

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: WYOMING v. SANDRA HOUGHTON

CASE NO: 98-184 c.2

PLACE: Washington, D.C.

DATE: Tuesday, January 12, 1999

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 WYOMING, :
4 Petitioner :
5 v. : No. 98-184
6 SANDRA HOUGHTON. :

7 - - - - -X
8 Washington, D.C.
9 Tuesday, January 12, 1999

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:06 a.m.

13 APPEARANCES:

14 PAUL S. REHUREK, ESQ., Deputy Attorney General of Wyoming,
15 Cheyenne, Wyoming; on behalf of the Petitioner.

16 BARBARA B. McDOWELL, ESQ., Assistant to the Solicitor
17 General, Department of Justice, Washington, D.C.; for
18 the United States, as amicus curiae, supporting the
19 Petitioner.

20 DONNA D. DOMONKOS, ESQ., Cheyenne, Wyoming; on behalf of
21 the Respondent.

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3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 98-184, Wyoming v. Sandra Houghton.

5 Mr. Rehurek. Am I pronouncing your name
6 correctly?

7 ORAL ARGUMENT OF PAUL S. REHUREK

8 ON BEHALF OF THE PETITIONER

9 MR. REHUREK: Rehurek, Your Honor.

10 QUESTION: Rehurek. Very well. Would you
11 proceed?

12 MR. REHUREK: Mr. Chief Justice, and may it
13 please the Court:

14 The question presented in this case is whether
15 the scope of a search under the automobile exception
16 extends to the personal belongings of a passenger when
17 police have developed probable cause to search a private
18 vehicle generally, but have no probable cause specific to
19 the passenger or her belongings.

20 Under United States v. Ross, a search of an
21 automobile based on probable cause extends to every part
22 of the vehicle and its contents that may conceal the
23 object of the search.

24 The officer here had probable cause to search
25 the entire vehicle and its contents because he had reason

1 to believe that the vehicle was transporting contraband
2 and that it could be concealed anywhere inside the
3 vehicle.

4 Once probable cause is established to search the
5 entire vehicle, that probable cause extends to every
6 plausible repository of the object of the search.

7 QUESTION: Am I right that in -- in Ross the
8 reason that -- the source, if you will, of the probable
9 cause was -- was information about -- I guess it was the
10 driver of the car, one person anyway?

11 MR. REHUREK: That's correct, Your Honor.

12 QUESTION: So, Ross did not have the issue in it
13 that we have here.

14 MR. REHUREK: That's true, neither Ross nor
15 Carroll nor Acevedo nor other cases from this Court on the
16 automobile exception.

17 The precise question involved here, of course,
18 involves the passenger's personal belongings when there
19 isn't specific probable cause. However, I feel that Ross
20 still controls the outcome of this case because the rule
21 announced in Ross covers this kind of situation and many,
22 many other kinds of situations.

23 QUESTION: Well, Ross was an effort to get --
24 get over, in effect, Sanders and Chadwick and some of
25 those cases that just parsed the thing down to a fare-

1 thee-well, wasn't it?

2 MR. REHUREK: It absolutely was, Mr. Chief
3 Justice, and it was also a way to allow officers to know
4 what the extent of their legal authority was. And in that
5 regard, it was also a way to let citizens know what the
6 extent of their rights were.

7 QUESTION: If this passenger, when she was told
8 to exit the vehicle by the police, clutched her bag with
9 her, then is that the dividing line that -- could the
10 police, not having suspicion relating to her, but relating
11 to the driver who had the syringe in his pocket -- could
12 the police say that was in the vehicle, therefore I can
13 search it?

14 MR. REHUREK: Justice Ginsburg, there's two
15 responses to that. First, that item, the purse, is a
16 plausible repository of the contraband that was being
17 searched for here, and it was inside the place where the
18 probable cause attached. In view of that, I think yes,
19 even if the passenger had picked up her purse and taken it
20 outside with her, the officer would have been within his
21 authority to have her put it back in the car or,
22 alternatively, to tell her not to take -- pick it up and
23 take it out of the car --

24 QUESTION: Could -- could he then go on to
25 search the person?

1 MR. REHUREK: No, Your Honor. DiRe teaches us
2 that a search of a person is going to require the
3 individualized probable cause that respondent wants to see
4 attached to the purse.

5 QUESTION: If DiRe is a given, if it's the law
6 that you can't search the person, then why is that we can
7 search the purse?

8 MR. REHUREK: Your Honor, I think there's a
9 dividing line here that -- that's probably based more on
10 actual practice and common sense than anything else. But
11 I would argue that a line should be drawn at articles of
12 clothing that are actually being worn by the person
13 getting out of the car. If there's a search of an item of
14 clothing, that amounts to a search of the person.
15 However, any other object that might be inside the car
16 when probable cause is established, picked up and taken
17 out of the car, even if it's an item of clothing, ought to
18 be subject to search by the officer because again it's at
19 the place when probable cause is established and it's a
20 plausible repository.

21 QUESTION: Well, do you take the position that
22 probable cause extends to every container in the car?

23 MR. REHUREK: Only, Justice O'Connor, with one
24 qualification, and that is that the container has to be
25 capable of holding the object of the search. This Court

1 has given an example of illegal aliens in a van does not
2 give authority to police to search their suitcase or a
3 lawn mower in a briefcase type of affair where it's just
4 physically impossible or for other reasons it's absolutely
5 known that the object of the search won't be there.

6 QUESTION: How -- how would your test extend in
7 fixed -- a fixed premises, a building, as opposed to a
8 car?

9 MR. REHUREK: I think the nature of a search of
10 the person is going to be the same either --

11 QUESTION: Not search of a person. We're
12 talking about containers --

13 MR. REHUREK: Oh, I'm sorry, Your Honor.

14 Certainly there's a large body of case law that
15 says when a warrant issues to search a premises, that the
16 -- the -- the officer may execute that warrant by going to
17 every container on the premises that's capable of holding
18 the object of the search.

19 QUESTION: And if there is no warrant but
20 there's probable cause to believe contraband is present?

21 MR. REHUREK: On a premises?

22 QUESTION: Yes.

23 MR. REHUREK: He must get a warrant.

24 QUESTION: I'm having --

25 QUESTION: And the automobile you say once

1 there's probable cause to believe contraband was present
2 for the driver, that it extends -- probable cause extends
3 to allow search of any container that could contain it
4 that's in the car.

5 MR. REHUREK: I would not personally
6 characterize it that way, Justice O'Connor. I think the
7 officer always had probable cause to search the entire car
8 in this particular situation. It's just that it was Mr.
9 Young, the driver, that furnished that probable cause. It
10 didn't -- the probable cause didn't exactly start there
11 with Mr. Young and then emanate outwards through the rest
12 of the car.

13 Justice Stevens?

14 QUESTION: Could I ask you this question?
15 Because as you pointed out earlier, this is the first time
16 we've gotten into the passenger problem with the
17 Ross/Acevedo line of cases. And I was wondering what your
18 view would be of this -- this question.

