

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: PATRICK KNOWLES, Petitioner v. IOWA

CASE NO: 97-7597 C.J.

PLACE: Washington, D.C.

DATE: Tuesday, November 3, 1998

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IN THE SUPREME COURT OF THE UNITED STATES

- - - - -X
PATRICK KNOWLES, :
Petitioner :
v. : No. 97-7597
IOWA :
- - - - -X

Washington, D.C.

Tuesday, November 3, 1998

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:07 a.m.

APPEARANCES:

PAUL ROSENBERG, ESQ., Des Moines, Iowa; on behalf of the
Petitioner.

BRIDGET A. CHAMBERS, ESQ., Assistant Iowa Attorney
General, Des Moines, Iowa; on behalf of the
Respondent.

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1 PROCEEDINGS

2 (11:07 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 97-7597, Patrick Knowles v. Iowa.

5 Mr. Rosenberg.

6 ORAL ARGUMENT OF PAUL ROSENBERG

7 ON BEHALF OF THE PETITIONER

8 MR. ROSENBERG: Mr. Chief Justice, and may it
9 please the Court:

10 By statute in Iowa, police are authorized to
11 search any motor vehicle in which the driver receives a
12 traffic citation. The question presented here is whether
13 Iowa's search incident citation statute shall be adopted
14 by this Court as a new category of per se reasonable
15 searches.

16 It was in March of 19 --

17 QUESTION: I'm not sure that's what the statute
18 does. The statute says, I believe, the issuance of a
19 citation in lieu of arrest or in lieu of continued custody
20 does not affect the officer's authority to conduct an
21 otherwise lawful search. So, I took it that the issue was
22 whether this was a lawful search, not whether the statute
23 said there can be a full-blown search. I thought it left
24 it to the subsequent determination of whether the search
25 was lawful.

1 Now, in this case, the Iowa court said that a
2 full search was lawful but, in the course of that, seemed
3 to rely, at least in part, on Federal law under the Fourth
4 Amendment.

5 MR. ROSENBERG: Well, the Iowa Supreme Court has
6 construed this language that says otherwise lawful search
7 to extend the search incident to -- excuse me -- search
8 incident to arrest exception to encompass those
9 circumstances where a citation is issued and there is in
10 fact --

11 QUESTION: Well, I thought what the court below
12 did was to say that a full search on the occasion of a
13 traffic citation was lawful in their view. Isn't that
14 what happened?

15 MR. ROSENBERG: Yes. Yes, they did say that.

16 QUESTION: Yes. It isn't that the statute
17 requires that result. They said that kind of a search is
18 lawful. So, I guess what we have to decide is whether
19 under the Federal Constitution that's correct.

20 MR. ROSENBERG: That's correct, Your Honor.

21 In March of 1996, Mr. Knowles was pulled over
22 for speeding in Newton, Iowa. In all respects, this was a
23 routine traffic encounter. Mr. Knowles was obedient to
24 the single deterrent to pull over. He produced a valid
25 driver's license. A computer check revealed that there

1 were no warrants for his arrest, and the police officer
2 testified that he had no suspicion --

3 QUESTION: Mr. Rosenberg, could you just back up
4 for a minute because in your answer to Justice O'Connor,
5 you said something that I didn't understand you had
6 challenged. That is, I didn't understand that you had
7 contested the authority to make a full custodial arrest
8 for speeding. You had only contested that if they don't
9 and they merely give him a citation, then they can't
10 search. But I hadn't realized that you had raised the
11 question that Justice Stewart left over in the Gustafson
12 case, which was whether you could have constitutionally a
13 full arrest for a traffic violation. Where did you raise
14 that question?

15 MR. ROSENBERG: We didn't raise the question of
16 lawfulness of the arrest. We're only questioning the
17 lawfulness of the subsequent search.

18 QUESTION: Well, then your answer to Justice
19 O'Connor was not right because she asked you if you were
20 contesting the authority to make a full custodial arrest
21 on the basis of a traffic violation, and you said you
22 were. But I understood that you were not, that you were
23 making a more limited challenge, that is, if -- assuming
24 they could make a full custodial arrest, they didn't. All
25 they did was issue a citation. Having done just a

1 citation, they cannot engage in -- in a full search.

2 MR. ROSENBERG: If I answered that way to
3 Justice O'Connor's question, then I misspoke. The statute
4 says otherwise lawful search. The Iowa Supreme Court held
5 that the search was lawful. At no stage in the proceeding
6 from the district court to the Iowa Supreme Court to this
7 Court have we contested the validity of the arrest --
8 excuse me -- the stop in this case or the authority to
9 arrest in the circumstances of a traffic citation.

10 QUESTION: Arrest and make a full custodial --
11 make a full search.

12 MR. ROSENBERG: Yes, under --

13 QUESTION: So, all that we're talking about is
14 if they don't exercise that authority, authority you're
15 not challenging, and merely issue a citation, can they
16 nonetheless go ahead. So, that's what we're talking
17 about.

18 MR. ROSENBERG: That's correct, Your Honor.

19 The officer testified that he had no suspicion
20 that Mr. Knowles was carrying contraband or a weapon or
21 that he had such items concealed on his person or in his
22 car. At this point, being satisfied, he issued the
23 citation to Mr. Knowles, handed it to him, and Mr. Knowles
24 signed it.

25 At this point, the officer radioed for backup

1 and searched Mr. Knowles' person and his automobile. He
2 found a small quantity of marijuana and what the officer
3 called a pot pipe.

4 At the suppression hearing, the officer
5 testified that he had no justification and no search --
6 excuse me -- no consent to conduct a search. He was
7 relying entirely on Iowa's search incident to citation
8 law.

9 The Supreme Court, in deciding Mr. Knowles'
10 appeal, essentially held that the search incident to
11 arrest doctrine, which in United States v. Robinson was
12 held to be a per se reasonable search, that this doctrine
13 was going to be extended by the State of Iowa by virtue of
14 the statute to situations in which a citation was issued.

15 The fundamental premise of the Iowa Supreme
16 Court's decision was that the search incident to arrest
17 doctrine does not require a custodial arrest. It merely
18 requires grounds for arrest or cause for arrest. This
19 premise is incorrect.

20 The search incident to arrest doctrine has
21 historical legitimacy. It existed at the common law in
22 this country and in England, and it was always thought to
23 involve search incident to arrest as a necessary and, it
24 was assumed, reasonable search. There was no comparable
25 historical roots or historical legitimacy for a search

1 incident to a citation or a search incident to any other
2 means by which a criminal prosecution would be commenced
3 outside of an arrest.

4 Also, in --

5 QUESTION: Do you think it's -- it's clear that
6 a stop or a traffic offense committed in the officer's
7 presence is not an arrest?

