

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-963

TITLE MASSACHUSETTS, Petitioner v. OSBORNE SHEPPARD

PLACE Washington, D. C.

DATE January 17, 1984

PAGES 1 thru 50



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IN THE SUPREME COURT OF THE UNITED STATES

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MASSACHUSETTS, :
Petitioner :
v. : No. 82-963
OSBORNE SHEPPARD :

- - - - -x
Washington, D.C.
Tuesday, January 17, 1984

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 10:58 a.m.

APPEARANCES:
BARBARA A. H. SMITH, ESQ., Asst. Atty. Gen. of Mass.
Boston, Mass.; on behalf of the Petitioner.
JOHN REINSTEIN, ESQ., Boston, Mass.; on behalf of the
Respondent.

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

2 CHIEF JUSTICE BURGER: Miss Smith, you may
3 proceed when you are ready.

4 CEAL ARGUMENT OF BARBARA A. H. SMITH, ESQ.,
5 ON BEHALF OF PETITIONER

6 MISS SMITH: Mr. Chief Justice, and may it
7 please the Court:

8 This case presents the question whether the
9 Fourth Amendment to the United States Constitution
10 requires application of the exclusionary rule to
11 evidence seized by police acting under the authority of
12 a search warrant issued upon a finding of probable cause
13 but which is later invalidated because of the technical
14 error of omission committed by the issuing judge, an
15 error of which the police had no knowledge, took no
16 advantage and which resulted in no prejudice to the
17 defendant.

18 The Supreme Judicial Court of the Commonwealth
19 of Massachusetts ruled that suppression was required
20 because this Court had not yet recognized an exception
21 to application of the exclusionary rule for an error of
22 this type. The court, thus, overruled the trial court's
23 determination that although the warrant was defective
24 the issuing judge failing to restate in the warrant the
25 items specified in the application or to incorporate

1 that affidavit by reference, he declined to exclude the
2 evidence finding that the police had acted properly in
3 conducting their duties, that they had acted upon
4 probable cause and in good faith thus presenting a
5 factual situation in which the exclusion would have no
6 deterrent effect. Rather, the sole consequence of
7 exclusion would be to deprive the jury of the real and
8 probative evidence, thus, impairing their fact finding
9 function.

10 I think the factual situation in this case is
11 extremely important, and I will, therefore, elaborate on
12 it in some detail. At 5 a.m. the morning of May 5,
13 1979, a Saturday morning, the badly burned, partially
14 clad body of a young woman was found in a vacant lot in
15 the Roxbury District of Boston.

16 A piece of wire was bound around one leg. An
17 autopsy disclosed that the victim had died of multiple
18 skull fractures. The victim had been alive but
19 unconscious when her body was set on fire.

20 By midday the victim had been identified and
21 Osborne Sheppard had been identified as a possible
22 boyfriend. An officer who knew Sheppard as a gambler
23 began to circulate through the Roxbury area stopping at
24 a gaming house he knew Sheppard to frequent.

25 Sheppard himself opened the door, and after

1 some conversation with the police agreed to accompany
2 them to the police station. He was given his Miranda
3 rights in the car on the way to the station.

4 He was told that the police were investigating
5 the death of Sandra Boulware, and they wanted to examine
6 his relationship with Ms. Boulware and establish his
7 whereabouts on May 4th and 5th. Mr. Sheppard told the
8 police that he had visited with the victim at her home
9 on Tuesday, May 1st, that they together had taken a taxi
10 cab back to his home, stopping on the way to purchase
11 some marijuana and a bottle of Amaretto.

12 He said that the victim had left him at
13 approximately 2 p.m. on Tuesday. He also stated that he
14 had been at the gaming house where the police had found
15 him from 9 p.m. on Friday until 5 a.m. that Saturday
16 morning.

17 After naming some other individuals who had
18 been at the gaming house with him, he left the police
19 station. Continuing their investigation that afternoon
20 the police questioned the other members of the gaming
21 establishment who said that indeed Osborne Sheppard had
22 left. He had left at approximately 3 a.m. borrowing a
23 car to drive some men home on a trip that ordinarily took
24 15 minutes although he did not return until 4:45 a.m.
25 and then abruptly left again.

1 The police also learned that on leaving the
2 gaming house at 6 a.m. one of the occupants noticed on
3 the porch a gasoline can and a pair of gloves. On
4 Sunday morning, the police learned from a friend of
5 Sheppards that he had refinished his basement area, and
6 this was an area in which he entertained women for
7 social purposes.

8 Most importantly on that Sunday morning the
9 owner of the automobile corroborated the fact that
10 Sheppard had borrowed his car. On inspection of the car
11 the police and a police chemist found human blood stains
12 and pieces of hair on the rear bumper near the trunk
13 area.

14 In the trunk area they found more human blood
15 stains and pieces of wire similar to that which had been
16 found on the body. The owner of the car told them that
17 there was no wire and no blood in the trunk of that car
18 on Friday night before he had loaned it to Sheppard.

19 It was then after consultation with the
20 district attorney's office determined that arrest and
21 search warrants should be obtained. A Detective
22 O'Malley typed an affidavit in support of the
23 application for the search warrant demonstrating
24 probable cause for the search and the seizure.

25 He specifically enumerated in his application

1 describing the condition of the body that had been
2 beaten and burned, that Sheppard had been the last
3 person known to have seen the victim, that he and the
4 victim had gone to 42 Leckard Street, that Sheppard had
5 been in possession of a particular automobile, which was
6 found to have blood stains and human hair on it that had
7 not been there prior to Sheppard's using the car.

8 He reiterated that a friend had told them that
9 Sheppard used his basement area for entertaining women
10 and O'Malley, therefore, specified the areas to be
11 searched as the second floor and second area controlled
12 by Sheppard at 42 Leckard Street. He specified the
13 items to be seized.

14 Probable cause for the seizure of each item
15 was related to the facts as set out in the affidavit.
16 The items included the fifth of Amaretto, two nickel
17 bags of marijuana, possessions of Sandra Boulware, wire
18 matching that found on the body or in the trunk of the
19 car, men's or women's clothing having blood or gasoline
20 stains, blunt instruments, which may have been used to
21 inflict the multiple fractures, and items with the
22 victim's fingerprints.

23 It was then Sunday afternoon and O'Malley was
24 unable to find a proper warrant form. The Foxbury court
25 was closed. Efforts to contact the clerks were

1 unsuccessful. Efforts to find a proper warrant form at
2 other police stations was also unsuccessful.