19 Supposing the officer thought he had probable
20 cause, but in fact the court would later on decide he
21 didn't. He just -- it was an illegal search of a car that
22 was improperly stopped. Would the passenger in that car
23 have standing to challenge the seizure of something in the
24 front seat. Say a back-seat passenger. Could -- would
25 the passenger have standing to -- to challenge the search,

1 do you think?

2 MR. REHUREK: Well, that's a Rakas sort of
3 situation by and large, but if that passenger was not the
4 owner of that property --

5 QUESTION: He's not.

6 MR. REHUREK: Okay. Rakas tells us that a
7 passenger who is not the owner of the car has no
8 legitimate expectation of privacy in places such as under
9 the seat or in the glove box or, for this example, on the
10 front seat either. So, without that legitimate
11 expectation of privacy and without knowing more about the
12 situation, I would say probably not, he wouldn't be able
13 to challenge that.

14 QUESTION: So the -- so the -- the passenger
15 would not have standing to challenge the search of the
16 entire car, but the right to search the entire car would
17 include a right to search and invade the passenger's
18 privacy interest in her own purse. It seems kind of
19 having it having heads I win, tails you lose.

20 MR. REHUREK: Well, your hypothetical is
21 premised on him actually doing something he had no legal
22 authority to do.

23 QUESTION: Well, see, I'm trying to identify
24 what the -- how you -- how you cabin the various interests
25 in privacy which both determine whether there's a

1 violation on the one hand, and also where there's standing
2 on the other. It seems to me somewhat inconsistent to say
3 that the privacy interest is insufficient to justify
4 standing and -- but nevertheless can be -- can be invaded
5 just because you happen to be in the car. That's the
6 question.

7 MR. REHUREK: Well, the reason for the invasion,
8 of course, is -- and this won't always be the case, but
9 the reason for the invasion is that the officer had
10 probable cause for the entire vehicle.

11 QUESTION: But Mr. -- do I misunderstand you? I
12 -- I -- surely she would have basis for challenging the
13 search of her purse --

14 MR. REHUREK: Yes.

15 QUESTION: -- if there were no probable cause
16 for the whole car. Isn't that right?

17 MR. REHUREK: Certainly.

18 QUESTION: So, to the extent she has a personal
19 interest involved, she can challenge.

20 MR. REHUREK: Certainly, certainly.

21 QUESTION: In trying to decide how broad --
22 broadly Ross should be read, I'm thinking of -- of a
23 possible distinction, and I'd like you to comment on it.

24 One case in which probable cause would be
25 established generally to search the car would be the case

1 that -- that Ross, read in -- in its most narrow sense,
2 exemplified. The driver of the car is exhibiting a
3 certain behavior which indicates that the driver of the
4 car is a drug user and from that it follows to the
5 requisite extent that there -- there are probably drugs or
6 paraphernalia in the car.

7 The second situation in which it would be fair
8 to say that there was probable cause to search the car
9 would be the situation in which a -- a witness, whom we
10 will assume to be credible and reliable, goes to the
11 police officer and says, there are three people sitting
12 over in that car and, you know, they're -- they're
13 shooting heroin or whatnot. They're having a high old
14 time on -- on drugs over there.

15 In the second situation, I would suppose there's
16 no question. The -- the probable cause relates to the car
17 and to everybody in it, so that every container in the
18 car, whether it belonged to a driver, passenger, or
19 whatnot, would be subject to the -- to the probable cause
20 conclusion.

21 In the first instance, however, in which it is
22 only the behavior of the driver and the driver alone which
23 furnishes what we speak of as probable cause to search the
24 car, that in fact is -- is not so.

25 Why shouldn't we, in effect, read Ross as -- as

1 consistent with that distinction and say that in a case in
2 which probable cause relates to the car and everybody in
3 it, every container, in effect, is -- is -- is open to
4 search, but when probable cause depends upon the activity
5 of only one person in the car, then although you can
6 generally search the car, you cannot search containers
7 which reasonably appear to belong to somebody else? Why
8 shouldn't we draw that line?

9 MR. REHUREK: Because, Justice Souter, you need
10 to take the perspective of the officer involved, first of
11 all. He has established probable cause that contraband is
12 to be found on the premises, whether it's a car,
13 residence, whatever. He has established probable cause to
14 believe there's -- there's contraband on that premises.
15 What he doesn't know is that -- is where it is. It can be
16 in more than one place. Just the fact that there are
17 several people in a car and only one is actually observed
18 using drugs doesn't mean that the others aren't involved.

19 QUESTION: Well, that's right, but if that
20 reasoning is going to be carried, I suppose, to its
21 conclusion, then the officer ought to be able to search
22 the persons of the passengers, which DiRe tells us he may
23 not do.

24 MR. REHUREK: But I think the Fourth Amendment
25 draws a distinct line on search of the person, and DiRe --

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QUESTION: Why? I mean, the standard is probable cause whether you're searching a person or searching a -- a box.

MR. REHUREK: The standard isn't just probable cause for the search of a person. It's probable cause particularized to that person.

Now, here Mr. Young, the driver of the car --

QUESTION: Well, are you saying that there need be no particularity requirement when you're searching something other than a person?

MR. REHUREK: Yes. What I'm saying --

QUESTION: What's -- what's your authority for that?

MR. REHUREK: Well, I think Ross says that.

QUESTION: Well, but Ross -- Ross was not -- yes, but the question is should -- should Ross be read to cover my second situation when, in fact, the facts in Ross go no further than the first situation?

MR. REHUREK: It's true the facts go no further than that, Justice Souter, but the rule announced in Ross --

QUESTION: Oh, broad language. No question. The -- but the question -- I mean, as I understand it, the question in this case is, is the language to be read as

1 broadly as it was stated? Is it to be read broadly enough
2 to cover the second situation? And if -- if your answer
3 is, that was the language and I'm going to go on the
4 answer, then I think we still have a question of -- of
5 principle to -- to wrestle with, and that is whether we
6 really ought to read the -- whether we ought to accept the
7 language as being as -- as broad as it was.

8 MR. REHUREK: Your Honor, it's not just the fact
9 that the officer knows a particular individual in that car
10 has drugs. It's -- it's that -- that coupled with the
11 fact that contraband could be concealed anywhere inside --

12 QUESTION: In the pocket.

13 QUESTION: That's very true, but exactly. It --
14 it could be concealed in the pocket just as well as the
15 purse, and if we accept that reasoning, I don't know how
16 DiRe is going to stand except we say, stare decisis, we
17 won't look back. But as a matter of principle, I don't
18 see how DiRe can stand.

19 MR. REHUREK: Well, of course, DiRe really isn't
20 involved in this case, but --

21 QUESTION: Well, it will be if we accept your
22 reasoning I think --

23 MR. REHUREK: Well --

24 QUESTION: -- because there will be an
25 implication, I think, that -- that would -- would tend to

1 undercut it.

