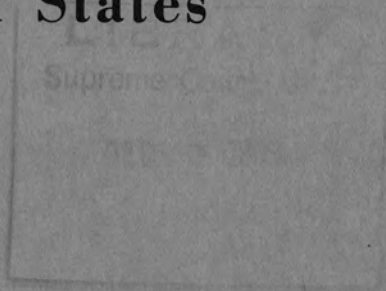


Supreme Court of the United States

October

██████████ TERM 1969



In the Matter of:

Docket No. 86

ELVIN MORALES,

Petitioner

vs.

NEW YORK,

Respondent

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Date November 20, 1969

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ORAL ARGUMENT :

P A G E

Richard R. Farrell, Esq. on behalf of Petitioner.....	2
Burton B. Roberts, District Attorney on behalf of Respondent	20
Richard R. Farrell, Esq. on behalf of Petitioner	40

ENHAM

IN THE SUPREME COURT OF THE UNITED STATES

October

TERM 1969

)
 4 MELVIN MORALES,)
)
 5 Petitioner)
)
 6 vs) No. 86
)
 7 NEW YORK,)
)
 8 Respondent)
)
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Washington, D. C.
November 20, 1969

The above-entitled matter came on for hearing at
11:05 o'clock a.m.

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice

APPEARANCES:

- RICHARD T. FARRELL, ESQ.
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Counsel for Petitioner

- BURTON B. ROBERTS
District Attorney
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Bronx, New York 10451
Counsel for Respondent

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: Number 86. Morales against
New York.

ORAL ARGUMENT BY RICHARD T. FARRELL, ESQ.

ON BEHALF OF PETITIONER

MR. FARRELL: Mr. Chief Justice and may it please the
Court; Richard T. Farrell for the Petitioner, Melvin Morales.

Your Honors, this case comes to this Court via writ of
certiorari to the Court of Appeals of the State of New York,
which court held that certain police activities founded upon
less than probable cause, did not constitute a violation of
the Defendant's rights under the Fourth Emendment, and do not,
affect the confession yielded by the Defendant after he was
seized, as we contend, in violation of the Fourth Amendment.

The facts in this case are fairly simply set forth.
Early in the morning of October 4, 1964, in Bronx County, New
York, Mrs. Addie Brown died of multiple stab wounds; 31 to be
exact, inflicted upon her by at that time an unknown assail-
ant in an elevator of a 21-story apartment house in a public
housing project in the South Bronx.

The police efforts at the scene at that time on Octo-
ber 4th, yielded no leads, but on October 5, 1964, Detective
Aubrey Ferguson was walking in the vicinity of the scene of
the crime and met Mrs. Rebecca Morales who is the mother of the
Petitioner here, Melvin Morales.

1 Detective Ferguson knew the Morales family; knew them
2 at a different address and he asked Mrs. Morales: "What are
3 you doing here?" And she said, "Oh, I live there," pointing
4 to the building in which the crime had been committed.

5 The police, also sometime after October 5th, had in-
6 formation from a young man who testified at the trial that he
7 had been outside the premises where the crime was committed and
8 had seen someone outside the building at the pertinent time.

9 Q Was that the very young boy?

10 A Yes; that's Everett Roberts, Mr. Justice Stewart,
11 whose testimony the District Attorney abandoned at the summa-
12 tion.

13 By the time Savarra Musio who tried this case in the
14 Supreme Court, finished cross-examining this young fellow, he
15 had the crime being committed sometime in October, November or
16 December of 1964. And I doubt very much if he could have
17 given a description much better than that available by looking
18 at Page 1320 of the record. "Morales is a skinny Puerto
19 Rican," which is a fairly accurate description of a great num-
20 ber of people in the South Bronx.

21 But on October 11th the police called again (from the
22 testimony of Detective Ferguson, at Page 732 in the record)
23 and said, "we're rounding up some of the neighborhood narcotics
24 addicts." About October 11th, 1964 the police officers came
25 to the conclusion that Morales, who did not live in the building

1 with his mother, they found him as a habitue of the neighbor-
2 hood, not seen around by who, we don't know exactly, but it
3 appears with these narcotics addicts who were rounded upon the
4 11th.

5 And the police then concentrated their efforts on
6 trying to find Melvin Morales to talk to him. The first of
7 their efforts was to contact his mother, Mrs. Morales, telling
8 her that they were interested in speaking to Melvin.

9 Q Now, if instead, there was this phrase that you
10 said the detective used to describe due process of getting
11 this information --if, instead of that, a dozen detectives or
12 24 detectives had walked up and down the street talking to
13 every narcotic addict and the others of that world and got the
14 same information, would you say the case was different or the
15 same?

