

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-303

TITLE MISSOURI, Petitioner V. ZOLA BLAIR

PLACE Washington, D. C.

DATE November 12, 1986

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2025 SUPREME COURT

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x

3 MISSOURI, :

4 Petitioner, :

5 v. :

No. 85-303

6 ZOLA BLAIR :

7 -----x

8 Washington, D.C.

9 Wednesday, November 12, 1986

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 1:00 p.m.

13 APPEARANCES:

14 ALBERT A. RIEDERER, ESQ., Prosecuting Attorney for
15 Jackson County, Kansas City, Missouri; on behalf
16 of the Petitioner.

17 JOSEPH LOCASCIO, ESQ., Kansas City, Missouri; on
18 behalf of the Respondent.

ORAL ARGUMENT OF

PAGE

ALBERT A. RIEDERER, ESQ.,

on behalf of the Petitioner

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JOSEPH LOCASCIO, ESQ.,

on behalf of the Respondent

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REBUTTAL ARGUMENT OF:

ALBERT A. RIEDERER, ESQ.,

on behalf of the Petitioner

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

2 CHIEF JUSTICE REHNQUIST: We will hear
3 arguments first this afternoon in No. 85-303, Missouri
4 against Blair.

5 Mr. Riederer, you may proceed when you're
6 ready.

7 ORAL ARGUMENT OF ALBERT A. RIEDERER, ESQ.,
8 ON BEHALF OF THE PETITIONER

9 MR. RIEDERER: Mr. Chief Justice, and may it
10 please the Court:

11 This case is here on a petition for certiorari
12 to the Missouri Supreme Court. The State submits that
13 the court below erred in its construction of the Fourth
14 Amendment when it required the suppression of the
15 respondent's palm print taken while in police custody;
16 and that it erred in the suppression of the respondent's
17 confession, as the fruit of the poisonous tree.

18 This case raises the issue of whether an
19 arrest on a warrant can be invalidated because of the
20 subjective state of mind of the officer making the
21 arrest.

22 The facts of this case presented to the courts
23 below are that the respondent was a suspect in a
24 November, 1981 homicide, and that Kansas City detectives
25 had wanted to compare her palm print to a palm print

1 found at the murder scene.

2 When they discovered that a warrant, a parking
3 warrant, had been issued by the Municipal Division of
4 the Circuit Court of Jackson County some two weeks
5 before she had become a suspect -- two weeks after --
6 two weeks after she had become a suspect, they arrested
7 the respondent on the parking warrant and asked her to
8 accompany them on a pick-up order on the homicide.

9 They took her to the main police station where
10 they left her in the custody of the detention unit
11 officers, with directions to hold her for the crimes
12 against persons unit and the warrant service unit.

13 After that, she was then taken by the homicide
14 detectives involved in the homicide investigation;
15 explained her rights under the Miranda case, which she
16 then waived. And she was questioned about the homicide
17 and denied any knowledge of it.

18 The next morning she was again taken by the
19 homicide detectives and explained her rights under the
20 Miranda case, which she waived again. And again, they
21 questioned her, and she denied any knowledge of the
22 homicide.

23 She was then booked on the parking warrant,
24 made a bond, and was released; later appeared on the
25 parking violation and pled guilty and paid a \$15 fine.

1 Meanwhile, it turned out that her palm print
2 matched the one found at the scene. The detectives then
3 secured a --

4 QUESTION: (Inaudible) station house on the
5 parking warrant charge, would her palm print have been
6 taken or not?

7 MR. RIEDERER: The testimony in the case is
8 that on a parking warrant arrest, the usual procedure is
9 to take simply a right index finger, although the
10 detention facility officer testified that when told to
11 do so by the ID department of the police department,
12 they sometimes take a full set of prints, including a
13 palm print. But it would depend on whether or not they
14 were told to do so by someone else in the department.

15 QUESTION: And I suppose there's no claim in
16 this case, is there, that it would have been
17 unconstitutional to take the palm print just on a
18 parking warrant arrest?

19 MR. RIEDERER: I don't think there's any claim
20 in this case to that effect.

21 The --

22 QUESTION: Mr. Riederer, a parking warrant
23 issued in this case, is that a situation where a person
24 gets a parking ticket and fails to pay it?

25 MR. RIEDERER: In this case, Your Honor, she

1 was issued a ticket which she failed to pay. It was set
2 on a hearing docket in the municipal court, and she
3 failed to appear for that hearing. And the warrant was
4 then issued when she failed to appear for that.

5 QUESTION: Mr. Riederer, you don't contest, do
6 you, that the reason that the full print was taken was
7 in order to obtain -- in order to investigate the murder?

8 MR. RIEDERER: No, not at all, Your Honor.
9 It's clear that the substantial part of the motivation
10 for the arrest and the incident fingerprint was, in
11 fact, the murder investigation that was ongoing.

12 QUESTION: Does the record show how long the
13 arrest warrant for the traffic offense had been in the
14 possession of the police?

15 MR. RIEDERER: The record shows that the
16 arrest warrant was issued on the 8th of January. And
17 apparently, it came to the attention of the police on
18 the 5th of February, which was the day she was
19 arrested. I think that's a fair reading of the record.

20 They did not go into detail as to when it came
21 to their knowledge. But I think the implication of the
22 police officers' testimony was that they found out about
23 it on February 5, the day she was initially arrested.

24 QUESTION: Does that -- well, let me put it
25 this way. How long had the warrant been in the

1 possession of the police without having been served on
2 her? I'm talking about the traffic arrest.

3 MR. RIEDERER: The traffic warrant, as a piece
4 of paper, was never in the possession of the police.

5 QUESTION: In the possession of the department.

6 MR. RIEDERER: The notification -- the traffic
7 warrant would have been in the police department's
8 computerized records as of January 8th, 1982; which was
9 two weeks before she became a suspect, and four weeks
10 before she was arrested.

11 QUESTION: What is the policy -- what was the
12 policy with respect to the disposition of those warrants?

13 MR. RIEDERER: There is some testimony in the
14 record that arrest warrants on parking tickets are
15 sometimes cleaned up, so to speak, where the officers go
16 out to the homes of the people involved; although that
17 is not necessarily the case done in all parking
18 warrants.

19 So sometimes they are executed in and of
20 themselves, and sometimes they're executed as they were
21 in this case.

22 QUESTION: So no consistent policy?

23 MR. RIEDERER: It does not appear from the
24 record, Your Honor, no.

25 QUESTION: Mr. Riederer, what is at the time

1 of the arrest of the respondent, the arresting officers
2 had been ignorant of the existence of a traffic warrant,
3 but nonetheless, it had been outstanding? Would your
4 position in this case be the same?

5 MR. RIEDERER: Well, I don't know that our
6 position would be the same in this case, Your Honor. We
7 -- but we have contended all along, what the State's
8 position has been all along was that the officers did in
9 fact have knowledge of the parking warrant when they
10 made the arrest, and that that was --

11 QUESTION: And if they did not have any
12 knowledge of it, you wouldn't be here making this
13 argument?

14 MR. RIEDERER: That's correct, Your Honor.

15 QUESTION: Is it enough for the arresting
16 officers to merely know of the warrant, or must they
17 rely on it in making the arrest?

18 MR. RIEDERER: I think that to sustain our
19 position, the officers would have to at least know of
20 the arrest warrant.

21 QUESTION: It's enough to know about it and
22 not rely on it, in your view?

23 MR. RIEDERER: Yes, Your Honor. The --

24 QUESTION: What if the respondent had made a
25 full confession following her arrest?

1 MR. RIEDERER: Then I think that confession
2 would have --

3 QUESTION: Would that have been admissible in
4 your view?

5 MR. RIEDERER: I think then the court would
6 have been called upon to examine whether or not that
7 confession, independently of the arrest, was voluntarily
8 given.

9 Under the circumstances of this case, I would
10 say that, although it's not this case, I would say that
11 confession would have been admissible.