2 MR. REHUREK: Well, I'm not trying to say that
3 the search of the person can occur without individualized
4 probable cause, but I am saying that when a container is
5 located in a place where there is generalized probable
6 cause to search, then that container is subject to search
7 unlike a person.

8 QUESTION: One of the problems with the line you
9 draw is -- is that this particular item, a lady's purse,
10 contains things that many gentlemen carry in their -- in
11 their pockets. So, that's why I raise the -- if the -- if
12 the lady's purse, why not the gentleman's pocket? Is that
13 a rational line to draw? What you're saying is the key is
14 where might one find contraband.

15 MR. REHUREK: I recognize that situation,
16 Justice Ginsburg. It seems to me the ultimate criteria,
17 though, under any hypothetical or any scenario is going to
18 have to be whether or not the search of the person
19 occurred.

20 QUESTION: Are you sure that a search of a purse
21 is not a search of a person? Suppose a woman is walking
22 down the street. Is there a difference between the
23 officer grabbing her purse? He needs less -- less
24 probable cause to just grab her purse and look at it than
25 he does to -- to conduct a search of her pockets or a

1 frisk search?

2 MR. REHUREK: I think the search of a purse
3 that's being held by somebody is not the equivalent of a
4 search of the purse in the way the search of perhaps the
5 woman's coat that is being worn at that time would be.
6 The purse can be picked up and put down. It can be left.
7 It can be carried with. It's not an article of clothing
8 being worn. I would draw the line, Justice Scalia, at
9 that point regarding the purse.

10 And again, of course, the officer -- officer
11 can't just approach and decide to search the purse because
12 it's not a search of the person and he can get away with
13 it. He'll need probable cause for that too.

14 QUESTION: Well, what are the alternatives for
15 the officer in a situation like this? Could he order
16 everyone out of the car and, by the way, leave your purse
17 or any other article in the car? Don't take it with you.
18 Is that --

19 MR. REHUREK: I believe he could --

20 QUESTION: -- authorized --

21 MR. REHUREK: I believe he could, Justice --

22 QUESTION: -- for law enforcement officers?

23 MR. REHUREK: I believe he could, Justice
24 O'Connor.

25 QUESTION: And then what would he have to do if

1 we were not to adopt your view here and he wanted to
2 search the purse and there was no particularized suspicion
3 with regard to this woman's purse? Get a search warrant?

4 MR. REHUREK: Well, the search warrant
5 apparently wouldn't cover it either because under Ross,
6 the scope of the automobile search is going to be the same
7 as the scope of the search pursuant to a warrant, and
8 neither one would cover, if respondent's rule was adopted.

9 However, in my view it certainly would have been
10 covered by a warrant had a warrant issued, but not because
11 the officer had particularized probable cause to the
12 purse, but because the purse was located in a place where
13 the officer did have probable cause to search and that
14 there was a likelihood that the contraband could have been
15 found anywhere.

16 QUESTION: I presume then the same reasoning
17 would extend to a wallet in a man's pocket. And if -- if
18 the officer is entitled to -- to make the order that --
19 that you say he is in response to Justice O'Connor, I
20 suppose the officer could say, everybody out of the car,
21 leave your purses and wallets on the seat.

22 MR. REHUREK: Your Honor, I would draw this
23 rather thin but I think distinct line at that point and
24 say pulling an item out of your pocket is going to be a
25 functional equivalent of a search of the person.

1 QUESTION: If she had her purse in her pocket,
2 it would be a different question.

3 MR. REHUREK: I believe it would.

4 QUESTION: But not if she was just holding the
5 handle of the purse.

6 MR. REHUREK: That's correct. It's a very thin
7 line.

8 QUESTION: It is a little thin.

9 (Laughter.)

10 MR. REHUREK: If I may, I'd like to reserve the
11 balance of my time for rebuttal.

12 QUESTION: Very well, Mr. Rehurek.

13 Ms. McDowell, we'll hear from you.

14 ORAL ARGUMENT OF BARBARA A. McDOWELL
15 FOR THE UNITED STATES, AS AMICUS CURIAE,
16 SUPPORTING THE PETITIONER

17 MS. McDOWELL: Mr. Chief Justice, and may it
18 please the Court:

19 In United States v. Ross, the Court articulated
20 a clear, logical, and easily applied rule that probable
21 cause to search a car gives the police the authority to
22 search any container in the car that might contain the
23 object of the search. The container should not be exempt
24 from that rule simply because it's owned by a passenger
25 whom the police do not have probable cause to arrest.

1 In many such cases, like this one, a police
2 officer still could reasonably conclude that the object of
3 the search may be found in the passenger's purse or other
4 container.

5 QUESTION: We're probing why this rule doesn't
6 extend to the search of a passenger in the car. It would
7 seem to me almost easier for the driver to say, here,
8 quick, take the drugs, to the passenger than to stop and
9 put it in the passenger's purse. Why can't we search the
10 passenger too? Let's say DiRe is not on the books.
11 Certainly under your -- the logic of your position, it
12 would clearly extend to the passenger.

13 MS. McDOWELL: Certainly the logic of our
14 position would tend to extend to a search of the passenger
15 as well. There might be --

16 QUESTION: Is DiRe wrong then?

17 MS. McDOWELL: Pardon me?

18 QUESTION: Is DiRe wrong then?

19 MS. McDOWELL: We would conclude that the
20 rationale of DiRe may be incorrect to the extent that it
21 suggests that there's no probable cause to believe that
22 there's contraband on the passenger.

23 However, there would be another rationale to
24 preserve DiRe but to allow the search here, and that would
25 be to recognize that a search of the person is more

1 intrusive for Fourth Amendment purposes than a search
2 merely of someone's belongings.

3 QUESTION: But the standard to justify that
4 search is the same whether we're talking about a search of
5 the person or -- or a search of a receptacle. I mean,
6 it's still the probable cause standard.

7 MS. McDOWELL: That's correct, but the Fourth
8 Amendment also incorporates the concept of what is a
9 reasonable search and one might be able to say that what's
10 reasonable in the context of property is not reasonable in
11 the context of a personal search.

12 QUESTION: So, probable cause -- to search the
13 person, you're saying perhaps we would have to say there
14 would be probable -- required probable cause plus
15 something more.

16 MS. McDOWELL: Perhaps one could say that there
17 needs to be somewhat more individualized suspicion
18 directed at the person in order to conduct a personal
19 search.

20 QUESTION: I'm not sure why that is. I'd much
21 prefer that a police officer search my pockets than my
22 briefcase. Maybe that's just idiosyncratic with me, but
23 I --

24 (Laughter.)

25 MS. McDOWELL: Perhaps.

1 Also, we have raised the possibility that in
2 many circumstances, a driver of the car who is clearly
3 involved in illegal activity would have an opportunity to
4 store contraband in an innocent passenger's purse. It
5 seems somewhat less likely that a guilty party could reach
6 into the pocket of a purely innocent party and -- and,
7 totally unawares, deposit contraband there. It's somewhat
8 easier to conceive of that happening with respect to a
9 purse or other container that's not on the person.

