

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: FLORIDA, Petitioner v. TYVESSEL TYVORUS WHITE.
CASE NO: 98-223 C-2
PLACE: Washington, D.C.
DATE: Tuesday, March 23, 1999
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1 P R O C E E D I N G S

2 (10:12 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this morning in No. 98-223, Florida v. Tyvorus.

5 Ms. Snurkowski.

6 ORAL ARGUMENT OF CAROLYN M. SNURKOWSKI

7 ON BEHALF OF THE PETITIONER

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

10 Today the State is here before the Court seeking
11 to have the Florida Supreme Court opinion in White v.
12 State reversed based on that court's determination that a
13 requirement under Florida law and under the Fourth
14 Amendment to the United States Constitution mandates that
15 there be a neutral magistrate sought and a warrant
16 obtained prior to the seizure of a vehicle under the
17 Florida Contraband Forfeiture Act.

18 The State would direct its attention to cases,
19 in particular, Cooper, in particular, United States v.
20 Watson as controlling in this case. The Solicitor General
21 will focus on the applicability of Horton to this case and
22 the plain view theory that has been presented in some of
23 the briefs.

24 QUESTION: The way this came up, Ms. Snurkowski,
25 was that evidence was found in the ashtray or something of

1 the car and that was introduced at trial?

2 MS. SNURKOWSKI: Yes, Mr. Chief Justice. What
3 happened on October 14th, 1993, the defendant was at his
4 place of business. The Officer Pierce and Officer Stewart
5 had the ability to go there under a search warrant to
6 arrest him for unrelated drug charges. At that time, he
7 was placed under arrest. His keys were taken from him.
8 The keys to his car, which was in a parking lot, which was
9 the Sam's parking lot -- the car was taken, driven to the
10 task force community. It was not searched. It was just
11 seized at that point. It was taken to the task force
12 facility. At that point it was searched. Two crack
13 cocaine rocks were found wrapped in toweling in the
14 ashtray of the car.

15 QUESTION: And was the car taken because it was
16 forfeitable, or was it taken just because he was arrested
17 and something had to be done with the car?

18 MS. SNURKOWSKI: This was not incident to a
19 lawful arrest and it was not because of anything more than
20 the officers' belief that it was under forfeiture. There
21 had been three previous occasions when Mr. White was seen
22 dealing drugs out of the car, and under Florida statutes
23 920 -- 32.701 through 04, the State has the ability to
24 seek forfeiture of a vehicle that's used as an
25 instrumentality.

1 QUESTION: So, from the moment they -- they put
2 the key in it and took it away it was because it was
3 forfeitable.

4 MS. SNURKOWSKI: Yes, Your Honor.

5 QUESTION: And how long --

6 QUESTION: Did they have probable cause to
7 believe that the vehicle had been used for the
8 transportation of drugs?

9 MS. SNURKOWSKI: I'm sorry. I didn't hear the
10 first part of your question.

11 QUESTION: Did the officers -- has it been
12 determined that they had probable cause to believe that
13 the vehicle, which they seized, had been used to transport
14 illegal drugs?

15 MS. SNURKOWSKI: Yes, Your Honor. There had
16 been three previous occasions where one of these officers
17 had personally observed and there were videotapes of the
18 defendant actually selling drugs out of the car.

19 QUESTION: And Florida law makes the car used
20 for that purpose to be -- makes it possible to forfeit it
21 to the State.

22 MS. SNURKOWSKI: Subject to forfeiture.

23 QUESTION: Now, you don't rely on the G.M.
24 Leading Corporation case?

25 MS. SNURKOWSKI: Yes, we do, Your Honor.

1 QUESTION: I would have thought that was the
2 closest case. You didn't even mention it.

3 MS. SNURKOWSKI: I believe that that has been
4 mentioned in the other briefs. But, yes, in looking at
5 this case, we believe that that is a pertinent and germane
6 case to this one.

7 The reason the State started out with the Cooper
8 decision is it's believed that that in that case there,
9 the subject matter of scrutiny was the search following
10 the seizure, and the seizure at that point was -- was
11 under a forfeiture statute and was not in question. It
12 seems reasoned and followed that if in this instance where
13 the inventory search is not in question in this instance,
14 that both the seizure and the search are satisfied --
15 satisfies the Fourth Amendment with regard to practices
16 engaged in by the Florida authorities.

17 QUESTION: Ms. Snurkowski, what --

18 MS. SNURKOWSKI: Yes.

19 QUESTION: -- what troubles me about the case is
20 the long time interval between the -- between the time
21 when the -- the police had probable cause to believe that
22 the vehicle had been used for a crime and the time when
23 they elected to -- to seize it as forfeit. I -- it just
24 raises the possibility of -- of the police creating a -- a
25 sort of a evidence depository by simply identifying a car

1 and just leaving that car out there for years and years
2 until they -- until they finally determine that it -- it
3 has evidence that they'd like to have, whereupon they --
4 they move in and seize it. What -- what assurance is
5 there? I mean, that doesn't seem right to me.

6 MS. SNURKOWSKI: Well, first of all, in this
7 instance, all of the activities that occurred that
8 generated the need or the ability by the State to forfeit
9 occurred prior to any activity going on with regard to
10 this -- this last event. It wasn't that the car was
11 suddenly sitting out there doing nothing. There had been
12 three occasions when Mr. White was selling drugs out of
13 his car.

14 The probable cause that generated -- was
15 generated by that -- was to forfeit the car. It was not
16 to ascertain or have probable cause to seize the car. In
17 fact, the car couldn't have been seized at the moment they
18 saw the drugs being dealt --

19 QUESTION: Well, I know that, but that's my very
20 point. If you say they seize it right away, I don't see a
21 potential for abuse, but if you say once they see it being
22 used for a drug transaction, they can thereafter just put
23 in their file, you know, license number, whatever, can be
24 seized at any time, and then wait until they think there
25 may be some evidence in that car. And the real reason

1 they're seizing it thereafter, or at least the real reason
2 for their timing, is to obtain the evidence and not to --
3 and not to forfeit the car.

4 MS. SNURKOWSKI: Well, in all due respect, I
5 think that under Whren, this Court has indicated that we
6 are looking at an objective standard as opposed to a
7 subjective standard. The police officers have a
8 legitimate basis under Florida's Contraband statute to
9 seize the vehicle.

10 QUESTION: So, they could have done it 3 years
11 later, 5 years later.

12 MS. SNURKOWSKI: Well, there is certainly case
13 law that reflects that the time -- the -- the -- it seems
14 to me that the probable cause doesn't become stale,
15 doesn't change because the vehicle itself is the criminal
16 act --

17 QUESTION: Not --

18 MS. SNURKOWSKI: -- the fact that it was used.

19 QUESTION: That's exactly what troubles me, but
20 you -- you -- you acknowledge that -- that it could have
21 been seized 10 years later.

22 MS. SNURKOWSKI: Well, it probably could have
23 been, but the -- the likelihood of it passing scrutiny
24 with regard to the ultimate review of the search itself -
25 - we are talking about whether you have to go to a neutral

1 magistrate to seize the car. It's --

2 QUESTION: Would you apply this, Ms. Snurkowski,
3 to a Venice-type case? Let's say, the -- the city has an
4 ordinance that if you engage in prostitution in your car,
5 it will be forfeit, and then the police say, oh, we saw
6 this guy two, three times in the summer. And then it gets
7 to be October, and his car is sitting out there in a
8 shopping mall. And they say, oh, now, well, now, we can
9 take the car because we saw it three times this summer,
10 and if we are questioned about it after, we'll say that,
11 but we don't have to go before any magistrate or anything
12 like that.