8 MR. ROSENBERG: The actual --

9 QUESTION: Is that clear?

10 MR. ROSENBERG: The actual stop would not be an
11 arrest.

12 QUESTION: Is the person free to leave?

13 MR. ROSENBERG: No. That would be a -- a -- a
14 seizure, a brief detention, and this Court has held that
15 it's a seizure. But in order to effectuate an arrest, the
16 officer would have to essentially handcuff the person and
17 take them to the police station. An arrest --

18 QUESTION: Handcuffs are required?

19 MR. ROSENBERG: All arrested persons are
20 handcuffed, yes.

21 QUESTION: Well, would you agree then if the
22 officer made the valid stop and exercised the -- the
23 option, which -- which it is understood I think clearly
24 that he has, to require the driver to get out of the car,
25 the officer at that point could at least have -- have gone

1 to -- to the -- to the point of a Terry kind of pat-down
2 search? Do you -- do you concede that?

3 MR. ROSENBERG: If he had the necessary
4 suspicion --

5 QUESTION: No. He's -- well, we assume that
6 it's a valid stop for a traffic violation, and we assume
7 that he has ordered the person out of the car so that the
8 driver is standing right in front of him. Could he not
9 then have -- have conducted a Terry pat-down without more?

10 MR. ROSENBERG: He could have conducted a Terry
11 pat-down.

12 QUESTION: Okay.

13 QUESTION: That would be regardless of any
14 suspicion caused by the appearance of the person or bulge
15 in his waist or something like that?

16 MR. ROSENBERG: Well, as recently as Minnesota
17 v. Dickerson, the -- this Court has reaffirmed the
18 requirement of Terry, that there be some articulable basis
19 to believe this person is armed and dangerous.

20 QUESTION: That's why I don't understand your
21 response to Justice Souter. I -- don't you think that the
22 mere fact that the person was speeding creates such an
23 articulable reason why you have to search the person?

24 MR. ROSENBERG: No, I don't believe that simply
25 speeding --

1 QUESTION: Then your answer to me should have
2 been different, shouldn't it? Shouldn't you have said,
3 no, he does not have the basis for a Terry pat-down?

4 MR. ROSENBERG: Yes, that's correct.

5 QUESTION: Well, you've -- you have conceded
6 that he could have been arrested, and what is it under
7 Iowa law that it takes, you said, handcuffs going to the
8 station? Is that necessary? Suppose the officer had just
9 said, I'm placing you under arrest, and he said those
10 words before he searched the driver and the passenger and
11 the inside of the car. Suppose he said, you're under
12 arrest, and then he conducted the search.

13 MR. ROSENBERG: If he had done that, then it
14 would have been a valid search incident to a lawful
15 arrest.

16 QUESTION: So, the whole thing turns on whether
17 the officer says you're under -- you're under arrest or
18 here's a ticket.

19 MR. ROSENBERG: Yes, but that is a distinction
20 that -- that --

21 QUESTION: Then what happened to the handcuffs
22 and the station? I'm trying to determine what constitutes
23 an arrest under Iowa law, and if all it takes is the
24 words, you're under arrest, then it's a different case
25 than if you have to go through quite an -- an involved

1 procedure to effect the arrest.

2 MR. ROSENBERG: Well, Your Honor, an arrest in
3 Iowa does not differ in terms of the seriousness of the
4 offense. An arrest is placing somebody in the custody of
5 the State. The State exercises dominion over their body,
6 and they are arrested for the purposes of commencing a
7 prosecution for a public offense. It necessarily entails
8 going to the jail and being booked at the jail and having
9 to post bond. That is what I understand to be --

10 QUESTION: Well, then you're giving a different
11 answer to the one you gave before when I asked you, is it
12 enough that the officer says, you're under arrest. This
13 is -- the officer says, you're under arrest. He then
14 searches the car, finds whatever was found here, a small
15 bit of marijuana, a pipe, then brings the person who he
16 has already told you're under arrest down to the station
17 house.

18 MR. ROSENBERG: I didn't mean -- I just meant to
19 say that when the officer says you're under arrest, that
20 would commence the arrest process. That is not the entire
21 arrest. That would begin the arrest process. You are
22 under arrest. The officer would take control of the
23 person. Then the rest of the procedure would have to
24 be --

25 QUESTION: Your basic argument here, as -- as I

1 understand it, is that while there is a justification for
2 a full search when you have an arrest, take the person
3 into custody, the -- as we said in -- in Robinson, those
4 facts are not present when you simply issue a citation.

5 MR. ROSENBERG: That's correct, Your Honor.

6 QUESTION: Suppose the police officer said, look
7 it, I'm entitled to arrest you and take you to the
8 station, and I'm not going to do that. I'm just going to
9 give you a citation if you let me search the car.

10 MR. ROSENBERG: I think under Bumpers v. North
11 Carolina, that would be a legitimate reason for
12 questioning the voluntariness of that consent because that
13 would be -- just be an acquiescence and a claim of lawful
14 authority by the police officer. I would question --

15 QUESTION: Well, if the officer had the right to
16 take him into custody, why couldn't he give him that
17 choice?

18 MR. ROSENBERG: Well, I think that would -- that
19 would simply be an issue of whether the consent would be
20 -- would be valid. I think consent can be coerced by
21 threats to do lawful things as well as unlawful things.
22 And I think that was basically the -- the holding in
23 Bumpers v. North Carolina.

24 QUESTION: Mr. Rosenberg, you -- you pointed out
25 that historically the distinction seems to have been

1 recognized between searches incident to arrest and the
2 consequences of a mere citation. Why? What is it about
3 the arrest, assuming that a valid arrest is made, that
4 justifies the search that doesn't justify it in the non-
5 custodial situation?

6 MR. ROSENBERG: I would like to answer that
7 question by quoting from United States v. Robinson, 414
8 U.S. at 234, note 5. I quote. The danger to the police
9 officer flows from the fact of arrest and its attendant
10 proximity, stress, and uncertainty, and not from the
11 grounds for arrest.

12 And I would elaborate further that a traffic
13 citation is a very common occurrence in this country. In
14 Iowa alone, we average 400,000-plus a year. Citizens are
15 not in great fear when they're pulled over for a traffic
16 violation. They know it will be a brief encounter. They
17 know that they will soon be free to go. They know they
18 will receive a summons. They can go to court to contest
19 it, but most elect to pay a fine and plead guilty. This
20 is not a provocative encounter.

21 Whereas an arrest presents other unique threats
22 to the officer's safety. The person may have items in his
23 car that if -- if were uncovered, he might go to a prison
24 for a long period of time, including life. And there is
25 going to be an extreme danger trying to bring this person

1 under control if he has a lot to lose by being brought
2 under control.

3 QUESTION: Of course, that's just one of the
4 justifications that it would express. The other one is to
5 obtain -- obtain necessary evidence. Isn't -- isn't that
6 another justification that's been alluded to besides
7 protecting the -- the officer?

8 MR. ROSENBERG: Yes, that is --

9 QUESTION: I mean, if he's arresting somebody
10 outside the car, why should he be able to search the
11 inside of the car? Just keep the guy outside the car. He
12 can search the inside of the car in the case of an arrest
13 to obtain necessary evidence --

14 MR. ROSENBERG: That's correct.

15 QUESTION: Could I ask you, in your -- in your
16 researches on the common law, did the common law draw a
17 distinction between a -- what you've called a custodial
18 arrest and a non-custodial arrest? Would the common law
19 have considered the -- the stop of the car an arrest? I
20 mean, the policeman is telling you, go no further. If you
21 go further, you know, you will be in violation of the --
22 of the law, and I will use force to stop you. Is that --
23 would the common law consider that an arrest?