12 But as it turned out, she denied any knowledge
13 of it, and in fact did not talk to them about the
14 homicide that evening.

15 QUESTION: But had she done so, in your view,
16 even though technically an arrest for homicide was
17 without probable cause at that time, in your view, the
18 confession would be admissible as well?

19 MR. RIEDERER: In my view, the confession
20 would have been admissible, because I don't think
21 there's anything that prevents the police from talking
22 to the respondent about another crime, once she's
23 lawfully in custody on the parking warrant.

24 And having explained her rights under the
25 Miranda case, she was free then not to talk to them or

1 to talk to them.

2 QUESTION: And you think she was lawfully in
3 custody on the warrant not because they relied on it,
4 the traffic warrant, but because they knew about it?

5 MR. RIEDERER: Well, in this particular case,
6 I think that she was lawfully in custody on the warrant
7 because they knew about it and relied upon it.

8 And I think that's clear not only from the
9 testimony of Officer Stewart, who repeatedly testified
10 that that's the reason he arrested her --

11 QUESTION: Was that the finding of the courts
12 below, do you think?

13 MR. RIEDERER: The -- it's my belief that
14 although there were no findings of fact or opinion in
15 the court below, the respondent's position, according to
16 her pleadings and her argument at that time was that
17 there was an arrest on the parking warrant, but that it
18 was pretextual and therefore illegal.

19 Since the trial court made no findings of
20 fact, I think it's fair to assume that the trial court,
21 in agreeing with the respondent, agreed that there was
22 an arrest on the parking warrant, but that it was in
23 fact illegal as a pretext.

24 And it seems that that is a fair reading of
25 the court below in the Missouri Supreme Court.

1 QUESTION: What about the trial court?

2 MR. RIEDERER: The trial court in this case --

3 QUESTION: Did the trial court find the arrest
4 was for homicide?

5 MR. RIEDERER: The trial court made no
6 findings of fact, and in fact, did not issue an
7 opinion. It simply stated that the motion of the
8 respondent to suppress the fingerprint and to quash the
9 arrest warrant was sustained.

10 The Missouri Supreme Court then indicated that
11 their holding was also based on the fact that there was
12 a parking arrest, but that it was illegal as a pretext.
13 The --

14 QUESTION: Counsel, where is the defendant now?

15 MR. RIEDERER: The defendant is free, out of
16 custody.

17 QUESTION: She's at large?

18 MR. RIEDERER: Yes. The -- in any case, when
19 the first -- when the palm print was taken, it turned
20 out it matched the one in the murder -- at the murder
21 scene. And there was, three days later then, on the 8th
22 of February, a warrant issued for the respondent on the
23 homicide.

24 She was arrested that same day, taken into
25 custody, again explained her rights under the Miranda

1 case, and at that time, later that same evening,
2 executed a written confession as to her part in the
3 homicide.

4 She then --

5 QUESTION: Mr. Riederer, may I go back to one
6 of the questions that I guess Justice Powell may have
7 asked a similar question but, I think you said the
8 warrant -- I'm talking about the traffic warrant -- that
9 the warrant was in the computerized records.

10 Does that mean that there was not a physical
11 piece of paper that had been issued, but just the
12 information in the computer that could be -- could
13 generate a warrant? Or was there actually a warrant?

14 MR. RIEDERER: There was a physical piece of
15 paper, which is the actual court copy of the parking
16 ticket originally issue.

17 QUESTION: The ticket.

18 MR. RIEDERER: Which appears on pages 5 and 6
19 of the supplemental legal file in this record, and
20 which, the face of it, the front of it is the ticket,
21 and the back of it is the court record.

22 And on that it indicates that on January 8th
23 of '82, Judge Carl issued a bench warrant for her
24 arrest, for failure to appear.

25 QUESTION: And is there a separate piece of

1 paper that is the bench warrant, or is it just the
2 notation on the back of the ticket?

3 MR. RIEDERER: The way I understand is how it
4 works is, that when the judge makes that notation, then
5 that is put into the computer, which is operated
6 jointly, or at least they have access jointly, between
7 the city and the police department.

8 QUESTION: And then if an arrest is made
9 pursuant to such a warrant, does the officer take that
10 ticket with him, or does he take another piece of paper?

11 MR. RIEDERER: He generally -- well, he might
12 take a piece of paper that indicates simply that there
13 is an arrest warrant; not the actual arrest warrant. He
14 also might not take any paper at all, but simply take
15 with him the knowledge that she is wanted on that
16 warrant.

17 QUESTION: And, of course, it's your view as a
18 matter of Missouri law it's a proper arrest on a
19 misdemeanor like this, even without actually having the
20 warrant in the officer's possession?

21 MR. RIEDERER: Yes, Your Honor. I think the
22 Rustici case originally cited by the petitioner -- or
23 the respondent in this case actually stands for the
24 proposition that a municipal parking warrant may be
25 issued without its being in the possession of the

1 officer, as long as it's done within the city limit,
2 which is the case here.

3 The --

4 QUESTION: The city limits being Kansas City?

5 MR. RIEDERER: Yes, Your Honor.

6 We submit in this case that if the arrest is
7 justified by lawful authority, then it's a valid arrest,
8 and it cannot be transformed into a Fourth Amendment
9 violation because of the subjective motivation of the
10 officers.

11 The Fourth Amendment generally proscribes
12 seizures and searches which are unreasonable. And this
13 Court has uniformly held that to be reasonable, a
14 seizure must be done pursuant to a warrant or pursuant
15 to a recognized exception to the warrant requirement.

16 QUESTION: Should we look, in determining what
17 is reasonable, at what the reasonable action would have
18 been absent suspicion of homicide?

19 MR. RIEDERER: I think that in --

20 QUESTION: Is that what we should look at?

21 MR. RIEDERER: In determining what was
22 reasonable for the officer to do in this arrest, it
23 seems to me that the Court has already indicated that it
24 is not a proper inquiry to look at the subjective state
25 of mind or motivation of the officer at the time.

1 QUESTION: Should we look at what is
2 objectively standard and reasonable for the officers to
3 have done in connection with executing a traffic warrant
4 on the assumption that the homicide was not involved?
5 Let's just drop the homicide out of the case and look at
6 what the reasonable standard practice would have been?

7 MR. RIEDERER: I think that the --

8 QUESTION: Is that what we do?

9 MR. RIEDERER: -- that the Court should look
10 at what --

11 QUESTION: Yes or no?

12 MR. RIEDERER: Yes, you should look at what
13 the reasonable practice is.

14 QUESTION: And you will tell us again, will
15 you, exactly -- if there had been no suspicion of
16 homicide here at all, what would the standard procedure
17 in that community have been on execution of a traffic
18 warrant?

19 MR. RIEDERER: On the execution of a traffic
20 warrant, when --

21 QUESTION: And whether to execute it at all.

22 MR. RIEDERER: If a citizen unsuspected of
23 homicide were brought in a similar parking warrant, they
24 usually would have simply a right index finger taken, a
25 print of the right index finger taken, although the

1 detention officers will take a full set of fingerprints
2 if they're told to by some other part of the police
3 department, if it's wanted for some other reason.

4 QUESTION: And then immediately put on the
5 street?

6 MR. RIEDERER: And then given opportunity to
7 make bond --

8 QUESTION: Immediately?

9 MR. RIEDERER: Correct, Your Honor,
10 immediately.

11 QUESTION: Just like eventually happened here.

12 MR. RIEDERER: That's correct, Your Honor.

13 QUESTION: How do you justify keeping her
14 overnight before she was asked to respond to the arrest
15 warrant?

16 MR. RIEDERER: I don't think that the
17 detention of this respondent over night is justified,
18 Your Honor. But I don't think that the detention of
19 this respondent over night goes to whether or not the
20 original arrest is valid.

21 Our position would simply be that since the
22 original arrest was valid, once she is lawful custody,
23 the police have a right to take her fingerprints. Ad if
24 they want to take --

25 QUESTION: I see, you took the fingerprints --

1 you took the palm print before she was held overnight?