13 I take it from what you've said so far that that
14 would also be okay.

15 MS. SNURKOWSKI: Yes, I believe --

16 QUESTION: There's no distinction between those
17 two situations.

18 MS. SNURKOWSKI: I -- I believe that the
19 instrumentality itself, the car is what is the offender
20 here, not the actions. The actions may precipitate that
21 the car is being used, and it may be incident. And, in
22 fact, under Florida statute there is a defense to
23 incidental or accidental use by the vehicle and therefore
24 it's not subject to forfeiture. But if it's -- if it's
25 part of the criminal conduct, and in this instance perhaps

1 where one is soliciting for prostitution, the car in and
2 of itself might not be --

3 QUESTION: I'm giving you a local ordinance --

4 MS. SNURKOWSKI: I'm sorry.

5 QUESTION: -- that was before this Court where
6 the car was forfeit if it had been used for an act of
7 prostitution.

8 MS. SNURKOWSKI: Right.

9 QUESTION: And I asked you if in that particular
10 case, the car was impounded on the spot. But suppose it
11 hadn't been taken then, and the police said, well, it's
12 forfeit, so we'll take it 2 months later.

13 And let's take another case in that same line.
14 Let's suppose the city has a measure that says, cars that
15 are driven by drunk drivers are forfeit.

16 MS. SNURKOWSKI: Right.

17 QUESTION: And someone is apprehended for drunk
18 driving, and the police decide, for whatever reason,
19 they're not going to take the car that day and 3 months
20 later they see it at the parking lot of the place of
21 employment and they take it.

22 MS. SNURKOWSKI: Well, I think it depends upon
23 -- again, we're -- the case before the Court is the
24 forfeiture act with regard to the drugs and other criminal
25 endeavors. But to expand it to the argument or the

1 suggestion that you have made that it has do with drunk
2 driving, as we have seen news stories out of -- coming out
3 of the State of New York, that very well may be a basis
4 if, in fact, it's the instrumentality used to -- for help
5 and involved in the crime itself.

6 QUESTION: I don't suppose getting -- if delay
7 is a problem, I don't suppose getting a warrant would
8 change things.

9 MS. SNURKOWSKI: Absolutely. And --

10 QUESTION: Well, but would this issue come -- I
11 mean, the reasonableness of the search is going to be
12 judged in part by reference to the -- to the -- or the
13 reasonableness of the seizure is going to be judged in
14 part by reference to the object of the seizure. Here the
15 object of the seizure is -- is punishment. It's an extra
16 penalty for -- for the -- for the -- the act involving the
17 contraband.

18 And I think it's probably accepted -- I think
19 it's accepted -- theory today that the further in time
20 between the act that is being punished and the imposition
21 of the penalty, the less effective it is, the less
22 reasonable it is to be imposing it. So, it would see to
23 me that there's a fair argument that the longer the police
24 wait without some kind of -- or the State waits without
25 some justification, the further removed the seizure

1 becomes from the -- the -- a reasonable relationship to
2 its object.

3 And at some point I suppose that would affect
4 the Fourth Amendment analysis. And I also assume it would
5 affect the Fourth Amendment analysis if a warrant were
6 being applied for.

7 Is that an illegitimate argument?

8 MS. SNURKOWSKI: I think there is probably some
9 truth to the fact that time could pass along, but it
10 doesn't mean that the probable cause in any way
11 deteriorates. It may be other factors --

12 QUESTION: Well, that's -- that's right, but the
13 ultimate question is the reasonableness of the search, and
14 you've got to have the probable cause, but we all know
15 probable cause can, in fact, be dissipated or -- or
16 rendered nugatory by various things that happen after you
17 get it.

18 And in Justice Scalia's example, the 5-year wait
19 -- I mean, it -- it really stretches credibility to say
20 that a 5-year wait without, you know, some extraordinary
21 excuse that we don't have in our hypo, can reasonably be
22 related to the ostensibly punitive object of the law. And
23 if that is so, don't we in, let's say, the 5-year example
24 -- don't we have to confront the unreasonableness of the
25 search in relation to its object?

1 MS. SNURKOWSKI: Yes, Your Honor. And in fact,
2 I don't --

3 QUESTION: Well, would you agree that the 5-
4 year search would violate the --

5 MS. SNURKOWSKI: It very well --

6 QUESTION: I keep saying search. You know --

7 MS. SNURKOWSKI: Right. Seizure.

8 QUESTION: I mean seizure.

9 MS. SNURKOWSKI: It very well -- it very well
10 may be, but it doesn't impact with regard to the probable
11 cause. It impacts upon the reasonableness.

12 QUESTION: I --

13 MS. SNURKOWSKI: And that certainly would be
14 something that would be under scrutiny upon a challenge to
15 the validity --

16 QUESTION: Well, it might affect the --

17 MS. SNURKOWSKI: -- of the seizure and ultimate
18 search.

19 QUESTION: It might affect the probable cause
20 determination in this regard. If you get a warrant, you
21 have the judge or the magistrate makes the determination,
22 whereas there is an advantage there.

23 And secondly, presumably the magistrate would
24 make it promptly, and then you'd have the warrant in the
25 -- in your desk to use whenever you want to serve it.

1 Whereas, if you wait 3 years or 6 months to do it, then
2 you have to -- your probable cause determines -- is based
3 on what you can remember of what happened 6 months earlier
4 and the facts are less clear than if they're established
5 and the warrant obtained at the time.

6 MS. SNURKOWSKI: That's true, but the
7 underpinnings of the probable cause here is that some --
8 an instrumentality, a car, was used during the course of
9 the criminal endeavor. That's the basis upon which the
10 probable cause arises under the Florida statute.

11 QUESTION: Well, again, if -- if delay is a
12 problem, do you think the problem would be alleviated by
13 keeping a warrant in the police officer's desk for 3 years
14 and then serving it?

15 MS. SNURKOWSKI: No, Your Honor, and that was
16 what I was trying to get to. The -- the point is that on
17 the facts of this case and I believe most of the facts as
18 presented in the hypotheticals, a magistrate would have
19 issued a warrant the next day or 10 days or 100 days
20 because it was -- if there's probable cause to believe
21 that that vehicle in fact was used during the course of a
22 criminal endeavor, to wit, selling drugs, that -- that car
23 cannot wipe --

24 QUESTION: Yes, but --

25 MS. SNURKOWSKI: -- itself away of the crime.

1 QUESTION: But that also survives transfer of
2 ownership. Say somebody -- say the car was sold in the
3 meantime. You'd still be able to seize the car. If you
4 had the warrant and you go to the new owner and say this
5 is why I'm seizing it. The judge decided it was used this
6 way. If you go to the new owner 3 or 4 months later and
7 say, well, your predecessor owner used this car
8 improperly, we're going to seize it, it seems to me
9 there's a -- factually the citizen might react a little
10 differently to the service in the two cases.

11 MS. SNURKOWSKI: But in fact -- but in fact
12 under the statute, there is a very speedy ability to have
13 redress with regard to wrongful taking of the vehicle, and
14 in fact, under --

15 QUESTION: But it wouldn't be a wrongful taking,
16 would it?

17 MS. SNURKOWSKI: Well --

18 QUESTION: I mean, the new -- the new owner
19 wouldn't have a defense, would he?

20 MS. SNURKOWSKI: Yes, because under the statute,
21 it applies to those individuals who -- under the Florida
22 statute, it applies to those individuals who are innocent
23 with regard to --

24 QUESTION: Well, but then it's not just the
25 vehicle is -- it's not like the deodand. The vehicle is

1 not the -- the criminal.