24 MR. ROSENBERG: Justice Scalia, I am not aware
25 that the common law had any other means to prosecute a

1 criminal offense -- to commence the prosecution of a
2 criminal offense outside of arrest. But I also believe
3 with the proliferation of a lot of minor misdemeanor
4 offenses in this country, that the citation came into
5 vogue as a more reasonable manner in which to -- to
6 prosecute a criminal offense.

7 QUESTION: I think you mistook my question. I
8 guess I'm really asking whether in the common law all
9 seizures of the person were not considered arrests. Is it
10 clear that there were two categories of seizures of the
11 person, one of which was just, you know, a temporary
12 traffic stop and another one was what you call a full
13 custodial arrest?

14 MR. ROSENBERG: I -- I do not know that the
15 common law distinguished between a -- a simple seizure of
16 the person and an arrest. I think that a lot --

17 QUESTION: Well, if that's the case, then --
18 then -- and if it didn't, then the long history of -- of
19 allowing searches of this sort only in connection with an
20 arrest could be a long history of allowing searches in
21 connection with a traffic stop, whether you give a
22 citation or not.

23 MR. ROSENBERG: The only common law history that
24 I'm aware of is that which was referred to in United
25 States v. Robinson where the Court indicated that the

1 common law authority or historical sources in this respect
2 were scarce. And the Court --

3 QUESTION: Well, I guess we didn't have a lot of
4 cars and trucks back in the 1600's and the 1700's.

5 (Laughter.)

6 MR. ROSENBERG: We didn't have any.

7 QUESTION: If we move forward from the common
8 law to cases decided by this Court, Berkemer against
9 McCarty you cite in your brief I guess for the proposition
10 that a traffic stop is not an arrest.

11 MR. ROSENBERG: That's correct, but I believe
12 later this Court clarified its decision in Berkemer and
13 said if the officer had told this individual that he was
14 under arrest at the inception of this particular
15 encounter, then the Court would have considered that an
16 arrest.

17 QUESTION: That was a clarification?

18 MR. ROSENBERG: Oh, it was?

19 QUESTION: I assume --

20 MR. ROSENBERG: I don't know if it was a
21 clarification or not. I don't -- I'm not going to venture
22 a guess at that.

23 There's another reason that searches incident to
24 arrest differ from searches incident to citation, and that
25 is in a lot of Fourth Amendment areas, a larger intrusion

1 will subsume a smaller intrusion or, so to speak, lesser
2 included intrusions. And once the person has been taken
3 into custody for arrest, a lot of rights are lost, a lot
4 of things can be done which in and of themselves would
5 have been intrusive or in violation of the Fourth
6 Amendment, but when subsumed by the greater intrusion are
7 no longer the case.

8 In a situation where a citation is issued, there
9 is no law -- there is no physical intrusion of the sort
10 that this Court has ever found allows lesser included --

11 QUESTION: That was Justice Powell's argument in
12 -- in Robinson. I'm not sure that I understand it because
13 if there is a right to make the greater intrusion, why
14 isn't there the right to make the lesser -- his argument,
15 as I understand it, was just as you have said, that once
16 you've arrested, the search is just kind of de minimis. I
17 mean, there's nothing much left for him to object to when
18 his body is subject to custody. And that's true. But I
19 don't know whether it really goes to the issue because if
20 there is a right to make the greater intrusion, why isn't
21 there a right to make the lesser intrusion?

22 MR. ROSENBERG: Well, because the -- the right
23 to make the greater intrusion, for purposes of the Fourth
24 Amendment, is a hypothetical situation. No arrest was
25 made and that is the key point in this case in terms of

1 the Fourth Amendment.

2 QUESTION: No, but you -- maybe I misunderstand
3 you. I thought you had conceded that an arrest could have
4 been made here. It would have been a lawful arrest.

5 MR. ROSENBERG: I have conceded that an arrest
6 could have been made -- made for the traffic offense, but
7 an arrest wasn't made. A citation was issued.

8 QUESTION: No, but if -- but my question is, if
9 the -- if the right to commit to the greater intrusion,
10 the arrest, is assumed, why doesn't it follow that there
11 is a right to commit to the lesser intrusion, which is the
12 mere search?

13 MR. ROSENBERG: Because -- and I would refer to
14 United States -- Whren v. the United States, that the
15 Fourth Amendment is concerned with the actual events and
16 not those events which could have happened or normally
17 would have happened. It's sort of the reverse argument
18 that was made in Whren. There the defendants tried to
19 rely on the fact that normally, police -- these vice
20 officers would not have made this arrest, and therefore,
21 they should be the beneficiaries of this hypothetical
22 situation.

23 The other side of the coin is that the State
24 should not be allowed to be the beneficiary of an
25 intrusion in lesser -- in lesser included smaller

1 intrusions that in fact never occurred.

2 QUESTION: Mr. Rosenberg, in your -- you made
3 some rather graphic comparisons in -- in -- in your
4 briefing in some of the others that if you say every
5 citation can trigger a -- a full custodial search, then
6 the jaywalker is in danger, the person who's walking a dog
7 without a leash. I mean, were these examples brought up
8 to the Iowa Supreme Court, to say that every citation for
9 every petty offense can yield a search that will turn up
10 something that has nothing to do with the offense?

11 MR. ROSENBERG: I don't believe that those
12 specific examples were brought up in briefing to the Iowa
13 Supreme Court.

14 QUESTION: Because there is no limit in Iowa, as
15 I understand it. Everything -- every traffic violation -
16 - you don't signal and you can be arrested.

17 MR. ROSENBERG: Every traffic offense in Iowa is
18 an arrestable offense, and therefore every traffic offense
19 in Iowa, for which somebody is cited, is the basis for a
20 full search of their person and vehicle --

21 QUESTION: Do you count driving under the
22 influence as a traffic offense?

23 MR. ROSENBERG: No.

24 QUESTION: Because there, it seems to me, the
25 officer might have a reason akin to those given in

1 Robinson for wanting to search for more evidence, but it
2 seems to me also that with speeding, the offense is
3 complete in a sense when the car is brought to a stop, and
4 you're not going to find anything inside the car that is
5 going to help you prove the person has been speeding.

6 MR. ROSENBERG: But most traffic citations are
7 -- produce no need to look for evidence. But I would like
8 to say this, if there is such a citation that would
9 necessarily involve evidence or a need to look for
10 evidence, then that particular search could be governed
11 under the Carroll decision, simply that the officer has
12 probable cause to believe that an offense has occurred and
13 probable cause that there may be evidence in the car. And
14 that search could be justified under existing doctrine.
15 But your typical traffic offense does not involve any
16 evidence other than what the officer has acquired already.

17 QUESTION: And if I understand it correctly,
18 it's not the State law that -- that -- that you can search
19 whenever you issue a citation. It's only the State law
20 that you can search whenever you issue a citation instead
21 of arresting when there is an offense that -- that permits
22 arrest.