10 QUESTION: What is the basic rule? I find it
11 hard to keep all these complicated rules in mind, so I
12 think maybe the police may also find it difficult and
13 others.

14 But -- but suppose you have really probable
15 cause, not some artificial rule, that you really have
16 probable cause to think that there's a pound of heroin in
17 a car. Let's say the police saw the pound of heroin and
18 they tested it. Somebody put it in a car and there it
19 was. The car has been moving. There's been no chance.
20 They've been watching it the whole time. There's no
21 chance it could have been disposed of.

22 Now, they stop the car. They know it's in the
23 car. It's not on the driver. There is one passenger.
24 Can you search the passenger, including his billfold?

25 MS. McDOWELL: No. We would say that you

1 cannot --

2 QUESTION: You cannot?

3 MS. McDOWELL: -- search the person under DiRe.
4 Whether you can search the passenger's belongings or
5 not --

6 QUESTION: Even if you really have probable
7 cause.

8 MS. McDOWELL: Pardon me?

9 QUESTION: Even if you really have probable
10 cause to believe that there is a pound of heroin in the
11 passenger's pocket because there's nowhere it could
12 possibly be and you know it's there.

13 MS. McDOWELL: Oh, if you believe --

14 QUESTION: Even under those circumstances, you
15 cannot search the passenger? That's the law?

16 MS. McDOWELL: I'm sorry. I didn't understand
17 your question. You believe that it's in the passenger's
18 pocket?

19 QUESTION: Look, I'm saying you know for sure
20 there's heroin in the car. You know it for sure. You
21 know for sure it's not on the driver. There's only one
22 place it could be: the passenger. Can you search the
23 passenger?

24 QUESTION: He'd have a bulge in his pocket.

25 QUESTION: He has a bulge. Right.

1 (Laughter.)

2 QUESTION: Exactly. He has a bulge and you
3 sniff it. It's there.

4 (Laughter.)

5 MS. McDOWELL: Yes.

6 QUESTION: All right?

7 MS. McDOWELL: In that circumstance, you would
8 have individualized probable cause presumably.

9 QUESTION: I don't know what this means,
10 individualized. I mean, you have probable cause to
11 believe it's in the car. You can't find it anywhere.
12 There's only one place left: the passenger. Can you
13 search the passenger?

14 MS. McDOWELL: The model code of pre-arraignment
15 procedure adopted by the American Law Institute would
16 suggest that you can. That code adopts the rule that once
17 you have searched everywhere else in the car and you have
18 reason to suspect that it may be on a passenger's
19 person --

20 QUESTION: In that hypothetical, you could
21 arrest him.

22 MS. McDOWELL: -- you can search them.

23 The model code recognizes that that position is
24 somewhat inconsistent with DiRe, however.

25 QUESTION: Why is it inconsistent with DiRe? I

1 mean, in -- in Justice Breyer's example, at the point the
2 police would conduct the search of the passenger's pocket,
3 all the -- all the facts known to them establish the
4 probability, in quite a literal sense, that the heroin is
5 in the passenger's pocket. Why isn't that a simple garden
6 variety example of having probable cause that points
7 directly to a given person and nothing more than that?

8 MS. McDOWELL: Well, there -- there certainly is
9 a lot of logic to that position.

10 There are not cases --

11 QUESTION: Which is good for starters. I mean,
12 why isn't the --

13 (Laughter.)

14 QUESTION: Why doesn't the logic -- why doesn't
15 logic win here?

16 QUESTION: Of course, the -- the -- the next
17 question is what if -- what if you just have probable
18 cause to believe that there is -- that there's contraband
19 in the car?

20 QUESTION: Yes. Thank you.

21 QUESTION: You're not certain there's contraband
22 in the car and you search everywhere else and -- and you
23 don't find it. And then there's the passenger left.

24 Now, is probable cause plus probable cause
25 enough?

1 QUESTION: That's -- that's what's confusing me,
2 of course. I didn't know there's more of a standard than
3 probable cause.

4 QUESTION: Well, the thing that puzzles me, why
5 don't you just arrest him in that hypothetical? You have
6 probable cause to arrest if you've got probable cause to
7 believe he's got heroin in his pocket.

8 MS. McDOWELL: They may not always be the same
9 concept. In this case that might be true and then you can
10 conduct a -- a search incident to arrest.

11 We're not aware of circumstances where the
12 automobile exception allowing a warrantless search of a
13 car has been extended to persons in the car.

14 QUESTION: Yes, but you have an exigent
15 circumstances exception, don't you? If you don't -- well,
16 you can do one of two things I suppose, and -- and either
17 of two rules would cover it. You can either arrest, as
18 Justice Stevens says, in which case you can then conduct a
19 search incident to an arrest, or if you don't arrest, I
20 suppose the exigent circumstances exception would apply.
21 I mean, you're -- you're -- one or the other is going to
22 apply, isn't it?

23 MS. McDOWELL: Probably so, yes, Your Honor,
24 depending on the degree to which one has suspicion focused
25 on the individual at the point that you conduct the arrest

1 or the search.

2 QUESTION: Do we have to decide all this stuff
3 today?

4 MS. McDOWELL: No, Your Honor. The question
5 here is a relatively simple one involving a -- a purse
6 that was left in the car when the passengers got out. So,
7 there are possibly difficult line-drawing problems
8 involving searches of persons or purses attached to
9 persons that would not need to be reached in this case.

10 QUESTION: Well, would you say that -- the same
11 question I -- I asked the first counsel. If she left the
12 car clutching the bag, would you treat that any
13 differently than if it's a container in the car?

14 MS. McDOWELL: No, we wouldn't, just as when the
15 police are executing a search of a residence, somebody
16 couldn't walk out with a box containing the contraband and
17 be allowed to walk away free. We would say that because
18 the purse was in the car at the time that probable cause
19 arose --

20 QUESTION: What is your answer to the warrant to
21 search a house and a woman is in the house with her purse.
22 She doesn't live there. She's just a guest. Can you
23 search her purse then?

24 MS. McDOWELL: Yes.

25 QUESTION: You can.

1 MS. McDOWELL: Yes.

2 QUESTION: Has any court held that?

3 MS. McDOWELL: Yes, the D.C. Circuit, among
4 others, Pennsylvania, Michigan, and Wisconsin Supreme
5 Courts have reasonably --

6 QUESTION: Are there any contrary holdings?

7 MS. McDOWELL: Other courts have adopted a
8 somewhat different standard that looks at the relationship
9 between the owner of the purse and the residence. They
10 have said that a mere guest or passer-by's objects cannot
11 be searched, but they have said somebody in the nature of
12 an overnight guest, somebody who is found there late at
13 night, a business associate, a brother-in-law, yes.

14 QUESTION: And did they more or less correlate
15 it to the kind of person who would have standing to object
16 to the -- the search of the whole house, the overnight
17 guest on the one hand and a transient on the other?

