are
7 legally free to go. That doesn't come up until point 2.
8 The first point in the syllabus seems just to consolidate
9 the first part of the opinion.

10 MS. INGRAM: Your Honor, the first -- the first
11 syllabus is, I would submit is an accurate statement of
12 the law. However, the -- and to the extent that you're
13 looking to the text of the opinion, I would say that in
14 Ohio the syllabus states the holding of the court on the
15 facts arising from the case. That's the holding of the
16 court. What is in the opinion is simply the opinion of
17 the writer or the author of the opinion.

18 QUESTION: Suppose this opinion just stopped,
19 the syllabus just stopped with point 1. The point 2 is
20 not necessary to the decision. They're alternatives,
21 aren't they? Suppose the decision had stopped with point
22 1, then the second question is academic, isn't it?

23 MS. INGRAM: No, Your Honor, because point 1 is
24 necessarily included in point 2. Point 1 talks about
25 continued detention, and in order to determine what the

1 Ohio supreme court is talking about under the Fourth
2 Amendment when they talk about continued detention, you
3 look to point 2 and see that there's continued detention.
4 We're going to presume that further cooperation is
5 voluntary if the officer has not given this warning, so
6 when that -- when you understand what -- when it's clear
7 what they're talking about in regard to the second for
8 detention --

9 QUESTION: Well, why would one make that
10 assumption when reading the court's own account of it?
11 It's one thing to say only the syllabus states the law,
12 but another thing to say is, we're going to put on the
13 that statement in the syllabus something different than
14 the Ohio supreme court's explanation of the statement.

15 MS. INGRAM: But Your Honor, as this Court has
16 noted in several cases, while the -- the opinion itself is
17 simply dicta, because the text of the syllabus is what the
18 Court holds is the law of the case, and that what is
19 contained in the opinion is simply the -- must be viewed
20 simply as the view of the author of the opinion.

21 QUESTION: Isn't it the -- in Ohio isn't it the
22 case that if there's thought to be ambiguity in the
23 syllabus you can turn to the opinion to interpret one --
24 to give one or another meaning to a syllabus paragraph?

25 MS. INGRAM: That's correct, Your Honor, but my

1 position is, is there is no ambiguity in syllabus 1,
2 because it's a correct statement of the law.

3 QUESTION: But if you go on with the Ohio
4 supreme court's opinion, before they get to this business
5 about a warning they say, even assuming Newsome's
6 detention of Robinette was legal throughout the time when
7 Newsome handed back Robinette his driver's license. The
8 first part of the opinion says it wasn't a legal
9 detention, and then it goes on, even if it was legal,
10 there had to be a warning.

11 So the first part seems to say the detention,
12 once the police officer satisfied himself with the license
13 check, was unlawful, period, and then we go on to, but
14 even if it was lawful.

15 MS. INGRAM: Your Honor, once again I'd ask you
16 to look at the language of the continued detention, and I
17 don't think you can understand that separately from the
18 definition, or the presumption of detention and lack of
19 cooperation given in the second.

20 Now, if this Court were to hold against me --
21 I'm sorry, hold for me on the second proposition of law,
22 and remand the case to the Ohio supreme court with
23 instructions to decide the case using the totality of the
24 circumstances test, then using the totality of the
25 circumstances test, and in view of the first syllabus, I

1 would either win the case or lose the case, but I would
2 lose it on the right standard.

3 They would be saying, here's how we decide when
4 detention occurs. We're not thinking about continued
5 detention because of a failure of warning. We're going to
6 look at the totality of the circumstances, and a court
7 could either --

8 QUESTION: Well, what about Ohio's position that
9 the continued detention was after the license check? Once
10 the license check was done under this first heading, that
11 was the end of the lawful detention, so that according to
12 the Ohio supreme court's explanation of what that first
13 paragraph is about, from the time the officer goes back to
14 the car and tells Robinette to get out, the detention was
15 unlawful.

16 MS. INGRAM: Your Honor, that's -- the court was
17 wrong in that that violates Pennsylvania v. Mimms and this
18 Court's decision in Wren v. United States, but the Ohio
19 supreme court -- and additionally the Ohio supreme court
20 has always held that the protections afforded by its search
21 and seizure provision are the same as afforded under the
22 Fourth Amendment. In fact, it held that back in March
23 1966 in a case called State Ex Rel --

24 QUESTION: Yes, but may I ask two questions.
25 First, this is different from Mimms, because Mimms was a

1 lawful detention. He got out -- ordered him out of the
2 car during a lawful detention. Here, as I understand the
3 first paragraph of the syllabus, it was an unlawful
4 detention after the purpose of -- purpose of the custody
5 had terminated.

6 MS. INGRAM: But Your Honor, at that point when
7 he ordered him out of the car he hadn't even -- he hadn't
8 even talked to him about speeding and he hadn't given him
9 the lecture. The Ohio supreme court also has determined
10 that the officer's subjective -- in line with this Court's
11 decision in Wren v. United States has also held that the
12 officer's subjective state of mind doesn't enter into a
13 reasonableness determination. The --

14 QUESTION: Well, let me put the second question.
15 Do you just take issue with the first paragraph of the
16 Ohio supreme court syllabus?