23 MR. ROSENBERG: That's correct. But all
24 offenses --

25 QUESTION: So, walking a dog, failing to curb

1 your dog and some of those other examples really -- would
2 they be a problem under Iowa law?

3 MR. ROSENBERG: No. Those are arrestable
4 offenses too. The Iowa --

5 QUESTION: They are arrestable for failure to
6 curb your dog?

7 MR. ROSENBERG: Yes.

8 QUESTION: Wow.

9 MR. ROSENBERG: Because the Iowa Supreme Court
10 recently --

11 QUESTION: They're tough out there --

12 (Laughter.)

13 MR. ROSENBERG: Yes, they are. And that's why
14 we're here.

15 (Laughter.)

16 MR. ROSENBERG: This law applies to municipal
17 offenses the Iowa Supreme Court has held recently in State
18 v. --

19 QUESTION: And it goes up too, does it not? At
20 least the -- the ability to substitute a citation for an
21 arrest goes up to second degree burglary.

22 MR. ROSENBERG: Yes.

23 QUESTION: There I suppose there might be a
24 reason to search that you wouldn't have in the case of
25 speeding.

1 MR. ROSENBERG: Absolutely, but once again those
2 searches would be justified under existing reasonableness
3 -- reasonable searches out of this Court, Carroll, or any
4 of the other --

5 QUESTION: Well, would you say that if you're
6 cited for second degree burglary and not arrested that
7 there is a right to search, let's say, the vehicle if the
8 vehicle was stopped and the citation is issued for second
9 degree burglary?

10 MR. ROSENBERG: I would think so because, you
11 know, that offense would likely involve the possession of
12 recently stolen property.

13 QUESTION: Well, let's assume that there's no -
14 - no probable cause to -- to believe that there's burglary
15 tools or the fruits of a crime in the car. Could the
16 officer incident to the citation for burglary search the
17 car without more? I'm surprised you're conceding that.

18 MR. ROSENBERG: No, no, no.

19 QUESTION: Your answer is no.

20 MR. ROSENBERG: I have to say no.

21 (Laughter.)

22 MR. ROSENBERG: That's correct. And that --
23 that would be because the citation itself does not give
24 rise to the justification.

25 QUESTION: Well, it gives rise to one of the

1 justifications advanced in Robinson, doesn't it, the --
2 the need to search for evidence?

3 MR. ROSENBERG: Yes.

4 QUESTION: Plus the fact I suppose to issue the
5 citation, they had to have probable cause, and if they
6 just got probable cause right at the moment, that would
7 include probable cause to search the vehicle I suppose.

8 MR. ROSENBERG: Well, the probable cause would
9 be needed for both the arrest and the search, and
10 generally for a traffic citation, it will only supply the
11 -- the justification for the arrest.

12 QUESTION: The need for -- for -- for searching
13 for evidence justification that the Chief Justice referred
14 to would be -- would be taken care of by the probable
15 cause, by the presence of probable cause. If there is
16 indeed need to search for evidence, you have probable
17 cause and you don't have to rely on the arrestability of
18 the offense. Right?

19 MR. ROSENBERG: Right.

20 QUESTION: And so, the only justification we're
21 talking about is the need to keep yourself safe.

22 I don't think you should issue citations to
23 burglars anyway. Do you know if they've ever done that?

24 MR. ROSENBERG: I'm not aware that they do it.
25 It's a theoretical position.

1 QUESTION: Writing -- do they ever just give
2 them a warning?

3 (Laughter.)

4 MR. ROSENBERG: If there are no further
5 questions, I'd like to reserve my remaining time for
6 rebuttal. Thank you.

7 QUESTION: Very well, Mr. Rosenberg.

8 Ms. Chambers, we'll hear from you.

9 ORAL ARGUMENT OF BRIDGET A. CHAMBERS

10 ON BEHALF OF THE RESPONDENT

11 MS. CHAMBERS: Mr. Chief Justice, and may it
12 please the Court:

13 In 1983, Iowa passed a statute which allowed
14 officers to use citations for almost any offense. At the
15 same time, the Iowa legislature authorized -- stated that
16 -- that when a citation is issued, officers may still
17 search and make any otherwise lawful search.

18 Patrick Knowles challenges that statute as it
19 applies to the search of his car made after he was issued
20 a speeding ticket. The concerns raised by petitioner in
21 this case are met by the fact that the Iowa statute
22 requires probable cause to arrest in every case where a
23 search is made. It's probable cause to arrest which makes
24 it both to arrest and issuance of a citation reasonable
25 under the Fourth Amendment. It's probable cause to

1 arrest --

2 QUESTION: May I just be sure that you agree
3 with what your opponent said on the scope of the citation?
4 This includes something like jaywalking?

5 MS. CHAMBERS: In Iowa, almost every
6 ordinance --

7 QUESTION: And therefore your -- so, it does --

8
9 MS. CHAMBERS: It does, generally, yes.

10 QUESTION: Because you could arrest him for
11 jaywalking.

12 MS. CHAMBERS: Correct.

13 QUESTION: And therefore, if there -- if
14 somebody jaywalks, the police could search him.

15 MS. CHAMBERS: Correct, because they could make
16 a custodial arrest and search incident thereto.

17 QUESTION: And that would include a strip
18 search. I mean, when you're arrested, you could be
19 subject to strip search.

20 MS. CHAMBERS: No. It --

21 QUESTION: A strip search for jaywalking?

22 MS. CHAMBERS: No. In Iowa, there clearly could
23 not be a strip search for two reasons. First of all, Iowa
24 has a specific statute that deals with that, and it is
25 805.3 I believe -- 804.3, and that statute specifically

1 says that for scheduled traffic violations or simple
2 misdemeanors, which would include ordinance violations --

3
4 QUESTION: But your argument is there would be
5 no constitutional objection to a strip search for a
6 traffic citation.

7 MS. CHAMBERS: No. That's the second prong of
8 our answer, and clearly under this Court's prior decisions
9 in the context of search incident to custodial arrests, a
10 strip search can only be made under certain very carefully
11 restricted circumstances which I cannot conceive could
12 exist in the context of a jaywalking or -- or other city
13 ordinance violation.

14 It's probable cause to arrest which also
15 prevents random suspicion-less searches which were a major
16 part of the petitioner's brief in this case.

17 QUESTION: Do you acknowledge that the rule
18 you're asking us to confirm today, the Iowa opinion, is an
19 extension of our previous cases?

20 MS. CHAMBERS: The -- it's the State's position
21 that in interpreting Iowa Code section 805.1(4), the Iowa
22 court simply says that statute authorizes whatever the
23 Fourth Amendment authorizes and then went on to decide
24 that the Fourth Amendment does authorize search incident
25 to citation. So, yes.

1 QUESTION: Well --

2 QUESTION: Well, is this an extension of our
3 prior cases?

4 MS. CHAMBERS: We think it's -- it's certainly
5 an issue that hasn't been decided before. It's the
6 State's position that it's not an extension of your prior
7 opinions because such searches always require probable
8 cause to arrest and --

9 QUESTION: Well, but Cupp v. Murphy certainly
10 didn't speak in terms of a broad right to conduct searches
11 even with the presence of probable cause.