2 MR. RIEDERER: They did get her palm print
3 before she was held overnight. It was taken about one
4 hour after she was arrested and before she was
5 questioned on the homicide, and before she was detained
6 overnight.

7 QUESTION: Respondent was booked on a homicide
8 charge before the fingerprints had been matched, wasn't
9 she?

10 MR. RIEDERER: Yes, Your Honor, she had been.
11 That shows -- the record shows that there was a homicide
12 booking on the afternoon of the 5th.

13 QUESTION: In the absence of probable cause?

14 MR. RIEDERER: In the absence of probable
15 cause, yes, Your Honor.

16 The -- I don't think there's any question here
17 -- once the police have her -- let me back up.

18 The arrest here was pursuant to a warrant.
19 And once she was in custody under a valid warrant, the
20 police had the right to take her fingerprint, including
21 her palm print if they wanted to.

22 And it seems to the State that that ought to
23 end the inquiry, except that the opinion of the court
24 below and the respondent, I think, would have this Court
25 look behind the warrant, not to examine the validity of

1 the warrant, but rather to examine the motivation behind
2 its execution.

3 QUESTION: Well, wasn't she, when she was
4 first brought in, and just before her palm print was
5 taken, she was booked for homicide?

6 MR. RIEDERER: Yes, Your Honor.

7 QUESTION: Well, why was she booked for
8 homicide if she was arrested on the parking warrant?

9 MR. RIEDERER: Well, it's clear on the --

10 QUESTION: What does it mean, booked for
11 homicide? Does that mean that she's charged with it?

12 MR. RIEDERER: It does not mean that she's
13 charged with it. I think the booking is simply an
14 internal bookkeeping procedure of the police department
15 which indicates --

16 QUESTION: Well, it's pretty clearly -- what
17 does it indicate to you, when the officers book her for
18 homicide? What did they arrest her for, then?

19 MR. RIEDERER: I think it indicates that the
20 officers, just like Officer Stewart testified, they were
21 in fact not only interested in her because of the
22 parking warrant, they were interested in talking to her
23 about this homicide.

24 And it seems that that is -- that bookkeeping
25 entry, or piece of paper, or booking slip, is exactly --

1 QUESTION: So you -- I guess you say, as
2 Justice O'Connor was inquiring from you, if she's booked
3 -- just arrested on the parking warrant, brought in and
4 given a -- and one fingerprint is taken. And then it
5 would be perfectly all right with you if she was then
6 detained while some officers from the homicide
7 department who had no probable cause to believe that she
8 was guilty of murder, but some suspicion, could come in
9 and question her?

10 MR. RIEDERER: Yes, Your Honor. If think if
11 she had been arrested on the parking warrant --

12 QUESTION: You have to go that far at least,
13 don't you?

14 MR. RIEDERER: Yes. And I think if she had
15 been booked on the parking warrant while she was waiting
16 to be bonded out --

17 QUESTION: And then some officers who really
18 had only a vague suspicion could then question her
19 before she was released?

20 MR. RIEDERER: That's correct, Your Honor,
21 because she was already within the lawful custody of the
22 police.

23 QUESTION: But I gather she would not have
24 been detained overnight if she had not been booked,
25 would she, on the homicide charge?

1 MR. RIEDERER: It's likely that she would not
2 have been detained overnight.

3 QUESTION: You said earlier that as soon as
4 she made bond, she was free to go out on the street.

5 MR. RIEDERER: Right, if she --

6 QUESTION: So it's rather obvious that she was
7 detained, wasn't she?

8 MR. RIEDERER: Yes, Your Honor.

9 QUESTION: Only because she'd been booked?

10 MR. RIEDERER: Yes, Your Honor.

11 QUESTION: And although you had no probable
12 cause to charge her with any homicide?

13 MR. RIEDERER: That's correct, Your Honor.

14 QUESTION: Was she also booked for violation
15 -- failure to appear on the traffic summons?

16 MR. RIEDERER: She was booked on the failure
17 to appear on the traffic summons the next morning, Your
18 Honor, and that time given an opportunity to make bond,
19 which she did about two hours later and was released.

20 QUESTION: Why wasn't she booked for that at
21 the same time?

22 MR. RIEDERER: Well, that I don't know. I
23 assume that the police, as they indicated at the
24 hearing, had an interest in her not only on the parking
25 warrant but also on the homicide. And that was there --

1 QUESTION: Well, I understand that. But
2 doesn't that go to the -- who decides what she's booked
3 for? The arresting officer, I presume?

4 MR. RIEDERER: Well, either the arresting
5 officer or the detention officer, or somebody who tells
6 the arresting officer.

7 The point is --

8 QUESTION: Well, doesn't that go --

9 MR. RIEDERER: -- I think the booking slip is
10 simply a bookkeeping device which at least the detention
11 unit has to have in order to know where this defendant
12 is while she's in their custody.

13 QUESTION: Well, doesn't that go to the point
14 that you were responding to Justice O'Connor on
15 earlier? You earlier said that this is not -- that we
16 don't really have to decide in this case whether mere
17 knowledge of the warrant would be enough. You say they
18 knew of it and relied on it.

19 But if they relied on that, they would have
20 booked her on that when they brought her in. Why should
21 we--

22 MR. RIEDERER: Well, Officer Stewart's
23 testimony, I think, is clear that the reason that he
24 went to arrest her was on the parking warrant and in
25 connection with this pick-up order indicating that the

1 police had wanted to talk to her about the homicide,
2 because they had reason to believe she was involved in
3 it.

4 QUESTION: But he comes back and doesn't book
5 her on the parking violation.

6 MR. RIEDERER: He comes back and tells the
7 detention unit to hold her both for the crimes against
8 persons unit and the warrant service unit. And -- which
9 is what the detention unit then does.

10 QUESTION: May I ask, is that -- well, the
11 detention unit holds her for that. But why was she
12 booked for homicide?

13 MR. RIEDERER: Why the officer put on there,
14 booked for homicide -- well, that is simply, as I say --

15 QUESTION: He didn't do it out of the air. He
16 did it because somebody told him.

17 MR. RIEDERER: That is correct, and I think it
18 indicates --

19 QUESTION: You keep talking about this
20 bookkeeping. What law in Missouri gives a policeman the
21 right to hold somebody in jail overnight for what?

22 MR. RIEDERER: There is no such law, Your
23 Honor.

24 QUESTION: Well, what right does a policeman
25 have to do that? Is that common practice in Missouri?

1 MR. RIEDERER: The law in Missouri would be
2 that if a person is arrested on a charge --

3 QUESTION: Did you ever hear about taking them
4 before a magistrate?

5 MR. RIEDERER: Yes, Your Honor.

6 QUESTION: Is that the law in Missouri or not?

7 MR. RIEDERER: Yes, Your Honor. And it's
8 required to be done either within 20 hours --

9 QUESTION: Well, why wasn't it done here?

10 MR. RIEDERER: It's required -- well, it's
11 because it's required to be done either within 20 hours
12 or as soon as is practicable. And the --

13 QUESTION: Well, what was practical this time?

14 MR. RIEDERER: Well, this defendant was --
15 this respondent was arrested on the parking warrant on
16 the afternoon of the 5th, and then she was held
17 overnight but was released within the 20 hours mandated
18 by the statute.

19 But I guess the point that the State would try
20 to make here, the point that the State is making here,
21 is that the respondent was arrested on a parking warrant
22 which was valid at the time the arrest was made.

23 QUESTION: And you can be held in jail
24 overnight on a parking ticket?

25 MR. RIEDERER: If she had not made bond, she

1 would have been held overnight.

2 QUESTION: But you said the bond hearing was
3 the next day. That's what you just said.

4 MR. RIEDERER: And in this case --

5 QUESTION: I'm talking about when she was
6 arrested. Why wasn't she allowed to be released on bond
7 then, not the next day?