2 MS. SNURKOWSKI: Well, it -- it can be wiped
3 clean in -- in --

4 QUESTION: By selling it?

5 MS. SNURKOWSKI: Pardon me?

6 QUESTION: You can -- you can exonerate the
7 vehicle by selling it?

8 MS. SNURKOWSKI: Well, under the Florida
9 statute, it shows -- we have a provision that says, for
10 example, a spousal ownership. If that person can
11 demonstrate that they had no knowledge with regard to
12 that, that the car will not be forfeited. So, there are
13 provisions that protect, but that doesn't mean to say that
14 because we put provisions that protect, that the
15 instrumentality suddenly is cleansed. It just means that
16 we're not going to forfeit because this is not the car
17 that --

18 QUESTION: Put the spousal one aside. What
19 about sale to an innocent, bona fide purchaser? Is that
20 person subject to forfeiture or not? Does that cleanse
21 the car?

22 MS. SNURKOWSKI: The car is not cleansed. What
23 happens is that the purpose for forfeiture has changed
24 because it's no -- the car no longer is being forfeited
25 because somebody engaged in a criminal endeavor, if an

1 innocent person now owns that car. That person didn't do
2 anything to that.

3 QUESTION: No, but the car had been used -- the
4 car committed the crime I thought under your theory.

5 MS. SNURKOWSKI: That's right. Under forfeiture
6 theory, the crime -- when the crime occurs, the car
7 becomes an offender or offender --

8 QUESTION: And it ceases to be an offender when
9 it's sold.

10 MS. SNURKOWSKI: Well, it doesn't cease to be
11 that, but it certainly -- it has -- it has less basis for
12 support for the ultimate forfeiture of that vehicle.

13 QUESTION: I don't see why.

14 QUESTION: Is time for executing a warrant
15 unlimited in Florida? If a magistrate gives a warrant,
16 can it be executed 3 months later or 4 months later?

17 MS. SNURKOWSKI: There's no specific provision
18 that allows for a time limitation.

19 Thank you.

20 QUESTION: Thank you, Ms. Snurkowski.

21 Mr. Stewart, we'll hear from you.

22 ORAL ARGUMENT OF MALCOLM L. STEWART
23 FOR THE UNITED STATES, AS AMICUS CURIAE,
24 SUPPORTING THE PETITIONER

25 QUESTION: Mr. Stewart, would you mind telling

1 us exactly what kind of an exception to the warrant
2 requirement you're supporting here? It certainly isn't
3 clear to me from the State's argument --

4 MR. STEWART: The rule --

5 QUESTION: -- what the State's asking for.

6 MR. STEWART: The rule we're advocating -- and I
7 think it is supported by a number of this Court's
8 decisions -- is that when items of personal property are
9 found in public areas, they may be seized by law
10 enforcement officials based on probable cause without a
11 prior judicial warrant.

12 Now, some of this Court's --

13 QUESTION: So -- so, if the vehicle had been
14 parked in the owner's driveway, could it have been seized?

15 MR. STEWART: The driveway is a close question.
16 If it had been parked in the owner's garage, for instance,
17 an area in which the owner would clearly have a reasonable
18 expectation of privacy, the car could not have been seized
19 on our view without a warrant.

20 QUESTION: So, what's your position on the
21 driveway or the curtilage?

22 MR. STEWART: Our position on the -- our
23 position on the driveway, generally speaking, is that a
24 driveway is not within the curtilage, and therefore the
25 owner would not have a reasonable expectation of privacy

1 in it.

2 There was actually a case in the Seventh
3 Circuit, United States v. Redman, that involved a related
4 issue in which law enforcement officials conducted a
5 search of trash cans located at the -- the point of the
6 individual's driveway that was closest to the house. And
7 the en banc Seventh Circuit split 8 to 5, held that the
8 individual did not have a reasonable expectation of
9 privacy in his driveway.

10 We think the same rule would apply to seizures
11 of a vehicle from a driveway, but in fairness, given the
12 way that the Seventh Circuit divided, we can't say that
13 that's a settled question.

14 QUESTION: It depends on how much is left of the
15 Coolidge decision.

16 MR. STEWART: That's correct.

17 But -- but at any rate, the dividing line would
18 be as to any particular location, did the individual have
19 a reasonable expectation of privacy in this place? The
20 garage, clearly yes. A public parking lot, clearly no.
21 The driveway is -- is somewhere in between.

22 QUESTION: Is the purpose for the forfeiture, as
23 you understand it, because this particular chattel is --
24 is a nuisance? It is a dangerous instrumentality. It
25 should be removed from the --

1 MR. STEWART: Well, I mean, a car --

2 QUESTION: -- from the streets?

3 MR. STEWART: A car is not per se dangerous.

4 Clearly part of the --

5 QUESTION: Why are we forfeiting? In order to
6 impose a punishment?

7 MR. STEWART: It is partly to impose a
8 punishment. It is partly out of a belief that so long as
9 the car remains in the hands of this owner who has
10 previously utilized it to facilitate criminal activity,
11 there is a danger that that activity will -- will occur in
12 the future. So --

13 QUESTION: Now, if -- if the latter is the
14 rationale, then doesn't the delay that we're concerned
15 about enter into the calculus? That is to say, if there's
16 a long, long delay before the automobile is seized,
17 doesn't that indicate that it is not such a dangerous
18 instrumentality, that forfeiture should be used?

19 I'm -- I'm trying to -- to find some standard by
20 which we could protect owners against the unreasonableness
21 that is caused by deliberate delay, which can be used to
22 harass persons.

23 MR. STEWART: I guess I'd have a couple of
24 responses.

25 The first is that at least in most cases, the

1 owner can't claim to be injured simply by the fact that
2 he's allowed to retain and use his property longer than he
3 might have been.

4 I think second we would draw an analogy to
5 warrantless seizures of the person, warrantless arrests.
6 That is, it's established law that a warrantless arrest
7 may be conducted in a public place without a warrant even
8 though a warrant would be required in a private place, and
9 it might seem intuitively as though once police have
10 probable cause to believe that an individual had committed
11 a crime, the natural thing to do would be to arrest him
12 immediately in order to remove the -- the danger from the
13 streets.

14 However, I think it's generally understood that
15 there may be countervailing concerns that would justify
16 some form of delay. The police might want to see whether
17 this person was acting in confederation with others, might
18 want to see whether it could locate bigger operatives
19 within the criminal organization. And, therefore, the
20 police are not required to arrest an individual as soon as
21 they have probable cause to believe that he has committed
22 a crime.

23 QUESTION: Then you're saying there's sort of a
24 notion of reasonable delay, but conversely I assume there
25 -- there -- there is the thought in -- in what you're

1 saying that there might be an unreasonable delay in
2 seizures.

3 MR. STEWART: Well, certainly the -- the primary
4 limitation on the amount of delay that would be considered
5 reasonable in the arrest context is the statute of
6 limitations. That is, as a practical matter, the -- the
7 police couldn't wait so long to arrest the individual that
8 the statute of limitations had expired.

9 QUESTION: Okay. Well, let's get to a case, you
10 know, a seizure case like this. I threw out the idea in
11 -- in talking with -- with your colleague that if the --
12 if the object is -- is essentially punitive, then there's
13 a point at which the punitive rationale really begins to
14 evaporate, and I don't know when that point was reached,
15 but we thought perhaps if there had been a 5-year wait, it
16 would have evaporated. Would you agree with that?

17 MR. STEWART: I -- I think it would depend upon
18 the -- the circumstances. I think the first place we
19 would look is to see whether the legislature that had
20 established the forfeiture statute had itself made the
21 determination as to what period of delay was unreasonable.

