

In the

ORIGINAL

Supreme Court of the United States

OMAR TAYLOR,

Petitioner,

v.

ALABAMA

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No. 81-5152

Washington, D. C.

Tuesday, March 23, 1982

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ALDERSON  REPORTING

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 OMAR TAYLOR, :
: 80, 530..

4 : on behalf of Petitioner, : 1000

5 THOMAS R. v. : No. 81-5152
: 13004, 530..

6 ALABAMA : on behalf of Respondent

7 - - - - -x

8 : on behalf of the Petitioner Washington, D. C.

9 Tuesday, March 23, 1982

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 1:16 o'clock p.m.

13 APPEARANCES:

14 ROBERT M. BENO, ESQ., Montgomery, Alabama;

15 on behalf of the Petitioner.

16 THOMAS R. ALLISON, ESQ., Assistant Attorney

17 General of Alabama, Montgomery, Alabama;

18 on behalf of Respondent.

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C O N T E N T S

2 ORAL ARGUMENT OF

PAGE

3 ROBERT M. BENO, ESQ.,

4 on behalf of the Petitioner

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5 THOMAS R. ALLISON, ESQ.,

6 on behalf of Respondent

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7 ROBERT M. BENO, ESQ.,

8 on behalf of the Petitioner - rebuttal

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

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in Taylor v. Alabama. Mr. Beno, you may proceed
4 whenever you're ready.

5 ORAL ARGUMENT OF ROBERT M. BENO, ESQ.

6 ON BEHALF OF PETITIONER

7 MR. BENO: Mr. Chief Justice and may it please
8 this honorable Court:

9 This case comes out of the State of Alabama in
10 reference to an arrest made on January 4, 1979. Now,
11 the background, which I think is very important in all
12 criminal cases, especially when the Fourth Amendment is
13 involved, of the facts and circumstances applicable to
14 the record generally turn -- make the case turn one way
15 or the other.

16 Now, there was a robbery, without question, on
17 the 2nd day of December, 1978. Subsequent to that time,
18 in the middle days of December a Charles Martin was
19 arrested in reference to a completely different and
20 separate rape and robbery, and he was in the county --
21 or in the city jail in Montgomery, Alabama.

22 QUESTION: Do you acknowledge that whoever
23 committed the robbery at the supermarket that you have
24 just described left some fingerprints there?

25 MR. BENO: There's no argument to that effect,

1 Your Honor. In fact, one issue here is whether or not
2 -- there are several -- how many people were involved in
3 the robbery. Initially --

4 QUESTION: Well, today we're only really
5 concerned about one of them, aren't we.

6 MR. BENO: The fingerprints and the
7 confession, right. And at the trial we didn't argue and
8 did not move to suppress the fingerprints taken from the
9 hotdogs and the package of sugar. That's not at issue
10 here.

11 The point here today is whether or not, first
12 of all, there was an illegal arrest. That's a critical
13 issue, because if there's no illegal arrest there's no
14 need to be in front of the Court today.

15 We have a situation where Mr. Martin said to
16 the police officer, Mr. Mobley -- I think if you'll
17 refer to the record at page 7 of the record, his
18 statement to the court was that he had heard -- that's
19 not in the appendix, that's in the record -- he had
20 heard.

21 At which time I moved or I objected, and there
22 was a discussion in front of the court and in front of
23 the officer. and during that discussion the judge came
24 to the conclusion and stated that, well, I think that
25 this, what he heard from someone else, if it cannot be

1 substantiated, certainly cannot be grounds to base a
2 credibility upon which an arrest can follow.

3 Well, if you'll notice, on page 15 -- no, on
4 page 13 of the record, after this discussion is over we
5 come back and we ask Mr. Mobley another question, and
6 now he says: "Well, I don't know where he got it. I
7 don't know where he got it."

8 This certainly -- the element of credibility
9 is involved here. Once in front of the court and the
10 court has said that, well, just hearing this is not
11 sufficient, it appears that his testimony changes. I
12 think that's critical, because credibility is very
13 important when this court decides this case.

14 At any rate --

15 QUESTION: May I interrupt you for just a
16 second? The question presented that you framed in your
17 brief is whether or not a confession taken from
18 Petitioner following a warrantless arrest based on less
19 than probable cause.

20 MR. BENO: That's correct.

21 QUESTION: And so you -- for purposes of our
22 consideration of the case, do we assume there was less
23 than probable cause?

24 MR. BENO: That's correct. That's what I'm
25 getting ready to show you.

1 QUESTION: Yes.

2 MR. BENO: Now, Mr. Martin, who was as I said
3 an alleged -- or a suspect in a separate and completely
4 different rape and robbery, was then questioned at the
5 police station by Mr. Mobley, all right. Now, he said,
6 and it's on the record, that he had heard such and
7 such.

8 The court then said: Well, hearsay is fine if
9 it's credible and can be substantiated or give some
10 credibility in reference to the statement. Well, the
11 question was asked to Mr. Mobley, was there anything
12 that you can base your credibility or you can give
13 credit -- credibility to the informant? Well, Your
14 Honor, all he told me was that he had heard. He did not
15 tell me who he heard it from or how he got this
16 knowledge.

17 I would suggest, based on that and quite
18 frankly until this brief by Petitioner -- I mean, by
19 Respondent -- it has never been argued that there was
20 probable cause. In fact, at the oral argument in front
21 of the Supreme Court of Alabama he readily admitted that
22 there was no probable cause.

23 In fact, one of the judges at that time
24 indicated that, well, I was kind of thinking about
25 reversing this case, but if you admit that there's no

1 probable cause I'm going to have a little bit more
2 difficulty. Well, now he suggests, and he tries to
3 gloss over this failure to produce probable cause by
4 saying that, well, we did have probable cause perhaps.