16 A Mr. Chief Justice, I attached no significance to
17 the fact that the officers rounded up these other narcotics
18 addicts.

19 Q I assume that you did when you emphasized that
20 phrase so much.

21 A Well, you will have to excuse the advocate for
22 perhaps
23 using what I consider/a "loaded term." I do not attach any
24 significance to the fact that there was a "round-up."

24 Q Well, you cleared up the question for me.

25 A On October 13, approximately nine days after the

1 event that led to the homicide investigation and about three
2 days after the police had started to concentrate their efforts
3 on finding Melvin Morales, the police officers followed Mrs.
4 Morales from her home to her place of business and staked out
5 the beauty parlor.

6 About 4:00 in the afternoon Mrs. Morales was visited
7 by one of the officers; I believe it was Carroll, who asked
8 her: "Well, do you think your son will be around?" And she
9 said, "Well, I think he'll be up this afternoon." As a matter
10 of fact, the testimonial record by Mrs. Morales indicates very
11 clearly that she had informed Melvin Morales that the police
12 were interested in speaking to them and Morales seems to have
13 said, "That's all right, mother; I will come up."

14 At 8:00 that evening on October 13th, Melvin Morales
15 did, in fact, come up to his mother's beauty parlor. He
16 arrived in a taxicab, stepped out of the cab; Detective Carroll
17 took Morales, put him in Detective Daum's car; Detective Daum
18 went to see Mrs. Morales and said in words, or in substance,
19 "Come on out; we have your son; please pay the taxicab."
20 Mrs. Morales: "May I talk to him?" The detective: "No, that
21 isn't necessary." As we repeat the statement of facts, and
22 the Respondent's brief points out ^{the} officer did interfere with
23 her access to her son.

24 The police officers then took him in the detective's
25 car down to the 22nd precinct, brought him upstairs in the

1 stationhouse; put him into the lieutenant's office and com-
2 menced the process of interrogation. Daum made some reference
3 to the following rights of the Petitioner: He said, "You can
4 have a lawyer; you don't have to talk us, and anything you
5 say to us may be used against you."

6 Morales declined to speak to Daum, and at that point
7 said, "I'd rather speak to Detective Carroll." Detective
8 Carroll returned from his brief departure to get coffee and
9 cake. The first words out of Morales' mouth, in words or in
10 substance, was: "Carroll, you know I can't take a beating."
11 Carroll replied to that: "Stop building fences; stop making
12 alibis; stop building crutches; there is one thing you can't
13 do: you can't lie to God. Do you believe in God?"

14 Morales: "Yes, I do."

15 "Between you and your God, did you do this thing,
16 Morales?"

17 "Yes, I did."

18 Q How long did all this take?

19 A From the time that Morales was picked up, Mr.
20 Justice --

21 Q I mean the interrogation.

22 A The interrogation lasted approximately 45
23 minutes. From about 8:00 in the evening on October 13th until
24 8:45 when he made the first damning statement in response to
25 the question: "Did you do it?"

1 Q About 45 minutes?

2 A Approximately 45 minutes, Your Honor.

3 Q Well, I'm not clear on your answer. Forty-five
4 minutes after Detective Carroll came in the room or 45 minutes
5 from the first--

6 A Forty-five minutes after the initial taking into
7 custody outside his mother's beauty parlor. The trip to the
8 stationhouse --

9 Q No, no, no. How long after CARroll got into the
10 stationhouse and Morales got into the stationhouse, was it
11 that the statement was made?

12 A It would seem to be about 10 to 15 minutes;
13 Your Honor. It's impossible to fix the time with any precision.
14 It was 45 minutes from the initial time of taking into custody
15 and approximately 10 minutes between the time they arrived at
16 the stationhouse to the time of the first statement: "Yes, I
17 did."

18 CARroll then repeated to Morales substantially the same
19 warning given to him by Detective Daum earlier and Morales
20 gave a full-blown verbal confession; that he had needed mar-
21 cotics; that he had been in his mother's apartment and went
22 outside for a breath of air; saw a woman entering the building;
23 followed the woman into the building; got into the same eleva-
24 tor with her; as the elevator went up he snatched at her purse;
25 she resisted; he stabbed her; the elevator stopped and he fled.

1 At that point Detective Daum returned to the interr-
2 gation site. And Daum and Carroll made essentially this
3 observation to Morales: "Now, since you, Morales, are going to
4 have to repeat your story to detectives from the homicide squad,
5 the precinct detective who is charged with the responsibility
6 in this case and perhaps the District Attorney and another un-
7 specified list of police officers, "Why don't you write your
8 statement down so no one can change it on you?" Morales
9 complied and that led to the second confession in this case,
10 a polygraphic statement completed at about 9:05 on October 13.