22 QUESTION: You know, that might be a good basis
23 for us to inform ourselves about contemporary standards of
24 reasonableness, but at some point the reasonableness would
25 dissipate, I take it, on -- on your rationale.

1 MR. STEWART: At some point. I think that has
2 nothing, with respect, to do with the warrant requirement.
3 That is, if for instance --

4 QUESTION: I -- I -- I agree with that.

5 MR. STEWART: If, for instance, Florida by
6 statute had said property can't be forfeited based on its
7 use in criminal activity more than 5 years ago, then if
8 police have evidence that the car had been used to
9 facilitate narcotics offenses 6 years ago, the seizure
10 would be no good because there would be no probable cause
11 to believe that the property was forfeitable under the
12 statute. That would be so regardless of whether the
13 police attempted to seize the vehicle without a warrant or
14 whether they went to a magistrate with a warrant.

15 And as the Chief Justice pointed out, I think to
16 the extent that the Court regards the possibility of
17 unreasonable delay as a problem, it's not a problem that
18 would be solved by imposition of a warrant requirement.

19 QUESTION: Do you rely here at all on the fact
20 that the car is a movable object and --

21 MR. STEWART: Certainly we think -- the rule we
22 propose is not automobile-specific, but we certainly think
23 that the mobility of automobiles reinforces the general
24 principle announced in this Court's decisions --

25 QUESTION: I would have thought the principle

1 didn't rest at all on that. Am I wrong?

2 MR. STEWART: Well, what -- what the Court has
3 said in --

4 QUESTION: In this case where there's a
5 forfeiture statute because of the use of the vehicle.

6 MR. STEWART: Well, the general principle this
7 Court has announced is that items of personal property
8 found in a public place may be seized with -- without a
9 warrant, and one of the justifications the Court has given
10 for that general rule is that, at least in many instances,
11 the property -- personal property, is susceptible of being
12 moved away quickly, and we think that is all the more true
13 in the case of an automobile. But the -- the rule, as we
14 propose, as I say, is not automobile-specific.

15 It is probably the type of rule that is
16 particularly likely to be invoked with respect to
17 automobiles simply because the automobile is a type of
18 personal property that is very often left in -- in public
19 places.

20 QUESTION: Mr. Stewart, you said a second ago -
21 - I agreed with you a second ago -- that the problem of
22 staleness and dissipation of reasonableness is going to
23 occur whether there's a warrant or whether there isn't,
24 and I -- I think that's right.

25 It doesn't, though, I think follow as -- as you

1 suggested a second later that that makes the warrant
2 requirement irrelevant because it seems to me that if
3 there is a warrant requirement, we're going to have some
4 magistrate considering at the time the warrant is issued,
5 i.e., prior to the actual seizure, whether in fact the
6 delay has dissipated the reasonableness of the search on
7 -- on the -- on the theory on -- on which forfeitures are
8 -- are required. And, therefore, we -- we will have a
9 situation, if there's a warrant requirement, in which some
10 cars are not going to be seized illegally.

11 And so, it would seem to me that if there is, in
12 fact, a dissipation rationale, there is a good reason,
13 therefore, to -- to have a -- a warrant requirement so
14 that there is -- there is some neutral judgment between
15 the officer and what may be a quite unlawful seizure.

16 MR. STEWART: I think -- I think that that is
17 not true because the problem you hypothesize is no
18 different in principle from the problem that may always
19 occur when the police undertake a warrantless seizure of
20 property from a public place. That is, it is always the
21 case that police might misjudge the question of whether
22 there is probable cause to effect the seizure.

23 QUESTION: Yes, but here we're not talking about
24 -- I mean, you're quite right. They -- they may get the
25 probable cause wrong. But now we have yet a -- a further

1 element, and it's not a probable cause kind of judgment.
2 And therefore, doesn't the further element at least
3 provide a further reason for saying that -- that a warrant
4 would -- would, in fact, be helpful in effectuating the
5 Fourth Amendment?

6 MR. STEWART: Well, the --

7 QUESTION: Maybe we can get by without it, but
8 something would be served by recognizing it.

9 MR. STEWART: Well, the further element would
10 simply be the legal determination of what period of delay
11 would be regarded under the law as unreasonable. And that
12 again is no different in principle from the judgment that
13 police may, when they decide whether to effect a
14 warrantless arrest -- that is, in order to determine the
15 existence of probable cause, they have to decide not only
16 what has this person done, but what does the law require
17 or prohibit.

18 And consequently, the probable cause
19 determination is inevitably entwined with police officers'
20 judgments about the applicable legal standards. They may
21 get those wrong and it's true that interposing a
22 magistrate might reduce the incidence of error.

23 Thank you, Mr. Chief Justice.

24 QUESTION: Thank you, Mr. Stewart.

25 Mr. Gauldin, we'll hear from you.

1 ORAL ARGUMENT OF DAVID P. GAULDIN

2 ON BEHALF OF THE RESPONDENT

3 MR. GAULDIN: Mr. Chief Justice, and may it
4 please the Court:

5 The State of Florida had 68 to 80 days in which
6 to obtain a warrant to seize this vehicle. They didn't
7 bother. The State of Florida has now had 6 years and
8 about 20 minutes to explain to explain why they didn't get
9 a warrant. They haven't done so adequately.

10 Simply our position is this. None of the
11 traditional warrant exceptions to the Fourth Amendment
12 apply. There is no civil forfeiture exception to the
13 Fourth Amendment, and under the circumstances of this
14 case, the police were required to get a warrant --

15 QUESTION: How do you distinguish the Cooper
16 case and the G.M. Leasing case?

17 MR. GAULDIN: Cooper v. California only dealt
18 with a subsequent inventory search after the car had been
19 seized. The issue was not placed before the Court as to
20 whether the seizure was appropriate. No one argued that,
21 so that issue was not decided by this Court.

22 QUESTION: Well, but the Court certainly assumed
23 that the seizure was appropriate.

24 MR. GAULDIN: It may well have assumed it, but
25 that just simply was not an issue before the Court. At

1 that point, it was assumed that it was valid, and the only
2 issue that you decided was once it came lawfully into the
3 police's hands -- into the police hands, whether they have
4 a right to conduct an inventory search. And Cooper v.
5 California, as far as I read the decision, simply stands
6 for that proposition.

7 QUESTION: How about G.M. Leasing?

8 MR. GAULDIN: G.M. Leasing represents the tax
9 levied on a public street exception of the Fourth
10 Amendment. In G.M. Leasing, as you'll recall, the revenue
11 agents went first to the home of who turned out to be the
12 fugitive tax debtor 2 days prior to the seizure of the
13 car, and they informed the wife, I believe it was, of the
14 tax debtor and also the son that there was a tax debt and
15 that their assets were subject to --

16 QUESTION: Well, G.M. Leasing involved a
17 warrantless seizure of a vehicle in a public place, and
18 this Court upheld it.

19 MR. GAULDIN: Yes, but G.M. Leasing was not a
20 forfeiture case. G.M. Leasing was a case where the
21 Government had a tax debt that it was satisfying, which it
22 did by first filing a lien 2 days prior to the seizure in
23 the Salt Lake City County courthouse and then proceeded to
24 levy on the Government's debt. Moreover --

25 QUESTION: Why should it make any difference the

1 fact that it wasn't a forfeiture? Why should forfeiture
2 produce a special -- a special class of rules in
3 connection with a warrant and no warrant?