3 O'Malley did find a warrant form used by the
4 Dorchester District Court for searches for controlled
5 substances, which he attempted to adapt. He crossed out
6 the words "controlled substances" on the face of the
7 warrant form, and he substituted the name Roxbury for
8 Dorchester as the court, and he inserted a reference to
9 42 Deekard Street, second floor and basement as the
10 places to be searched.

11 He did not at that time delete the reference
12 to controlled substance in the portion of the form
13 constituting the application which, when signed, would
14 constitute the warrant itself. The trial court found,
15 and I think it is important to note, that all of the
16 items listed in the affidavit were small and susceptible
17 of easy destruction and transport and were located in a
18 place to which the defendant had total right of access.

19 The defendant was at liberty, and he was known
20 to spend his evenings with the occupants of the gaming
21 house that had given the information about the car.
22 Therefore, it was essential that the police move with
23 great dispatch, and they did.

24 Arrangements were made to meet with the judge
25 at his home. O'Malley accompanied by other

1 investigating officers and an assistant district
2 attorney went there at approximately 2:45 p.m.

3 The judge took O'Malley's oath and signed the
4 affidavit to that effect. The trial judge found as fact
5 that the judge had concluded upon the affidavit that
6 probable cause existed to search the premises and for
7 the items listed.

8 QUESTION: Listed where, in the affidavit?

9 MISS SMITH: In the affidavit.

10 O'Malley explained the problem to the judge
11 about the warrant form that he had. He showed the judge
12 the controlled substance form, and the judge then
13 attempted to search his library for a proper form. He
14 was unable to find one, and he took the form from
15 O'Malley assuring him that he would make the necessary
16 changes.

17 He did make some minor alterations as to the
18 name of the judicial district and the judge. He
19 signed --

20 QUESTION: Was this person, Miss Smith, a real
21 judge?

22 MISS SMITH: Yes, he was a real judge.

23 QUESTION: In Massachusetts, Miss Smith, what
24 is the rule with respect to the action of a judicial
25 officer. That is, the general rule is that the action

1 of a judicial officer is presumptively valid and binding
2 until it is set aside by some higher authority.

3 MISS SMITH: That is the position in
4 Massachusetts.

5 QUESTION: So when this warrant was served,
6 executed it had the benefit of the presumption of
7 validity.

8 MISS SMITH: Yes, Your Honor.

9 QUESTION: Miss Smith, what would have been,
10 if they had been successful, the real form?

11 MISS SMITH: We would not be here.

12 QUESTION: I know. What is the difference
13 between it and the one they used?

14 MISS SMITH: The proper form has a space in
15 which you fill in the items listed in the affidavit or
16 make a simple notation, "See affidavit incorporated or
17 attached herein" and then staple the affidavit to the
18 form.

19 QUESTION: Is that the only distinction
20 between the form actually used and the real one?

21 MISS SMITH: This form used here has printed
22 in reference to controlled substances in the aspect of
23 the form --

24 QUESTION: In the body of the warrant those
25 items were not listed, the items to be searched for and

1 seized.

2 MISS SMITH: That is right.

3 QUESTION: Nor was the affidavit attached to
4 the --

5 MISS SMITH: The affidavit was not attached.
6 The only correlation between the warrant that we have is
7 in the affidavit. Marijuana was named. Marijuana is a
8 controlled substance.

9 QUESTION: So the warrant really was
10 defective?

11 MISS SMITH: Yes, as far as the items
12 reflecting the specific items specified in the
13 affidavit.

14 QUESTION: If you presented it to the owner of
15 the premises to be searched and he said, "What are you
16 searching for?", you could not tell that from the
17 examination of the warrant itself.

18 MISS SMITH: Officer O'Malley could tell that
19 because he was the one who applied for it and specified
20 the items to be searched.

21 QUESTION: But the owner of the premises
22 presumably could not tell what items a search had been
23 authorized for.

24 MISS SMITH: That is right. They could only
25 tell that a search had been authorized for controlled

1 substances and, therefore, the only areas that could be
2 searched are areas that could accommodate controlled
3 substances, and it was limited --

4 QUESTION: Miss Smith, is it not correct that
5 when they executed the warrant they had the affidavit
6 with them?

7 MISS SMITH: Yes, they did.

8 QUESTION: So they could have showed them the
9 affidavit which would then have given them a bill of
10 particulars.

11 MISS SMITH: Absolutely, Your Honor.

12 QUESTION: If I understand it, all that the
13 judge had to do was simply in that space that said
14 "controlled substances" was strike it out and put in
15 "see attached affidavit"?

16 MISS SMITH: That is right. That is all he
17 had to do.

18 QUESTION: It would have made a perfect
19 warrant then.

20 MISS SMITH: That would have made a perfect
21 warrant, but as the court found through total
22 inadvertence the judge failed to do that in the rush.

23 QUESTION: He was a real judge.

24 MISS SMITH: He was a judge.

25 (Laughter)

1 MISS SMITH: Possibly he was too detached a
2 judge at this particular point.

3 Pardon me, Your Honor?

4 QUESTION: I was just going to observe he was
5 not a member of this court.

6 (Laughter)

7 MISS SMITH: No, he was not.

8 The trial judge returned the warrant and the
9 affidavit to O'Malley informing him, as found by the
10 trial judge, that he had the authority to carry out the
11 search as requested. The search was then executed under
12 the direction of O'Malley.

13 It was limited in fact to what O'Malley
14 understood the warrant to permit. In the bedroom area a
15 bloodstained boot was seized. In the cellar area a
16 bloodstained scatter rug, pieces of bloodstained cement,
17 women's earrings, women's leotards, bloodstained jockey
18 shorts, a hair piece that was later identified as being
19 very similar to one worn by the victim were found as
20 well as a piece of the wire similar to those found on
21 the body and in the trunk of the car.

22 After the search was completed O'Malley
23 inventoried the items and a return was made to the
24 Roxbury District Court on Monday morning. It seems
25 clear to us that the police fully complied under urgent

1 circumstances with the warrant process.