11 Thereafter, true-enough to the police officers' words,
12 there was a further procession of police officers interrogating
13 Morales and he substantially reiterated his confessions. Later
14 ⁱⁿ on/the evening the Assistant District Attorney from the Bronx
15 County's office arrived on the scene, conducted a question and
16 answer session with Morales and which he gave to a stenotype
17 reporter. And then that session was completed sometime early
18 on the Morning of October 14th, now about 4 and 1/2 hours
19 to five hours after the initial taking into custody.
20 Morales was taken to the scene of the crime where he reenacted
21 it, the crime.

22 At 4:00 on the morning of October 14th he was in the
23 emergency ward of Morrisania Hospital, being treated for what
24 appeared to be narcotics withdrawal symptoms. A week later,
25 around October 20th, police officers visited Morales at the

1 Bronx House of Detention. They said they wanted to talk to
2 him. And according to the police officers' own testimony, they
3 said that Morales had formed a new resolve: He said, "No, I
4 will not talk to you; I am going to fight this thing," meaning,
5 obviously, the charge of murder.

6 Morales was duly tried and convicted in Bronx County;
7 question of the
8 a preliminary hearing on the/voluntariness of his confession;
9 the famous Huntley hearing in New York City, when this Court's
10 decision of Jackson versus Denno was held.

11 Morales did not testify at the Huntley hearing. The
12 trial judge found his confession voluntary; the jury was
13 charged on a question of voluntariness; the jury convicted
14 Morales; he received a life sentence.

15 The Appellate Division of the First Department of New
16 York found unanimously, without an opinion. The Court of
17 Appeals of the State of New York affirmed, again unanimously,
18 but this time with an opinion.

19 This Court granted certiorari in this case on April
20 21, 1969.

21 Your Honors, at the time the police officers picked
22 up Melvin Morales, they knew the following concrete, specific
23 information about him: His mother lived in the building where
24 the crime was committed. He was a narcotics addict. He,
25 they had been told, had not been seen around since the time
that the crime was committed. And that, Your Honors, is about

1 all they knew about Melvin Morales.

2 However, with this scanty information, the police
3 officers, for the very obvious intention of taking Morales into
4 their custody and bringing him down to the stationhouse for
5 interrogation.

6 The Court of Appeals for the State of New York said
7 in its opinion that it may be conceded that there was no
8 probable cause. They did not make a finding on the question of
9 whether there was probable cause or not. But, I submit, on
10 the record in this case, and especially in light of the testi-
11 mony of the two officers who picked Morales up in the first
12 place. One saying, "Well, I had nothing definitely to tie him
13 to the crime." And the other saying, "I was dubious about his
14 connection at the time and it wasn't until the interrogation
15 brought ^{it} out that I was convinced that he was guilty."

16 There is quite obviously no probable cause. Further,
17 the Court of Appeals did, however, seem to make a finding; a
18 finding which I submit, is probably binding on this Court. The
19 Court of Appeals said on Page 58 of its Opinion in 22 NY 2d.
20 "The record does not support a finding that Defendant consented
21 to/detention and questioning." Says the Court of Appeals, "The
22 fact that there is no consent; the fact that there was no
23 probable cause does not necessarily make the seizure here un-
24 reasonable. We must examine to see whether under all the cir-
25 cumstances whether the seizure here was reasonable or not."

1 The Court of Appeals, of course, was writing in May
2 of 1968. They were writing without the benefit of the illumina-
3 tion supplied by this Court in the case of Davis versus
4 Mississippi, decided on April 22nd, the day after this court
5 granted certiorari in this case.

6 Davis versus Mississippi, Your Honors, I think, makes
7 it painfully clear that if the police do not possess probable
8 cause, do not have a warrant, they cannot take a citizen off
9 the street and bring him to the stationhouse. The only thing
10 they can do is Footnote 6 in the Davis Opinion.

11 The only thing they can do is request the voluntary
12 cooperation of the citizen. Morales was not requested to
13 voluntarily cooperate. He was grabbed by one police officer,
14 rushed into the other officer's car and taken down to the
15 stationhouse.

16 The Court of Appeals makes the almost comical observa-
17 tion: "Defendant testified he was so loosely guarded when taken
18 from the car to the station that he could safely escape." Well,
19 Well, I don't know about that. All he said in his testimony
20 on Page 915 in the record is that the police officers didn't
21 hold him by each arm. But the Court of Appeals: "Oh, but this
22 was a reasonable seizure within the Fourth Amendment." No
23 probable cause and therefore caused no arrest. There couldn't
24 be an arrest; there was no basis to link this man to the crime.
25 No consent.