18 MS. McDOWELL: No, that distinction hasn't been
19 drawn. So, conceivably a person who would not have
20 standing to challenge the search of the whole house could
21 nonetheless have her own property searched. Obviously,
22 she would have standing with respect to her own purse.

23 We further suggest that the test that was
24 suggested by the Wyoming Supreme Court would be very
25 difficult for the police to apply in the often difficult,

1 even dangerous conditions of a traffic stop. It would
2 require many factual inquiries that might be exceedingly
3 unworkable to conduct.

4 In addition, that test provides no really
5 principled protection of a passenger's privacy.

6 QUESTION: Why is it so hard to apply? Because,
7 at least as I read the decision, it says when they find
8 out, they say, is this your purse? She says, yes. She's
9 a passenger they stopped. I don't see why it's hard to
10 apply.

11 MS. McDOWELL: Well, for one thing, Justice
12 Ginsburg, the police shouldn't have to accept a person's
13 word that a particular purse is hers. A person who would
14 want to conceal --

15 QUESTION: Well, when they -- let's -- I don't
16 -- the -- as I understood the Wyoming Supreme Court, they
17 said they -- the police found what was it? Her driver's
18 license. So, they know that it's her purse. So, if -- if
19 that's the line, they know that it belongs to the
20 passenger, that's not a hard line to administer. There
21 may be other reasons to reject it.

22 MS. McDOWELL: Could I answer the question, Your
23 Honor?

24 There are additional inquiries that would have
25 to be conducted, inquiries as to exactly how much

1 particularized suspicion there is as to the passenger,
2 questions about whether an opportunity existed to hide
3 contraband in the passenger's purse immediately before the
4 stop, which the Wyoming Supreme Court would allow.

5 QUESTION: Thank you, Ms. McDowell.

6 Ms. Domonkos.

7 ORAL ARGUMENT OF DONNA D. DOMONKOS

8 ON BEHALF OF THE RESPONDENT

9 MS. DOMONKOS: Mr. Chief Justice, may it please
10 the Court:

11 Wherever a man may be, he is entitled to know he
12 will be free from unreasonable searches and seizures.
13 That is the language from Katz v. the United States where
14 this Court said the Fourth Amendment protects people not
15 places.

16 This Court has also said that it is the owner of
17 the container who is protected under the Fourth Amendment.

18 The Wyoming Supreme Court recognized these
19 rulings when it adopted the notice test. In the first
20 instance of the notice test, if the officer knows or
21 reasonably knows that the container to be searched does
22 not belong to the person whom they have probable cause to
23 search, they cannot search it.

24 QUESTION: Well, Ms. Domonkos, the Wyoming
25 Supreme Court certainly did not follow the language in

1 Ross here, did it, in our Ross decision?

2 MS. DOMONKOS: It did follow the language in
3 Ross.

4 QUESTION: I -- I thought Ross said probable
5 cause extends to any container in the car.

6 MS. DOMONKOS: The -- the scope of the Ross
7 holding was that --

8 QUESTION: I didn't say --

9 MS. DOMONKOS: The scope of the search.

10 QUESTION: Yes, go -- go ahead. Go ahead.

11 MS. DOMONKOS: The scope of the search is that
12 where -- wherever the officer has probable cause to
13 believe that contraband may be concealed. And there was
14 no reason to believe the officer in this case had probable
15 cause --

16 QUESTION: Well, but didn't it say -- it
17 extended to any container in the automobile?

18 MS. DOMONKOS: Yes. Ross introduced a bright
19 line rule.

20 QUESTION: And the reason it introduced a bright
21 line rule was because lawyers and courts have been
22 hopelessly confused by some of our earlier decisions which
23 parsed this thing to a fare-thee-well: Chadwick, about
24 whether the trunk was in the car and who saw it when;
25 Sanders, the same thing. Ross straightened out a lot of

1 those things, and I'm concerned if we follow the Wyoming
2 Supreme Court, we're just going to get right back into
3 that same case-by-case thing where people never knew what
4 the answer was.

5 MS. DOMONKOS: Ross -- the bright line rule in
6 Ross was -- was that all containers could be searched.
7 The Wyoming Supreme Court notice test still carries the
8 presumption that all containers within a vehicle where
9 there's probable cause to believe contraband may be
10 concealed can be searched, unless they know or have reason
11 to know that the container they want to search belongs to
12 someone they do not have probable cause to search.

13 QUESTION: Unless the suspect had immediate
14 access to that object before the search. Isn't that
15 another exception?

16 MS. DOMONKOS: That's another exception --

17 QUESTION: Well, so that it's not as
18 straightforward even as you've just stated it.

19 MS. DOMONKOS: But it's still in compliance with
20 this Court's holdings. In *Zurcher v. Stanford Daily*, they
21 said that if the cop -- or the officer has reason to
22 believe that evidence is concealed, they may still search
23 a third party. So, once again it's in compliance with
24 this Court's precedent that there has to be some kind of
25 probable cause, some reason to believe that this container

1 contains evidence.

2 In this case, the officer was searching for
3 evidence of Mr. David Young's drug usage. There was no
4 indication that that drug usage evidence was going to be
5 in Sandra Houghton's purse.

6 QUESTION: Would the case have come out
7 differently if the prosecutor hadn't made a point of
8 saying, now, we kept our eye on that car and we -- we know
9 that there was no opportunity to just slip this into her
10 purse, so she's responsible?

11 MS. DOMONKOS: Yes, it's possible the outcome
12 would have been different, but since we have evidence in
13 this case that says, from the officer who testified, that
14 the car was under surveillance the entire time and there
15 was no chance for David Young to slip any evidence into
16 Sandra Houghton's purse, there was no reason to believe
17 that his possession crime would be -- evidence of this
18 crime would be in her purse.

19 QUESTION: That isn't actually what they said.
20 I thought that the -- what they said on the facts is that
21 after the officer shined the lights, nobody slipped
22 anything into the purse. But they had been driving
23 together for we know -- we don't know how long.

24 I mean, that's what I don't understand about
25 this case. Why isn't there probable cause to believe it

1 was in the purse? You have a person with a syringe in his
2 pocket. He says he's a drug user. He's driving along.
3 If you think he has drugs, why wouldn't you think there
4 would be drugs in the car? And an obvious place to put
5 them would be in a purse. If you were a drug user, you
6 don't have people driving in the car when your syringe is
7 exposed unless you trust them. I mean, why doesn't that
8 at least give probable cause to search the purse, if that
9 makes a difference?

10 MS. DOMONKOS: This Court has already rejected a
11 similar argument in *Sibron v. New York* where they said
12 that the mere association with a drug addict -- and this
13 was a person -- or a case where the person was associating
14 with these drug addicts for approximately 8 hours
15 throughout a day. And this Court said that was not enough
16 to presume that this person was also involved with drugs.

17 The fact that Sandra Houghton was in this
18 vehicle with someone that is possibly a known drug addict
19 cannot rise to that level of probable cause unless the
20 officer sees something.