2 However, the judge issuing the warrant through
3 error and inadvertence, as found by the trial court
4 judge, failed to restate in the warrant the items
5 specified or to incorporate the affidavit by reference --

6 QUESTION: Miss Smith, did the police have an
7 obligation to execute the warrant as it's written?

8 MISS SMITH: I believe they do, Your Honor. I
9 believe that once that warrant is signed --

10 QUESTION: So that is in a sense some kind of
11 an error that occurred when the police did not read it
12 and say, look, that is not what is listed in the
13 warrant.

14 MISS SMITH: Your Honor, I --

15 QUESTION: I guess if the police had read it
16 at the time the magistrate or judge could have corrected
17 it.

18 MISS SMITH: Yes. He might have, but I do not
19 think there is any obligation --

20 QUESTION: Well, there is no doubt that he
21 would have, is there?

22 MISS SMITH: I would hope that he would have.
23 I mean, I think once this was brought to his attention
24 he would see the mistake that was made and correct it.

25 QUESTION: Of course, if you are a policeman

1 the chance that you may feel who am I to tell the judge
2 what form of warrant to use --

3 MISS SMITH: Absolutely. The police knew what
4 they had asked for. They were assured that they got
5 what they asked for, and they left with both the
6 affidavit and the warrant.

7 I think that the police have no obligation to
8 do anything further than secure the warrant. I think
9 the constitutional obligation stops there. In the
10 general case there is simply nothing more they could
11 do.

12 QUESTION: You think the police have no
13 obligation whatever to comply with what is written on
14 the fact of the warrant?

15 MISS SMITH: I am not saying that, Your
16 Honor. I am saying in this case they did not read the
17 warrant. They knew exactly what they needed to get.
18 They were moving quickly before this evidence was
19 destroyed. They did not read the warrant.

20 QUESTION: Well, if, as you told us, the law
21 of Massachusetts is that the warrant is presumptively
22 valid once signed then it is valid on the instant it was
23 served.

24 MISS SMITH: That is right. I think since the
25 warrant is presumptively valid there really is no

1 obligation on the police to, in a sense, secondguess or
2 judge the judge.

3 QUESTION: Yes, but, Miss Smith, it is
4 presumptively valid to seize what the warrant says may
5 be seized, is it not?

6 MISS SMITH: Yes, Your Honor, and the --

7 QUESTION: Is it presumptively valid to seize
8 something that is not listed in the warrant?

9 MISS SMITH: Not once that is determined after
10 the fact, but the police do not wait until another court
11 has reviewed the warrant. They have the warrant as
12 issued by the judge, and what I am suggesting --

13 QUESTION: But this warrant did not authorize
14 them to seize the matters listed in the --

15 MISS SMITH: Affidavit. That is why it is
16 defective.

17 QUESTION: But they thought it did.

18 MISS SMITH: They thought it did absolutely.
19 There can be no question of that. They were very
20 specific in their affidavit, and that is why, we
21 submit --

22 QUESTION: Did they show the person the
23 affidavit?

24 MISS SMITH: No, they did not. They did not
25 show the person either the warrant or the affidavit.

1 They did not ask to see it.

2 QUESTION: What weight does that have?

3 MISS SMITH: I do not think it really has any

4 weight. I think what we have here is a case in which

5 the police from any objective analysis acted in

6 reasonable good faith reliance upon a judicially issued

7 warrant.

8 QUESTION: Isn't one of the base reasons for

9 the affidavit to show somebody authority?

10 MISS SMITH: They had authority to enter these

11 premises.

12 QUESTION: What authority did they have? The

13 affidavit?

14 MISS SMITH: The authority in the warrant

15 placed them on the premises.

16 QUESTION: Weren't they obliged to show the

17 warrant?

18 MISS SMITH: If someone had asked to see it.

19 I do not believe there is any obligation that they go in

20 holding the warrant out. They say we have a warrant.

21 We are here to search this particular area. The mother

22 and, I believe, sister who were present had no problem.

23 QUESTION: The policemen were armed?

24 MISS SMITH: I'm sorry?

25 QUESTION: The policemen had weapons? We

1 assume so.

2 MISS SMITH: I would imagine police officers
3 would not go on a search without a weapon.

4 QUESTION: That is right.

5 MISS SMITH: Did they have drawn weapons, I
6 would say no.

7 QUESTION: Well, could they be admitted
8 because of the weapon or because of the warrant? How do
9 you know which one?

10 MISS SMITH: There is absolutely nothing in
11 the record to support even speculation that they were
12 admitted because they were waiving weapons at the
13 people. They went in peacefully.

14 QUESTION: Isn't that the reason for having
15 the warrant?

16 MISS SMITH: They have a warrant.

17 QUESTION: I mean they show it.

18 MISS SMITH: They said, we have a warrant,
19 which in fact is true, and that was enough for the
20 people on the premises. There was no question raised by
21 the people on the premises. There were no threats, no
22 need for threats.

23 QUESTION: They had a presumptively valid
24 warrant. They did not say that, did they?

25 MISS SMITH: Did the police say they had a

1 presumptively valid warrant? No, I would doubt that,
2 Your Honor.

3 QUESTION: No, they said we have a warrant.

4 MISS SMITH: We have a warrant, which they
5 had, which was later, later determined to be found
6 defective because of the omission by the issuing judge.

7 QUESTION: Was there any requirement by
8 statute under Massachusetts law that the officer show
9 the warrant without a request?

10 MISS SMITH: Not that I know of, Your Honor.
11 I do not believe --

12 QUESTION: But if requested what would be the
13 normal practice?

14 MISS SMITH: I think the normal practice would
15 be for the police to go on the premises, say, "We have a
16 warrant to search the particular area." If a request is
17 made, "I want to see the warrant", then they should show
18 the warrant. There was no request made.

19 QUESTION: Under the Massachusetts law they
20 are not required to deliver the warrant or a copy of
21 it?

22 MISS SMITH: No.

23 QUESTION: Or to show it.

24 MISS SMITH: No.

25 QUESTION: Miss Smith, there is no question, I

1 guess, that the police were acting with subjective good
2 faith here. Is it fair to say that a policeman acts
3 with objective good faith in executing a warrant to
4 seize items not mentioned on the face of the warrant?
5 Do you think that that generally would amount to
6 objective good faith?

7 MISS SMITH: I cannot give you an absolute
8 blanket answer to a question like that, Your Honor. I
9 think it would be limited to examination of the totality
10 of all the circumstances surrounding the officers'
11 obtaining and executing the warrant. I think in this
12 instance under an objective test the officers acted in a
13 reasonable manner in executing the warrant they had
14 obtained.