5 He says that this Mr. Martin was a suspect in
6 the robbery at Moseley's Grocery Store at that time.
7 Well, the record indicates that the only reason he was a
8 suspect is because he was arrested on some other
9 robberies. And another time in the record he says,
10 well, he was a suspect to me. He never indicates any
11 reason on which to base his suspicion that Mr. Martin
12 was even a suspect, other than the fact that he was in
13 jail on another crime.

14 I don't believe that can be sufficient
15 evidence on which to give credibility.

16 CHIEF JUSTICE BURGER: What was the
17 information that Martin gave?

18 MR. BENO: Simply that he knew that Omar
19 Taylor was involved in the robbery of Moseley's Grocery
20 Store. That is it. Nothing further to indicate any
21 amount of credibility.

22 Dunaway falls very close to this case in
23 reference to the fact that there was no evidence on
24 which to substantiate the testimony or the statement mde
25 by the alleged individual incarcerated.

1 One thing I want to point out. Now, a lot of
2 the Justices on their dissents --

3 QUESTION: Tell me, why are you arguing -- are
4 you arguing that there was no probable cause?

5 MR. BENO: Right.

6 QUESTION: And why are you doing that?

7 MR. BENO: Well, if there's probable cause --

8 QUESTION: Well, I know, but is that in issue
9 in this case?

10 MR. BENO: It wasn't until Respondent's brief
11 came in.

12 QUESTION: Well, was it an issue in the
13 Alabama Supreme Court?

14 MR. BENO: No.

15 QUESTION: Do you think that that is open to
16 the Respondent to make that claim here?

17 MR. BENO: Well, I know that he is going to
18 argue that. I'll move along.

19 Assuming that there is no probable cause, then
20 we come to the point in fact of the arrest.

21 QUESTION: Yes.

22 MR. BENO: All right.

23 QUESTION: What are you relying on for the
24 proposition that there's no probable cause, Aguilar and
25 Spinelli?

1 MR. BENO: Aguilar and Spinelli. There's also
2 an Alabama case which I argued originally, Berry.

3 QUESTION: Well, presumably that's not open to
4 you if that's a state law.

5 MR. BENO: I understand. But under Aguilar
6 and under the petition filed by the Defendant, he states
7 clearly that Aguilar and Spinelli are involved here.
8 And on brief by the amicus curiae raised this also.

9 QUESTION: Well, but Aguilar and Spinelli were
10 both warrant cases, weren't they? There was no warrant
11 here.

12 MR. BENO: They spell out the necessary basis
13 for the credibility of the informant.

14 QUESTION: To be supplied to a neutral
15 magistrate.

16 MR. BENO: That's correct.

17 QUESTION: But here you're not talking about a
18 neutral --

19 MR. BENO: You don't even have that here. I
20 understand that. I agree with you on that, Your Honor.

21 Now, Omar Taylor was arrested following this
22 information, without a warrant, which makes it different
23 from Dunaway in that in Dunaway the Justices, I believe
24 Mr. Burger, Chief Justice Burger, indicated that, well,
25 I'm not so sure that this wasn't a consent to follow the

1 police officer to the station.

2 We certainly don't have that issue in the
3 present case. We have no issue -- there's no question
4 but that he was arrested at the time he was taken into
5 custody by the police. In fact, he was handcuffed.

6 Now we come to the question under Dunaway and
7 under Brown. There are three temporal -- I mean, there
8 are three circumstances which the court would look to.
9 Certainly, the temporal proximity is involved, and Mr.
10 Justice Stevens in Dunaway indicated that that is an
11 ambiguous term in that certainly the longer an
12 individual is incarcerated, considering the facts and
13 circumstances of his incarceration can not -- will not
14 necessarily dilute the detention, but will only increase
15 the confusion on the part of the incarcerated
16 individual.

17 I think it's clear here that the Defendant was
18 -- or the Petitioner was questioned at least three
19 times, perhaps four; that he was fingerprinted prior to
20 being placed in a lineup. Now, it's interesting in
21 discussing the fingerprinting that you ruled in Davis v.
22 Mississippi that under narrowly defined circumstances
23 perhaps the limits of probable cause can be removed to
24 some extent.

25 QUESTION: Was he fingerprinted again after

1 that occasion?

2 MR. BENO: After the arrest.

3 QUESTION: Was he fingerprinted a second
4 time?

5 MR. BENO: He was not -- he was indeed -- yes,
6 he was indeed fingerprinted. At the trial he was
7 fingerprinted.

8 QUESTION: Well, those were the only
9 fingerprints that were introduced.

10 MR. BENO: That's correct.

11 QUESTION: Well, why were the fingerprints
12 taken immediately after arrest excluded? They were
13 excluded?

14 MR. BENO: They were excluded.

15 QUESTION: Why?

16 MR. BENO: Under Mississippi versus Davis.
17 And under Mississippi --

18 QUESTION: And the trial court then ruled
19 that, A, there was no probable cause for arrest --

20 MR. BENO: That's correct.

21 QUESTION: That the fingerprints were
22 excludable as the fruits of an illegal arrest --

23 MR. BENO: That's correct.

24 QUESTION: And then the Alabama Supreme Court
25 holds that the taint has been removed.

1 MR. BENO: Well, quite frankly --
2 QUESTION: Is that right?
3 MR. BENO: That's what they ruled.
4 QUESTION: Yes, that's what -- but the trial
5 court -- and did the Alabama Supreme Court disagree with
6 the holding that there was no probable cause?
7 MR. BENO: No, they indicate that. They
8 indicated that the taint had been removed. Actually,
9 what the Alabama --
10 QUESTION: They didn't disagree with the
11 ruling that the first set of fingerprints were fruit of
12 an illegal arrest?
13 MR. BENO: They did not.
14 QUESTION: Yes.
15 MR. BENO: It's interesting that the Alabama
16 Supreme Court basically said in its opinion that they
17 were rather discouraged by the exclusionary rule, and
18 that they were just, quite frankly, not going to follow
19 it. That is basically what they said, because they did
20 not delineate the reasons upon which they reversed the
21 case. They did not delineate the factors on which they
22 overturned the case.
23 Going a little bit further now, it's
24 interesting in the fact that in Davis you all indicated
25 that perhaps there will be a case in which the