1 Said the Court of Appeals here: "The question is,
2 was it reasonable to do what the police officers did?" And in
3 marching through the consideration of what constituted reason-
4 ableness, the Court of Appeals said, "There is no practical
5 alternative to taking the man off the street and dragging him
6 under the stationhouse. The police station is a better place
7 to interrogate defendants.

8 I reiterate on oral argument what I say in the brief:
9 That's exactly what I think this Court decided in *Miranda*
10 versus *Arizona*, because the police station is such a dandy
11 place to interrogate suspects.

12 Q Did he raise his Fourth Amendment claim at the
13 trial?

14 A Your Honor, the first time the Fourth Amendment
15 claim was raised in this case was by me in the New York State
16 Court of Appeals. The first time in this case. *Haley* versus
17 *Ohio*, however, stands for the proposition that once the con-
18 tention has been contended by the highest court of the State
19 that question is properly preserved for review by this court.

20 And Your Honor, the Court of Appeals quite obviously
21 considered this question as a brief reading of its opinion will
22 indicate. Although it was raised I have no qualms about ad-
23 mitting that the question was raised for the first time by me
24 in the Court of Appeals. That is not, I think, particularly
25 an objection to this Court considering that question since the

1 highest court in New York has considered the question properly
2 preserved for its review.

3 Q And that may be that it may be true, but it also
4 may be true that the State might have more proof to put in as
5 to the background in which the focus of the police suspicion
6 of this man came to their attention.

7 A Yes, Mr. Justice Harlan; that's one of the
8 principal escape valves in the Respondent's brief in this case.
9 "Oh, we may have more evidence." But that question, I think,
10 is referable to the proper procedure under the New York
11 practice since the question has been properly preserved for
12 review by this Court I think the only thing that the people
13 can rely on is what they have got in the record right now.

14 They could perhaps go out and beat the bushes now,
15 the event
16 five years after/and find some more evidence. And perhaps this
17 Court could be convinced to send it back for hearing. I do
18 not think that is necessary in the state of the record and
19 especially in light of the testimony of the two arresting
20 officers. Because those two officers had nothing even remotely
21 approaching, in their view, probable cause to make the seizure.
22 And it is these two, if you will, petty officials, to borrow
23 from Boyd versus the United States, whose determination to take
24 this citizen into custody that is under review in this Court
25 in this case.

If this Court be not convinced that the unconsented to

1 seizure of a citizen for the purpose of bringing him into the
2 police station for interrogation, does not violate the Fourth
3 Amendment, then I, quite frankly, confess a bit of confusion
4 about what the Davis versus Mississippi was driving at.

5 But, the --

6 Q What bearing do you think the stop and frisk
7 cases have on this?

8 A I don't think they have any bearing on this case
9 at all, Mr. Justice Harlan, except for the very general propo-
10 sition that the police may make some temporary estoppage of a
11 citizen if there is a reason to inquire about his suspicious
12 conduct. The only think the police officers saw Morales do
13 was to get out of a taxicab. That's far from the kind of con-
14 duct, I think that is --

15 Q Well, there were some events that led them to be
16 there to see him get out of the taxicab; were there not?

17 A Yes, Mr. Chief Justice, there certainly were.

18 Q And these events didn't just happen to be there.

19 A Oh, they were there because they were looking for
20 Melvin Morales. But as to the reason why they were looking
21 for Melvin Morales that makes the seizure here unreasonable
22 within the ambit of the Fourth Amendment.

23 They were not operating on anything remotely approach-
24 ing probable cause for his arrest. They had nothing but a bare
25 suspicion that he might have something to tell them about the

1 crime. Since, of course, his family lived in the building;
2 he was an addict; he had not been seen around. It hardly
3 inordinately points the finger of suspicion of Morales.

4 The Court of Appeals said the checkerboard square of
5 investigation pointed only to Morales. But at most, to give the
6 people their due, four out of the 64 squares on a checkerboard
7 will fill them in. That hardly amounts up to the kind of
8 justification of the seizure and detention of the citizen, as
9 in this case,

10 To say that since Morales knew the police were look-
11 ing for him that his coming to his mother's beauty parlor may
12 be read as a surrender, flies in the face of both the deter-
13 mination by the New York Court of appeals that there was
14 nothing in this record to support the consent argument and it
15 is also tantamount, in my opinion, to saying that a lamb that
16 goes out to the pasture surrenders himself to the wolf. If
17 Morales wanted to surrender to the police there were better
18 places to surrender than your mother's beauty parlor. There
19 are police stations, and many of them.