4 MR. GAULDIN: Probably because tax assessments
5 seemed to create a special class. The tax assessments --
6

7 QUESTION: Well, is that what -- the Court
8 didn't say that in G.M. Leasing.

9 MR. GAULDIN: What the Court did say --

10 QUESTION: I mean, you -- you can -- you know,
11 you can say that South Dakota against Opperman, the
12 inventory case, involved a van, so it doesn't cover a car,
13 but we don't distinguish cases that way.

14 MR. GAULDIN: What the Court said in G.M.
15 Leasing, it went back to the history of the tax
16 legislation and the taxing power, which is a
17 constitutional power, it went back to the history of that
18 and said almost --

19 QUESTION: Well, you say -- you say the taxing
20 power is a constitutional power. Do you think that the
21 enactment of a forfeiture statute by Florida is not a
22 constitutional power?

23 MR. GAULDIN: No. It's a statutory -- it's a
24 statutory right that they're giving law enforcement.

25 QUESTION: Well, but certainly under the

1 allocation of government in our system, the Florida
2 government has as much right to enact a forfeiture statute
3 as the United States has to enact a taxing statute, does
4 it not?

5 MR. GAULDIN: It certainly does that. But
6 first, the Constitution specifically provides for the
7 collection of taxes.

8 Secondly, in Bull v. United States and various
9 other cases that you have dealt with in relation to taxes,
10 you have justified this on the base -- basis of the prompt
11 collection of the revenue of taxes saying that, in fact,
12 the very realm -- or the very United States Government
13 depends upon the prompt collection of taxes.

14 QUESTION: Well, I think the question, at least
15 mine, would be, how could it be a reasonable thing to
16 seize a car in a public place without a warrant to satisfy
17 a tax debt, but it wouldn't be a reasonable thing to seize
18 an instrumentality of a crime, the car, in a public place?
19 I mean, how could the one be reasonable but the other
20 isn't? An instrumentality of a crime would seem as
21 historic, as necessary, at least as seizing a car to
22 satisfy a tax debt. I mean, that's the same question, but
23 I'm looking for the distinction.

24 MR. GAULDIN: Well, one thing, of course, the
25 tax debt has been determined to be a tax debt. According

1 to your tax bases, they --

2 QUESTION: You mean you have to determine it
3 beyond probable cause? In other words, just having the
4 probable cause to seize the car to satisfy the debt, they
5 wouldn't have been able to do it?

6 MR. GAULDIN: To satisfy the debt or the
7 forfeiture?

8 QUESTION: No. To satisfy the debt. I mean,
9 does -- what was the -- is that -- is that open? I mean,
10 in other words, you're saying of G.M. Leasing, if they
11 hadn't had -- if they just had probable cause, it would
12 have been constitutionally forbidden? Is that the point?

13 MR. GAULDIN: Well, G.M. Leasing was not a case
14 that involved probable cause. What G. --

15 QUESTION: No, but the Court in G.M. Leasing
16 specifically said it took the case limited to the Fourth
17 Amendment issue, and because there was probable cause,
18 even though it was a warrantless seizure, it occurred in a
19 public place and it was valid under the Fourth Amendment.
20 Now, I mean, the Court didn't get into this tax issue at
21 all. I think you have a very hard time distinguishing the
22 principle involved in that case.

23 QUESTION: Whether it's reasoned or not --
24 whether it did or didn't get into it, my problem is one of
25 logic or reason, not a problem of precedent. I don't see

1 the distinction between -- well, you heard what I said.

2 MR. GAULDIN: Okay, well --

3 QUESTION: What is the distinction in your view?

4 MR. GAULDIN: The distinction, at least in my
5 view, is that at least in the civil forfeiture area, they
6 did not have a specific exception that has been validated
7 by this Court to the Fourth Amendment for a seizure.
8 There now exists, as I said early, a specific exception
9 for the seizure for tax levies, which means a tax
10 judgment, because a tax assessment is equivalent to a tax
11 judgment.

12 QUESTION: Well, we make a lot of exceptions to
13 other constitutional principles in the tax field, don't
14 we? I mean --

15 MR. GAULDIN: Yes, we do and I hope --

16 QUESTION: We -- we allow the Government to take
17 your property before the -- the actual tax judgment is
18 issued, don't we?

19 MR. GAULDIN: Yes, we do, and in fact Bull v.
20 United --

21 QUESTION: They can take it now and -- and --
22 you know, and try the tax case later.

23 MR. GAULDIN: That's exactly right.

24 QUESTION: We don't generally allow that in the
25 criminal law, do we?

1 MR. GAULDIN: No, we do not, and that's what
2 Bull v. United States says, that that's the system that we
3 have in taxing: the assessment comes first and the
4 defense comes second.

5 QUESTION: Maybe -- I don't -- maybe we trust
6 tax gatherers more than we trust criminal law officials.

7 (Laughter.)

8 MR. GAULDIN: I don't know, but in light of the
9 legislative problems and hearings recently, maybe you'll
10 reconsider that. But that's not the case here. The case
11 here --

12 QUESTION: I want to -- I'm sorry. I want to
13 make sure I understand your -- your -- your response to
14 Justice Breyer. Was it your response, in effect, as to
15 G.M. that in the G.M. case there had, in fact, been a tax
16 judgment and that that would have been the analog of the
17 hearing before the magistrate and, therefore, there was a
18 kind of process that had been satisfied there going to the
19 question of the reasonableness of the seizure?

20 MR. GAULDIN: There was not only a kind of
21 process because first a tax assessment had occurred, which
22 is equivalent apparently in tax law to a tax judgment.
23 Secondly, a lien had been filed, and third, they had gone
24 to the place and informed at least the wife of the tax
25 debtor of the imminence of that. So, they had notice and

1 opportunity that the seizure would occur.

2 QUESTION: Okay, but I take it then -- I just
3 don't remember this. They -- there had never been even an
4 ex parte judicial proceeding in the G.M. case, had there
5 been?

6 MR. GAULDIN: No, other than that they went to
7 the county courthouse and filed a tax lien so at least you
8 had notice and opportunity, which is more than -- than you
9 have here.

10 QUESTION: Notice and opportunity to do what?

11 QUESTION: -- may not even know it.

12 MR. GAULDIN: To institute whatever
13 procedures --

14 QUESTION: Stake out in front of the car and --
15 and meet the seizure with armed force?

16 MR. GAULDIN: Well --

17 QUESTION: What -- what good did the notice do
18 you?

19 MR. GAULDIN: Well, the notice did do them
20 something because they hauled a bunch of crates of
21 information and stuff in the other part of G.M. Leasing.

22 QUESTION: Well, notice provides legal notice in
23 -- as -- on a constructive notice theory, but in fact, the
24 -- the owner of the property may not have any actual
25 notice whatsoever. I mean, a filing is simply a filing.

1 MR. GAULDIN: True, although -- and you're
2 right, they're placed on constructive notice. But the
3 owner of the property, at least the wife's owner did know,
4 and the only the reason the owner of the property didn't
5 know because he was a tax fugitive at the time.

6 QUESTION: But this was not part of the Court's
7 rationale in G.M., was it?

8 MR. GAULDIN: That was part of the foundation
9 from which the Court's rationale sprung. That is to
10 say --

11 QUESTION: Well, it was the -- it was a fact of
12 the case, but the Court did not explain that fact as being
13 essential to its holding, did it?

14 MR. GAULDIN: No. The Court essentially
15 explained that the immediacy for the collection of
16 revenues has historically been an exception for a seizure
17 of that sort for a tax assessment. And that -- I think
18 it's paragraph C. I forget. It's just a narrow, little
19 area where they actually talk about the seizure of the car
20 in G.M. Leasing.