1 fingerprints on less than probable cause can be
2 permitted. But this case is not the one, because the
3 individual was fingerprinted twice, he was questioned on
4 at least -- at least questioned during that period of
5 time. In other words, they did not arrest him or pick
6 him up specifically to get the fingerprints and then
7 match them up.

8 I cited in my brief M.B. v. State of New
9 Jersey, a New Jersey case, In Re the Fingerprinting of
10 M.B., which seemed to fall within the confines of what
11 you all consider reasonable under Davis. In other
12 words, they went to a magistrate and indicated that we
13 have the possibility of determining the murderer of an
14 eighth grade child, because we found a ring which has a
15 fingerprint on it. We believe that the culprit in this
16 situation may match this and is probably a member of
17 that eighth grade class.

18 And the court in that case went ahead and
19 said, we will allow you, we will allow you to bring in
20 the members of the eighth grade class and fingerprint
21 them. But in order to protect their rights under the
22 Fourth Amendment, should you not find that those
23 fingerprints match they must be destroyed, so that they
24 will not be on record, so that they will not interfere
25 with the normal constitutional rights of the

1 individual.

2 And I think that's very important in this
3 case. I think it's important that the police officers
4 did not stop with the fingerprinting. And there's no
5 indication in the record that they picked him up
6 specifically to fingerprint him. There's no indication
7 in the record.

8 QUESTION: Counsel, how is the admissibility
9 of the fingerprints that were taken before the arrest
10 before the Court? It seems to me that as I recall that
11 evidence was suppressed.

12 MR. BENO: Yes, ma'am.

13 QUESTION: And the State didn't cross-appeal
14 --

15 MR. BENO: No, they did not.

16 QUESTION: -- on that. And I don't see how
17 that issue is even before us.

18 MR. BENO: Well, I'll explain something to
19 you, that it's so important. In Dunaway you all talk
20 about the flagrancy, purpose and flagrancy of the police
21 conduct, all right. You discuss the fact that when the
22 police conduct is excessively flagrant the intervening
23 circumstances perhaps should be more credible. A
24 stronger intervening circumstance, the more flagrant the
25 police conduct, the more you have to look at the -- I

1 mean, of the flagrant procedures used by the police.

2 Now, assuming again that there was no probable
3 cause whatsoever and that this -- well, I submit that
4 this was strictly for the purposes of investigation.
5 You've got to look at what they did. They picked this
6 young man up --

7 QUESTION: You want us to look at it as one of
8 the Dunaway cases?

9 MR. BENO: I believe it falls within the
10 Dunaway line. I believe it falls in the Dunaway line.
11 Fingerprints fall under the Davis line --

12 QUESTION: They never used those
13 fingerprints.

14 MR. BENO: Excuse me?

15 QUESTION: They never used those first set of
16 fingerprints.

17 MR. BENO: Well, it's my contention that it
18 was one and the same. It came out, the issue is the
19 same.

20 QUESTION: Well, the court took the
21 fingerprints in the courtroom. Is there anything that
22 you can think of when you've got the defendant in the
23 courtroom that forbids taking his fingerprints or his
24 picture or getting a sample of his handwriting?

25 MR. BENO: Let's look at this, then. What are

1 we -- how did he get in the court? How did he get in
2 the court? If this Court can say -- let's look at, what
3 evidence did they have prior to the arrest? Nothing.
4 What evidence did they have when they took the
5 fingerprints? None.

6 From that point, what did they use to get the
7 confession? They used the fingerprints. The record is
8 replete, is full of evidence that he was confronted with
9 the fingerprints over and over again.

10 QUESTION: Did the trial court -- I am
11 confused about what happened where in this case. Did
12 the trial court suppress anything?

13 MR. BENO: They suppressed the fingerprints.

14 QUESTION: The first fingerprints.

15 MR. BENO: The first fingerprints.

16 QUESTION: And then the Court of Appeals
17 decided that the confession --

18 MR. BENO: Under Dunaway, yes, was not --
19 could not come within the purview of the --

20 QUESTION: As to all these things that
21 happened --

22 MR. BENO: Yes, sir.

23 QUESTION: -- have we got to go to search the
24 record to find them, or did you file something other
25 than this brief?

1 MR. BENO: There is a --
2 QUESTION: Have you filed any brief in
3 addition to this?
4 MR. BENO: There is another brief that was
5 filed, a reply brief.
6 QUESTION: I don't have it. I just don't have
7 it.
8 MR. BENO: It was filed.
9 QUESTION: Well, there's one here, but I
10 didn't have it.
11 QUESTION: I don't have it, either.
12 QUESTION: It was filed one day late.
13 MR. BENO: Well, and we filed a motion. Let
14 me explain what happened on that. We filed that motion
15 --
16 QUESTION: It was filed one day late.
17 MR. BENO: We filed that motion on time --
18 QUESTION: My point is, your original brief
19 doesn't give us anything. You've got six cases cited.
20 The whole thing from beginning to end is nine pages.
21 MR. BENO: That's correct.
22 QUESTION: And that's all you think of this
23 case.
24 MR. BENO: If you will look at the appendix,
25 you will notice that the appendix indicates the facts

1 involved in the case. All I did was cite the case and
2 the law as it applied to the facts, Your Honor.