17 MS. INGRAM: No, I do not.

18 QUESTION: You agree that's a correct statement
19 of law.

20 MS. INGRAM: It's a correct statement of law,
21 but I don't believe -- but I do not believe that if the
22 Court were to agree with me on the second, or disagree
23 with, that that would not -- that that would determine the
24 outcome of the case, or that I would still lose in Ohio.

25 QUESTION: Well, is it not true that we could

1 answer the question presented in the certiorari petition
2 in your favor and still affirm the judgment of the court
3 of -- of the supreme court?

4 MS. INGRAM: I would say you could do that if
5 you would -- if you would affirm -- resolve the second --
6 the question presented in my favor, do a -- perform
7 totality of the circumstances analysis, and conclude that
8 the detention was lawful and that the consent was
9 voluntary.

10 QUESTION: But you say the totality of the
11 circumstances analysis has to be performed somewhere,
12 either in this Court or the supreme court of Ohio?

13 MS. INGRAM: That's exactly right, Your Honor,
14 and I think that should the Court -- should the Court
15 advise the Ohio supreme court or reverse the Ohio supreme
16 court and hold that the totality of the circumstances test
17 is appropriate, whether there's a bright line rule, then
18 if this Court were to look at the totality of the
19 circumstances or to remand, I would either -- I -- the
20 evidence would be such that even under -- it would offer
21 an explanation of what continued detention means under the
22 first syllabus and a review of all the facts and
23 circumstances would indicate that, in this case, where he
24 admitted that he knew he was free to go and that video
25 tape reveals no coercion, that this person was not

1 detained and consented voluntarily.

2 Your Honor, if I may, I'd like to reserve the
3 rest of my time.

4 QUESTION: Very well, Ms. Ingram.

5 Mr. Gornstein, we'll hear from you.

6 ORAL ARGUMENT OF IRVING L. GORNSTEIN
7 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,
8 SUPPORTING THE PETITIONER

9 MR. GORNSTEIN: Mr. Chief Justice, and may it
10 please the Court:

11 The Ohio supreme court held that the Fourth
12 Amendment categorically requires an officer who has
13 stopped a motorist to inform the motorist that he is
14 legally free to leave before any interaction between them
15 can be viewed as consensual. Our position --

16 QUESTION: Supposing we disagree with that
17 holding, is it nevertheless true that we might affirm the
18 judgment in this case?

19 MR. GORNSTEIN: I think that you should not --

20 QUESTION: I understand that, but is it legal --

21 MR. GORNSTEIN: It is possible, if you concluded
22 that on the totality of the circumstances in this case the
23 respondent would not have felt free to leave in light of
24 the officer's conduct in this case, you could affirm the
25 judgment. We would suggest that you go on and conclude,

1 based on the totality of the circumstances, that he was
2 free to leave at that point in time.

3 QUESTION: Why would we make that judgment?
4 Isn't that a judgment that the Ohio supreme court seems to
5 have made?

6 MR. GORNSTEIN: The Ohio supreme court, itself,
7 has not made that judgment except based on the free-to-
8 leave warning rule which appears in the syllabus.

9 QUESTION: Which appears in the opinion after it
10 had made the other judgment.

11 MR. GORNSTEIN: But the first point in the
12 syllabus presupposes --

13 QUESTION: Where are you reading from, Mr.
14 Gornstein?

15 MR. GORNSTEIN: This is from App 1 in the
16 petition.

17 QUESTION: Thank you.

18 MR. GORNSTEIN: It says, when the motivation
19 behind a police officer's continued detention of a person
20 is not related to the purpose of the violation, so that
21 presupposes a continued detention and that it's not
22 related to the violation.

23 Now, nothing in that tells you when the court as
24 a whole concluded that those two things were true, and I
25 would suggest that you should look not at what the opinion

1 writer said -- he gave several different points in which
2 the opinion writer concluded that there was a continued
3 detention and that there was conduct unrelated to the
4 violation going on, and the only thing the court said
5 appears in number 2, syllabus 2, which when you put the
6 two together, I think the only holding of the court is
7 there was continued detention at the time the consent was
8 sought because of the failure to give the free-to-leave
9 warning, and that questioning was unrelated to the
10 violation.

11 I think when you look at the first point, it
12 would -- the opinion writer's view is flawed for two
13 reasons, and that is, 1) he relies on the motivation of
14 the officer, which under this Court's decision in Wren is
15 simply incorrect, it's an objective test, and the second
16 point is, at the point in time at which the officer
17 ordered the respondent out of the car, he had not yet
18 issued a warning, he had not yet returned a license, so it
19 simply is not true that the business of the traffic stop
20 had been completed at that point.