15 They established probable cause. They listed
16 the items specifically in their affidavit. They
17 presented them to a neutral and detached magistrate who
18 made a determination that probable cause existed to
19 seize those particular items.

20 He took the warrant. He told them that he
21 would adopt it. The trial judge found that he told them
22 they had the authority to do what they had requested.
23 He gave them back the warrant. He gave them back the
24 affidavit, and I think under the circumstances the fact
25 the police did not read the warrant does not render

1 their conduct objectively unreasonable. I think when
2 they got that warrant there was nothing more they could
3 do.

4 QUESTION: May I ask you a question here? May
5 I for the moment just put the exclusionary rule to one
6 side. Assume we have got a warrant that is defective
7 for the reasons that we have talked about.

8 In your opinion did the police officers
9 conduct an unreasonable search within the meaning of the
10 Fourth Amendment?

11 MISS SMITH: In my opinion if and only if this
12 Court were to extend its holding in Gates where the
13 Court announced a totality of the circumstances test for
14 determining the probable cause aspect, if you were to
15 extend that to determining the reasonableness of a
16 search in this instance, I think, yes, we would have a
17 reasonable search because the police complied with the
18 warrant process. The police executed the search
19 consistent with what they authority they told they had.

20 There were exigent circumstances. This was
21 easily destroyed evidence. The defendant was going to
22 understand very, very shortly that his alibi had been,
23 in effect, blown out of the water, that he had been
24 identified with a car with human blood on it and
25 practically simultaneously with a body being deposited

1 and burnt in a vacant lot, and I think, yes, indeed --

2 QUESTION: If you are right on that that there
3 is a reasonable search here then there is no need to
4 reach a good faith exception to the exclusionary rule.

5 MISS SMITH: If the Court is going to extend
6 Gates considered under a --

7 QUESTION: Well, Gates really dealt with what
8 kind of showing of probable cause is necessary.

9 MISS SMITH: That is right.

10 QUESTION: Here there is admittedly probable
11 cause and there is also admittedly a defect in the
12 warrant.

13 MISS SMITH: Absolutely.

14 QUESTION: The ultimate holding in Gates was
15 that the warrant was okay.

16 MISS SMITH: That is correct, Your Honor.

17 QUESTION: So it is a little bit different.

18 MISS SMITH: It is different. That is why I
19 cannot say without the Court extending Gates to this
20 type of situation that this would be necessarily a
21 reasonable search without the warrant.

22 QUESTION: I did not necessarily mean to say
23 without the warrant. I am just saying taking all the
24 facts together would you say this is a reasonable or an
25 unreasonable search?

1 MISS SMITH: Exactly, Your Honor. Taking all
2 the facts together including the existence of the
3 warrant under the totality of the circumstances, I would
4 say it was a reasonable search.

5 However, we are talking here about the
6 application of the exclusionary rule. In a case in
7 which there was no police misconduct, no turn effect can
8 be achieved by application of the exclusionary rule.

9 I think it is also inappropriate to extend
10 the deterrent rationale to judicial mistakes given that
11 a judge is not a proponent of either side. He is not a
12 member of the law enforcement team.

13 I would suggest that appellate determination
14 or identification of the judicial error is sufficient to
15 deter future conduct.

16 QUESTION: I suppose in answering Justice
17 Stevens I suppose if you just said any time an officer
18 makes a reasonable mistake there is no violation of the
19 Fourth Amendment because it is a reasonable search. You
20 really arrive at the same result.

21 MISS SMITH: We would.

22 QUESTION: Except then you hold that there has
23 been no violation of the Fourth Amendment at all.

24 MISS SMITH: Well, the Fourth Amendment only
25 precludes unreasonable searches so if the search is

1 found to be reasonable with or without a warrant --

2 QUESTION: No, but usually in searching a
3 house you need a warrant.

4 MISS SMITH: I believe all of the case law
5 says that ordinarily. Except if you can establish a
6 specific exception a warrant is required for the search
7 of a home, which is why I focused on the application of
8 the exclusionary rule to this type of reasonable
9 mistake.

10 QUESTION: So you are saying any time it is
11 reasonable for an officer to believe that he has
12 complied with a warrant requirement there is no
13 violation of the Fourth Amendment.

14 MISS SMITH: I do not think that quite --

15 QUESTION: But that was your submission to
16 Justice Stevens. It was a reasonable search. The
17 officers reasonably believed they had a good warrant.

18 MISS SMITH: Yes, Your Honor, but --

19 QUESTION: Because they had the affidavit.

20 MISS SMITH: They had the affidavit. They had
21 gone through the whole warrant process. They
22 established probable cause.

23 QUESTION: The only trouble was that the two
24 pieces of paper were not put together.

25 MISS SMITH: Yes. That is the size of the

1 whole error in this case, and that is one reason that we
2 would argue that the exclusionary rule should not apply
3 because it is totally contrary to the idea of
4 proportionality, which I think is central to our concept
5 of justice. It deflects the truth-finding process and
6 affords a windfall to, in this case, a guilty defendant
7 of outrageous proportions. It is a remedy that is
8 simply not consistent with the degree, the extent or the
9 effect of the error committed in this case.

10 Commonwealth, therefore, requests this Court
11 to recognize an exception to application of the
12 exclusionary rule where the police act in
13 reasonably-based good faith, not merely subjective good
14 faith at all, in obtaining a warrant. Such an
15 exception, it is submitted, is not inconsistent with the
16 concerns which gave rise to the exclusionary rule in the
17 first instance for it would have no effect under
18 dispositions of those cases involving warrantless
19 rummaging through a person's belongings or other
20 flagrant violations as were the case in Weeks and Mapp,
21 nor would it permit police falsification of the facts
22 according a finding of probable cause because by
23 definition that would not be reasonable good faith.

24 It would simply be an explicit recognition
25 that exclusion of evidence at the expense of the public

1 where police have complied with the warrant process in
2 an objectively reasonable manner simply has no
3 legitimate justifications. The exception would not be
4 inconsistent with prior recent rulings of this Court
5 which have implicitly recognized that the deterrent
6 purpose of the rule is not effectuated where the police
7 have acted in a reasonable manner.