3 QUESTION: And doesn't the rule say that you
4 give the statement of facts in the brief? Or did you
5 not look at the rules?

6 MR. BENO: I did in fact look at the rules.

7 At any rate, after the fingerprints were taken
8 the girlfriend was taken to the -- the individual was
9 taken into a -- for a lineup, prepared for a lineup.
10 The lineup was taken subsequent to the fingerprints and
11 prior to any judicial finding in this case.

12 Now, under Johnson v. Louisiana, as cited by
13 the Respondent in this case, he tries to indicate under
14 the holding of the Supreme Court of Alabama they seem to
15 indicate that the -- I would like to go back to Justice
16 Marshall for a second.

17 The indication to me was, from the Clerk's
18 office, was that there could be full and complete going
19 -- I could go to the record in my argument throughout.
20 And then they indicated to me they wanted the brief to
21 be as short as possible.

22 At any rate, there's no question in this case
23 but that there were an illegal arrest, three cases of,
24 or four cases of questioning, illegal fingerprints were
25 taken; he was confronted by his girlfriend at the time

1 just prior to the confession; that at that time the
2 police officers came in and discussed the case in front
3 of the girlfriend and Petitioner, and indicated to him
4 at that time and to her that he was facing 30 years in
5 the penitentiary, that he had nothing left to hide, that
6 they had the fingerprints and that they would stand up
7 in any court.

8 It is my position that in reference to the
9 same, that the flagrancy of the police conduct, which
10 appears to be under Dunaway what you all were looking
11 at, mainly because of temporal proximity can be
12 ambiguous. But the flagrancy in this case is that the
13 police had two weeks between the time they got this
14 information and the time they went and got and picked up
15 the Defendant to make a determination of whether or not
16 there was probable cause.

17 There are no exigent circumstances in this
18 case, Your Honor. There are no exigent circumstances in
19 which to determine that they can go out and pick up this
20 individual. They had plenty of time to go before a
21 magistrate and ask the question of whether or not there
22 was probable cause.

23 QUESTION: Well, but if a magistrate issued a
24 warrant for his arrest, I presume you would have argued
25 that it was subject to attack.

1 MR. BENO: I agree, I agree.

2 QUESTION: So getting a warrant wouldn't have
3 improved their case.

4 MR. BENO: No, it would not have, not in my
5 opinion.

6 QUESTION: So why do you talk about exigent
7 circumstances and having two weeks?

8 MR. BENO: Well, I'm just trying to point out
9 that -- and maybe I should hold this for response --
10 that the Petitioner -- or the Respondent in this case is
11 going to argue that there may have been probable cause.

12 QUESTION: Well, maybe there was.

13 MR. BENO: Maybe there was. I would submit
14 there certainly was not.

15 I'll reserve the rest of this time for
16 response.

17 CHIEF JUSTICE BURGER: Mr. Allison?

18 ORAL ARGUMENT OF THOMAS R. ALLISON, ESQ.,

19 ON BEHALF OF RESPONDENT

20 MR. ALLISON: Mr. Chief Justice and may it
21 please the Court:

22 Prior to the trial in Omar Taylor's case, a
23 pretrial motion to suppress the confession and to
24 declare the arrest illegal was filed. A full-blown
25 hearing was held and much testimony taken. At the end

1 of this hearing the trial judge denied this motion and
2 found the confession admissible on the --

3 QUESTION: But the court found that the
4 fingerprints were inadmissible and had to be suppressed,
5 right?

6 MR. ALLISON: The fingerprint issue arose in
7 the trial, and the very first time that the fingerprint
8 issue came up, on page 20 of the record, the trial judge
9 says: Now, then you come along and you say that you
10 object to the fingerprints because of the illegal arrest
11 and because of the language of Davis v. Mississippi.
12 And the content in which the fingerprints were objected
13 to was the admissibility of the fingerprint comparison
14 in the trial of the case.

15 This is the first time that the fingerprint
16 issue was argued.

17 QUESTION: Well, weren't they kept out,
18 presumably, because the arrest was illegal?

19 MR. ALLISON: The reason that the trial judge
20 suppressed those fingerprints and ordered him
21 re-fingerprinted was that he considered, apparently, the
22 arrest based on less than probable cause.

23 QUESTION: Right. And didn't you -- didn't
24 the State virtually concede that at the time, that there
25 was no probable cause?

1 MR. ALLISON: Reading the arguments of the
2 district attorney, he attempts to establish probable
3 cause, but concedes that the arrest was based on less
4 than probable cause.

5 QUESTION: Yes, and so everybody assumed at
6 the trial court level there was no probable cause and
7 the confession came in under the Dunaway concept, isn't
8 that basically right?

9 MR. ALLISON: Your Honor, that's correct.
10 That is exactly what the trial judge said. There are
11 circumstances under Dunaway that would make this
12 confession admissible.

13 QUESTION: Intervening circumstances.

14 MR. ALLISON: Yes, sir.

15 QUESTION: But it was not a fruit of an
16 illegal arrest.

17 MR. ALLISON: No, sir. There were certain
18 attenuation factors that I will compare shortly.

19 QUESTION: Now, the state didn't appeal that
20 finding of no probable cause.

21 MR. ALLISON: On argument before the Court of
22 Criminal Appeals the State argued that there was
23 probable cause, and the Court of Criminal Appeals
24 rejected that argument.