8 MR. RIEDERER: That I don't know, Your Honor.
9 I assume it's because the police had wanted to --

10 QUESTION: Well, shouldn't you know?

11 MR. RIEDERER: I assume that it --

12 QUESTION: Shouldn't you know?

13 MR. RIEDERER: Yes, Your Honor, I should.

14 QUESTION: Well, give me any reason why not?

15 MR. RIEDERER: Because the police had wanted
16 to talk to her in connection with the homicide.

17 QUESTION: That's the only reason?

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

19 QUESTION: And that's why she was held
20 overnight?

21 MR. RIEDERER: That's correct, Your Honor.

22 QUESTION: So they could talk to her about the
23 homicide?

24 MR. RIEDERER: That's correct, Your Honor.

25 And the point is that the fingerprint here,

1 which is what the respondent contests, was not a fruit
2 of the overnight detention. It was not a fruit of the
3 questioning on the homicide.

4 It was a result of an arrest which was made on
5 a valid, outstanding warrant.

6 QUESTION: Why should we differ with the
7 decisions of the -- as I read what was written below, it
8 was accepted that the arrest was for a homicide.

9 MR. RIEDERER: The court talked about the
10 arrest for homicide, but actually, the decision --

11 QUESTION: Well, why shouldn't we accept that?

12 MR. RIEDERER: The court below didn't make
13 that finding. The trial court made no finding, and the
14 --

15 QUESTION: Well, how about -- is this wrong?
16 This is in the Supreme Court's opinion, I think, said:
17 Officer Stewart's partner, Officer Thomas, filed the
18 report of the arrest under the homicide charge number as
19 investigation arrest, criminal homicide.

20 And the officer followed the procedures for
21 arresting and booking an individual for homicide rather
22 than that used for a traffic violation.

23 MR. RIEDERER: The --

24 QUESTION: Now, is that an accurate
25 description of what occurred at the police station?

1 MR. RIEDERER: It's an accurate description,
2 first of all, that they did file this report, which is
3 the Exhibit No. 3. And they indicated at a small box at
4 the top that it was an investigation arrest, criminal
5 homicide.

6 But down in the body of the arrest report
7 indicated that it was also in connection with the
8 parking warrant.

9 The procedures within the police department --

10 QUESTION: Well, and also, the Supreme Court
11 seemed to me -- they said that the -- on the conflicts
12 of the evidence, one of which was, what was the person
13 arrested for, the trial court resolved the conflicts in
14 favor of the defendant.

15 That's what the Supreme Court says. And the
16 Court defers to the trial court's determination, because
17 it is supported by the evidence.

18 That's what it said.

19 MR. RIEDERER: The trial court did not make
20 any such finding.

21 QUESTION: It had -- what did -- in order to
22 sustain the suppression motion, it had to find that.

23 MR. RIEDERER: In order to sustain the
24 suppression motion, actually Your Honor it had to find
25 that there was an arrest on the parking warrant which

1 was invalid because it was pretextual, because that was
2 what the respondent was arguing at that time.

3 QUESTION: Well, if it's pretextual -- if it's
4 pretextual, it's because they really arrested her for
5 homicide.

6 MR. RIEDERER: That's --

7 QUESTION: That's the only -- I don't know
8 what difference that makes.

9 MR. RIEDERER: The Supreme Court then went on
10 to say that assuming that there was an arrest for the
11 parking violation, and then goes on to the holding in
12 the case, that it was pretextual and therefore invalid.

13 QUESTION: Well, the claim in the trial court
14 was that this palm print was the fruit of an illegal
15 arrest for homicide.

16 MR. RIEDERER: The claim in the trial court
17 was that it was the fruit of an illegal arrest --

18 QUESTION: For homicide?

19 MR. RIEDERER: Well, no. Actually, the
20 statement of the respondent at that time was that there
21 was an arrest on a parking warrant, which was invalid
22 because it was pretextual.

23 QUESTION: Well, I know, but that's the same
24 thing. That's the same thing. And the State -- and
25 what was the State's response to the --

1 MR. RIEDERER: Our response was then --

2 QUESTION: Was that we arrested her on the
3 parking warrant.

4 MR. RIEDERER: We arrested her on the parking
5 warrant.

6 QUESTION: Yes.

7 MR. RIEDERER: And having had her in custody,
8 we were entitled to her prints. And when she was
9 released --

10 QUESTION: I don't know how the order -- the
11 suppression order -- the suppression motion could have
12 been sustained and the evidence suppressed without the
13 trial court concluding that this was not a valid arrest
14 for homicide?

15 MR. RIEDERER: Because the trial court
16 apparently bought the respondent's argument that the
17 motivation of the police at the time was part of the
18 determination of whether or not the arrest was
19 reasonable under the Fourth Amendment.

20 QUESTION: Well, the Supreme Court certainly
21 read the trial court as having resolved the conflict
22 this way. And the evidence supported it.

23 MR. RIEDERER: Well, I think that if the -- if
24 the respondent's position and the court below's position
25 is taken, then that means that a state of mind is part

1 of the determination of reasonableness, which it seems
2 to the State flies in the face of this Court's decisions
3 in --

4 QUESTION: Well, it is important to decide
5 whether the arrest was for the homicide, or not?

6 MR. RIEDERER: Yes, Your Honor, it is.

7 QUESTION: All right. And so you get the
8 officer on the stand. What did you arrest this person
9 for? I arrested him for homicide. Now, is that
10 inquiring into the state of mind of the officer?

11 MR. RIEDERER: Yes, Your Honor.

12 QUESTION: And you say that's not the way to
13 proceed?

14 MR. RIEDERER: I say that the motivation
15 behind it -- the officer said, I arrested him on the
16 parking warrant, but admitted that the motivation was to
17 get evidence in an unrelated homicide investigation.

18 I'd like to reserve the rest of my time, Your
19 Honor.

20 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
21 Riederer.

22 We'll hear now from you, Mr. Locascio.

23 ORAL ARGUMENT OF ROSEPH LOCASCIO, ESQ.,

24 ON BEHALF OF THE RESPONDENT

25 MR. LOCASCIO: Mr. Chief Justice, and may it

1 please the Court:

2 On February the 5th, 1982, police officer
3 Stewart of the Kansas City, Missouri, police department
4 went over to respondent's house to take her into custody
5 for a pick-up on homicide.

6 The State has conceded there was no probable
7 cause for that arrest.

8 Coincidentally, when he got to her home, he
9 ran her address through the police department computer,
10 and was told by that computer that a parking warrant
11 existed authorizing that she be taken into custody on a
12 park -- a failure to pay a parking fine.

13 But that's not what happened here. The
14 Missouri Supreme Court found that there was no arrest on
15 a parking ticket.

16 QUESTION: (Inaudible.) As I read their
17 opinion, it says, assuming an arrest for the parking
18 violation, the arrest in the circumstances of this case
19 was at best a pretext employed to gather evidence on an
20 unrelated homicide.

21 MR. LOCASCIO: Yes, Your Honor.

22 QUESTION: Now, there's a difference between
23 saying there was no arrest whatever on the parking
24 ticket, and saying, there was an arrest on the parking
25 ticket but the police were really doing it not to get

1 this person for the parking ticket but to get her on the
2 homicide.

3 MR. LOCASCIO: Yes, Your Honor.

4 QUESTION: Now, it seems to me that what the
5 Supreme Court was saying was the latter.

6 MR. LOCASCIO: Yes, Your Honor. As Justice
7 White pointed out earlier, the Supreme Court of
8 Missouri's opinion said that there was a conflict in the
9 evidence on whether she was arrested on the parking
10 warrant.

11 The trial court resolved those conflicts in
12 favor of the defendant. Implicit --

13 QUESTION: But it isn't clear on which basis.
14 On the basis that there was no arrest on the parking
15 ticket? Or rather on the basis that there was an arrest
16 on the parking ticket, but that that arrest was
17 pretextual, that that wasn't the real reason for
18 bringing the woman in?