21 I think what the Ohio supreme court opinion
22 writer was suggesting was that the officer was required to
23 reach into the car and to give back the license and to
24 say, here's your warning, rather than order the person out
25 of the car for those purposes, but I think under this

1 Court's decision in Mimms, it is very clear that an
2 officer can do those two things outside the car.

3 QUESTION: Mr. Gornstein, he didn't order him
4 out of the car for those purposes. I think it's conceded,
5 it's not in controversy, is it, that he ordered him out of
6 the car so he could turn on the video tape in the police
7 officer's car and have a video tape of what next
8 transpired?

9 MR. GORNSTEIN: That is correct, but as I was
10 just saying, Justice Ginsburg, it does not matter under
11 the Fourth Amendment what the officer's subjective
12 motivation was, it is what is a reasonable conduct under
13 the circumstances, and under this Court's decision in
14 Mimms, as long as the business of that traffic stop was
15 not completed, a reasonable officer can order a person out
16 of the car to issue the warning --

17 QUESTION: What is your recollection of the
18 Mimms rationale for saying the officer had that authority?
19 It had nothing to do with giving warnings.

20 MR. GORNSTEIN: Well, it had to do with officer
21 safety.

22 QUESTION: Right. Was officer safety implicated
23 here?

24 MR. GORNSTEIN: I think that what Mimms says is
25 that officer safety is categorically implicated every

1 time --

2 QUESTION: Even when the officer just wants to
3 give the guy a lecture?

4 MR. GORNSTEIN: It's --

5 QUESTION: That's what's involved here.

6 MR. GORNSTEIN: Well, every time the officer
7 wants to have interaction with a motorist, he can take
8 into account his safety, yes, that a reasonable officer --

9 QUESTION: And Wren would say even if he doesn't
10 himself subjectively take into account his safety, if that
11 is an objective reason, that's enough.

12 MR. GORNSTEIN: That's correct, Justice
13 Rehnquist. The --

14 QUESTION: But I thought it was on the record
15 objective, the reason that he had Robinette get out of the
16 car was he wanted to video tape their ensuing
17 conversation, which was not going to be related to the
18 traffic stop.

19 MR. GORNSTEIN: But Justice Ginsburg, the --
20 that was what the officer said he wanted to, but the
21 question is, what could a reasonable officer have done in
22 those circumstances where the business of the traffic stop
23 was not yet completed, and a reasonable officer can take
24 into account safety in issuing the warning and giving the
25 lecture and returning the license.

1 QUESTION: Mr. --

2 QUESTION: Mr. Gornstein, do you know whether
3 the Ohio supreme court has had a repeat of this holding,
4 and if so, has it used the Fourth Amendment in addition to
5 the State constitution? Has there been another holding
6 about the --

7 MR. GORNSTEIN: I am not --

8 QUESTION: -- bright line test?

9 MR. GORNSTEIN: I am not familiar with any
10 additional holding, Justice Ginsburg.

11 QUESTION: Mr. Gornstein, just so I understand
12 your argument, you were saying that all of the reasons why
13 there was continuing detention set forth in the opinion as
14 opposed to the one perhaps set forth in number 2 of the
15 syllabus are all invalid reasons.

16 MR. GORNSTEIN: Correct.

17 QUESTION: And so it's either -- it's either
18 part 2 of the appendix or nothing.

19 MR. GORNSTEIN: That's correct, Justice Scalia.

20 QUESTION: Of the syllabus or nothing.

21 MR. GORNSTEIN: Correct.

22 The reason that the Ohio supreme court's per se
23 test should be rejected, for three reasons. First, this
24 Court has in a wide variety of contexts decided whether
25 there is a Fourth Amendment seizure based on the totality

1 of the circumstances. The relevant inquiry has always
2 been whether under the totality of the circumstances an
3 officer's conduct would have communicated to a reasonable
4 person that he was not free to leave. That is the test
5 that has been applied in street encounters, in airports,
6 on buses --

7 QUESTION: And under that test, is his testimony
8 he thought he was free to leave therefore irrelevant?

9 MR. GORNSTEIN: I don't think it is entirely
10 irrelevant, Justice Stevens. I think in this case an
11 admission --

12 QUESTION: His subjective motivation is
13 relevant, but the officer's subjective motivation is not
14 relevant?

15 MR. GORNSTEIN: Well, it tends to show
16 whether -- it's of some relevance, but then you have to go
17 on from there and examine whether -- what a reasonable
18 officer would do. It is not dispositive. Similarly, the
19 cases here, what this particular person thought is of some
20 relevance. You still then have to go on and conclude --

21 QUESTION: Well, similarly, then, is what this
22 particular officer thought of some relevance?

23 MR. GORNSTEIN: It is of some relevance, but it
24 ends up being --

25 QUESTION: Not controlling.

1 MR. GORNSTEIN: Not dispositive, because a
2 reasonable officer could always conclude that it is
3 reasonable to order somebody out of the car when you're
4 going to have interaction and you haven't completed the
5 work of the stop.