21 QUESTION: Didn't she give a false name to the
22 officers?

23 MS. DOMONKOS: Yes, she did, but the officer
24 didn't know this until he did breach --

25 QUESTION: Doesn't -- doesn't that suggest that

1 the idea of identifying who's who in a car is -- is not
2 going to be all that straightforward? I mean, to say --
3 you know, she says it's her purse. Well, if she -- if she
4 can give a false name, she can probably make a false
5 statement that it's her purse too.

6 MS. DOMONKOS: Yes, she could make a false
7 statement, but in this case we have an officer who made
8 the determination. He made the determination that he had
9 probable cause to search the vehicle because of probable
10 cause on David Young. He also said that he knew the purse
11 did not belong to David Young and that he did not have
12 probable cause on Sandra Houghton --

13 QUESTION: Suppose he did. Would that -- would
14 you then lose or not?

15 MS. DOMONKOS: I'm sorry.

16 QUESTION: Suppose after reading Sorrano and so
17 forth, I thought, well, to me anyway, he does have
18 probable cause to search the purse. It makes a lot of
19 sense. Suppose I thought that. I'm just saying this
20 hypothetically. Then you lose or not? I'm not sure. I'm
21 asking because I'm not sure. If he had probable cause to
22 search the purse, what's the right analysis?

23 MS. DOMONKOS: Yes, if he had probable cause to
24 search the purse, then --

25 QUESTION: Then that's it.

1 MS. DOMONKOS: Then he had probable cause to
2 search the purse and the actions of the officer would have
3 been in compliance with this Court's --

4 QUESTION: But if -- if he had probable cause to
5 search her, he couldn't do it, according to the
6 Government.

7 MS. DOMONKOS: No, I believe if he had probable
8 cause to search her, he would have had probable cause to
9 search her purse, all effects.

10 QUESTION: But he couldn't have searched her
11 without arresting her or something? Forget it. Forget
12 it.

13 (Laughter.)

14 QUESTION: As -- as I understand your -- I think
15 I'm right about this. Suppose in the back seat the
16 officer sees a tote bag, a gym bag, a man's lunch box, a
17 brown paper sack, a Gucci bag, and a purse. As I
18 understand it, your position is he can search everything
19 but the purse.

20 MS. DOMONKOS: Yes, Your Honor, if the facts are
21 the same as in this case where you have a male driver, two
22 female passengers, and there's no reason to believe that
23 he has secreted something within the purse because the
24 indication there at that point is that the purse does not
25 belong to David Young. It would be the same as if there

1 is a briefcase --

2 QUESTION: And, of course, if that's the rule
3 that we make, then probably the best place for this man to
4 put it would be in the purse.

5 MS. DOMONKOS: It is possible that that is the
6 way that he could have done it, but there would have to be
7 some reason to believe that he did before this -- before
8 he would be allowed to --

9 QUESTION: It's unlikely that a man who is
10 driving around with a syringe sticking out of his pocket
11 is going to be conscious of hiding things.

12 (Laughter.)

13 MS. DOMONKOS: Yes. I'm not sure I understand
14 the -- if there was a question.

15 QUESTION: The question was maybe he transferred
16 it before the lights were on the vehicle. At least in
17 this scenario, this was a terribly careless man.

18 MS. DOMONKOS: Yes. But once again, if he had
19 transferred something before the officer had shined the
20 light or before he started observing, then he would have
21 no reason to believe that the evidence had been secreted
22 within this purse.

23 QUESTION: Suppose I wanted the simplest rule on
24 the ground that this a borderline case. It is borderline
25 I think and it's quite complex. What's the simplest rule?

1 I mean, what they're arguing is that a container is a
2 container. That's the end of it. That's simple. Now,
3 what would you say?

4 MS. DOMONKOS: The -- the rule would be that
5 when there is only one person within a vehicle, if you
6 have probable cause to search the vehicle, you may search
7 all containers within the vehicle. If there is a
8 passenger present and you know the item you want to search
9 belongs to the passenger, then you cannot search unless
10 you have probable cause to search the passenger.

11 QUESTION: That would go for trunks, large
12 cardboard boxes, valises, chicken coups, whatever the --
13 the passenger says, oh, this all belongs to me. He says,
14 well, this is all mine. It's not the driver's, and then
15 that's it. You can't search it.

16 MS. DOMONKOS: Yes, because there would be no
17 probable cause, and this Court has required probable
18 cause.

19 QUESTION: Well, are you saying that the
20 passenger's say-so is enough? I mean, the reason this
21 purse was identified was that there was an ID card with
22 her name and her picture on it. So, as I understood the
23 Wyoming Supreme Court, it's not enough that the passenger
24 says, yes, that gym bag is mine or whatever.

25 MS. DOMONKOS: There has to be objective

1 criteria that indicates that it belongs to the passenger.
2 In this case, the officer said he didn't believe it
3 belonged to David Young because he was male and this was a
4 purse, and so it would belong to one of the passengers who
5 were female.

6 QUESTION: So, the presumption is that a
7 container in the car belongs to the driver unless there is
8 affirmative evidence to show the contrary. That would be
9 your rule.

10 MS. DOMONKOS: That's correct.

11 And that evidence can come in many ways:
12 initials on a briefcase, so if you have someone asserting
13 ownership over the briefcase, and the initials on the
14 briefcase do not --

15 QUESTION: Well, that -- that kind of
16 discriminates in favor of rich people in a way, doesn't
17 it?

18 (Laughter.)

19 QUESTION: If you can afford to have initials
20 put on your briefcase, you can avoid search, but if you
21 just have a -- something that doesn't have your initials
22 on it, you can't?

23 MS. DOMONKOS: I'm just saying there's objective
24 criteria to look for and that could be one of them.

25 QUESTION: Even I have initials on my briefcase,

1 Mr. Chief Justice.

2 (Laughter.)

3 QUESTION: But the -- the -- the statement of
4 the passenger that this belongs to me would not be
5 sufficient?

6 MS. DOMONKOS: In most instances, not.

7 QUESTION: Well, what instances would it be?
8 You say in most instances it wouldn't be.

9 MS. DOMONKOS: In instances like in this case
10 where we have the belief of the officer that it did not
11 belong to the driver. He had some criteria that he looked
12 at and he said it did not belong to the driver.

13 QUESTION: Well, if you've got a male driver and
14 two female passengers, I suppose you'd think the purse
15 didn't belong to the driver.

16 MS. DOMONKOS: That's correct.

17 QUESTION: Yes.

18 MS. DOMONKOS: And so that, with claiming
19 ownership from Sandra Houghton, is enough to -- to say,
20 okay, this item does not belong to the driver. It belongs
21 to the passenger. Now you must have probable cause to
22 search the passenger before -- you have to have the
23 probable cause before the search can commence.

24 QUESTION: The -- suppose this police officer,
25 instead of just saying, is this your purse, he said, is

1 this your purse? She says, yes. He says, mind if I
2 search it? That's a familiar scenario.