25 QUESTION: And you never appealed the trial

1 court's exclusionary order.

2 MR. ALLISON: No, Your Honor, there was no
3 appeal on the exclusionary order.

4 QUESTION: So presumably that issue is at
5 rest. So do we not have to assume, then, that the
6 arrest was illegal?

7 MR. ALLISON: Was based on less than probable
8 cause.

9 QUESTION: Yes.

10 QUESTION: Well, but you also have with you
11 the favorable ruling on the pretrial suppression motion,
12 which refused to exclude the confession, did you not?

13 MR. ALLISON: Yes, sir, that's true.

14 QUESTION: And that was appealed as a part of
15 the Defendant's appeal to the Court of Appeals?

16 MR. ALLISON: To the Alabama appellate court.

17 QUESTION: Yes.

18 MR. ALLISON: Yes, sir.

19 QUESTION: That wasn't based on the notion
20 that there was probable cause, was it?

21 MR. ALLISON: The one issue that the Court of
22 Criminal Appeals considered was, is a voluntarily given
23 confession admissible in an instance where there is less
24 than probable cause. And what the Alabama appellate
25 court did was to look at Dunaway and Brown and to weigh

1 the facts, and the Alabama Court of Criminal Appeals
2 found nothing to distinguish Omar Taylor's case from
3 Brown and Dunaway.

4 Then on appeal the Alabama Supreme Court
5 reviewed the decision of the Alabama Court of Criminal
6 Appeals. The Alabama Supreme Court found that the
7 causal connection between the illegal risk and the
8 confession had been sufficiently broken, and that any
9 taint of an illegal arrest had been sufficiently
10 attenuated by the three factors as set forth in Brown
11 and Dunaway.

12 And what I would first like to do is to look
13 at these three factors as set forth in Brown and
14 Dunaway, and to see the correctness of the decision of
15 the Alabama Supreme Court. The three factors:

16 First of all, the first factor is the temporal
17 proximity of the arrest and the confession. In both
18 Brown and Dunaway, the Defendant was arrested and had
19 confessed in less than two hours. In Taylor's case
20 there was a period of six hours. And in order to show
21 the importance of the six-hour period, we have to look
22 at the circumstances that occurred.

23 We know that there are four things that
24 occurred during this period of time, and we know the
25 approximate time, or the record shows the approximate

1 time in three of these. When Omar Taylor was arrested
2 at 3:00 p.m. in the afternoon and taken directly to the
3 police station, the first thing that happened, he was
4 processed. He was fingerprinted, he was photographed,
5 and by his own statement they talked to him for 15
6 minutes.

7 We know then that he was taken directly to a
8 lineup. According to Omar Taylor's estimate, this
9 lineup lasted one hour. Then, ten minutes later,
10 Detective Wilson read him his Miranda rights and
11 confronted him with the fingerprint comparison. While
12 he was being placed in the lineup, the police officers
13 had taken the latent print from the crime scene, they
14 had compared them with these roll prints, and he was
15 confronted with these prints and he declined to make any
16 statement.

17 He was then placed in his cell. Then Omar
18 Taylor says, that afternoon I talked to my girlfriend
19 and I confessed. But it was not the girl -- but it was
20 not that afternoon. If you look at the record, his
21 confession came at 9:00 p.m. that night.

22 So if you add up this time between 3:00 p.m.
23 and 9:00 p.m. that night, some six hours, the activities
24 that occurred immediately after his arrest consumed some
25 two and a half hours, approximately, or three hours at

1 the most. But this leaves a three-hour period, and this
2 is important, I think, from the length of time, because
3 during this period he sat in the solitude of his cell.
4 He had an opportunity to compose his thoughts and to
5 ensure that the confession was a product of his free
6 will.

7 The second factor to be considered,
8 intervening circumstances. In Brown and Dunaway there
9 were none. But I think there are several circumstances
10 that are significant and should be considered. First of
11 all, I use the period of solitude in his cell as an
12 example to show what happened to him during this
13 six-hour period. But I think as an intervening
14 circumstance we would have to consider this period of
15 solitude in his cell.

16 His Miranda rights were read to him or given
17 to him on three occasions, and the final time was just
18 minutes before he confessed. Omar Taylor was a twelfth
19 grade student, and just before making his confession the
20 police also read him his Miranda rights. He gave him a
21 copy, Omar Taylor read it and signed the waiver of
22 rights form.

23 Another intervening circumstance is the visit
24 between Omar Taylor's girlfriend and neighbor. There is
25 a difference in the versions of exactly what happened

1 when you look at the record. Omar Taylor gives a
2 different version from that of the police officer.

3 According to the police officer, at 8:50 p.m.
4 that night he took Omar Taylor out of his cell, read him
5 his Miranda rights, and had been talking to him for
6 approximately ten minutes. At that time Omar Taylor's
7 girlfriend and neighbor arrived. She wanted to talk to
8 Omar Taylor. Omar Taylor wanted to talk to her.

9 So the police officer allowed them to have a
10 private conversation in the detective's office. After
11 this private conversation, approximately ten minutes,
12 Omar Taylor confessed. But I think that as an
13 intervening circumstance you would have to consider the
14 conversation, in which Omar Taylor was free to discuss
15 anything in the privacy there with a person with whom he
16 was very closely associated.

17 And the last intervening circumstance which is
18 given weight by the Alabama Supreme Court -- and this is
19 prior to the confession -- an arrest warrant was
20 obtained based on an affidavit that the officers made.
21 This affidavit included information about the
22 fingerprint information. The arrest warrant was issued
23 prior to the confession.