6 QUESTION: Is there any difference between a
7 consensual encounter, where the person has never been
8 under detention, and a case where there has been a
9 detention and then it's asserted that the detention ended
10 and the rest was consensual?

11 MR. GORNSTEIN: I would say that you apply the
12 same totality of the circumstances test, but of course, in
13 applying that test, you take into account in deciding
14 whether at a later point in time something is consensual
15 or a seizure, that at an earlier point in time there was a
16 seizure.

17 That is a relevant factor in deciding, but it
18 does not change the ultimate inquiry, which is whether on
19 the totality of the circumstances at the later point in
20 time the officer's conduct would have communicated to a
21 reasonable person that he was not free to leave.

22 QUESTION: Mr. Gornstein, maybe -- maybe we
23 should adopt a new rule that in addition to when you're
24 still in custody, there's another situation in which
25 things have to be made absolutely clear, and that is, when

1 your denial of permission for a search may impose upon you
2 some sanction that otherwise wouldn't be imposed.

3 I mean, there is the suggestion here that even
4 if this person was no longer under custody, his saying no
5 to the search of his car might have produced a traffic
6 ticket. I agree, it's -- I would have taken the traffic
7 ticket rather than the conviction for marijuana, but does
8 that coercion invalidate the search?

9 MR. GORNSTEIN: It does not, because that is not
10 anything that the officer said or communicated to this
11 particular individual, and that is the test for deciding
12 whether there is coercion in -- for purposes of whether a
13 search should be invalidated.

14 QUESTION: Thank you, Mr. Gornstein.

15 Mr. Ruppert, we'll hear from you.

16 ORAL ARGUMENT OF JAMES D. RUPPERT

17 ON BEHALF OF THE RESPONDENT

18 MR. RUPPERT: Mr. Chief Justice, if it please
19 the Court:

20 Before I discuss specifically the merits of the
21 case, if I might I'd like to approach a ground which we
22 think would be dispositive of the case, and that is
23 whether the writ should be dismissed for having been
24 improvidently granted.

25 The reason for the position is twofold.

1 Number 1, it is clear that if there are adequate and
2 independent State grounds for the decision of the State's
3 highest court that that situation, when confronted by this
4 Court, is such that the Court will generally not review
5 the case, and we believe that is the case here. The
6 second syllabus starts, the right guaranteed by the
7 Federal and high Constitution to be secure in one's person
8 and property requires the citizen stopped for traffic
9 offenses be clearly informed when they are free to go.

10 Under the law in Ohio, the supreme court has
11 recognized its own inherent power. It did that in Arnold
12 v. Cleveland, where it indicated that the Ohio
13 constitution is a document of independent force.

14 QUESTION: Well now, Mr. Ruppert, as I recall,
15 the Ohio supreme court appeared to be interpreting Federal
16 law here, and cited a number of Federal cases, and in
17 general Ohio has followed the Federal interpretation of
18 the Fourth Amendment, isn't that true?

19 MR. RUPPERT: I would agree that in some cases,
20 but the Ohio court has also recognized its inherent power
21 to reject --

22 QUESTION: Well, there's no question that Ohio
23 could adopt this per se rule as a matter of Ohio law if it
24 wants to, but unless it's clear from the face of the
25 opinion that it has rejected the Federal rule and is

1 adopting something as a matter of State law only, under
2 Michigan v. Long we assume that it's interwoven with
3 Federal law and we have jurisdiction.

4 MR. RUPPERT: I understand --

5 QUESTION: I think your position would require
6 us to reject or overturn Michigan v. Long.

7 MR. RUPPERT: I don't think so in my first
8 analysis, Justice O'Connor, and my reason for saying that
9 is when one looks at the syllabus, which indicates the
10 right which the court is addressing is guaranteed by the
11 Federal and Ohio constitution. Under Ohio law, under
12 Williamson Heater Company, that's cited in the brief, the
13 syllabus of the decision of the Ohio supreme court states
14 the law of Ohio.

15 QUESTION: But Mr. Ruppert, in Michigan v. Long
16 we talked about opinions of State courts, not syllabi, and
17 although Ohio may have a special rule as to the holding of
18 its court, I think Michigan v. Long would require us to
19 look at the opinion rather than just the syllabus to
20 decide whether the Michigan v. Long test is satisfied.

21 MR. RUPPERT: I would agree with the Chief
22 Justice that would be appropriate, Your Honor. There is
23 an issue concerning Michigan v. Long, given subsequent
24 cases that arose. Coleman v. Thompson and Ylst v.
25 Nunnemaker, decided by this Court.

1 QUESTION: Ylst.

2 MR. RUPPERT: Ylst v. Nunnemaker, yes, Mr. Chief
3 Justice, and it indicated -- the Court's review of the
4 cases in that seemed to indicate that a rebuttable
5 presumption might be appropriate.