3 MS. DOMONKOS: Yes, it is.

4 QUESTION: And -- and the answer is often yes.

5 MS. DOMONKOS: And if there is a yes answer that
6 he can search it, then he has consent to search, and there
7 would be no -- no problem with the validity of the search.

8 QUESTION: She left the bag too. I mean, most
9 -- most people, when they have a bag -- I think a woman
10 who has a bag normally just takes it with her, and she
11 left it in the car. So, the officer is thinking, look,
12 here he has a syringe hanging out, he says he's a drug
13 user, she's been driving with him I don't know how long,
14 there's a bag right in the back seat, and she leaves it in
15 the car. Now, does that amount to probable cause to
16 search the bag?

17 MS. DOMONKOS: No, Your Honor, and the reason
18 for that is because there's no indication that this was a
19 voluntary leaving the bag in the car. We also don't want
20 to encourage them to be grabbing for these kind of items
21 while they're getting out of the car because then that's
22 going to pose a -- a safety problem for the officer. And
23 so, it is -- like I said -- and the record does not
24 disclose that this was an actual voluntary leaving of the
25 -- the bag within there. She was ordered out of the car.

1 The State's argument and what they are asking
2 this Court to do is to carve out an exception to the
3 probable cause requirement that this Court has held is
4 always necessary before a search can happen, whether it be
5 under the automobile exception where all that has been --
6 all that has changed with the automobile exception --

7 QUESTION: Well, I had thought it was a fairly
8 straightforward application of Ross, but you don't agree
9 with that.

10 MS. DOMONKOS: No, I do agree with that. I do
11 agree that because there's probable cause required before
12 the officer may search, this is the application of Ross.

13 QUESTION: Well, but I think it's you who are
14 wanting to carve -- carve out the exception from the
15 language of Ross which says that any container in the car
16 can be searched when there's probable cause. You're
17 saying no in the case -- case of a passenger. So, I think
18 the exception carving is the Wyoming Supreme Court and not
19 your opponent.

20 MS. DOMONKOS: Your Honor, I would disagree
21 because of the fact that just like you said with the Ross
22 holding, probable cause is required, and in this holding,
23 the Wyoming Supreme Court said there was no probable cause
24 to believe the evidence was going to be found in her
25 personal effects.

1 QUESTION: Well, but that's the inquiry that was
2 superseded under Ross. I mean, you no longer had to make
3 that sort of an inquiry. When there was probable cause to
4 search the car, you could search any container in the car.
5 And then so, what the Wyoming Supreme Court here said is,
6 no, that's not -- that's not quite true when you have a
7 passenger.

8 MS. DOMONKOS: Ross did not have any passengers,
9 so we really -- we don't really know what would have
10 happened had Ross had a passenger, but the fact remains
11 that Ross requires probable cause to search.

12 And also, Ross also identified the fact that
13 it's the owner of the container who is protected, and the
14 owner of this container was Sandra Houghton. She is the
15 one protected by the Fourth Amendment, and that protection
16 is that unless there's probable cause, the search is
17 unreasonable.

18 QUESTION: One of the problems with the Ross
19 opinion is it also said the search of the car should be
20 coextensive with the search that would be authorized if
21 they had a warrant with probable cause. But the problem
22 is I don't think the Court has ever decided whether even
23 if you had a warrant for a house or whatever it is, you
24 could search an individual's purse who happens to be
25 within the place described in the warrant. I think that's

1 an open question, and that's why Ross doesn't completely
2 answer it.

3 MS. DOMONKOS: That is correct.

4 QUESTION: Yes.

5 MS. DOMONKOS: And we have to take a look at
6 what would have happened if this officer had sought a
7 warrant. I believe David Young possesses drugs because he
8 had a syringe and he admits to taking drugs. I also know
9 that in this vehicle was a passenger, Sandra Houghton, and
10 she has a purse. I have no reason to believe he hid this
11 -- any evidence of his drug usage in her purse, and I have
12 no probable cause to believe she is involved with any
13 illegal activity. Would a warrant be issued in that
14 circumstance? And I don't believe it would be.

15 And so, under Ross --

16 QUESTION: Well, the question isn't whether the
17 warrant would be issued. The question is whether -- if
18 the warrant is issued describing the car, whether that
19 warrant would authorize the search of a particular person
20 who happens to be in the car, a person's purse, or
21 whatever it is. And the same question with -- for a
22 house. And part of the problem is we've never decided it.

23 MS. DOMONKOS: And that -- that is true.

24 QUESTION: Yes.

25 MS. DOMONKOS: I guess we can look to Ybarra,

1 which is the same thing that the Wyoming Supreme Court
2 did, and they said, here is a warrant that was issued, but
3 there was no reason to believe that Ybarra was involved
4 with criminal activity. And so, the warrant would not
5 extend --

6 QUESTION: But that -- that was -- that was a
7 search of a person, was it not? Ybarra?

8 MS. DOMONKOS: Yes, it was a search of a person.

9 QUESTION: And it was -- it had nothing to do
10 with an automobile.

11 MS. DOMONKOS: No, it did not. No, it did not.
12 It's just looking at the analogy of what a warrant that
13 was issued would allow, and in Ybarra, it would not allow
14 this search because the officer didn't have any reason to
15 believe -- no probable cause to believe this person was
16 involved with criminal activity.

17 QUESTION: Of course, the bright -- bright line
18 rule in Ross didn't -- didn't really last all that long
19 because it was changed in Acevedo. There was a dramatic
20 change in the rule in that case.

21 MS. DOMONKOS: Yes. In that case we then had
22 the probable cause just on the container that was in place
23 within -- in the vehicle.

24 QUESTION: Why isn't that true here -- the
25 purse? I mean, it's -- I can't get over the fact it's --

1 perhaps it's just my own odd way of looking at the world,
2 but -- that it would be an obvious thing for a drug addict
3 driver to put the drugs in this purse which is right next
4 to him or nearby. Now, you're saying there's no way in
5 that situation that the law permits a search of the purse.
6 I'm not saying Ms. Houghton was involved, but it just
7 seems logical that he could have put it there. So, don't
8 we have probable cause for the purse, though not
9 necessarily for the person?

10 MS. DOMONKOS: And that is the second part of
11 the notice test. If you have reason to believe that the
12 evidence has been secreted within this purse, you can
13 search it.

14 QUESTION: And is it not -- but -- I see. All
15 right, we're back --

16 MS. DOMONKOS: I'm sorry. I didn't mean to
17 interrupt.

18 QUESTION: Why was there not reason to believe
19 that it might have been secreted in the purse?

20 MS. DOMONKOS: The officer said he kept the
21 vehicle under surveillance from the time that he observed
22 the speeding and the taillight. He kept it under
23 observance from that time period till he stopped. Once he
24 stopped, he placed the light on the interior of the
25 vehicle and he said he saw no movement.

1 QUESTION: Well, but would he necessarily see a
2 movement while he was following the thing? I mean, it
3 doesn't take much to simply hand something from the front
4 seat to the back seat.