19 MR. LOCASCIO: I think at the point in the
20 Supreme Court of Missouri's opinion, when they're
21 talking about the evidence, they're not talking about
22 pretext. They're talking about whether or not this
23 woman was legitimately arrested on a parking ticket.

24 Now, they then say --

25 QUESTION: You can't put it that way, whether

1 she was legitimately arrested.

2 MR. LOCASCIO: Well, whether she was arrested.

3 QUESTION: She's not legitimately arrested,
4 under their opinion, if -- if -- although she's arrested
5 on the parking ticket, it was pretextual for something
6 else.

7 MR. LOCASCIO: The first --

8 QUESTION: How do you explain that sentence
9 that I read? Assuming an arrest for the parking
10 violation, the arrest in the circumstances of this case
11 was at best a pretext?

12 MR. LOCASCIO: I explain that by the fact that
13 they reach -- they give an opinion about the pretextual
14 nature of this arrest only secondary to the fact that
15 this was an illegal arrest from the beginning, and there
16 was no arrest on a parking ticket.

17 So actually, the finding that this arrest was
18 pretextual is not even necessary. And my argument to
19 this Court is that it doesn't even have to reach the
20 pretext argument, or the pretext issue, precisely
21 because there was no arrest on a parking ticket.

22 QUESTION: Where do you find that in the
23 language of the Supreme Court's opinion?

24 MR. LOCASCIO: Of Missouri?

25 QUESTION: Yes.

1 MR. LOCASCIO: There opinion states --

2 QUESTION: Could you turn to a page?

3 MR. LOCASCIO: Yes, Your Honor, A5 and 6 of
4 the joint -- of the petition for certiorari specifically
5 states that -- the Supreme Court of Missouri starts out
6 saying that there was a conflict in evidence --

7 QUESTION: Where are you?

8 QUESTION: Bottom of A5. The evidence
9 conflicts on whether the officers arrested the defendant
10 on the outstanding parking violation warrant blah-blah,
11 and then they say -- they show what the conflict was,
12 okay?

13 MR. LOCASCIO: At that point, they analyzed
14 the evidence. And the next paragraph is that the
15 conflicts raised by the evidence were for the trial
16 court to resolve.

17 The trial court resolved them in favor of the
18 defendant. Now, the defendant at the trial court level
19 had two arguments.

20 Number one, this was an illegal arrest for
21 homicide, and that this parking ticket did not even come
22 into play. Supplemental legal file 37, addendum to
23 supplemental legal file 32, we argue specifically that
24 at least at the point where she was brought to the
25 homicide unit and booked for homicide and not booked on

1 a parking warrant, that detention was the product -- was
2 for the sole reason of investigating a homicide, and not
3 for a parking warrant.

4 And the Supreme Court of Missouri found that
5 any -- that any arrest, if you want to assume that an
6 arrest occurred for a parking ticket, was not pursued.

7 And that is -- and the reason they say that is
8 precisely because it was not pursued. She was not
9 booked on the parking ticket.

10 So the detention was solely for homicide.

11 QUESTION: But is it clear that when the Court
12 says, the conflicts thus raised were for the trial court
13 to resolve, is it clear that they're talking only there
14 about the conflict as to whether the arrest was on the
15 parking ticket or not?

16 Or rather, is the conflict that they're
17 talking about the conflict as to whether it was, or if
18 it wasn't, whether it was pretextual?

19 It seems to me that it was both, because if
20 you read further on in that paragraph, it discusses
21 other Missouri cases that deal with pretext.

22 And it concludes the paragraph by saying:
23 Such pretextual use to justify an arrest or search has
24 been clearly recognized as violative.

25 And that all is in the same paragraph whose

1 topic sentence is: The conflicts thus raised by the
2 evidence were for the trial court to resolve.

3 I read that as saying, we don't know whether
4 the arrest was on the parking warrant or not, but even
5 if it was, it was pretextual. So either way, this
6 defendant wins.

7 MR. LOCASCIO: Well, I think you're not -- I
8 think, Your Honor, you have to look at what the Supreme
9 Court of Missouri said at the bottom of page A5, when
10 they say, specifically, the evidence conflicts on this
11 issue, the evidence conflicts of whether the officers
12 arrested the defendant on the outstanding parking
13 violation warrant.

14 The beginning of the next paragraph, the
15 conflict was raised -- the conflicts thus raised by the
16 evidence were for the trial court to resolve, and they
17 resolved them in favor of defendant.

18 So this Court does not even have to reach any
19 issue about whether this was a pretextual arrest. This
20 was an arrest for a homicide without probable cause in
21 violation of the Fourth Amendment.

22 QUESTION: Do you object to us reaching it if
23 we want to, and if it doesn't hurt you at all? Or do we
24 have to do it the way you want us to do it?

25 MR. LOCASCIO: I think that the evidence was

1 abundantly clear that there was no arrest on a parking
2 warrant.

3 QUESTION: Mr. Locascio?

4 MR. LOCASCIO: Yes.

5 QUESTION: What do you mean when you say there
6 was no arrest, quote, on, close quote, a parking warrant?

7 MR. LOCASCIO: Well, I'm saying that if you
8 look at the exhibits that were filed, Exhibit 3, the
9 arrest report, doesn't say that the arrest was for a
10 parking ticket.

11 If you go back and look at Exhibit 10, which
12 is the exhibit that talks about her being booked the
13 next day on the parking warrant, that exhibit
14 specifically says that she was arrested at that time on
15 the parking warrant.

16 QUESTION: How do you decide whether a person
17 was arrested on, close quote, a particular warrant?

18 MR. LOCASCIO: I think that the only way to
19 decide that is to look at the objective facts to
20 determine --

21 QUESTION: What's the legal test? Does the
22 officer have to know that the warrant exists?

23 MR. LOCASCIO: Well, I certainly think he must
24 have to know, not only --

25 QUESTION: Well, suppose there's an

1 outstanding warrant against someone for robbery. And
2 the officer goes out to arrest, not knowing the warrant
3 exists, but thinking perhaps he has probable cause
4 without a warrant.

5 Now, is that invalid if there is no probable
6 -- if the officer's idea of probable cause was wrong,
7 even though there was an outstanding warrant?

8 MR. LOCASCIO: I think under those facts as
9 you've given me, yes, it's unlawful, precisely because
10 the actions he took were not justified by the Fourth
11 Amendment.

12 But what I'm saying is that the Court doesn't
13 have to reach into the subjective mind of the police
14 officer in this case. Because the subjective mind of
15 the police officer doesn't come into play if the arrest
16 warrant -- the parking warrant didn't come into play.

17 And we're saying the Missouri courts found it
18 did not come into play.

19 QUESTION: Yes, but you do, in the end, have
20 to decide, as the Chief Justice says, that whether -- if
21 the -- if the officers had otherwise a perfectly legal
22 reason for taking her palm print, the palm print must
23 nevertheless be excluded, because the reason they took
24 it for was invalid.

25 Now, let's assume that the arrest was for

1 homicide. Everybody agrees for homicide. But when you
2 get down -- and they take her palm print.

3 But then it turns out that there was an
4 outstanding warrant for a robbery. They could have
5 arrested her for the robbery. They could have taken her
6 palm print for robbery, on the robbery charge.

7 Now, you say that because the actual arrest
8 was for homicide, the palm print was excludable. You at
9 least have to handle that proposition.

10 MR. LOCASCIO: I'm saying that this Court
11 doesn't have to get into an analysis to decide --

12 QUESTION: Well, they could -- it wouldn't
13 have -- if they had arrested her on the parking
14 violation, it would not have been unconstitutional for
15 them to take her palm print.

16 MR. LOCASCIO: Well, that is our -- that's a
17 matter of perspective, I think. There was no reason in
18 this police --

19 QUESTION: Well, it's a matter of law, isn't
20 it?

21 MR. LOCASCIO: Well, there is law that says
22 that they have a right to fingerprint to identify an
23 individual. But there is also the clear evidence in
24 this case that when they arrest somebody on a parking
25 ticket, the way they identify them is to take an index

1 fingerprint.