12 MS. CHAMBERS: Right. It's the State's position
13 that you must have both probable cause to arrest and
14 initiation of a prosecution in some manner. That we
15 believe is consistent with the Court's prior opinions.

16 In Cupp v. Murphy, the difference is that in
17 that situation, although there was probable cause to
18 arrest, there was not any kind of an initiation of a
19 prosecution. There were no charges filed whether
20 custodial arrest or by citation. No prosecution had been
21 initiated. So, given that particular circumstance, the
22 court simply said the exigencies that exist in this case,
23 Cupp, do not give rise to the kinds of concerns that arise
24 when a prosecution is initiated, that is, escape or
25 destruction of evidence and that because there is no

1 prosecution --

2 QUESTION: Well, your -- there's no reason to
3 expect evidence to be produced by virtue of this search of
4 the traffic violation, is there?

5 MS. CHAMBERS: The State does not concede that
6 point, Your Honor --

7 QUESTION: Really.

8 MS. CHAMBERS: -- for a couple of reasons.

9 First of all, if the context is speeding,
10 certainly we wouldn't be looking for the kinds of broad
11 ranging evidence that we might look for in a burglary
12 case, for example. But certainly identity is always at
13 issue in any case, and that's --

14 QUESTION: How can you say that at the point
15 that the decision is made to issue the citation? I mean,
16 the -- at that point, the individual has presumably
17 produced a driver's license or whatever identification is.
18 If that isn't so, the officer isn't going to let him go
19 with a citation.

20 MS. CHAMBERS: It's certainly true that the --
21 the person will likely have produced some kind of
22 identification.

23 QUESTION: Well, would the officer let him go
24 with a -- with a citation if he didn't have any
25 identification? Surely not. He wouldn't know who to

1 write in the citation.

2 MS. CHAMBERS: Right, likely not.

3 Two things are true then, Your Honor. If the
4 officer can't search -- if the officer has any doubts
5 about whether that -- that identification is valid or if
6 the person can't produce acceptable identification, then
7 the officer will likely make a custodial arrest when he
8 might not if he could search. Let me give you an example.

9 It's not at all uncommon for an officer to stop
10 someone, and particularly in Iowa where we're dealing with
11 rural communities, small population, to stop someone and
12 have that person say, I have a license. I simply don't
13 have it with me. My name is Bob Jones. I live at 308 Elm
14 Street. The officer may well know that that information
15 is true and feel comfortable writing a citation, and
16 because they're comfortable with the identification, the
17 officer can -- can make the necessary records checks to
18 confirm that the license is valid.

19 On the other hand, it certainly isn't uncommon
20 for suspects to misidentify themselves or present false
21 ID's, and in that situation, the officer who has some
22 doubts about that identification either has to issue a
23 citation not knowing if it's being issued in the right
24 name, or has to make a custodial arrest. And it simply -
25 -

1 QUESTION: Well, I think you're -- I don't know
2 whether that's -- I'm from a small town too.

3 (Laughter.)

4 QUESTION: And I -- I'm not ready I think to
5 concede that your example is much of a real world example,
6 but assuming -- assuming it is, wouldn't it make more
7 sense for us simply to say, in order to keep our kind of
8 -- not only our constitutional categories but our
9 constitutional protections intact, to say that in that
10 case it's better for the officer to make the custodial
11 arrest and to justify any search on that basis than to
12 consider broadening the scope of the so-called search
13 incident exception to include a -- a citation for -- for
14 any kind of misdemeanor or traffic violation even?
15 Wouldn't it make more sense to say, look, if that's your
16 problem, go ahead and arrest him and then we all know
17 where we stand?

18 MS. CHAMBERS: Well, of course, the State's
19 second response to the issue of whether there's evidence
20 in a -- in a speeding case, for example, is that in
21 Gustafson and Robinson, the Court said because such a
22 search is reasonable, we don't look in a particular case
23 to see whether there would, in fact, be evidence or
24 weapons to search for --

25 QUESTION: Okay, but that goes back to another

1 one of the justifications in Robinson. One was the
2 evidentiary justification that you referred to and the
3 other one, which we've already heard about this morning,
4 is the justification of protecting the officer and in fact
5 making good on the arrest that -- that is made.

6 I don't see how that can apply here because, as
7 I understand the facts, the point at which the decision to
8 cite is announced is, in effect, the end of the encounter.
9 The officer says, I'm not going to arrest you. I'm going
10 to give you this citation instead. The fear for police
11 safety is, I would suppose, at a minimum in that case,
12 whereas it is at a maximum when an arrest is made. So,
13 why -- why isn't Robinson against you?

14 MS. CHAMBERS: Well, certainly one would
15 normally expect that a search based on a concern for
16 officer safety might be made at the initiation of a stop,
17 but I would point out a couple of things.

18 QUESTION: But it's -- but it's not. I mean,
19 we're talking about -- I presume we're talking about the
20 case that we've got here in which there isn't any search
21 until the encounter to the -- to the point of issuing the
22 citation is over and then the officer says, and by the
23 way, I'm going to search your car.

24 MS. CHAMBERS: Correct. It's -- it's the
25 State's position that officers have to be allowed to make

1 the decision for themselves what best serves their safety.
2 In this case, the officer stopped Knowles, kept him in his
3 car while the officer wrote the citation. The officer
4 called for backup and at the point at which a backup
5 officer arrived, then the officer issued the citation and
6 made the search. So, one can infer that the officer kept
7 Knowles in a place where he could keep him at least
8 partially under observation until an officer came to serve
9 as backup and that he made --

10 QUESTION: Well, can infer that the officer
11 always intended to make the search because he was relying
12 on State law and he realized that he might very well want
13 some extra protection while he was searching a car. But
14 that sort of begs the question here because the -- the --
15 the officer protection justification in Robinson is a
16 justification for protecting the officer when he has an
17 individual in the -- in arrest -- in custody following an
18 arrest. And that by definition is what we don't have
19 here. So, it seems to me that whether your argument
20 ultimately prevails or not, we would certainly have to
21 extend Robinson in order to see it your way here.

22 MS. CHAMBERS: If by extend Robinson, the Court
23 means apply it to a situation where the officer
24 subjectively did not fear the suspect, then the State does
25 not agree with that characterization because I think the

1 Court noted in Robinson --

2 QUESTION: I was going to -- go ahead.

3 MS. CHAMBERS: I think the Court noted in

4 Robinson that that officer did not have a subjective fear

5 of the defendant.

6 QUESTION: Well, but that's because --

7 MS. CHAMBERS: Certainly --

8 QUESTION: -- Robinson said we're going to

9 establish general rules.

10 MS. CHAMBERS: Right.

11 QUESTION: Okay.

12 MS. CHAMBERS: And it's the State's position

13 that similarly a general rule should be established in

14 this context.

15 QUESTION: But -- but in a way you -- you would

16 be going beyond Robinson here because you're saying that

17 there's an authority to search that would not be the same

18 basis as was set forth in Robinson. When you have a

19 traffic stop, you're not going to find any additional

20 evidence of speeding by searching either the person or

21 their car, and the safety situation is -- is simply not as

22 great when you issue a citation as it is when you have a

23 formal arrest.