5 MS. DOMONKOS: He testified he saw no movement.

6 QUESTION: But what about putting it there
7 before he saw? I mean, we're back in circles, but your
8 answer to that was simply there's a Supreme Court case
9 that says it isn't probable cause. Right?

10 MS. DOMONKOS: Just that he associated with drug
11 addicts, and that's all that you would have at that point.

12 At any time prior to his observance --

13 QUESTION: This just doesn't quite conform to
14 common sense in -- in my view. I think that's what
15 Justice Breyer was saying. You know, this -- going -- if
16 I may be forgiven the expression, going around Robin
17 Hood's barn to figure out what was going on when it seems
18 perfectly common sense to say this guy was spotted for a
19 -- for an offense. He was being followed by the police.
20 He had a syringe in his pocket. If he was going to put
21 his drugs somewhere, he's going to put them in some
22 container in the car. What's wrong with that just as a
23 matter of common sense?

24 QUESTION: That's where I started.

25 QUESTION: Well, what's wrong is that they

1 didn't find him guilty of possessing drugs. He had an
2 empty syringe. So, he didn't have any drugs.

3 MS. DOMONKOS: The other thing too is that we
4 have no indication that Sandra Houghton did know about the
5 syringe. The officer who approached this vehicle had a
6 better vantage point to see within the pocket of the
7 driver.

8 QUESTION: Well, but couldn't he have grabbed
9 her purse perhaps without her knowledge?

10 MS. DOMONKOS: It is possible that it could have
11 happened, yes. But the officer did not have any reason to
12 believe that happened.

13 QUESTION: Well, why did he need to have a --
14 any more reason to believe? The guy had a syringe.
15 Presumably he had drugs somewhere, and there were
16 containers in the car. Why didn't that give him probable
17 cause to search the containers?

18 MS. DOMONKOS: Absent any actual knowledge that
19 this happened, it is just a presumption that it could have
20 happened, and since the owner is the one that is
21 protected, we have to look at how we are going to protect
22 Sandra Houghton. And there was no probable cause to
23 search her and there was no --

24 QUESTION: She turned out -- there were drugs
25 in her purse, were there not?

1 MS. DOMONKOS: That is correct. That is
2 correct. There were.

3 QUESTION: But they were her drugs not his,
4 weren't they?

5 (Laughter.)

6 QUESTION: But I mean, they're not -- there's no
7 indication they were placed in the purse by the driver.
8 They just -- she happened to have drugs, and it's just
9 that, you know, they just stumbled on this really.

10 QUESTION: In fact, she probably planted the
11 pipe on him.

12 (Laughter.)

13 MS. DOMONKOS: Always possible, yes.

14 QUESTION: Is that -- is that the case? I
15 hadn't taken that in, that they -- they weren't his drugs?

16 MS. DOMONKOS: She actually disclaimed ownership
17 of --

18 QUESTION: She said they weren't mine.

19 MS. DOMONKOS: Yes, of some of the drugs that
20 were within her purse, but she did claim ownership of
21 some.

22 QUESTION: Yes, but the jury didn't believe
23 that.

24 QUESTION: She also gave a false name.

25 (Laughter.)

1 MS. DOMONKOS: Yes, she did. Yes, she did.

2 QUESTION: The driver and the other passenger
3 were clean as far as the police were concerned. She was
4 the only one prosecuted. Is that --

5 MS. DOMONKOS: That is correct. That is
6 correct. They let Mr. Young and the other passenger go
7 that evening and they did not place him under arrest or
8 the other passenger. She was the only one placed under
9 arrest that evening.

10 QUESTION: Did they search her purse? And
11 actually the other passenger was in the middle, wasn't
12 she?

13 MS. DOMONKOS: That is correct.

14 QUESTION: And -- and she -- her -- was her
15 purse searched too?

16 MS. DOMONKOS: I'm not aware it if it was or
17 whether she even had a purse.

18 QUESTION: The record doesn't tell us because
19 you would think if he was going to put them on -- in the
20 purse, he'd put them in the woman next to him rather than
21 the one over by the door.

22 MS. DOMONKOS: That is correct. That is
23 correct.

24 QUESTION: What happened in respect -- there was
25 something in -- there's some reference to her trying to

1 give the impression it wasn't her purse, isn't there?

2 What was that about?

3 MS. DOMONKOS: No. There were three wallet type
4 containers within the purse, and those were where the
5 contraband was found. Now, the first one that was pulled
6 out, she said that is not mine, and then another one was
7 pulled out and she said that one is mine. So, she did
8 claim ownership even of the contraband that was pulled out
9 of the purse, but she disclaimed ownership of part of the
10 contraband that was pulled out of the purse.

11 The Fourth Amendment requires probable cause,
12 and in this case there was no probable cause to search the
13 passenger. The Wyoming Supreme Court ruling is consistent
14 with this Court's holdings in Ross and Acevedo which
15 require probable cause before a container can be searched.

16 The State is asking this Court to carve out an
17 exception to the probable cause requirement and say, your
18 mere presence in a vehicle is enough to search your
19 personal effects as long as there's probable cause for the
20 vehicle generally.

21 QUESTION: Can I ask you one other detail? I'm
22 sorry. On the fact are we objecting -- are you objecting
23 to the search of the purse or the wallet in the purse?

24 MS. DOMONKOS: We are objecting to the search of
25 the -- of the purse. It would also be an objection to

1 searching anything within the purse as well.

2 QUESTION: But only from the point when they
3 knew that it was hers and not Young's.

4 MS. DOMONKOS: That is correct.

5 Without probable cause, this -- this search
6 should never have happened, and we're asking this Court to
7 affirm the ruling of the Wyoming Supreme Court when they
8 adopted the notice test that required probable cause
9 before a passenger could be searched or, in the
10 alternative, if they have reason to believe that a
11 container is still concealing the contraband, that they
12 can search it. Both of these ideologies are consistent
13 with this Court's rulings.

14 Thank you.

15 QUESTION: Thank you, Mrs. Domonkos.

16 Mr. Rehurek, you have a minute remaining.

17 REBUTTAL ARGUMENT OF PAUL S. REHUREK

18 ON BEHALF OF THE PETITIONER

19 MR. REHUREK: Thank you, Your Honor.

20 I would just ask the Court, unless it has
21 questions, to envision a group of officers in the middle
22 of the night in Wyoming standing around for 60 minutes, as
23 just happened here, trying to figure out whether they can
24 search the purse in the back of the car and ask that this
25 Court overrule the Wyoming Supreme Court and apply Ross to

1 this situation.

2 Thank you.

3 CHIEF JUSTICE REHNQUIST: Thank you, Mr.

4 Rehurek.

5 The case is submitted.

6 (Whereupon, at 12:02 p.m., the case in the
7 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:

WYOMING v. SANDRA HOUGHTON
CASE NO: 98-184

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

BY:

Jonathan May
(REPORTER)