24 During the exclusion -- during the motion to
25 exclude the confession, this evidence pertaining to the

1 issuance of the search warrant was before the trial
2 judge. During this hearing the information was placed
3 before him that these fingerprints were used as a basis
4 for the warrant. There was no specific objection on
5 this point.

6 The first time that the fingerprint issue
7 arose was in the trial itself, when the district
8 attorney attempted to introduce into evidence a
9 comparison of the fingerprints from the roll prints and
10 the fingerprints from the crime scene, at which time the
11 trial court sustained the objection and ordered the
12 Defendant re-fingerprinted.

13 QUESTION: General Allison, I'm curious about
14 one thing. Didn't I detect something in the record
15 about a request on his part during this period for an
16 attorney?

17 MR. ALLISON: There is a conflict of testimony
18 on this point. The two police officers that testified
19 both stated, no, he did not ask for an attorney.
20 Detective Hicks very clearly testified on two occasions,
21 no, he never requested an attorney. So what you have, I
22 think that when the trial judge considered the totality
23 of the circumstances, he was considering two things when
24 he considered this first motion. He was considering
25 also a Fifth Amendment question, the voluntariness of

1 that confession.

2 And in considering all the facts and
3 circumstances surrounding it, I think that the trial
4 judge had to consider this conflict of testimony between
5 the officer and then the Defendant. The Defendant said
6 a number of things. He said, I signed the statement of
7 rights form after I confessed. But then when he was
8 shown the date on it, he changed the story and said, no,
9 I believe I signed the statement of rights form before I
10 confessed.

11 But I would say that there you have a direct
12 conflict of testimony that had to be resolved by the
13 trial court.

14 The third factor that I would like to look at
15 is the purpose and the flagrancy of the official
16 misconduct of the officers. I want to compare the
17 conduct of the officers in this case with that in Davis
18 v. Mississippi, Dunaway and Brown.

19 In Davis, the police officers had a latent
20 fingerprint from a crime scene. The only description
21 the rape victim could give was that it was a young Negro
22 youth. That was all. The police go out in a dragnet
23 situation and arrest some 24 people, in a complete
24 absence of probable cause.

25 In Dunaway, the officers maintained that the

1 defendant was simply detained. They did not arrest him,
2 they maintained. They merely took him to the police
3 station for interrogation. The information in Dunaway
4 came from a person being held in jail. It passed
5 through several hands.

6 We find a completely different situation when
7 you look at the fact situation in Taylor. In Brown,
8 Brown was nothing more than an associate of a murder
9 victim. He was not even a real suspect. And yet the
10 officers go to his apartment at 7:30 at night, they
11 search his apartment without a warrant. They jump out
12 and arrest him, and they arrest him in such a manner
13 that would cause fright and shock and confusion. They
14 take him to the police station. He has confessed in
15 less than two hours.

16 In Taylor's case, the investigation had
17 focused on one individual, Omar Taylor. The officers go
18 to Omar Taylor and they say, Omar Taylor, you are under
19 arrest for the robbery of Moseley's Grocery, and they
20 take him to the police station.

21 I want to look at the probable cause that the
22 officers had.

23 QUESTION: Of course there are some
24 parallels. In both Dunaway and this case, it was a man
25 in jail who made the suggestion.

1 MR. ALLISON: Yes, sir.

2 QUESTION: And in this case Martin himself was
3 ultimately convicted, was he not, or implicated at
4 least, in the robbery?

5 MR. ALLISON: When Omar Taylor gave his
6 statement, he named Charles Martin as his accomplice.

7 I think that we can show that in this case
8 there is much more probable cause and there's much that
9 would distinguish this case from Dunaway. Some 20 days
10 after the robbery of Moseley's Grocery -- and this
11 robbery of Moseley's Grocery had been one of a series of
12 armed robberies in the same neighborhood.

13 20 days after the robbery, Charles Martin was
14 arrested in a robbery in the same neighborhood. During
15 the week following the arrest of Charles Martin,
16 Detective Mobley began to talk to Martin. He knew
17 Martin as one of the three suspects in the Moseley's
18 Grocery robbery. Charles Martin and Detective Mobley
19 began to have conversations over a period of a whole
20 week.

21 On numerous occasions Mobley talked to
22 Martin. He impressed upon him the importance of telling
23 the truth if he wanted the information to be known to
24 the judge. He emphasizes the adverse consequences that
25 any false information would have. Detective Mobley

1 said, that over a period of a week, I developed a
2 rapport with this man. He convinced me that he was
3 telling the truth.

4 Now, there is a difference in the testimony,
5 because on one or two occasions Mobley says, Charles
6 Martin told me he heard. And I'm sure that over a
7 period of talking to this man for at least a week, I'm
8 sure that on occasion he said, I heard, but on other
9 occasions he said, I know.

10 And the district attorney attempted to clarify
11 this point. On page 15 of the record, which is not in
12 the joint appendix -- part of page 15 is -- but on page
13 15, on redirect examination the district attorney
14 attempts to clarify this point. He asks the direct
15 question:

16 "Now, when Martin gave you this information,
17 was it in the sense that Omar Taylor did the robbery or
18 X told me that Omar Taylor did the robbery?"

19 And his answer was: "It was in the sense that
20 Omar Taylor was involved."

21 He repeatedly told him that he knew that he
22 was involved. On the following page he states: "He
23 didn't say anything else other than the fact that he
24 knew that Omar Taylor was involved in the robbery."