2 QUESTION: Well, I know, but that's the local
3 practice.

4 MR. LOCASCIO: That's true.

5 QUESTION: So it's not -- it wouldn't have
6 been unconstitutional if their practice was to take a
7 full set of prints?

8 MR. LOCASCIO: Well, presumably, when they
9 wrote their local practice, they determined what their
10 needs were. And they determined on parking warrants
11 their need is to identify someone by way of an index
12 fingerprint.

13 And so to go beyond that would seem to be --

14 QUESTION: Yes, but all that goes to is what
15 they really arrested for in the first place.

16 But conceding, for the minute, that they
17 arrested her for homicide, if they had some other
18 completely valid reason for taking her palm print, why
19 exclude it?

20 MR. LOCASCIO: Because -- they didn't --
21 because that's not the purpose for which they acted.
22 What I'm trying to say is that --

23 QUESTION: Does the inevitable discovery
24 doctrine of this Court have a bearing on that at all, do
25 you think?

1 MR. LOCASCIO: I don't think in this case
2 there was anything inevitable about this palm print. IF
3 they would have --

4 QUESTION: Well, let's put Justice White's
5 question another way. Suppose that the critical
6 evidence here that was needed in connection with the
7 homicide was a fingerprint. That's all they needed. An
8 that's all they took down at the station. And that that
9 could have been done anyway for a traffic warrant.

10 Is that okay?

11 MR. LOCASCIO: No. Not if they're --

12 QUESTION: No. Why not?

13 MR. LOCASCIO: Well, in that situation that
14 you have given me, then this Court would be talking
15 about reaching my second point, which is that it's
16 unlawful and a violation of the Constitution to use the
17 power that you have primarily for ulterior purposes.

18 QUESTION: Well, don't you think that cases of
19 this Court, such as Scott v. United States and Mr.
20 LaFave and his treatise and so forth all talk about the
21 fact that the Court should disregard the underlying
22 intent of the officer if the objective realities provide
23 a better way of dealing with it?

24 MR. LOCASCIO: When I say, primary purpose,
25 that doesn't necessarily mean subjective purpose.

1 Because if you read Scott, the way Scott talks about
2 purpose is on the objective facts.

3 And what we submit here is that even on the
4 objective facts, they would not have gotten a palm
5 print. And in your example on the objective facts, they
6 didn't do anything that would normally do, if I
7 understand correctly.

8 QUESTION: On my example, they clearly,
9 objectively, would have been entitled to have the index
10 print, and could have had it in any event on the traffic
11 warrant, and why isn't that perfectly all right?

12 MR. LOCASCIO: Well, it wouldn't be all right
13 if she's booked for murder because of a traffic warrant?

14 QUESTION: What's wrong with that?

15 MR. LOCASCIO: Well, it's precisely because
16 this woman is subjected to the most humiliating and
17 frightening and intrusive experience that a person could
18 be without probable cause.

19 QUESTION: What follows as a result of her
20 having been booked?

21 MR. LOCASCIO: Well, she certainly has a
22 permanent record for homicide.k

23 QUESTION: Well, all we're talking about is
24 whether the palm print should be suppressed. The
25 Missouri Supreme Court didn't pass on all the rest of

1 the stuff.

2 We're not interested in a minute examination
3 of whether some of this conduct after the palm print was
4 wrong. The question is, what was bad about the police
5 action with respect to the palm print that requires it
6 being suppressed when it's an indication of -- evidence
7 in the trial?

8 MR. LOCASCIO: Precisely because they obtained
9 the palm print as the fruit of an unlawful detention.

10 QUESTION: But it's conceded that she could
11 have been detained for the traffic violation -- traffic
12 warrant, couldn't she?

13 MR. LOCASCIO: But that's not what happened
14 here.

15 QUESTION: Well, then we're back to what did
16 the Supreme Court of Missouri mean and that sort of
17 thing.

18 MR. LOCASCIO: Right. We're back to the
19 question of whether or not she was lawfully detained on
20 a parking warrante. And we're submitting under these
21 facts that she was not.

22 QUESTION: But, of course, to say, whether she
23 was lawfully detained on a parking warrant begs the
24 factual question.

25 MR. LOCASCIO: Whether or not --

1 QUESTION: There are two questions. Number
2 one, whether she was detained on the parking warrant,
3 leaving out the term "lawfully". And number two, if she
4 was, was she lawfully detained on a traffic warrant,
5 because, really, it was a pretext for something else.

6 MR. LOCASCIO: Right. That is the analysis.
7 And what we submit is that you don't -- the Court need
8 not even reach the second level of whether she was
9 lawfully detained, because the objective facts alone in
10 this case demonstrate beyond dispute, I claim, that the
11 sole reason for the detention was homicide, and not for
12 parking warrant at all.

13 QUESTION: Well, Mr. Locascio, what if the
14 Kansas City police department, of the Jackson County
15 police, had had a policy of palm-printing every tenth
16 person who was brought in on a traffic warrant, and just
17 fingerprinting the other nine. And your client happened
18 to be the tenth person who was brought in.

19 Would you think that -- and there was no
20 question that he was brought in on an arrest pursuant to
21 a traffic warrant -- do you think you could object if
22 that later proved useful in a murder trial?

23 MR. LOCASCIO: I think the only objection I
24 would have at that point would be that the procedure was
25 arbitrary. Unless there was some legitimate reason to

1 only palm-print the tenth individual.

2 QUESTION: And you think anything that strikes
3 you as arbitrary is excludable from a criminal trial?

4 MR. LOCASCIO: I think that anything that's
5 arbitrary, and is not obtained by probable cause, that
6 it violates the Fourth Amendment.

7 QUESTION: Do you think that you have to have
8 probable cause to take a fingerprint of someone who is
9 lawfully detained?

10 MR. LOCASCIO: No, no, you have to have --
11 whose lawfully detained?

12 QUESTION: Assume the person is lawfully
13 detained, do you think you have to have further probable
14 cause to take a fingerprint?

15 MR. LOCASCIO: No, of course not. Of course
16 not. The cases especially out of this District of
17 Columbia say that you can fingerprint for purposes of
18 identifications.

19 QUESTION: And I take it if you were to
20 palm-print everyone who was brought in on a traffic
21 warrant, that would be all right, in your view?

22 MR. LOCASCIO: I think you arguable have a
23 Constitutional question of the need to palm-print,
24 because --

25 QUESTION: Well, if there's no requirement for

1 a need to fingerprint, why should there be a
2 Constitutional requirement for a need to palm-print?

3 MR. LOCASCIO: Because that's not what was
4 meant when you fingerprint an individual for purposes of
5 identification. Under that example that you've given
6 me, then there would be no reason why you can't feet
7 print or hair or teeth impressions.

8 QUESTION: Well, what is it that is
9 Constitutionally different between taking a fingerprint
10 and taking a palm print? Obviously, you think there is,
11 because your answer to my question suggests that.

12 MR. LOCASCIO: What I am suggesting is that
13 what happened in this case is exactly --

14 QUESTION: Well, I want a -- I'd like an
15 answer to my question?

16 MR. LOCASCIO: What's wrong with it in this
17 case?

18 QUESTION: No, I'm not asking, what's wrong
19 with it in this case. What I ask you, and what I would
20 like you to answer, is, what is it that's
21 Constitutionally different between taking a fingerprint
22 and taking aa palm print?

23 MR. LOCASCIO: There is just the -- in that
24 example, the only argument that you would have is that
25 there was no probable cause to take a palm print. There

1 was no demonstrated need to take a palm print.

2 QUESTION: But you don't need a demonstrated
3 need or probable cause to take a fingerprint?

4 MR. LOCASCIO: Well, not if it's
5 Constitutional to fingerprint for purposes of
6 identification. But under that example, if you want to
7 palm-print -- or if you want to print someone for
8 purposes of identification, I would think that the most
9 appropriate print to take would be the footprint,
10 because that's the one that's on the birth certificate.