24 MS. CHAMBERS: We certainly agree that although

25 there are studies that say that -- that show that officers

1 are not objectively able to accurately predict which
2 offenders are likely to be dangerous and while there are
3 -- are statistics that indicate that traffic offenders do
4 pose a threat, certainly common sense would tell us that
5 on a continuum of danger, in most cases most offenders are
6 less likely to be dangerous --

7 QUESTION: And the officer has it his power
8 under Iowa law to obviate at least a part of that danger
9 by making a custodial arrest.

10 MS. CHAMBERS: And -- and that, Your Honor, is
11 why we -- we make the statement that it's not really an
12 extension of Robinson or Gustafson because in every case
13 where the officer can search under the Iowa statute, the
14 officer can already make a custodial arrest --

15 QUESTION: How many other States have a policy
16 like Iowa's? I -- I haven't been able to uncover more
17 than perhaps Arkansas.

18 MS. CHAMBERS: There are a handful of States who
19 either by rule, statute, or judicial decision have a
20 practice similar to Iowa's. In Vermont, the State v.
21 Greenslit case which is cited in the State's brief.
22 Florida issued a decision in State v. McCray, 626 S.2d
23 1017, Arkansas in the State v. Earl decision, 970 S.W.2d
24 789, and Colorado in the --

25 QUESTION: Are these all States that say that

1 any -- all these traffic offenses -- that all of those are
2 subject to full custodial arrest?

3 MS. CHAMBERS: Colorado makes a bit of a
4 distinction in that there they were dealing with a statute
5 -- an offense for which the statute specifically
6 prohibited arrest, and so some of --

7 QUESTION: I'm asking you about how many are
8 like Iowa because, frankly, it startled to me to think
9 that -- that a police officer could make a full custodial
10 arrest for the pettiest infraction.

11 MS. CHAMBERS: I'm sorry. I misunderstood the
12 question.

13 All -- most States do and depending on who
14 counts, it varies between 25 and 30. My count came up
15 with about 27 who allow it in virtually every
16 circumstance. Almost all 50 States allow it in certain
17 circumstances.

18 QUESTION: May I ask another question about the
19 routine procedure that police follow? Is it not correct
20 that normally, when a custodial arrest is made, the
21 officers have a procedure they follow which would include
22 a rather complete search to be sure there are no weapons
23 around, whereas normally in the citation situation, unless
24 they go ahead and arrest, they do not conduct a search?

25 MS. CHAMBERS: That's normal --

1 QUESTION: In the States except for Iowa.

2 But now, with Iowa's statute on the books, I
3 suppose in Iowa now the police are routinely making
4 searches in these situations?

5 MS. CHAMBERS: No. Actually, Your Honor,
6 although the statute went into effect in 1983, this
7 practice is far from routine for a couple of reasons. I
8 think one could infer that one of the reasons is that
9 until now the constitutionality of those searches were
10 some -- were unsettled and cautious prosecutors were
11 likely advising cautious law enforcement officials to
12 exercise a great deal of care in this area.

13 QUESTION: So that now that -- if -- if we
14 affirm the Iowa court, presumably the practice would
15 become much more prevalent.

16 MS. CHAMBERS: Well, certainly as one would
17 expect prior to Belton, there were probably few auto
18 searches under that -- that doctrine. Prior to the
19 decision in this case, certainly officers are exercising
20 caution.

21 But secondly --

22 QUESTION: Doesn't that also indicate that the
23 Iowa officers do not consider it, in the usual case,
24 necessary to search in order to protect the officer?

25 MS. CHAMBERS: That's -- the second ground is

1 that I think that officers do exercise a great deal of
2 discretion, and -- and are careful about when they use
3 this.

4 QUESTION: But -- but you're asking us to have
5 -- have a rule which presumes that there's a danger to the
6 officer. I suppose that's the basis for your rule.

7 MS. CHAMBERS: It's certainly one of the two --
8

9 QUESTION: But that presumption doesn't accord
10 with the facts even as Iowa officers now understand.

11 MS. CHAMBERS: Well, certainly just as the law
12 currently allows custodial arrest and search in every
13 situation, which is unquestionably constitutional and
14 conceded by -- by Knowles, and officers currently are not
15 searching in all those cases, they would -- they would
16 behave presumably similarly under search incident to
17 citation.

18 The -- the fact that officers exercise
19 discretion certainly doesn't defeat the rule. The rule
20 presumes that it's reasonable under the Fourth Amendment
21 because of concerns with preservation of error and officer
22 safety, and if officers subjectively choose not to go to
23 the limits of their power, the State believes that that's
24 a proper exercise of discretion.

25 QUESTION: Ms. Chambers, there's another side to

1 this too because the person who's apprehended, if in fact
2 there's arrest, there's a warning light that will go off
3 because that person will get a Miranda warning. But here
4 -- your argument is very appealing when you say, if the
5 greater, then the lesser; if the full arrest, then the
6 citation. But the other part of it is the defendant who
7 gets a traffic ticket doesn't have any idea that that's
8 the kind of situation he faces, where if there's a full
9 custodial arrest, he must be given his Miranda warnings.
10 So, the -- it's a pretty good situation for the police.

11 MS. CHAMBERS: Well, of course, if a custodial
12 arrest, Miranda would only have to be made if the officer
13 wished to interrogate. So, it's not necessarily true that
14 it would be given in every case.

15 But if the question is, does this allow officers
16 to search without providing those protections provided by
17 arrest, of course, the answer is yes. However --

18 QUESTION: It does seem an enormous amount of
19 authority to put into the hands of the police. As you
20 said, you have to leave it to the judgment and the police
21 will exercise good judgment. But that's -- we do have
22 constitutional checks because we're not always so sure
23 that -- that the police will exercise good judgment.

24 MS. CHAMBERS: But taking this back into the --
25 a practical example, the officer in the Knowles case

1 could already have made a custodial arrest and searched,
2 and unless the officer wished to interrogate Mr. Knowles,
3 he would not have been required to give a Miranda.

4 Similarly, an officer could arrest and, under
5 Iowa law, then search and subsequently release the person
6 on citation which is in fact the -- the practice advocated
7 by the American Bar Association and the American Law
8 Institute.

9 All of those circumstances are functionally
10 identical from the point of view of a suspect. It -- as a
11 practical matter, it matters little to a suspect whether
12 the officer utters the words, you're under arrest, before
13 he searches and releases. For those reasons, although we
14 recognize that -- that -- that one could see this as
15 skirting Miranda, for example, really in a functional
16 manner it is not.

17 QUESTION: But it's a lot of trouble not just
18 for the -- not just for the suspect but for the officer
19 and for the system to arrest somebody.

20 MS. CHAMBERS: It certainly is.

21 QUESTION: And it's a deterrent against
22 conducting -- conducting searches where there is genuinely
23 no reason to conduct a search. Yes, you can do it if you
24 arrest, but you -- you have to do the paperwork.

25 MS. CHAMBERS: That would --

1 QUESTION: Police don't like to do paperwork I
2 gather from watching television movies.

3 (Laughter.)