6 QUESTION: It's your position that if the Ohio
7 supreme court says, we are basing our interpretation of
8 the Ohio constitution's unreasonable searches and seizure
9 provision upon the interpretation the Supreme Court of the
10 United States has given to the Federal provision, but it
11 is nonetheless an independent provision of the Ohio
12 constitution, you think that's enough to get around
13 Michigan v. Long?

14 MR. RUPPERT: That is my position, Your Honor.

15 QUESTION: Well, I don't think it's ours.

16 MR. RUPPERT: All right.

17 QUESTION: I think our cases indicate that if
18 you're basing your interpretation of State law upon the
19 Federal Constitution, even though you say it's a separate
20 provision of State law, the issue is not whether it's a
21 separate provision of State law, it's whether your
22 interpretation of it rests upon this Court's
23 interpretation of the Federal Constitution.

24 MR. RUPPERT: I understood that, Justice Scalia.
25 My own interpretation, in terms of analyzing the case, was

1 that if this Court acts and based upon syllabus number 2,
2 if this Court would, for example, determine the Ohio court
3 was in error under the Federal Constitution, the result
4 under the Ohio constitution would not change, and this
5 Court's opinion would be in advisory in nature --

6 QUESTION: Mr. Ruppert --

7 MR. RUPPERT: -- with regard to that State
8 ground.

9 QUESTION: -- do you -- would you answer the
10 question I asked Mr. Gornstein any differently? Has
11 there -- have there been any subsequent decisions in Ohio
12 that place this warning solely on the Ohio constitution
13 rather than on both?

14 MR. RUPPERT: There are no cases, Justice
15 Ginsburg, that I have located that predicate its decision
16 solely upon the Ohio case law.

17 Looking at the merits of the case, obviously the
18 issues that the supreme court confronted were significant
19 in terms of its citizens in Ohio, and the backdrop of the
20 case is extremely important, because the Court of Appeals
21 of the Second District, that reviewed this case initially,
22 indicated that it was adopting its holding and its opinion
23 in State v. Rutherford, which was another case involving
24 the same deputy, and what the Ohio court was confronted
25 with, and what gave rise to this significant issue, was

1 that the officer in that case, Deputy Newsome, who is the
2 same officer in this case, indicated that in the year
3 Mr. Robinette was stopped he had obtained consent searches
4 in 786 cases. That's one officer in one county in the
5 State of Ohio.

6 QUESTION: Well, good for him, so long as he
7 hasn't violated the Federal Constitution. I mean, the
8 fact that it's effective doesn't show that it's unlawful.

9 MR. RUPPERT: I would agree with that, Justice
10 Scalia. What it does raise, however, are two significant
11 points which the supreme court was concerned about.
12 That's one officer in one county, which certainly could
13 indicate that this same practice is affecting Ohio
14 citizens and other citizens --

15 QUESTION: What county was it?

16 MR. RUPPERT: I'm sorry, Your -- Mr. Chief --

17 QUESTION: What county was it?

18 MR. RUPPERT: That was Montgomery County, Your
19 Honor.

20 QUESTION: That's --

21 MR. RUPPERT: Dayton, Ohio.

22 QUESTION: Dayton.

23 MR. RUPPERT: So the Court was concerned that
24 this may literally be involving thousands of motorists.

25 Secondly, the fact that the officer indicated

1 that in all cases in which he sought a search, he got
2 consent to search, would simply indicate to the court in
3 its facing the problem that perhaps motorists do not
4 realize that they do not have the liberty of refusing
5 consent to search, so it is significant data, and there is
6 very little other data that's available, no record to tell
7 us how many innocent citizens are stopped, are subjected
8 to search, and how that impacts not only citizens of Ohio
9 but citizens of other States.

10 QUESTION: Well, this fellow certainly wasn't
11 innocent. He was driving 69 miles an hour in a 45-mile-
12 an-hour zone, wasn't it?

13 MR. RUPPERT: That is correct, Mr. Chief
14 Justice. There's no question that he violated the statute
15 and the stop was appropriate.

16 What is important when the court looked at this
17 case is that it is clear from the record in this case that
18 the deputy had indicated that he in fact had determined in
19 his own mind that he was going to give a warning and
20 nothing more, and he made that determination after he
21 obtained the driver's license and before he ever removed
22 Mr. Robinette from the vehicle.

23 QUESTION: So you agree that the criterion for
24 deciding what he could and couldn't do, what was lawful,
25 what was unlawful, was not his subjective determination,

1 but an objective assessment of the facts. You agree with
2 that.

3 MR. RUPPERT: What the officer could do would be
4 an objective determination. What the facts are in this
5 case, which the Supreme Court is looking at to make its
6 judgment on, is subjective in nature.

7 QUESTION: But the subjective fact is not
8 dispositive. You agree with that, I take it.

9 MR. RUPPERT: I would agree that the subjective
10 fact itself is not dispositive of the broader issue.

11 QUESTION: Okay.

12 QUESTION: And also, in cases where we've been
13 trying to determine for Fourth Amendment purposes at what
14 point a seizure occurs, have we not looked at the totality
15 of the circumstances?