8 Finally, I would suggest that the exception
9 would serve two salutary purposes. First, the exception
10 will serve to foster this Court's stated preference for
11 warranted searches so that a neutral and detached
12 magistrate is interposed between the police and the
13 individual. Second, by granting consideration to the
14 extent and effect of the error rather than the mere fact
15 of the error, it will restore some degree of
16 proportionality to our criminal justice system and
17 acknowledge the that truth-finding function of our
18 system will not be unreasonably impaired by inflexible
19 mechanistic application of the exclusionary rule.

20 Thank you very much.

21 ORAL ARGUMENT OF JOHN REINSTEN, ESQ.,

22 ON BEHALF OF RESPONDENT

23 CHIEF JUSTICE BURGER: Mr. Reinstein, let me
24 ask you a question right at the outset if I may.
25 Suppose this affidavit had been attached to the warrant

1 with a clip -- what would you say then -- and if the
2 warrant had said see attached affidavit?

3 MR. REINSTEIN: The key, I think, is the
4 sufficiency of the words of incorporation whether on the
5 face of the warrant there is an indication by the
6 magistrate that he or she intended to adopt the language
7 of another document so that if there is sufficient words
8 of description in the warrant itself sufficient to
9 identify either by saying "see attached" and the
10 document is attached or "see a document" and describes
11 the document by date and author, then I believe that
12 that would be sufficient to meet the requirements of the
13 particularity requirement.

14 QUESTION: But without that cross reference
15 the warrant would be invalid you say?

16 MR. REINSTEIN: That is right.

17 QUESTION: Do you agree with your friend that
18 the law of Massachusetts gives presumptive validity to
19 that warrant?

20 MR. REINSTEIN: I do not agree with Miss
21 Smith --

22 QUESTION: It is not presumptively valid, the
23 act of a judge?

24 MR. REINSTEIN: I believe that it is clear
25 that a police officer may not treat as presumptively

1 valid a document which he knows --

2 QUESTION: Forget about the police officer.

3 Is it the law of Massachusetts that the action of a
4 judge within the scope of his lawful authority is
5 presumptively valid until it is set aside on review?

6 MR. REINSTEIN: As a general proposition that
7 would be true.

8 QUESTION: So this warrant would fall within
9 that rule, would it not?

10 MR. REINSTEIN: No, it would not.

11 QUESTION: Why not?

12 MR. REINSTEIN: The police officer in this
13 case, Detective O'Malley, who knew from the very outset
14 what this investigation was about. He knew that it was
15 a murder investigation and knew what they were looking
16 for. He knew what he asked for in his application for a
17 warrant.

18 QUESTION: I thought you conceded that if a
19 clip like this or anything like it had attached the two
20 together it would be all right.

21 MR. REINSTEIN: No, not a clip alone. The
22 proximity is not enough to make it sufficient. There
23 has to be some indication that the magistrate who
24 reviewed the application actually adopted its language
25 and the scope of the search which it contemplates. I

1 suggest that a paper clip, a staple, or some other
2 mechanical attachment is not sufficient to do that.
3 There has to be words of description and incorporation.

4 QUESTION: If the words were "see affidavit
5 attached"?

6 MR. REINSTEIN: If the words were "see
7 affidavit attached" and the affidavit were attached I
8 believe that that would be sufficient.

9 QUESTION: Thank you.

10 MR. REINSTEIN: I would like to respond at the
11 outset to the description of some of the facts, which
12 counsel for the State has described in her
13 presentation. The State says that there was probable
14 cause for this search and that the search described in
15 the application was, in fact, authorized by the
16 magistrate.

17 Because there is no proper warrant executed by
18 the magistrate in this case, something which reflects on
19 its face that certain findings were made by the
20 magistrate after consideration, the facts set forth in
21 the affidavit, we are forced to rely in this case on
22 after-the-fact reconstruction based on a police
23 officer's testimony approximately one year later in the
24 proceedings related to the motion to suppress the
25 evidence.

1 That evidence shows as follows: that the
2 police officers with the wrong warrant form in hand went
3 to the magistrate's home on a Sunday afternoon; that
4 they knew of the problems with the warrant form at that
5 time and, in fact, they told the magistrate. They said,
6 "We have the wrong form. Something will have to be done
7 about this."

8 The magistrate looked at it, and he
9 acknowledged that this was the wrong form. He said
10 that, in the police officer's words, he would adjust the
11 warrant. That is all that is in the record about what
12 the magistrate told the police officers about this
13 changes in the warrant.

14 There is nothing in the record about telling
15 them what the scope of their authority was or that he
16 would grant full approval for the search that they had
17 described in the application. The officers then took
18 that warrant, and the State concedes today that it was
19 never read. They simply put it in their pocket and went
20 out to execute it.

21 Now, let me mention first the question of
22 exigent circumstances. The police obtained the final
23 link of evidence, which they put in their application
24 for the warrant, early on Sunday morning in their
25 interview with the owner of the car where the blood was

1 found on the trunk.

2 It was shortly after that time that they made
3 a decision to arrest the defendant and to seek a warrant
4 for the search of his home. They made no attempt at
5 that time to locate the defendant who was not at that
6 point at his home. He was at the gaming house where
7 they found him the previous day.

8 They went to the judge's house sometime early
9 in the middle afternoon still not having, as I
10 understand it, made any attempt to find out where the
11 defendant was. It was only when they returned to the
12 District Two police station that they discovered by
13 asking one of the witnesses that they had interviewed
14 that morning where is the defendant.

15 He made a telephone call to the gaming house
16 and learned that he was there. So the police knew at
17 least from that point on, at least from the point at
18 which they should have known of the defects in the
19 warrant where the defendant was, that he was not in a
20 position to interfere with a search or to tamper with
21 any evidence they might be seeking.

22 With respect to the finding of probable cause,
23 there is, of course, nothing in the warrant which
24 reflects a finding of probable cause as to the items
25 which were described in that application, and all that

1 the motion judge found, the trial judge, found in this
2 case was -- He found as a fact on the basis of the
3 affidavit that the magistrate found that there was
4 probable cause to search the second floor premises of
5 the house at 42 Deckard Street and the playroom, which
6 was in the basement.

7 That is obvious from the face of the search
8 warrant, which does in the application part of it
9 mention the premises at 42 Deckard. It says 42 Deckard,
10 second and basement. There is a photocopy of the
11 warrant itself which appears on page 74a of the record
12 appendix, which appears as an appendix to Justice
13 Liacos' concurring opinion in the Supreme Judicial Court.