11 So you can't identify someone based on a print
12 unless you something to compare them to. So if you take
13 a palm print --

14 QUESTION: Maybe fingerprints are
15 unconstitutional. You're saying only footprints are
16 Constitutional, is that where we are now?

17 MR. LOCASCIO: You know, the question that you
18 ask really gets -- no, that's not where we're at now.
19 What we are submitting is that she was subjected to a
20 very humiliating experience for arrest and booking for
21 homicide when no probable cause existed.

22 She was not subjected to the simple procedures
23 that were authorized in connection with a parking
24 warrant violation.

25 Our primary submission then is that,

1 notwithstanding any subjective intent at all in this
2 case --

3 QUESTION: Mr. Locascio, let's come to your
4 secondary submission, because the primary one, we got
5 into that discussion, it depends, you agree, upon the
6 meaning of the Supreme Court's opinion.

7 But let's assume that I disagree with you on
8 that, and that I think the Supreme Court was saying --
9 the Supreme Court of Missouri was saying that he was
10 arrested on -- she was arrested on the parking warrant,
11 but that was pretextual.

12 Now here's the kind of -- your next argument
13 is, that's sufficient reason for invalidating it, even
14 if the arrest was technically on the parking warrant, if
15 the real reason they arrested her was to get this other
16 evidence on the homicide, that makes the whole thing
17 bad.

18 This happens all the time. We'd endlessly be
19 inquiring into what the real motive of the officer was.
20 For example, the Coast Guard is allowed to board ships
21 to examine the ship's papers. Now, do we have to
22 entertain an argument in every case where they board the
23 ship that their real reason for going on was not to look
24 at the papers, but rather to see if there was any
25 marijuana on board, or if there was, you know, a drug

1 party going on, or something like that?

2 MR. LOCASCIO: I think under your example that
3 you do have to look at the purpose. But the question
4 doesn't necessarily mean that you would have to look at
5 the subjective intent.

6 You could just look at what the objective
7 factors tell you to have been the purpose of the -- in
8 your example, of the boarding of the ship.

9 Now, under your example, also, I might point
10 out that the right of the Coast Guard to board those
11 ships has been occurring all the time precisely for
12 searching for drugs. And that's --

13 QUESTION: I don't know what you mean, the
14 objective factor. They actually -- they went on to look
15 at the papers. There's no doubt that they went on to
16 look at the papers.

17 But in fact, one of them said to the other,
18 before they boarded, let's check this ship for papers
19 because this ship is weaving so much it looks like
20 there's a drug party going on.

21 Now, do we have to throw that out? They
22 actually wanted to look at the papers. It's the first
23 thing they asked for when they got on the boat.

24 MR. LOCASCIO: Of course not, you don't have
25 to throw that out. Because human beings act for dual

1 motives all the time. There's always a mixed motive for
2 doing something.

3 What I'm asking the Court to recognize is that
4 they comply with the Fourth Amendment according to their
5 primary motive.

6 QUESTION: And you think the primary motive
7 here wasn't --

8 MR. LOCASCIO: I think just looking -- not
9 even getting into subjective intent now on this second
10 point, the objective facts alone tell us that their
11 primary motive was to investigate homicide.

12 She was arrested for that offense, and the
13 objective facts tell us -- she was booked for that
14 offense, and she was not booked, nor was the parking
15 warrant pursued.

16 So you don't -- in this case, the Court does
17 not have to get into delving -- as Justice White pointed
18 out in his dissent in Massachusetts v. Paton, where the
19 writ of certiorari was dismissed as improvidently
20 granted, if you go into the subjective minds of the
21 police, you're really getting into an area that may be a
22 waste of judicial time.

23 Because it's very difficult to determine what
24 subjectively is going on in the mind of the police.
25 However, in this case, you don't even have to do that.

1 Because if you just consider the objective facts
2 involved, the objective facts will tell you -- well tell
3 anybody who knows this case that the primary purpose of
4 picking her up, of arresting her and detaining her, was
5 solely -- was for homicide.

6 We contend also -- we contend more than that,
7 that it was solely for homicide. But we think,
8 borrowing from this Court's opinion in Michigan v.
9 Clifford that a good test would be primary purpose.

10 QUESTION: What did you say -- what was your
11 reason, I'm not sure I understood it -- that, suppose
12 it's conceded the arrest was for homicide, but that the
13 police had a perfectly valid outstanding warrant for
14 robbery, under which the person could have been arrested
15 and held and a palm print taken.

16 And why do you say the palm print then should
17 be excluded?

18 MR. LOCASCIO: Well, if -- I assume then --
19 under your example, I will assume that they did not know
20 about the arrest warrant at the time they conducted the
21 arrest.

22 QUESTION: Exactly, they never found it out
23 until they got to the stationhouse. And it's conceded,
24 they arrested her for homicide on no probable cause.
25 But -- and they took a palm print pursuant to that

1 arrest.

2 But they could have gotten the palm print
3 pursuant to that -- and as a matter of fact, they could
4 have rearrested her right there on the spot for robbery.

5 MR. LOCASCIO: Under your example, Your Honor,
6 then the --

7 QUESTION: And taken her palm print right then.

8 MR. LOCASCIO: Under the example, would be
9 that oftentimes when police officers do perform illegal
10 arrests, there's probable cause out there somewhere,
11 that if they'd only investigate the case, they'd find
12 it.

13 But that's not the purpose for which they
14 acted.

15 QUESTION: Well, you don't -- you know, you
16 can arrest a person on probable cause. And if there's
17 no -- no fruit of the illegal arrest, and the person is
18 then convicted, that's just too bad about the probable
19 arrest. There's no remedy for it.

20 MR. LOCASCIO: That's true. And under those
21 situations, there's really no way to deter the unlawful
22 conduct of the police in that example.

23 But in this case, there is a clear way to
24 deter the unlawful conduct of the police in this case.
25 They went over there to conduct an illegal arrest.

1 The evidence was clear: He went over there to
2 arrest her for homicide. It was just coincidental to
3 that fact that his computer had a parking warrant in it.

4 So he takes her to the homicide unit, and all
5 the objective facts would indicate that they did not --
6 were not in any way interested in the parking warrant.

7 QUESTION: All right, they bring her back to
8 the stationhouse and take the palm print. And then the
9 sergeant says, by the way, we want to book this person
10 for robbery; we have a warrant.

11 MR. LOCASCIO: Well, that's what happened in
12 Hayes v. Florida in 1985.

13 QUESTION: Well, all right.

14 MR. LOCASCIO: That's exactly what this Court
15 held to be a violation of the Fourth Amendment. Because
16 there was no probable cause to do that, to take the
17 person to the police station, detain them, and take a
18 palm print.

19 Palm prints are certainly covered by the
20 Fourth Amendment. And before you can do that, you need
21 at least probable cause --

22 QUESTION: What happened in Hayes? They took
23 some statements, didn't they?

24 MR. LOCASCIO: Sure, they took some
25 statements. But first what they did was they --

1 QUESTION: Statements that they might not have
2 gotten if they'd have made a valid arrest.

3 MR. LOCASCIO: Of course, but they brought him
4 down to the police station without probable cause. And
5 that was -- the statements were the direct fruit of an
6 illegal arrest, which is what happened here. The palm
7 print was the direct fruit --

8 QUESTION: The difference here --

9 QUESTION: You wouldn't say if they -- about
10 the time he was walking out the door, the sergeant said,
11 by the -- don't let that fellow go. We're going to
12 arrest him for robbery because we have a warrant here.

13 The took him back, take his palm print again.

14 MR. LOCASCIO: Well, under that example,
15 there's certainly no prohibition to arrest the fellow.

16 QUESTION: And then if the sergeant said,
17 well, there's no use taking his palm print again; we've
18 already got one.

19 MR. LOCASCIO: Well, see, but that's not the
20 facts of our case. Because the facts of our case, even
21 if you -- even if you consider that an arrest was made
22 on a parking warrant, their standard procedures would
23 not have given them an index fingerprint.