21 QUESTION: So, you're saying there was a kind of
22 economic exigency rationale in G.M.?

23 MR. GAULDIN: The Court in G.M. indicated it was
24 an economic exigency, and they cited about three or four
25 very old cases for that proposition, Bull v. United

1 States, Springer, and several other cases.

2 QUESTION: It is your position, as I understand
3 it, that a warrant would have been necessary even if that
4 car had been seized when they first saw it being used in
5 an illegal drug transaction, assuming -- assuming that
6 there were no exigent circumstances, that they -- they had
7 time to get a warrant.

8 MR. GAULDIN: If there were no exigent
9 circumstances, yes. If none of the traditional exceptions
10 applied, yes, they would have had to get a warrant.

11 QUESTION: It isn't just if you -- if you don't
12 seize it right away when you're seeing it being used
13 illegally and you want to seize it later you need a
14 warrant. You need a warrant all the time.

15 MR. GAULDIN: No, you don't need a warrant all
16 the time. If they actually came upon him while he was,
17 for instance, selling drugs out of the car and they had
18 probable cause to believe that drugs were in the car --

19 QUESTION: Right.

20 MR. GAULDIN: -- and that the car was movable or
21 may be moved because the occupants were alerted, then I
22 think the car exception would apply, at least to the point
23 where they could --

24 QUESTION: Well, so then -- then your answer is
25 that if -- if they had seized this particular car when

1 they first saw him dealing drugs out of the car, they
2 could have done it without a warrant.

3 MR. GAULDIN: Yes, if they had done it right
4 then. Yes.

5 QUESTION: So, it's just -- that certainly
6 wasn't the reasoning of the Supreme Court of Florida. The
7 -- I don't think the Supreme Court --

8 MR. GAULDIN: What the Supreme Court --

9 QUESTION: I'm -- I haven't finished.

10 MR. GAULDIN: I'm sorry.

11 QUESTION: I think what the Supreme Court of
12 Florida relied on was just the fact that you need the
13 warrant regardless of any delay.

14 MR. GAULDIN: The Supreme Court of Florida I
15 think said that there were no exigent circumstances and
16 that that was admitted by the parties below, and that
17 that's why the car exception was inapplicable.

18 QUESTION: Yes, and so -- but did you read the
19 opinion of the Supreme Court of Florida as relying on this
20 delay factor?

21 MR. GAULDIN: I think delay was intrinsic in it
22 because once there's a delay --

23 QUESTION: You say it was intrinsic. Did the
24 Florida Supreme Court mention the word delay in its
25 opinion?

1 MR. GAULDIN: The Florida Supreme Court set out
2 the dates that occurred between the illegal activities
3 that occurred and the ultimate arrest of the person and
4 the seizure of the car.

5 QUESTION: But did they rely on that in their
6 reasoning?

7 MR. GAULDIN: What they -- well, their reasoning
8 was that simply the car exception didn't apply because
9 there were no exigent circumstances.

10 QUESTION: Can you help me with another thing
11 which I haven't found --

12 MR. GAULDIN: Sure.

13 QUESTION: -- and you probably know. I have a
14 bell in my mind that there used to be something called the
15 Government's power to seize contraband in a public place
16 or an instrumentality of a crime. Is there no such
17 historical tradition that the Government can take the
18 instrumentality of a crime in a public place?

19 MR. GAULDIN: Well, I think what you're talking
20 about is --

21 QUESTION: Yes. What am I talking --

22 MR. GAULDIN: -- the plain view exception, and
23 under the plain view exception, that if the officers are
24 in a public place and they come across either evidence of
25 a crime or per se contraband, that is, contraband which is

1 just unlawful for anyone at any time to possess, then they
2 can seize --

3 QUESTION: What about an instrumentality of a
4 crime?

5 MR. GAULDIN: No. I think what we have here
6 is derivative --

7 QUESTION: No, but I'm -- I'm saying in terms of
8 what you just said, is it part of that tradition that they
9 could seize in plain view an instrumentality of a crime,
10 which I guess would be evidence of a crime?

11 MR. GAULDIN: Yes, if it's evidence of a crime.
12 The car --

13 QUESTION: There's not -- there's no separate
14 thing for instrumentality of a crime.

15 MR. GAULDIN: No. The two that I understand are
16 evidence to be used in a crime or contraband, per se
17 contraband. Now, in One 1958 Plymouth Sedan, you stated
18 that a car, such as the car in this circumstance, where
19 drugs may have been sold out of it -- in that case I think
20 it was alcohol that carried it -- that that is derivative
21 contraband. That's not the same thing as per se --

22 QUESTION: No, no. That's not contraband, but
23 the reason that this is not evidence of a crime is?

24 MR. GAULDIN: First place, they didn't seize it
25 as evidence of a crime. They didn't introduce it below as

1 evidence of a crime, and more importantly, when an officer
2 seizes evidence of a crime, an officer doesn't then take
3 the evidence back and proceed to either sell the evidence
4 and keep the proceeds or to use the evidence for their own
5 personal benefit, which the statute allows. The statute
6 allows the seizing agency to either keep the car that they
7 seize for the agency's purposes or --

8 QUESTION: I thought forfeited items were often
9 evidence of the crime and would often be sold, if that's
10 what the law provides. I mean, isn't the car that you're
11 selling drugs out of often, if not here, evidence of a
12 crime, namely the crime of selling drugs?

13 MR. GAULDIN: Not usually. There may be
14 purposes for which it can be. For instance, Cardwell v.
15 Lewis. In Cardwell v. Lewis, they came and take -- took
16 paint chips off of the car and then the car might have
17 been evidence in a crime because their theory in Cardwell
18 v. Lewis was that the car bumped a victim off and hit the
19 victim's car. And, therefore, it was evidence of crime,
20 but that's not the situation here.

21 QUESTION: Mr. Gauldin, what do you make of the
22 -- the history which I -- I think was put forward in the
23 Government's brief that -- that on the heels of the
24 proposal and the adoption of the Fourth Amendment, the
25 Congress of the United States passed legislation which,

1 among other things, authorized the seizure of -- of ships
2 that had been used in carrying contraband and smuggling
3 and -- and -- and it authorized the seizure without any
4 warrant? And this apparently has -- was -- was never
5 thought challengeable at the time and is, therefore, some
6 evidence of -- of the extent that they understood the
7 warrant requirement of their -- their -- their new --
8 their new search and seizure provision to -- to cover.

9 MR. GAULDIN: Well, for ships are -- I hate to
10 mix analogies, but a horse of a different color. Ships
11 are on international waters. You have one option with a
12 ship, and that is to seize the ship because if you
13 don't --

14 QUESTION: Well, yes, the ship can -- can leave
15 the harbor. The car can, you know, be driven to
16 California. It seems to me that there's a pretty good
17 analogy there.

18 MR. GAULDIN: Well, at least if it's driven to
19 California, it's still within the continental United
20 States and it's much easier to locate a car --

21 QUESTION: Mexico.

22 (Laughter.)

23 QUESTION: Baja California.

24 (Laughter.)

25 QUESTION: That's what he meant.

1 MR. GAULDIN: Even then it's limited, but it's
2 easier to track a car at least while it's doing that,
3 through registration and various other means, than it is
4 to track a vessel on international waters, particularly a
5 vessel owned by foreign powers.

6 QUESTION: Do -- do you have another basis for
7 distinguishing that practice?

8 MR. GAULDIN: What the maritime? Other than
9 it's historic for maritime because that was the only --
10 that was the only practical thing they could do for a
11 ship. A foreign power owned the ship. If they didn't
12 bring the res before the court, they could do nothing
13 except maybe go to war with the other country.