16 MR. RUPPERT: Yes, Justice O'Connor.

17 QUESTION: And why shouldn't the converse be
18 true when we're looking to determine when a seizure has
19 ended? Why wouldn't we look again at the totality of the
20 circumstances?

21 MR. RUPPERT: I would believe that under the
22 Ohio court opinion that they did not discard the totality
23 of circumstances, because the court --

24 QUESTION: Well, do you think that's the proper
25 rule, then, look to the totality of the circumstances?

1 MR. RUPPERT: I think that the totality of
2 circumstances rule is fine in search and seizure cases.
3 This Court's -- the Ohio court's opinion did not intend,
4 nor does it suggest that it's going to supplant that. The
5 Ohio --

6 QUESTION: Well, it certainly looks like it to
7 me, as I read paragraph 2 of the syllabus, accompanied by
8 the opinion. They appear to have engrafted on it a per se
9 rule in determining when a seizure ends, that you have to
10 have a warning.

11 Now, I thought in general we would look to the
12 totality of the circumstances. Now, maybe we would end up
13 with the same result here. I don't know. Nobody applied
14 that test.

15 MR. RUPPERT: Well, as this Court said, Justice
16 O'Connor, in Florida v. Royer, in that opinion the Court
17 addressed one of the issues in regard to that was an
18 unlawful detention, and therefore any consent obtained was
19 invalid, but the Court indicated in that opinion very
20 similar to what the Ohio court rationalized, and that is
21 that all that would have been necessary for the officer to
22 do is return the driver's license and the ticket, and
23 advise Mr. Royer that he was free to go. That is in the
24 language of the --

25 QUESTION: But the difference between the Royer

1 opinion, as I read it, and the supreme court of Ohio
2 opinion here, is the Supreme Court opinion says in so many
3 words we're laying down a per se rule, regardless of the
4 circumstances, and Royer was a totality of the
5 circumstances case.

6 MR. RUPPERT: I would agree with that, Mr. Chief
7 Justice, it certainly was, and -- but what the court has
8 recognized here in light of the facts of this case and
9 what's developed is, how does the citizen truly know when
10 he can or cannot leave, when he can walk away, because
11 part of the totality of the circumstance is an analysis of
12 what is the citizen confirming, what is the officer doing,
13 what is the citizen, or the motorist standing there, what
14 understanding did he have of what is transpiring, and what
15 the Ohio supreme court looks at is, attempting to provide
16 at least some very minimal protection to the motorist
17 who's confronted with the situation.

18 Because it is true that until the officer tells
19 the motorist that he can leave, the average person would
20 certainly not feel free to depart if the officer continues
21 his discussion with him. He's inquiring about where
22 you've been and where you're going, and who's with you
23 and --

24 QUESTION: -- May I ask --

25 MR. RUPPERT: -- the average person does not

1 feel free --

2 QUESTION: May I ask you one question --

3 MR. RUPPERT: -- while the officer --

4 QUESTION: -- Mr. Ruppert?

5 MR. RUPPERT: Yes, Justice Stevens.

6 QUESTION: Refresh my recollection. Did the
7 court of appeals, the intermediate court in Ohio, did they
8 decide that the detention continued without relying on any
9 per se rule?

10 MR. RUPPERT: Yes, Justice Stevens. The court
11 of appeals opinion did not refer to any per se rule at
12 all.

13 QUESTION: Does that -- is that holding entitled
14 to any deference, in your view?

15 MR. RUPPERT: From the Ohio supreme court, or
16 this Court?

17 QUESTION: From a Federal court reviewing the
18 results of a State criminal proceeding.

19 MR. RUPPERT: My understanding of this Court's
20 opinion in Arnell is that that review would be de novo.
21 It certainly would be considered by the court, but the
22 court is not -- it's not necessary to give deference to
23 the --

24 QUESTION: And the other question I had, in your
25 view that you -- I know you argue the detention continued

1 during the interrogation. In your view, was that
2 detention lawful or unlawful?

3 MR. RUPPERT: In my view the detention was
4 unlawful, and the supreme court very precisely analyzed
5 that issue. The court pointed out that when Newsome
6 returned to Robinette's vehicle, at -- all aspects of the
7 traffic stop had been concluded. He had checked the
8 license, it was valid, the registration was okay, he had
9 already determined he was going to issue a warning, so he
10 then went back, and the only reason, according to the
11 record in this case and Deputy Newsome, for removing
12 Robinette from his vehicle was for the purpose of placing
13 him in front of the cruiser so that he could begin -- then
14 begin the --

15 QUESTION: We've just gone around on that. That
16 has to do with his subjective intentions, and the issue
17 was whether objectively an officer could have asked -- he
18 still had to issue the warning. He hadn't issued the
19 warning yet, had he?

20 MR. RUPPERT: He had not issued the warning.

21 QUESTION: He had determined he was going to
22 issue a warning, but he hadn't issued it, and the question
23 is whether, knowing there was still going to be
24 interaction, a reasonable officer could have had the
25 intention of having him exit the car just to be sure he

1 wasn't armed. That's perfectly okay.