24 They had no desire to obtain a palm print but
25 -- except for their interest in investigating a

1 homicide.

2 QUESTION: Leaving aside the argument over
3 whether you could take a palm print if you can take a
4 fingerprint, assuming that they could take a palm print
5 under a simple traffic violation arrest, really nothing
6 happened to your client that couldn't lawfully be done
7 to her?

8 MR. LOCASCIO: In this case?

9 QUESTION: In fact -- in fact, the police had
10 the authority to arrest her on the traffic -- on the
11 parking warrant, and she was arrested. They had
12 authority to take a palm print, and the palm print was
13 taken.

14 And you're saying, they did it for the wrong
15 reason. It's sort of, you know, they brought the wrong
16 writ.

17 But in fact, the police had objective
18 authority to arrest her and to take the palm print. And
19 your argument boils down to, well, yes, they did, but
20 they made the wrong noises. They didn't do it for this
21 purpose; they did it for some other purpose.

22 MR. LOCASCIO: Not really. Because it was
23 more than that. It was more than that. They not only
24 did it for the wrong reason. They subjected her to a
25 procedure, a very intimidating and frightening procedure

1 for being under arrest for homicide.

2 They bring her down to the police headquarter
3 homicide unit where the commander says, book her for
4 homicide. They bring her to the city jail, they book
5 her for homicide.

6 So this -- a lot more happened to this women.

7 QUESTION: I understand. You may have a cause
8 of action for that. But that has nothing to do with
9 whether the palm print can be taken to incriminate her
10 in the murder.

11 MR. LOCASCIO: What we claim is that the palm
12 print was the fruit of that illegal action. That --
13 that objective conduct, in this case, was a violation of
14 the Fourth Amendment.

15 And as the direct fruit of that booking,
16 detention for murder, they obtained a palm print.

17 QUESTION: (Inaudible) you say that they
18 couldn't have picked her up and brought her down on the
19 parking ticket thing?

20 MR. LOCASCIO: Of course not. No. If I --

21 QUESTION: It was a bench warrant.

22 MR. LOCASCIO: That's correct, Your Honor.

23 QUESTION: And they would have brought her to
24 the same place and done the same thing.

25 MR. LOCASCIO: No, Your Honor, they would not

1 have.

2 QUESTION: What would they have done with a
3 bench warrant?

4 MR. LOCASCIO: They would have taken her to
5 her local precinct, which is just a few blocks from
6 where she lives.

7 QUESTION: Right.

8 MR. LOCASCIO: The would have filled out the
9 form that they eventually filled out in this case.

10 QUESTION: And taken a fingerprint.

11 MR. LOCASCIO: Taken an index fingerprint, and
12 allowed her to sit there until her relatives posted bond.

13 QUESTION: Well, the only difference -- the
14 only difference is they took her to a different station.

15 MR. LOCASCIO: And they booked her for murder.

16 QUESTION: No, no, I'm talking about -- they
17 said they had no -- you said they had no right to bring
18 her there in the first place on a traffic ticket.

19 MR. LOCASCIO: I'm saying --

20 QUESTION: It wasn't a traffic ticket, it was
21 a bench warrant.

22 MR. LOCASCIO: That's correct, Your Honor.

23 QUESTION: And for your information, those are
24 different animals.

25 MR. LOCASCIO: I agree. There's no question

1 about that. But what we're talking about it --

2 QUESTION: (Inaudible.)

3 MR. LOCASCIO: Yes, Your Honor. But what
4 we're saying is that she was subjected to more than just
5 being brought down to the police headquarters.

6 In fact, she was brought directly to the
7 commander of the homicide unit. And what we're saying
8 is that when you try to justify that on the basis that
9 she failed to pay a parking ticket, and therefore a
10 municipal judge issued a bench warrant, that that is
11 unreasonable under the Fourth Amendment.

12 QUESTION: That's unreasonable?

13 MR. LOCASCIO: That when your justification is
14 to subject a person to these type of procedures --

15 QUESTION: You mean when someone ignores a
16 traffic ticket, there's nothing the State can do about
17 it?

18 MR. LOCASCIO: What I meant to say was, when
19 you subject a woman to what she was subjected to, and
20 then you say, my justification was, there was a bench
21 warrant, when they certainly don't follow these
22 procedures when a bench -- when they really are
23 executing a bench warrant, that that is a violation of
24 the Fourth Amendment.

25 QUESTION: (Inaudible) newspapers would ask

1 you on a bench warrant on a traffic warrant in the
2 middle of the night?

3 MR. LOCASCIO: There is nothing wrong with
4 executing a bench warrant.

5 QUESTION: (Inaudible) bench warrant on a
6 traffic ticket.

7 MR. LOCASCIO: And the police in this case
8 should very well have gone out and executed in this
9 case. But what they --

10 QUESTION: (Inaudible) about it.

11 MR. LOCASCIO: What they should have done --

12 QUESTION: Don't tell us, tell them.

13 MR. LOCASCIO: Well, I'm -- thank you.

14 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
15 Locascio.

16 Mr. Riederer, do you have anything more? You
17 have two minutes remaining.

18 REBUTTAL ARGUMENT OF ALBERT A. RIEDERER, ESQ.,

19 ON BEHALF OF THE PETITIONER

20 MR. RIEDERER: Yes, Your Honor, thank you, Mr.
21 Chief Justice.

22 With respect to the second submission of the
23 respondent, he's indicated that it would be wrong to
24 take someone into custody for the wrong reason, even if
25 you had a perfectly valid reason to arrest and

1 fingerprint.

2 And his reason, as stated, is that you do it
3 for the wrong reason.

4 The State submits here that what that means is
5 that part of the -- that the warrant requirement of the
6 Fourth Amendment is no longer met by having a warrant.
7 You've got to have a warrant plus proper and pure
8 motivation.

9 And it seems to me that that flies in the face
10 of the basic fundamental -- the fundamental
11 jurisprudence of the Fourth Amendment. If you have a
12 valid warrant, you ought to be able to execute the
13 warrant without looking at the reason behind the
14 execution of the warrant.

15 Furthermore, all of the things that the
16 respondent has complained about here happened after the
17 respondent was in custody, and after the fingerprints
18 had already been taken.

19 Those fingerprints were not the fruit of an
20 overnight detention, and they were not the fruit of any
21 questioning on the homicide.

22 QUESTION: Can you tell us quickly why -- what
23 you have to support the proposition that the arrest was
24 at least facially on the parking violation?

25 MR. RIEDERER: Yes, Your Honor. The arrest

1 was at least partially, or facially, on the arrest
2 warrant is borne out by Officer Stewart's testimony
3 where he testified at the hearing, seven different times,
4 both on direct and cross-examination, that he had
5 arrested her on the outstanding parking warrant.

6 In addition to which, the booking record that
7 we have referred to also refers to the warrant as being
8 a reason for her detention, and Officer Thomas' police
9 report, written the same day, also refers to that same
10 parking warrant, denominating it by number, as to one of
11 the reasons why she was arrested.

12 So I think the reference is replete with
13 references to this parking warrant at the time of the
14 arrest; not later.

15 QUESTION: It's not clear that the Supreme
16 Court of Missouri agreed with that, though, is it?

17 MR. RIEDERER: The Supreme Court of Missouri
18 apparently did not agree with that. But it seems to me
19 that a fair reading of that opinion is --

20 QUESTION: So that even if we agree with you
21 on the pretextual point, the most we could do is remand
22 to the Supreme Court of Missouri to have them make clear
23 how they come out on the other part.

24 Or do you want us to make the judgment?

25 MR. RIEDERER: I think that this Court should

1 make the judgment, Your Honor.

2 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
3 Riederer.

4 MR. RIEDERER: Thank you, Your Honor.

5 CHIEF JUSTICE REHNQUIST: The case is
6 submitted.

7 (Whereupon, at 2:00 p.m., the case in the
8 above-entitled matter was submitted.)
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#85-303 - MISSOURI, Petitioner V. ZOLA BLAIR

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