25 I think that an experienced police officer,

1 knowing that Charles Martin was a suspect in the very
2 same robbery, I think that an experienced police officer
3 would know that this man could not tell him how he knew
4 without confessing, without saying, I was there standing
5 beside him and robbing Mr. Moseley.

6 The officer knew that he could not tell all
7 the circumstances or the basis of his information, but I
8 think the fact that this man was known as one of the
9 three suspects gave weight to this officer's information
10 and his belief --

11 QUESTION: What did Martin get as a result of
12 this?

13 MR. ALLISON: The record does not show what
14 the police officer told him. He said, if you give me
15 reliable information I will see that any help you have
16 given us will be presented to the trial judge for
17 whatever benefit he can give you. He could not promise
18 him anything, but he could only tell him that the judge
19 would be made aware of it.

20 QUESTION: Well, what did he end up with?

21 MR. ALLISON: I have no idea, Your Honor. The
22 record shows nothing about Charles Martin and his
23 sentence in his case.

24 I think that --

25 QUESTION: Mr. Allison, I take it from your

1 argument you're not going to press upon us the necessity
2 to apply some good faith exception to the exclusionary
3 rule or any modification of it?

4 MR. ALLISON: What I would ask Your Honor is
5 that -- I think I'm going to look a little bit further
6 in the probable cause area, but I think what you will
7 find is that if the officers were technically short of
8 probable cause, that they acted in good faith; that
9 whether they acted in good faith could not be a
10 subjective matter with the officers. You would have to
11 look at it in an objective manner.

12 But if there is an objective, reasonable basis
13 for that belief, then you find this evidence admissible
14 under a good faith exception to the exclusionary rule as
15 set forth in the Fifth Circuit case of United States v.
16 Williams.

17 QUESTION: Was there any finding by the courts
18 below specifically of the good faith of the officers?

19 MR. ALLISON: Your Honor, the language of the
20 Alabama Supreme Court when they discussed the
21 exclusionary rule, it is very difficult to determine
22 exactly what they had in mind. It is a detailed history
23 and discussion of the exclusionary rule. But Your
24 Honor, I cannot answer that question. Your
25 interpretation of the second half of the opinion is open

1 to interpretation, I would think, Your Honor.

2 QUESTION: But you can't point to any specific
3 finding in the courts below on the good faith?

4 MR. ALLISON: Your Honor, there was none.

5 But to conclude in the area of probable cause,
6 I don't think that in the suppression hearing the extent
7 of probable cause was ever brought -- or was fully
8 developed. The officers had -- also had a description,
9 not like Davis v. Mississippi, but of a colored male,
10 five foot six inches, 150 pounds, 20 to 25 years old.
11 The record doesn't even show --

12 QUESTION: Did they know what the Petitioner
13 looked like before they went out and picked him up?

14 MR. ALLISON: Your Honor, that's exactly what
15 I was going to say. The record is completely silent.
16 This was never developed.

17 QUESTION: So that we can't assume that they
18 relied on the description, then? The record suggested
19 to me they relied entirely on Officer Mobley's
20 conversation with this man, with Martin.

21 MR. ALLISON: I think that the -- I think that
22 that is an accurate interpretation.

23 QUESTION: In fact, he didn't arrest him
24 himself, if I understand. He got two other officers to
25 go out and pick him up, didn't he?

1 MR. ALLISON: He relayed the information to a
2 detective, I believe it was Detective Alford, I believe,
3 who actually made the arrest.

4 QUESTION: In that relay did he tell him what
5 the Respondent looked like -- what the Petitioner looked
6 like?

7 MR. ALLISON: The record is silent. It
8 doesn't go into that.

9 And if you'd like me to, I would make my
10 remarks about the exclusionary rule. If you don't want
11 to hear those, then --

12 QUESTION: They're covered quite fully in your
13 brief, I think, aren't they?

14 MR. ALLISON: With the exception of one thing,
15 if I might add, that in the past this Court has used a
16 balancing process in making a determination as to
17 whether or not to apply the exclusionary rule. In a
18 number of cases this Court has stated exactly what
19 factors were balanced.

20 In U.S. v. Calandra this Court weighed the
21 potential injury to the functions of a grand jury on the
22 one hand and the effect the suppression of evidence
23 would have as to a deterrence of police misconduct on
24 the other, and this Court found that illegally seized
25 evidence could be admitted as an exception to the

1 exclusionary rule.

2 In *Waldor v. United States*, this Court weighed
3 the need to prevent perjury and the public interest in
4 determining the truth on the one hand, and the interest
5 safeguarded by the exclusionary rule on the other, and
6 this Court that illegally seized evidence could be used
7 for impeachment purposes.

8 In *Michigan v. Tucker*, this Court weighed
9 society's interest in the effective prosecution of
10 criminals on the one hand and the need to provide an
11 effective sanction to a constitutional right on the
12 other.

13 QUESTION: The Court's familiar thoroughly
14 with *Waldor*, because we reaffirmed that in *Harris*
15 against New York many years later.

16 MR. ALLISON: Your Honor, what I would ask the
17 Court to do if they found this evidence otherwise
18 inadmissible is to weigh society's interest in the
19 prevention of crime on the one hand and the benefits
20 derived in applying the exclusionary rule in an
21 objective good faith situation on the other, and
22 consider -- I'll name these very briefly -- the high
23 cost to society in the release of criminals. You can
24 see the agony of the Court of Criminal Appeals when they
25 say, we are loath to reverse the conviction of a man so

1 obviously guilty. Guilt drips from the fingers of both
2 hands, and yet we are lighted by -- our path is lighted
3 by Dunaway.