2 But let -- as I understand it, Mr. Ruppert, you
3 are not contending that this is invalid because there was
4 some coercion placed upon the motorist in his knowing that
5 if he didn't allow the search he might get a traffic
6 ticket instead of just a warning. That's not in this
7 case, is it?

8 MR. RUPPERT: I have no evidence of that, Your
9 Honor. That is an issue that obviously comes to mind,
10 because the citizen --

11 QUESTION: But it's not in your question
12 presented, and it's not before us, is it?

13 MR. RUPPERT: It is -- there isn't -- there are
14 no facts in the record.

15 QUESTION: But I thought there was a fact in the
16 record. I thought he testified that in fact he did not
17 feel that he could refuse the request for the search.
18 Isn't that a relevant fact?

19 MR. RUPPERT: Perhaps I misunderstood the import
20 of Justice Scalia's question. It is true that the record
21 indicates that the first thing that happened was, he was
22 asked, did you feel at the time that the officer gave you
23 your license you were free to go? He said yes, but the
24 immediate conversation after that took place, and his
25 response was that he was shocked when he was asked about

1 drugs, or about, are you carrying any illegal contraband.

2 Then the followup question to that was, do you
3 mind if I searched? He testified that he was shocked, and
4 felt that he had no choice but to --

5 QUESTION: Did he say why he was shocked, in
6 view of the fact that he did have drugs in the car?

7 (Laughter.)

8 MR. RUPPERT: He did not indicate why he said
9 that he was shocked, Your Honor, Mr. Chief Justice. He
10 simply indicated he was shocked when confronted with that
11 question.

12 QUESTION: Well, Mr. Ruppert --

13 MR. RUPPERT: Perhaps he didn't remember that he
14 had a half a pill there.

15 QUESTION: Mr. Ruppert, your question presented
16 still only presents the question of whether this
17 transaction was unlawful because the detention hadn't
18 concluded. It doesn't raise the other question at all.

19 MR. RUPPERT: That is correct, Your Honor. It's
20 just a very narrow decision by the Ohio supreme court.
21 The detention was unlawful, and any consent he had given
22 was invalid as a result of the unlawful detention. In
23 fact --

24 QUESTION: The --

25 MR. RUPPERT: I'm sorry, Justice Breyer.

1 QUESTION: The trial judge looked at the tape
2 and reached a conclusion in part on the basis of the tape.
3 Is there anything that suggests whether or not the two
4 appellate courts looked at the tape? I couldn't find
5 anything in the opinion that said that they did.

6 MR. RUPPERT: The appellate court, I don't think
7 it's clear. It was -- the tape was in the record. I do
8 not specifically recall whether any specific comments that
9 would indicate that they did look at the tape.

10 QUESTION: If that's so, I'm wondering if
11 there's some deference due. The tapes are awfully good
12 checks against serious police abuse, very good checks. Is
13 there any sense in deferring more to those judges who use
14 them than those who don't?

15 MR. RUPPERT: I think that may provide some
16 added assistance in reviewing the opinion for those judges
17 who do. However, in the trial court's decision, the trial
18 court never approached the issue of whether this was an
19 unlawful detention. That issue was not discussed by the
20 trial judge.

21 Justice -- I think it was Justice Ginsburg that
22 had asked earlier concerning the first syllabus in this
23 case. Syllabus number 1 that appears in this case,
24 neither the State nor the Government in its brief or in
25 argument have contested syllabus number 1 which is before

1 the Court, which clearly finds that there was an unlawful
2 detention, and that any consent that was obtained from Mr.
3 Robinette as a result of that unlawful detention cannot be
4 upheld, since it is the product of that illegal detention.

5 QUESTION: Yes, but the question is, why was the
6 detention found to be illegal, and what the Government
7 says is, there are only two alternatives, number 1 for the
8 reasons set forth on the opinion, but both of those are on
9 their face wrong under Federal law, or perhaps it was
10 unlawful because of the reasons set forth in number 2 of
11 the syllabus, and that's what we're debating about now,
12 isn't it, whether the mere fact that the officer did not
13 give notice that you were free to leave rendered it
14 unlawful.

15 Are you content to rest the debate on that, or
16 do you think that we have to look somewhere else?

17 MR. RUPPERT: I think the only -- I'm content
18 with the issue as framed by the Justice. However, it is
19 clear that, at least in my understanding of both Federal
20 and Ohio law, that the syllabus, syllabus number 1 that
21 directs itself to the unlawful detention, is in compliance
22 with Federal law.

23 QUESTION: You still think that syllabus 1 could
24 mean that the detention was unlawful for a reason that is
25 neither set forth in the opinion nor is set forth in

1 syllabus number 2? We should read it that way?