14 With respect to the marijuana and the question
15 of whether there was probable cause to search for
16 marijuana, we do not concede that there was probable
17 cause to search for marijuana. The only evidence
18 supporting the application for the warrant on that was a
19 statement made by the defendant on Saturday that on
20 Tuesday, some five days before the warrant was executed
21 and three to four days before the murder took place,
22 that the victim and the defendant had gone to his house
23 and before going there they had purchased some
24 marijuana.

25 But the defendant also told the police, which

1 is not reflected in this affidavit, that when the victim
2 had left his house --

3 QUESTION: Counsel, I was just looking at the
4 opinion of the Supreme Judicial Court of Massachusetts
5 at page 49a in the joint appendix. This, I believe,
6 Justice Wilkens, if I am not mistaken, describing the
7 findings of the trial court. He says on the matter of
8 the search warrant he concluded that the warrant was
9 issued on probable cause.

10 MR. REINSTEIN: The findings of the trial
11 court are contained --

12 QUESTION: Was Justice Wilkens simply mistaken
13 then in making that observation?

14 MR. REINSTEIN: I think that that slightly
15 overstates the extent of the findings, and in some
16 respects I think the findings of the trial court go well
17 beyond the testimony that was actually given in the
18 Superior Court. The only evidence about what took place
19 in the proceedings before the magistrate was the
20 testimony of Detective O'Malley who based it on his
21 recollection of what had happened a year earlier.

22 The only statement that he says that the judge
23 made to them was that after receiving the warrant that
24 he would adjust it. There were not statements about
25 findings of probable cause or comments on the substance

1 of the application.

2 All of the rest of the findings of both the
3 trial court and the conclusions of the Supreme Judicial
4 Court are based on inferences drawn from those facts.

5 QUESTION: We do not ordinarily take a case to
6 review a question of whether or not there was probable
7 cause when the lower courts have made a finding either
8 that there was or was not.

9 MR. REINSTEIN: Well, in this instance the
10 finding of probable cause invariably is first made by
11 the magistrate. The problem with this case is that
12 there is nothing to reflect what the magistrate did so
13 that as a result the Superior Court, the Supreme
14 Judicial Court and now this Court are forced to rely on
15 this after-the-fact reconstruction of what happened.
16 That is what is before the court.

17 QUESTION: When you are talking about probable
18 cause you are always talking about after-the-fact
19 reconstruction, are you not? When a search warrant is
20 challenged in court it is always after it has been
21 executed.

22 MR. REINSTEIN: But the preliminary decision
23 is made before the fact, before the search is actually
24 carried out by the magistrate. That is the function of
25 the warrant requirement to have that determination made

1 before there is some intrusion.

2 QUESTION: But that is always ex parte, is it
3 not?

4 MR. REINSTEIN: Invariably that is ex parte.

5 QUESTION: There is no doubt, is there really,
6 that the magistrate if he had noticed the error at the
7 time would have corrected it and authorized the search
8 for the items listed in the affidavit?

9 MR. REINSTEIN: That is certainly a
10 possibility. Certainly if the --

11 QUESTION: Well, it is much more than a
12 possibility. You have direct evidence, do you not, that
13 he expressed his intention to authorize the search for
14 the scope spelled out in the affidavit?

15 MR. REINSTEIN: Authorized a search. There is
16 nothing to indicate that he intended to authorize the
17 full search for each of the items that were specified in
18 the affidavit.

19 QUESTION: We are not here to argue about the
20 rule in Shelley's case or something that goes back to
21 Chittie in pleading. We have got more important things
22 in mind in granting this writ, I think.

23 QUESTION: Can we assume that the judge looked
24 at the affidavit?

25 MR. REINSTEIN: Yes, we can assume the judge

1 looked at the affidavit.

2 QUESTION: Then he knew at least what kind of
3 a search he was authorizing.

4 MR. REINSTEIN: We can assume that the judge
5 knew generally not only what kind of a search was
6 authorized but what it was that the police had found
7 thus far. He knew there was a murder investigation.

8 QUESTION: Counsel, before you go on. There
9 is no question of prejudice to your client in this case,
10 is there?

11 MR. REINSTEIN: I believe there are several
12 ways of looking at the prejudice. There is definite
13 prejudice. First --

14 QUESTION: Let me ask a follow up with this
15 question. If the affidavit had been attached to the
16 warrant in the way you suggested to the Chief Justice
17 would be appropriate, would the search have been any
18 more extensive or different in any respect?

19 MR. REINSTEIN: I do not believe it would
20 have.

21 QUESTION: You doubt that it would?

22 MR. REINSTEIN: I do not believe that it would
23 have.

24 QUESTION: So in what way was that prejudice,
25 actual prejudice, apart from the theoretical argument

1 that we are addressing here today and that is whether
2 any technical violation of the warrant procedure
3 requires exclusion of obviously probative evidence?

4 MR. REINSTEIN: I do not think that this is a
5 technical violation.

6 QUESTION: You would agree it was inadvertent,
7 would you not?

8 MR. REINSTEIN: It was careless.

9 QUESTION: You are not suggesting that the
10 judge deliberately omitted --

11 MR. REINSTEIN: No, I am not suggesting that.

12 QUESTION: Right.

13 MR. REINSTEIN: The requirement in the Fourth
14 Amendment that a warrant particularly describe the items
15 to be seized serves a number of important functions. It
16 is tied to the requirement of probable cause. The
17 magistrate is expected to find probable cause and then
18 to evidence that finding and to give direction to the
19 police officers. The magistrate is expected to record
20 that in the written warrant document.

21 It serves several functions, none of which
22 were met in this case. That is why there was some
23 prejudice to the defendant.

24 First, the warrant which was the equivalent of
25 a warrant in blank since it described something

1 completely different from what was described in the
2 affidavit. It did not give notice to the members of the
3 defendant's family who were home when the police
4 came --

5 QUESTION: Did they ask to look at the
6 warrant?

7 MR. REINSTEIN: The police officer testified
8 that it was showed to them.

9 QUESTION: Did he ask? My question was did
10 anyone ask to see the warrant and read it?

11 MR. REINSTEIN: The record does not show
12 whether anyone read it. Detective O'Malley testified
13 that when he went to the defendant's home he was met by
14 the defendant's sister and mother and that he showed
15 them the warrant. Presumably they examined it and read
16 it.