14 QUESTION: Well, I would have supposed that if
15 there was a ship in the harbor that had been shown to --
16 to have goods being smuggled in, that they could have
17 gotten a warrant for it.

18 MR. GAULDIN: I suppose they could, but again
19 because of what -- the --

20 QUESTION: In any case, your argument is that
21 the ship involves again a -- a justification of exigency
22 and that that's not present with the car?

23 MR. GAULDIN: Pardon me. I didn't hear that.

24 QUESTION: That the seizure of the ship without
25 a warrant rests on a justification of exigency, whereas

1 the seizure of a car under a statute like this does not.

2 MR. GAULDIN: Yes, yes, yes.

3 Which brings up actually Calero-Toledo. In
4 Calero-Toledo v. Pearson Yacht Leasing Company, a vessel
5 was involved, and what they sought in Calero-Toledo was an
6 adversarial pre-seizure hearing. And in Calero-Toledo,
7 you said that there were three reasons as to why that they
8 were not entitled to an adversarial hearing prior to
9 seizure of the ship.

10 The first reason was that it would place these
11 people on notice that the owners or possessors, in that
12 case the possessors, of the vessel -- it would place them
13 on notice, and that they then might abscond with the
14 vessel.

15 The second thing you were concerned about in
16 Calero-Toledo was that if you gave them an adversarial
17 hearing, which we're not asking for here -- that if you
18 gave them an adversarial hearing, the delay occasioned by
19 that would allow them to continue to use the vessel for
20 illicit purposes.

21 And the third thing you noted in Calero-Toledo
22 was -- or the third reason for which you decided Calero-
23 Toledo was that the disinterested government was the
24 seizing agency and not some interested private -- private
25 agency.

1 Taking the first reason first, we're not asking
2 for an adversarial hearing. An adversarial hearing might
3 put the person in the car that allegedly has carried
4 illicit contraband on notice, and might give him a reason
5 to flea, but an ex parte judicial warrant won't do that.

6 Secondly, there is certainly no evidence in this
7 case that the government was concerned about continued use
8 of the car for illicit purposes. If they had been
9 concerned about that, they wouldn't have waited 68 to 80
10 days until, what I contend based on the record, they
11 cavalierly went down and seized the car.

12 And thirdly, the third reason in Calero-Toledo,
13 the government is not disinterested in this case. The
14 seizing agency benefits from this. In Harmelin v.
15 Michigan, you said when the government benefits -- when
16 the government benefits, you have to scrutinize the
17 government more closely. That is the situation that
18 exists here. The government is going to benefit. The
19 seizing agency is going to benefit, and human nature being
20 such it -- as it is, that is going to color the issue of
21 probable cause.

22 When a neutral and detached magistrate makes the
23 determination of probable cause, the neutral, detached
24 magistrate is not only not engaged in the competitive
25 enterprise of ferreting out crime, but the neutral and

1 detached magistrate is not going to get a piece of what's
2 seized or revenue for what's seized.

3 QUESTION: Why -- why was that not the situation
4 in Calero-Toledo? That was not a government seizure?

5 MR. GAULDIN: No. It was a government seizure,
6 but they said the disinterested government.

7 QUESTION: Oh, that was a disinterested
8 government.

9 MR. GAULDIN: Right, right.

10 QUESTION: How do you tell the one from the
11 other?

12 MR. GAULDIN: All I know is that in Florida
13 we've got an interested government because --

14 QUESTION: I see. I see.

15 (Laughter.)

16 MR. GAULDIN: -- the seizing agency is going to
17 get the proceeds.

18 QUESTION: Who was going to get the proceeds
19 from the ship in -- in Calero-Toledo?

20 MR. GAULDIN: I don't know and I'm not sure how
21 the -- that was a Puerto Rican statute and I'm not sure
22 exactly what occurred with the Puerto Rican statute.

23 QUESTION: You think maybe it was going to be
24 distributed as a tax refund to the populace at large?

25 (Laughter.)

1 MR. GAULDIN: I doubt it.

2 QUESTION: I don't see any difference between
3 that case and this one. I think it very likely that the
4 money was going to go into the government's treasury.

5 MR. GAULDIN: It may -- there's a difference
6 between the money going into the government's treasury
7 where it goes into the general fund as opposed to where
8 the seizing agency, the officers that get to seize it, get
9 to either keep the vehicle and, say, use it for under
10 cover purposes or later --

11 QUESTION: I see.

12 QUESTION: Well, do they -- I know this happens
13 in some cases. I don't know if it's in Florida. But if
14 they sell the -- the seized vehicle, does the money go
15 into, in effect, an appropriation account for the police
16 agency itself? Do they -- can they fund themselves out of
17 this?

18 MR. GAULDIN: Yes, yes, although there's --
19 there's a formula I think set up in the Florida statute as
20 to which police agencies and hierarchy and all that get
21 and how, but the seizing agency does get a cut.

22 QUESTION: But it's law enforcement that gets
23 funded, in effect, with this money.

24 MR. GAULDIN: Yes, law enforcement does or law
25 enforcement -- the agency gets to use the car. If it

1 likes your SUV and wants to --

2 QUESTION: Yes.

3 MR. GAULDIN: -- they can keep it. They don't
4 even have to put it in the pot. They don't have to go
5 sell it. They can use it under the statute.

6 QUESTION: And I -- do you know -- I mean, I
7 think -- I think I can suspect the correct answer, but
8 I'll ask anyway. Do you know whether there was any such
9 scheme as this in place in -- in the 1790s in the instance
10 of the ship seizure that I was talking with you about
11 earlier --

12 MR. GAULDIN: No, I don't --

13 QUESTION: -- whether the --

14 MR. GAULDIN: No, I don't know whether the --
15 the people that seized it got it. No.

16 QUESTION: That's probably a modern notion I
17 would imagine --

18 MR. GAULDIN: Oh --

19 QUESTION: -- that you -- that you fund your
20 agency out of the proceeds of -- of your forfeitures.

21 MR. GAULDIN: Yes, very modern, in fact. In
22 fact, as I understand that, that was the idea behind the
23 Federal statute. And the Federal statute is similar to
24 the Florida statute in this respect, that is, that the
25 seizing agency gets the option of either -- of either

1 being able to keep the -- the goods themselves.

2 QUESTION: That's a healthy incentive to enforce
3 the law, don't you --

4 MR. GAULDIN: It is indeed, and too healthy if a
5 magistrate hasn't reviewed it to make sure -- the
6 magistrate serves an auditing function in the sense that
7 -- you know, not that I imply that the law officers are
8 dishonest, but it will keep them honest. Moreover, on the
9 real borderline cases, this is all the more reason that
10 you want a disinterested, neutral, and detached
11 magistrate.

12 Finally, the government I think relies upon the
13 Watson case with the idea that if you can seize a person
14 in a public place, why can you not seize the property
15 itself. You have already addressed that. The answer to
16 that, of course, is that, first, this is a civil
17 forfeiture case. This is not a criminal case. You have
18 certain safeguards of a constitutional nature, *Gerstein v.*
19 *Pew*, for the seizure of a --

20 QUESTION: You say that Watson -- Watson was a
21 criminal case --

22 MR. GAULDIN: Watson was a criminal case, yes,
23 but this is a forfeiture case.

24 QUESTION: And does -- why is that different?

25 MR. GAULDIN: Pardon? Oh, because in -- you

1 have civil remedies. You have civil standards; that is to
2 say, probable cause and all is the ultimate standard for
3 the forfeiture of the vehicle.