2 MR. RUPPERT: No. No, Your Honor, I do not.

3 QUESTION: Well --

4 MR. RUPPERT: I don't mean to suggest that.

5 The -- syllabus number 1 clearly rests upon the
6 facts, as the high Supreme Court set forth in its opinion.

7 QUESTION: Well, not the facts. What principle
8 of law do you think rendered the determination in syllabus
9 number 1 that the detention was -- had not ended? What
10 principle of law was that based on?

11 MR. RUPPERT: It was based upon the Terry
12 analysis that the initial intrusion that was justified in
13 the first instance had been -- that there were no
14 additional facts that expanded the scope of the basis for
15 the original detention, and therefore the officer was --
16 had exceeded permissible search as a result of that.

17 QUESTION: I thought that what we're talking
18 about is the duration of the detention.

19 MR. RUPPERT: I think one of the facts the
20 supreme court looked at what the time. That is, the time
21 relationship between when the initial stop occurred and
22 when the officer had completed his, and the subsequent
23 events.

24 The Court also looked to the question of whether
25 there were any intervening circumstances that impacted

1 upon the officer's conduct, and finally looked at the
2 conduct of the officer in terms of whether what were his
3 specific actions, and was it flagrant and purposeful, and
4 basically the analysis seemed to parallel this Court's
5 analysis in the Royer case in viewing the conduct that was
6 involved, and the Ohio supreme court specifically
7 addressed the fact that once the officer had determined
8 that in his mind all of the circumstances relating to the
9 original purpose of the stop were completed, then one
10 could not justify the subsequent actions that occurred.

11 It is basically respondent's position that what
12 the Ohio supreme court attempted to do in reviewing the
13 facts of this case was to provide some minimal protection
14 that is available under the Fourth Amendment, and that's
15 all they were trying to do. The court does not --

16 QUESTION: May I ask -- I want to be sure about
17 some facts. When exactly did the officer give him back
18 the driver's license?

19 MR. RUPPERT: After he removed him from the car
20 and placed him in front of the cruiser, the officer then
21 went to his cruiser, turned on the video, returned back,
22 and then as he began talk to him, he handed his license --

23 QUESTION: After he had started questioning him?

24 MR. RUPPERT: After he had started
25 questioning --

1 QUESTION: And the dissenters on the court will
2 say that that's the moment when he gave him the driver's
3 license, that's when the detention ended.

4 MR. RUPPERT: Right.

5 QUESTION: So ordering him out of the car was
6 part of the detention, and the first few questions were
7 part of the detention, or at least -- I don't know, just
8 the first question or two.

9 MR. RUPPERT: Right. That was the view of the
10 dissent, Justice Stevens.

11 QUESTION: Yes.

12 MR. RUPPERT: And --

13 QUESTION: I guess that's the State's view here,
14 too, isn't it?

15 MR. RUPPERT: Still -- there still arises the
16 issue of the officer's conduct behind that, and one of the
17 things the Ohio supreme court was concerned about was the
18 fact that while that is transpiring, that one follows the
19 other. There is no interval. The officer didn't stop
20 talking. He hands him his license, and he's talking
21 about, we've had some traffic accidents, and -- but let
22 me -- before you get going let me ask you one other
23 question. And then the subsequent sequence of events
24 occurred.

25 It is respondent's position that under the

1 Fourth Amendment the analysis that was entertained by the
2 Ohio supreme court was an appropriate one. It certainly
3 is consistent with the authority of this Court on -- under
4 Fourth Amendment cases, and we would urge affirmance of
5 the supreme court's decision.

6 QUESTION: Thank you, Mr. Ruppert.

7 Ms. Ingram, you have 1 minute remaining.

8 REBUTTAL ARGUMENT OF CARLEY J. INGRAM

9 ON BEHALF OF THE PETITIONER

10 MS. INGRAM: Thank you, Mr. Chief Justice.

11 The State's position is that there's nothing so
12 peculiar about a traffic stop that requires the imposition
13 of a bright line threshold, and this is a threshold, not a
14 test.

15 It's a burden without a benefit, because once
16 that threshold is met of showing that these warnings were
17 given, the analysis must proceed to whether or not, under
18 the totality of the circumstances, there was a detention
19 and consent was voluntary, so while it imposes the burdens
20 of a bright line test, it doesn't afford the benefit of
21 clarity or certainty that bright line tests normally --

22 QUESTION: Am I correct that you think the
23 detention ended when the officer gave him the driver's
24 license back?

25 MS. INGRAM: Yes.

1 QUESTION: But it continued up until then?

2 MS. INGRAM: Yes, and it was lawful, lawfully
3 continued until then.

4 For these reasons, I'd ask the Court to --

5 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Ingram.

6 MS. INGRAM: -- reject -- thank you.

7 CHIEF JUSTICE REHNQUIST: The case is submitted.

8 (Whereupon, at 10:57 a.m., the case in the
9 above-entitled matter 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:

OHIO, Petitioner v. ROBERT D. ROBINETTE
CASE NO. 95-891

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Ann Marie Federico
(REPORTER)