17 I should add that --

18 QUESTION: Well, you find facts in the
19 findings. I did not find any fact that they presumably
20 read it.

21 MR. REINSTEIN: There is nothing in the record
22 which suggests they presumably read it. The record says
23 only that it was shown to them.

24 QUESTION: That is all?

25 MR. REINSTEIN: That is all.

1 The second point on the question of prejudice
2 is that although Detective O'Malley knew what he wanted
3 to search for the warrant did not give specific
4 direction to the police officers who were responsible
5 for executing the search. I should add that there were,
6 I believe, ten police officers who went to the
7 defendant's home, some of whom went to the cellar.
8 Others went to the second floor.

9 I believe that Detective O'Malley went to the
10 cellar and led the group that conducted the search there
11 and that a number of other police officers went to the
12 second floor and were on their own so that while
13 Detective O'Malley may have known what it was that he
14 was looking for, the rest of the police officers and to
15 some extent Detective O'Malley were forced in conducting
16 this search to determine its limits by their impression,
17 not of what was written in the warrant, but their
18 impression of what they had asked for, what they thought
19 they had probable cause for and their impression of what
20 the judge had let them do, what he had said, whether
21 there was some clear indication that they could do such
22 and such a search.

23 QUESTION: Mr. Reinstein, let me go back just
24 a minute. I do not know if this has a great deal of
25 bearing on the case, but there seems to be numerous kind

1 of conflicting versions of the facts. Now, I am looking
2 at page 28a of the recrd, which I believe is the trial
3 justice's findings of fact.

4 On page 28a it says with respect to the manner
5 in which the warrant was served, "The defendant's mother
6 and sister were present at the time. O'Malley orally
7 informed them of the fact he had a warrant authorizing
8 the search of the second floor premises and area
9 occupied by the defendant."

10 I understood you to say that there was a
11 finding that the detective showed the warrant. Did you
12 not say that just a minute ago?

13 MR. REINSTEIN: No, I did not say there was a
14 finding. I said that the testimony was.

15 QUESTION: Well, this finding certainly does
16 not support any conclusion that the detective showed the
17 warrant.

18 MR. REINSTEIN: That is correct.

19 The record before the Court includes the full
20 testimony that was considered by the trial judge, and I
21 suggest that the Court is not bound to accept a finding
22 which is not based on any evidence at all where the sole
23 evidence is something else, that the judge's finding is
24 clearly erroneous and is not necessarily to be accepted
25 by this Court.

1 There is a third reason why there is if not
2 prejudice to the defendant some concern why a warrant, a
3 written warrant, should be required in every case, and
4 that is that as in this case we are trying to determine
5 several years after this event took place what it was
6 that happened. The Superior Court had that problem, and
7 now this Court is going to have to determine whether
8 there was probable cause, what the judge said and what
9 the effect of the judge's instructions or comments to
10 the police may be.

11 That raises the possibility if that is an
12 acceptable procedure that in any case where a search
13 warrant is challenged as being defective on its face
14 that the police officers and the prosecution can attempt
15 to bring in additional evidence to go behind the warrant
16 to show that the warrant did not mean what it said and
17 that a search completely different than the search
18 authorized by the warrant was in fact authorized by the
19 magistrate who issued it.

20 QUESTION: You have been advancing the
21 familiar arguments in favor of the strict exclusionary
22 rule. We have heard those before. I suppose the
23 reasoning behind my initial question was whether if the
24 Court responds to the request that it made in this case
25 and in the case that follows for some relaxing of the

1 strictness of the present exclusionary rule, it is
2 relevant or irrelevant that the defendant in the case
3 suffered personal prejudice.

4 I take it your answer is there is no evidence
5 in this case of any such prejudice, personal prejudice.
6 If the search warrant had been in perfect condition, the
7 search would have been the same.

8 MR. REINSTEIN: I agree that if the search
9 warrant had been precisely as applied for then the
10 search that was conducted would have, in fact, been
11 fine.

12 QUESTION: Right. I would make the same
13 argument you are making for the strictness of the
14 exclusionary rule if I had your responsibility.

15 MR. REINSTEIN: There is a second
16 consideration in dealing with the application of the
17 exclusionary rule in this particular case. The
18 formulation and the standard suggested by both the State
19 and by the Solicitor General as amicus in this case and
20 as the Petitioner in the Leon case is that the conduct
21 of police officers should be judged by a standard of
22 what a reasonably well-trained police officer would do.

23 A reasonably well-trained police officer under
24 the circumstances of this case should have been expected
25 to stop, to look at the warrant, to read it and to say,

1 "This is not the warrant that we requested. This is a
2 different warrant than we requested" and to go back to
3 the magistrate and to get the correct warrant.

4 QUESTION: The trial judge made a finding here
5 or made a reference, not a finding, a reference to the
6 law of Massachusetts saying a search warrant may be read
7 with the complaint where it is attached to the warrant
8 to provide sufficiency of the description of the place
9 to be searched. That, I suppose, was the basis of your
10 response that if these two pieces had been put together
11 their problem would have been solved.

12 MR. REINSTEIN: That is right so long as there
13 was sufficient description there to incorporate it. I
14 believe the Fourth Amendment would place some
15 restriction --

16 QUESTION: Absent a staple or clip or a
17 reference it falls?

18 MR. REINSTEIN: It is the reference which is
19 the key point. It is the intent to incorporate.

20 QUESTION: This statement of the law of
21 Massachusetts does not say anything about the
22 reference.

23 MR. REINSTEIN: No, I do not believe that --

24 QUESTION: A search warrant, said the judge,
25 may be read with the complaint, that is, here the

1 affidavit, where it is attached to the warrant.

2 MR. REINSTEIN: That is correct. That would
3 be the law of Massachusetts. However, --

4 QUESTION: He does not say it must be referred
5 to. There must be a reciprocal reference.

6 MR. REINSTEIN: I suggest that the Fourth
7 Amendment requires some appropriate words of description
8 so that it is the clear intent of the magistrate to
9 adopt the language of the affidavit.

10 Because the police officers in this case knew
11 or should have known that the Fourth Amendment requires
12 that a warrant describe what it is to be seized, because
13 they were put on notice by that language by the parallel
14 language of the state constitution and by a state
15 statute, which also requires that search warrants
16 describe what it is that is going to be seized, there is
17 no claim in this case that they had no basis for
18 knowing.

19 You do not have to be a constitutional
20 scholar. You do not need the advice of the judge or of
21 the district attorney's office to read what is quite
22 explicit in the Fourth Amendment.