4 MS. CHAMBERS: We will certainly concede the
5 latter.

6 QUESTION: They don't like to do --

7 MS. CHAMBERS: That would be true if it were not
8 for the fact that under Iowa law officers can arrest,
9 search, and then subsequently release on citation.
10 Because they can promptly release on citation, those --
11 those practical limits that might -- that might arise
12 don't --

13 QUESTION: Excuse me. They can arrest, search,
14 and then say never mind the arrest?

15 MS. CHAMBERS: Yes.

16 QUESTION: Wow.

17 (Laughter.)

18 MS. CHAMBERS: And in fact, the form that they
19 would use --

20 QUESTION: I really only did this arrest so I
21 could search. I've done the search. Here's a citation.

22 MS. CHAMBERS: Well, that's --

23 QUESTION: Let's forget about it.

24 MS. CHAMBERS: That's certainly one take. Of
25 course, the State's position is that that releasing on

1 citation allows the officer to -- to do those things which
2 he finds necessary to confirm the identity, investigate
3 the crime, obtain any evidence necessary, and then
4 releases the suspect, minimizing the amount of detention
5 required. Again, I would point out that's the position
6 that the American Bar Association and the American Law
7 Institute in fact advocate.

8 The position advanced by Knowles is -- is really
9 one that is counter-effective in terms of the overall
10 protections of the Fourth Amendment. He's asking the
11 Court to require that a custodial arrest be made in any
12 case where -- where the officer wishes to search to
13 protect his safety, to preserve evidence, or both.

14 QUESTION: That's not entirely true, I don't
15 think, Ms. Chambers. I think if there were reasons simply
16 by looking at the person in the car to -- to feel that he
17 was armed or anything, I think you'd have the authority to
18 search under Terry without needing to rely on the
19 custodial arrest doctrine.

20 MS. CHAMBERS: But certainly there would not --
21 that would not meet the needs to preserve evidence. Yes,
22 there are some situations where the officer could search
23 under Terry, but certainly not all.

24 QUESTION: And what evidence do you need to --
25 to search for when you've stopped a person for speeding?

1 MS. CHAMBERS: Again, identity, but there also
2 might be -- speeding is -- is probably at the lowest end
3 of the continuum.

4 QUESTION: If you'd come here on second
5 burglary, it might have been different.

6 MS. CHAMBERS: Certainly, and of course --

7 QUESTION: Actually in this case, he knew the
8 defendant.

9 MS. CHAMBERS: He did.

10 QUESTION: He knew that he was Knowles when he
11 stopped -- before he stopped him.

12 MS. CHAMBERS: He did, and certainly in this
13 case the officer made no bones about the fact that he
14 suspected that there were drugs. He searched for drugs
15 and he found drugs.

16 But again, any rule enunciated by this Court
17 will apply not only to this case but by analogy to -- to
18 every case.

19 QUESTION: And under Whren, we said there's no
20 such thing as a pretextual search. The fact that he
21 thought there might be drugs doesn't counsel against the
22 reasonableness of the arrest.

23 MS. CHAMBERS: Yes, and under Robinson and
24 Gustafson, the Court also said that the fact that the
25 officer didn't believe that he would, in fact, find

1 evidence or a weapon did not defeat the need for the
2 search, the search being reasonable under the Fourth
3 Amendment. That's the end of the -- that's the end of the
4 question and the officer may search.

5 And we believe the search here is reasonable for
6 a couple of reasons.

7 First of all, as I've said, every search
8 incident to citation in Iowa requires probable cause and
9 initiation of a prosecution. So -- in some manner, here
10 by citation. So, by definition, the officer has authority
11 and a right to make the arrest. In those circumstances -
12 -

13 QUESTION: May I ask you about your statement,
14 requires initiation of prosecution? I know I've been
15 stopped and the officer -- well, he gave me a lecture and
16 I had a warning. And sometimes they may stop, intending
17 initially to give a citation, and then they figure it's a
18 -- it's a -- some unusual excuse. The speedometer wasn't
19 working or something, and -- and they decide later to just
20 give a warning.

21 In Iowa, if they stop, must they give a
22 citation?

23 MS. CHAMBERS: No. They may give warnings.

24 QUESTION: They could give a warning.

25 MS. CHAMBERS: Yes.

1 QUESTION: Could they give a warning after
2 initially arresting the person?

3 MS. CHAMBERS: Yes, if -- if by arrest, you mean
4 saying, you're under arrest.

5 QUESTION: Yes.

6 MS. CHAMBERS: Or certainly they --

7 QUESTION: They could -- so, in other words,
8 they could arrest, search, find nothing, and then say,
9 well, I'll just give you a warning.

10 MS. CHAMBERS: Yes.

11 QUESTION: They could.

12 MS. CHAMBERS: The State, however, does not
13 believe that the Court needs to go as far as deciding
14 whether search could be conducted where only a -- only a
15 warning is issued.

16 QUESTION: Could -- could they arrest -- under
17 Justice Stevens' hypothetical, could they arrest, search,
18 then give a warning, if the arrest were simply a pretext
19 for a search and they had no intention at the time of
20 arrest of doing anything other but giving a warning?

21 MS. CHAMBERS: The --

22 QUESTION: Absent finding something.

23 MS. CHAMBERS: Did you assume arrest? Did I
24 hear --

25 QUESTION: Could the -- could the -- could the

1 officer arrest, having the intention at all times simply
2 of giving a warning? Could he arrest simply in order to
3 effect the search?

4 MS. CHAMBERS: Of course, that's not this case,
5 and it raises I think the question of pretext.

6 QUESTION: Well, but you were the one that said
7 we have the right for a lot --

8 MS. CHAMBERS: Right.

9 (Laughter.)

10 MS. CHAMBERS: I think -- I think they could do
11 that. I assume defendants would raise the issue of
12 pretext. I think Whren likely would answer that question.

13 QUESTION: Well, it's not -- it's not -- it's
14 not a pretext. It's -- it's -- it's an instance in which
15 the officer's objective actions really are -- are -- do
16 not disclose his true purpose.

17 MS. CHAMBERS: I think he could do that, Your
18 Honor. Again, we don't think you need to go that far, but
19 here's why I think you could.

20 I think the underlying premise, at least as I
21 read Whren, was that the officers in that case followed
22 and subsequently stopped the car because they thought they
23 would find drugs. And -- and the issue there, of course,
24 was pretext. And I think -- I think that what the Court
25 is getting at is if the officer really all along wanted to

1 search, was that arrest pretextual and if so, is that
2 improper. And it's -- under Whren I would be the State's
3 position it would not be proper. Now, it may not be good
4 public policy and it may raise some other concerns, but -
5 - but those wouldn't be answered by the Fourth Amendment.

6
7 But again, that's -- that's not what happened in
8 this case and the rule that the State is proposing would
9 require initiation of a prosecution either by citation or
10 by custodial arrest, leaving for another day the
11 hypothetical posed by the Court.

12 QUESTION: I don't understand why it would
13 require that. You say it would require initiation of
14 prosecution, but how can that be so if the officer would
15 have authority to make the arrest because the guy was
16 speeding, and then he -- he makes the search, and he says,
17 I don't think I want to write up a ticket. I'll just give
18 him a warning. What would prevent him from doing that?