4 Consider the suppression of the truth in a
5 criminal trial. Here what could be more reliable than
6 fingerprints?

7 Consider judicial integrity. Consider the
8 reaction of the public in what they see, where robbers,
9 murderers, rapists are released on what the public calls
10 a technicality. And consider that judicial integrity is
11 not injured to the same extent when there is a good
12 faith mistake on the part of officers.

13 And consider proportionality. Consider the
14 difference between the flagrant violation on the one
15 hand and the good faith action of the police officers on
16 the other.

17 CHIEF JUSTICE BURGER: Do you have anything
18 further, Mr. Beno?

19 REBUTTAL ARGUMENT OF ROBERT M. BENO, ESQ.

20 ON BEHALF OF PETITIONER

21 MR. BENO: Mr. Chief Justice and may it please
22 the Court:

23 Respondent's statement to you in reference to
24 the facts in this case certainly finds no support in the
25 record. He indicates that Charles Martin was a suspect

1 in the crime. There is no factual evidence from the
2 record to indicate on what basis he finds that
3 conclusion.

4 He tries to change the events which occurred
5 at the police station and give you some indication that
6 the continuous questioning and police investigation on
7 this crime took place in a very short period of time. I
8 think it's clear from the record that the Defendant was
9 arrested at 3:00 o'clock, that from that point until he
10 got to the police station, although there is a conflict
11 in the testimony, that he was at least questioned by the
12 police officer in the car; that he was questioned prior
13 to his fingerprints being taken; that he was placed in a
14 lineup prior to a warrant being issued; that he was
15 again questioned.

16 And it's clear on the record that a Detective
17 Wilson -- and this was without rebuttal by the State --
18 that a Detective Wilson threatened to shove his head
19 through the wall if he did confess.

20 QUESTION: Well, you don't -- I didn't think
21 you were making any claim that the confession was
22 coerced; are you? You're just saying it's a product of
23 an illegal arrest.

24 MR. BENO: I understand, but I think it's
25 clear that --

1 QUESTION: Well, you've never raised the --
2 made a coerced confession claim in this case.

3 MR. BENO: But I'm pointing out, we're now
4 looking at the flagrancy of the police conduct. Now,
5 that's certainly a consideration of Dunaway.

6 QUESTION: That's quite different from
7 coercion.

8 MR. BENO: Yes, that's correct.

9 QUESTION: That's what he's suggesting.

10 MR. BENO: But we're talking about the
11 flagrancy of the police conduct and the purposefulness
12 from which the arrest was made. It seemed almost
13 impossible in my mind that Respondent can argue a good
14 faith action on the part of the police.

15 QUESTION: Well, you wouldn't -- if there were
16 probable cause to arrest and the arrest had been legal,
17 you don't suggest that any of this evidence would then
18 be inadmissible, do you? If there had been probable
19 cause?

20 MR. BENO: If there's no illegal arrest, we
21 have no grounds for being up here.

22 QUESTION: Yes, yes. Exactly, exactly. So if
23 the police officers mistakenly thought there was
24 probable cause but there wasn't, they just proceeded as
25 though there was.

1 MR. BENO: That's correct. That's how they
2 proceeded in this case.

3 QUESTION: What makes you think that's so
4 outrageous? I mean, they may be wrong.

5 MR. BENO: I understand.

6 QUESTION: And under the law it may be that
7 the evidence is inadmissible. What makes their conduct
8 so outrageous?

9 MR. BENO: They had this information in front
10 of them for a period of over a week, Your Honor, over a
11 week to make a determination as to whether or not there
12 was probable cause to make this arrest.

13 QUESTION: I suppose this wasn't the only case
14 on the police blotter, was it?

15 MR. BENO: I understand that, Your Honor. But
16 certainly you're not going to -- it's not going to be
17 contended that because of the number of cases on the
18 police blotter that a police group can go out, even when
19 there is time, in fact time to go to a magistrate or at
20 least contact a district attorney or something of that
21 nature to determine whether or not, based on the bald
22 statement of an alleged rapist and robber, that you can
23 go out and make an arrest. I don't think this Court is
24 going to come to that conclusion.

25 If this was a case where after the information

1 came in to him he had immediately gone out based on that
2 and in good faith made an arrest, that might have been a
3 situation where it was simply a mistake. This is not a
4 case where there is simply a mistake. This is a case
5 where the police obviously knew that they did not have
6 probable cause, that they had time to make a
7 determination -- have a determination made as to whether
8 or not there was probable cause, that the only purpose
9 that the Defendant was picked up in this case was in
10 order to find out whether or not they could, through
11 their flagrant and purposeful measures, whether or not
12 they could bring in certain evidence during the
13 detentionary period on which to hold the Defendant.

14 That is certainly the only fact before you in
15 this case. If this Court is of the opinion that the
16 police can purposefully and when knowing they have no
17 probable cause go out and pick up an individual in order
18 to determine through investigation of that defendant's
19 condition at the police station whether or not they have
20 a case against the defendant, then we're in a situation
21 where the exclusionary rule no longer serves a deterrent
22 purpose.

23 Certainly the medication served by the
24 exclusionary rule is not a pleasant one. But the
25 interest of society in protecting them from abusive

1 conduct and extraordinary conduct on the part of the
2 police must be balanced against the need to protect
3 society. And in this case there is no evidence that the
4 officers in this case acted in any other way than
5 flagrantly. And the time period involved certainly does
6 not take this case out of Dunaway.

7 Thank you.

8 CHIEF JUSTICE BURGER: Thank you, gentlemen.
9 The case is submitted.

10 (Whereupon, at 2:10 p.m., the case in the
11 above-entitled was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

Omar Taylor, Petitioner v. ALABAMA -- No. 815152

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BY Deene Hammond

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