4 QUESTION: But you would think perhaps that
5 there would be more protections against seizure in a
6 criminal case than there would be in a civil case.

7 MR. GAULDIN: There are for a person. For
8 instance, you get a first appearance in Florida within 24
9 hours. You get the right to counsel if --

10 QUESTION: But you -- but you can be arrested
11 without a warrant.

12 MR. GAULDIN: You can be arrested without a
13 warrant for a felony outside of your home under Watson,
14 under the circumstances of Watson.

15 QUESTION: So, if the police need a warrant to
16 -- to arrest, in effect, or seize a car in a public place
17 where they have probable cause to know that the -- the car
18 was an instrumentality of a crime, I would certainly think
19 a fortiori they would need a warrant to arrest a person in
20 a public place, although they have probable cause to
21 believe that the person is or has engaged in a crime.

22 MR. GAULDIN: Well, the Watson decision holds
23 otherwise in that respect --

24 QUESTION: No, no. I'm talking about logic.

25 MR. GAULDIN: Oh, yes, logically -- not only

1 logically, but as I recall Justice Powell said that logic
2 would dictate that, but that history is against it.

3 QUESTION: All right. So, what we do if we
4 decided in your favor, we would then have to say that
5 these other cases were wrong but simply established the
6 law through precedent.

7 MR. GAULDIN: Well, no, I don't think you have
8 to say that these other cases were wrong, if you mean
9 Watson, because that's dealing -- it's different because
10 in Watson you have given them certain constitutional
11 protections such as the right to a first appearance within
12 24 hours or 48 hours at the most, the right to a probable
13 cause hearing where the burden is on the government to
14 prove probable cause, the right to appointment of counsel
15 if you're an indigent to help you make that decision when
16 you don't have those rights, and any rights that you do
17 have here are merely of a statutory and evanescent nature.

18 QUESTION: But isn't there a -- a public safety
19 rationale behind the -- the warrantless arrest which does
20 not apply here?

21 MR. GAULDIN: Yes, there is. And, in fact, in
22 Watson, they specifically cited an old Massachusetts case,
23 Rohan v. Swain I think, in which they stated that the
24 public safety was implicated in their decision. That's
25 what they referred to in -- in basing it on Watson.

1 QUESTION: And was there also a factor that a
2 person is mobile and here there was no assertion that this
3 car, as the cars that are under the car exception, might
4 go across the border? I mean, the car had been there and
5 visible and able to be taken for some period of time.

6 MR. GAULDIN: There was certainly no assertion
7 and the record doesn't support any idea that the car was
8 going to go anywhere. I mean, they wouldn't have waited
9 68 to 80 days if they had thought that the car or the
10 individual was going to be -- abscond.

11 QUESTION: How long had the car been in the
12 parking lot where it was seized?

13 MR. GAULDIN: That I don't know, but what I can
14 say --

15 QUESTION: It hadn't been there 80 days, had it?

16 MR. GAULDIN: No, but it might been there every
17 day --

18 QUESTION: Nothing in the record indicates it
19 was there for 80 days.

20 MR. GAULDIN: Pardon?

21 QUESTION: Nothing in the record indicates it
22 was there for 80 days.

23 MR. GAULDIN: No.

24 QUESTION: Nothing in the record indicates that
25 the police had it under surveillance for 80 days, does it?

1 MR. GAULDIN: No, no. However, the record does
2 indicate that he was arrested at his -- at his place of
3 employment.

4 QUESTION: And there was no suspicion that at
5 that time the car was carrying contraband. The crack
6 happened to turn up --

7 MR. GAULDIN: No, no. That was conceded below
8 by the State, and in fact, you can find that in the
9 Florida Supreme Court opinion.

10 QUESTION: Have we held that you can have an
11 arrest of a person without a warrant for an offense less
12 than a felony?

13 MR. GAULDIN: Not that I know of. Watson dealt
14 with a felony. Not that I know of.

15 QUESTION: So, you -- you -- you can argue that
16 this is more analogous to a misdemeanor arrest than it is
17 to a felony arrest, the seizing of property that is --
18 that is forfeited.

19 MR. GAULDIN: Yes, without a warrant.

20 QUESTION: Do you say that we have not held that
21 a police officer can arrest someone without a warrant for
22 a misdemeanor committed in the presence of the officer?

23 MR. GAULDIN: Oh, no, no, no. I wouldn't say
24 that. No, if that occurred in his presence. The problem
25 here, of course, is, is that what occurred occurred 68 to

1 80 days earlier.

2 At this point, if there are no further
3 questions, thank you very much.

4 QUESTION: Thank you, Mr. Gauldin.

5 Ms. Snurkowski, you have 4 minutes remaining.

6 REBUTTAL ARGUMENT OF CAROLYN M. SNURKOWSKI

7 ON BEHALF OF THE PETITIONER

8 MS. SNURKOWSKI: Thank you, Your Honor.

9 Forfeiture is a process. It's not just the
10 activity of seizing the car, and the Florida statute is
11 very clear with regard to that. The seizure of the
12 vehicle commences forfeiture proceedings. It is not the
13 end all. So, to suggest that somehow the police are
14 acting beyond the pale and doing something that they
15 shouldn't do because there's going to be monies coming to
16 the agency at some point I believe is not a sound basis to
17 suggest that forfeiture is not a valid basis upon which to
18 be able to seize without a -- a warrant.

19 Watson I believe is very controlling with regard
20 to this instance whether a individual, who has committed a
21 felony and there's probable cause by the police officers
22 to arrest or, in fact, he sees the individual committing a
23 misdemeanor in his presence, I don't believe that there's
24 a dime's worth of difference, to be very frank, between
25 that and the bottom line of seizing a vehicle where the

1 officers understand, believe, and have knowledge and
2 probable cause based on that knowledge, that this vehicle
3 is an instrumentality in a criminal endeavor.

4 In this particular instance, the police did not
5 just willy-nilly go down to the Sam's parking lot and
6 seize the car. They had an arrest warrant and they
7 arrested Mr. White on other charges, on other narcotics
8 charges. And as a part of that, they seized the vehicle
9 because they had the requisite probable cause based on
10 earlier conduct by this defendant.

11 The State would submit that there's nothing been
12 done during this event, nor any other event, that
13 similarly tracks the ability of the government to go and
14 seize vehicles without a pre-seizure warrant. In fact,
15 that is done throughout this country on a daily basis
16 based on the Federal forfeiture acts and other State
17 forfeiture acts. And, in fact, many States and many -- in
18 particular, other supreme courts and the Federal
19 Government have relied heavily with regard to the
20 applicability of the Cooper decision, of the applicability
21 of Watson, and of G.M.

22 And with regard to our G.M. argument, the reason
23 -- one of the reasons why I believe that we did not rely
24 so heavily on that was the second prong of this, was that
25 we want to make sure that the -- the Court understood that

1 we're not talking about real property. There was a
2 discussion with regard to the Florida Supreme Court about
3 Florida Department of Law Enforcement versus real property
4 in their opinion, and that case dealt with real property.
5 We are talking about personal property such as vehicles
6 and other instrumentalities of criminal act, not real
7 property which is an exception under the Florida statutes
8 with regard to forfeiture.

9 Thank you.

10 CHIEF JUSTICE REHNQUIST: Thank you, Ms.
11 Snurkowski.

12 The case is submitted.

13 (Whereupon, at 11:09, the case in the above-
14 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:

FLORIDA, Petitioner v. TYVESSEL TYVORUS WHITE.

CASE NO: 98-223

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

BY:

Diana M. May
(REPORTER)