19 MS. CHAMBERS: There is an argument to be made
20 -- and it may be a good one -- that probable cause to
21 arrest alone would be enough, but the State has recognized
22 the Court's concerns in Robinson, Gustafson, and other
23 cases that the -- the scope of the search and the
24 immediate need to search is related to custody or an
25 equivalent of custody. So, the reason we -- the reason we

1 are proposing a rule that would require initiation of a
2 prosecution is that it's our strong belief that when a
3 prosecution is initiated, whether that's by custodial
4 arrest or by issuance of a citation, those -- the same
5 concerns with officer safety and preservation of error
6 arise.

7 QUESTION: Yes, and I know you say that, that it
8 would -- that's the rule you propose, but it seems to me
9 that if we adopted the rule you propose, there would be
10 nothing to prevent the officer from conducting all the
11 searches he wants to and simply giving warnings whenever
12 he finds nothing and going ahead with the prosecution
13 whenever he finds something. That could happen under your
14 rule.

15 MS. CHAMBERS: It could happen, but let me
16 remind the Court that it could also happen with custodial
17 arrest --

18 QUESTION: Yes.

19 MS. CHAMBERS: -- because that is the equivalent
20 of arresting and then saying, eh, we don't really want to
21 proceed with this prosecution. We're dismissing the
22 charge.

23 QUESTION: There was a point -- there was a
24 point, Ms. Chambers, made in response to that. And you
25 said, yes, it's so, but maybe the good citizens of Iowa

1 would be a little upset if they get arrested every time
2 they forget to signal when they're turning.

3 MS. CHAMBERS: We believe that like the
4 citizenry would be upset if custodial arrest were made in
5 every case, they would also be upset if -- if the right to
6 search were abused.

7 QUESTION: Well, you -- you -- the usual rule is
8 there can be a search incident to an arrest. You want to
9 turn it around and have an arrest incident to a search.
10 And it seems to me that that's an abuse of authority.

11 MS. CHAMBERS: Well --

12 QUESTION: If the officer arrests not intending
13 really to arrest, that's an abuse of authority. You're
14 not really proposing that this could happen, are you?

15 MS. CHAMBERS: We're certainly not advocating
16 that that should happen, and we're certainly not -- we're
17 not encouraging that. Given the hypothetical, we think it
18 could conceivably happen, and -- and for the same reasons
19 that arrest followed by dismissal of the charges wouldn't
20 violate the Fourth Amendment, likely that would not.

21 But let me go back to the -- to the question
22 posed by -- by -- by the Court and that is, would -- would
23 the citizenry become upset? Certainly if custodial arrest
24 is abused, it's likely that the legislative process would
25 lead to curbs on -- for which offenses custodial arrests

1 could be made.

2 Similarly, if -- if officers abuse the right to
3 search incident to citation, the legislature will curb
4 that authority, and we not only believe that that would
5 happen if abuse has occurred, but we think it should
6 happen, that that is the essence of the --

7 QUESTION: But the answer to that is that
8 officers are going to use some judgment and they're only
9 going to use this power when they think, well, I'm not
10 sure this fellow doesn't look just a little bit
11 suspicious. He was a little nasty in my conversation. I
12 mean, they could have the authority without using it in
13 every case.

14 MS. CHAMBERS: That's right, just as they
15 currently don't always exercise the custodial arrest.

16 But again, while that could be used in a
17 discriminatory or abusive manner, one, there's no evidence
18 that that's happening in Iowa since 1983, and secondly, if
19 -- unless it violates the Fourth Amendment, that kind of
20 discriminatory or abusive police procedure, while
21 objectionable --

22 QUESTION: Or better yet, they might save it for
23 out-of-state motorists.

24 (Laughter.)

25 MS. CHAMBERS: They might but certainly in this

1 case, the person arrested was a white man who had been
2 born in Newton, so there is no evidence that it is being
3 abused.

4 But, of course, if it were abused, it certainly
5 would not be something the State would advocate. If it
6 were abused, the legislative process or police regulations
7 or certainly advice of counsel are ways that those kinds
8 of abuses can be curbed. And certainly if it's used in a
9 discriminatory manner, the Equal Protection Clause
10 provides the remedy there, as this Court noted in Whren.

11 I'd like to point out just a couple of other
12 things and that is that one of the things that Knowles'
13 proposal would require is for this Court to frequently get
14 into the issue of the officer's subjective intent, an
15 examination that this Court has rejected time after time
16 after again -- time after time and most recently in Whren.

17 The reason that we'd have to get into that is
18 this. Some of the examples posed by the Court dealt with
19 when the officer made the decision to search, and it would
20 be an open question, what happens if the officer makes the
21 search and then doesn't issue the citation until later or
22 then makes the custodial arrest subsequently? Do we have
23 to determine whether the officer intended to arrest when
24 the search was made? Do we have to determine when that
25 decision was made? Those kinds of subjective evaluations

1 are nearly impossible --

2 QUESTION: But arrest is an objective thing.

3 MS. CHAMBERS: It is, but that would, of course,
4 require the Court to set down a rule that arrest would be
5 required in all of these cases rather than the less
6 intrusive alternative of issuing a citation.

7 QUESTION: Thank you, Ms. Chambers.

8 Mr. Rosenberg, you have 2 minutes remaining.

9 REBUTTAL ARGUMENT OF PAUL ROSENBERG

10 ON BEHALF OF THE PETITIONER

11 MR. ROSENBERG: Thank you, Your Honor.

12 I would just like to make a few comments.

13 Ms. Chambers mentioned that the officer
14 suspected Mr. Knowles had drugs. The officer, although he
15 may have suspected, testified at the suppression hearing
16 that he had no cause, no suspicion, that Mr. Knowles had
17 any drugs on him on this occasion, and that is in the
18 appendix.

19 The second response I'd like to make regarding
20 the enforcement of this statute, although the statute was
21 passed in 1983, it wasn't until about 1990 or thereafter
22 that the Iowa Supreme Court gave it its construction and
23 anybody had any idea that this was what it meant. And it
24 hasn't been enforced much because a lot of county
25 attorneys have been advising the police officers not to

1 rely on this as their sole basis for a search pending
2 their belief in the -- that it may be overturned.

3 And finally, in response to Justice Ginsburg's
4 question about the citizens of Iowa not putting up with
5 this, over 400,000 citizens in Iowa a year get traffic
6 tickets. If this policy were uniformly and
7 nondiscriminatorily enforced, it -- the right to arrest
8 would be ended. The legislature would end it. I have
9 confidence in that. This policy can only be enforced --
10 the statute can only be enforced selectively, otherwise it
11 would politically not be stood for by the citizens of
12 Iowa, and that in fact is one of the dangers of a statute
13 like this.

14 Thank you very much. I'll waive the additional
15 time.

16 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
17 Rosenberg.

18 The case is submitted.

19 (Whereupon, at 12:07 p.m., the case in the
20 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:

PATRICK KNOWLES, Petitioner v. IOWA
CASE NO: 97-7597

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