23 QUESTION: Is there any evidence of bad faith
24 on the part of the police officers?

25 MR. REINSTEIN: The trial court made a finding

1 of good faith, and the officers testified at several
2 points that they believed what they were doing was
3 proper. However, I believe the trial court's finding is
4 clearly limited to the subjective good faith of the
5 police officers, which we do not question.

6 QUESTION: Well, your submission then includes
7 a suggestion that an officer would be unreasonable to
8 think that since he had the affidavit in one hand and
9 the warrant in the other that he was authorized to
10 search for the items in the affidavit.

11 MR. REINSTEIN: I do not believe that that is
12 a reasonable proposition absent something in the warrant
13 executed by the magistrate which would tell him that the
14 magistrate had approved the search which is described in
15 the application.

16 QUESTION: You also would think that the
17 officer should not have taken the magistrate's word for
18 saying, "I'm going to do what you asked." They had to
19 read the warrant.

20 MR. REINSTEIN: They had to read the warrant
21 and --

22 QUESTION: As it was issued and not just read
23 the affidavit.

24 MR. REINSTEIN: That is right. They had to
25 rely on something in writing from the magistrate and

1 then even if they had read it, they would have been on
2 notice. They cannot execute something which they know
3 of their own personal knowledge is not valid.

4 For example, if a magistrate issues an arrest
5 warrant which authorizes the arrest of John Doe and the
6 police know either after the fact or contemporaneously
7 that John Doe is not the person either that they applied
8 for or that they have later information which tells them
9 that John Doe is not guilty of the offense.

10 QUESTION: So if there is an affidavit that
11 asks for a warrant to search a certain address and the
12 warrant comes out and is one number off -- there has
13 been a typographical error -- the officers should have
14 picked that up.

15 MR. REINSTEIN: It depends on whether the
16 error in the warrant is in the nature of an ambiguity
17 which --

18 QUESTION: There is nothing ambiguous about
19 it. There is a difference between 17 Black Street and
20 18 Black Street.

21 MR. REINSTEIN: If there is a 17 Black Street
22 and an 18 Black Street then they cannot conduct the
23 search. If there is only one house on Black Street then
24 the variance between the affidavit and the warrant would
25 probably not be significant.

1 QUESTION: If the affidavit is attached to the
2 warrant and says 18, and the warrant on its face says
3 17, they should not go searching?

4 MR. REINSTEIN: They should not conduct the
5 search in that case. They are faced with a
6 contradiction and it should be resolved by the
7 magistrate rather than by the police.

8 QUESTION: Well, there are cases against you
9 on that, I believe, are there not, incorrect address in
10 the affidavit where there really is a place --

11 MR. REINSTEIN: The underlying principle of
12 all the cases dealing with misdescription and ambiguity
13 is that there has to be something which permits the
14 officers on the scene to make a reasoned choice and to
15 understand that the court made a finding of probable
16 cause and granted them the authority to conduct the
17 search. If there is a choice to be made --

18 QUESTION: But supposing you have a case that
19 everybody involved from the magistrate to the officer to
20 the executing officer on down intended 17 Black Street
21 to be searched -- that is the place where the defendant
22 lives and all the rest -- and they type in 18 Black
23 Street, which is next door. They go out and execute
24 that affidavit.

25 There is a lot of cases saying that is not a

1 defective warrant, are there not? It does not, in fact,
2 authorize the search of 17, but does in fact authorize
3 the search of the place that was intended to be
4 searched. Maybe I am wrong. I thought there were such
5 cases.

6 MR. REINSTEIN: There are some cases about
7 partial misdescriptions, but where, as I understand it,
8 the misdescription is misleading --

9 QUESTION: What you are saying it is the
10 information on the face of the warrant that makes it
11 clear that they --

12 MR. REINSTEIN: If there is something on the
13 face of the warrant which would either mislead or makes
14 the police officers make a choice on the scene and
15 leaves doubt about the intention of the magistrate, then
16 they cannot execute the warrant.

17 QUESTION: Mr. Reinstein, do you not think
18 there may be a point at which you get -- I do not doubt
19 the cases say what you say they say -- but you are
20 getting away from kind of Fourth Amendment values that
21 are mandated by the federal constitution and get into
22 something that is really quite finicky almost like the
23 law of wills about misdescription. Do you think that is
24 all Fourth Amendment law as well as, say, State of
25 Massachusetts law or some other state law?

1 MR. REINSTEIN: I am glad that I am not in a
2 position of having to defend that entire body of law
3 today. I do not think that the Court needs to reach
4 that issue, and I do not think that the Fourth Amendment
5 necessarily requires pickiness. But rejection of this
6 warrant is not being picky. This is a warrant which is
7 just plainly defective on its face.

8 QUESTION: May I ask another question? Is
9 there any evidence in this record of a practice of
10 police officers in this jurisdiction serving warrants
11 that contain no specification of the items to be
12 seized?

13 MR. REINSTEIN: There is no evidence in the
14 record of that.

15 QUESTION: I asked you a little while ago
16 about good faith, and you agreed that the court below,
17 the trial court I suppose, found good faith. There is
18 no evidence of willful omission of the items to be
19 searched, is there?

20 MR. REINSTEIN: There is nothing to indicate
21 that the police officers deliberately used this warrant
22 for some ulterior motive. In fact, as the State now
23 suggests they did not read it.

24 QUESTION: Just one question. Is your only
25 complaint -- Do you admit that if they had written on

1 the warrant "see the attached affidavit" everything
2 would be all right? Do you admit that?

3 MR. REINSTEIN: And they had attached the
4 affidavit.

5 QUESTION: Yes.

6 MR. REINSTEIN: So that --

7 QUESTION: Is that your only complaint?

8 MR. REINSTEIN: That is the substance of the
9 criticism of this warrant.

10 QUESTION: That is your only complaint?

11 MR. REINSTEIN: That is correct.

12 Thank you.

13 CHIEF JUSTICE BURGER: Very well.

14 Do you have anything further, Miss Smith?

15 MISS SMITH: No, Your Honor. Thank you.

16 CHIEF JUSTICE BURGER: Thank you, gentlemen.

17 The case is submitted.

18 (Whereupon, at 11:57 a.m., the case in the
19 above-entitled matter 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:
82-963 - MASSACHUSETTS, Petitioner v. OSBORNE SHEPPARD

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