20 But Morales, I don't think, can be said to have sur-
21 rendered in this case. I think the Court of Appeals has de-
22 cided that way. There is no surrender; no consent to interro-
23 gation at that place under these circumstances and since that
24 is the determination, I believe, on the question of fact by the
25 highest court in the State of New York, I do not think that

1 question of fact is reviewable by this court. But if the Court
2 be convinced that there was a violation of the Fourth Amend-
3 ment it becomes another more pressing problem.

4 If the Fourth Amendment was violated what effect
5 should that have upon the use of Morales' confessions? Taking
6 my leave from the American Law Institute's Model Code of Pre-
7 arranged Procedures, especially Article 9 of that document;
8 and from Wong Sun versus the United States. I believe that the
9 answer to that question that once the confessions are taken so
10 close, at least in point of time, to have unreasonable seizure
11 within the Fourth Amendment, those confessions must be barred
12 from evidence without reference to the fact of the voluntari-
13 ness or not.

14 As this Court has said time and time again, the pur-
15 pose behind the exclusionary rule is to discourage the police
16 from engaging in the prohibitive conduct; the prohibitive con-
17 duct here is an investigatory detention upon less than probable
18 cause.

19 The involuntary submission of the citizen to the
20 custody in the police station, if the Fourth Amendment is to
21 be protected in this context, the confessions that came at the
22 police station just like John Davis's fingerprints in the Davis
23 case, must be barred from evidence, whether they were voluntary
24 or not.

25 The next step, of course, is if the Court not be

1 willing to buy a rule based upon hearsay exclusion we then
2 come to the question of where there is kind of continuation
3 between the initial police illegality, that is the seizure of
4 Morales on the street corner, and his confessions that will
5 permit the Court to say that there has been a dissipation of
6 the primary taint.

7 Again, there are leading cases: Wong Sun versus the
8 United States. You have Blackie Terry whose confession was
9 excluded from evidence. He was seized on his own premises and
10 made admissions almost immediately.

11 Wong Sun took off and was at large for several days.
12 He came back and made his confessions. As to Wong Sun, the
13 taint of the primary illegality of any uncertainty had been
14 dissipated, but as to Blackie Terry; as to Melvin Morales in
15 this case, the link between the illegal police activity of
16 seizing Morales without probable cause and taking him without
17 his consent into the custody, is so linked closely both in time
18 and in circumstances.

19 Because Morales was taken down to the police station
20 and interrogated almost immediately. The mere fact of inter-
21 position of -- I think it probably would be called the best
22 point in time, Escobedo -- should not by and of themselves be
23 of sufficient attenuation of taint. The oppressiveness of the
24 initial seizure was followed by the oppressiveness of the de-
25 tention at the place selected by the police, which was followed

1 by the oppressiveness of the isolation from everyone else in
2 the room but the police, which was followed -- by the con-
3 fessions.

4 The link between these confessions and the seizure
5 is so close, both in time and in circumstances, I believe,
6 Your Honors, that it cannot be reasonably said in a realistic
7 appraisal of this record, that there has been the kind of
8 attenuation between the unlawful police conduct in the first
9 place violating the principles renounced by this Court several
10 months ago in *David versus Mississippi*, and the confessions
11 to say that the confessions are not the tainted produce of this
12 initial police illegality.

13 And further, Your Honors, we submit, that the con-
14 fessions of the defendant, each and every one of them were not
15 proved to be voluntary beyond a reasonable doubt.

16 He did confess he was warned, but he was a narcotics
17 addict, a group prone to be garrulous; to have a rather shallow
18 perception of their rights and responsibilities. He was
19 isolated from his only ally in the field, his mother, who
20 testified that she wanted to tell him that he shouldn't speak
21 to the police officers.

22 He was alone in the police station; he was isolated;
23 he did, after the fact, as *Haley versus Ohio* indicates, also
24 is germane -- after the fact, for whatever light these sub-
25 sequent events may throw on what went before -- after then he

1 did wind up in the emergency ward of the Morrisiana Hospital,
2 being treated for what looked like narcotics control symptoms.

3 Now, when he had been completely freed of the fetters
4 of police custody; when he was completely alone with several
5 days to cogitate, ruminate over the possibilities of his right
6 to not speak with the police officers, when the police officers
7 arrived on October 20th Morales told them, in essence: "Go
8 away. I don't want to talk to you." Removed in time and space
9 from the inherent -- we submit, inherently coercive atmosphere
10 surrounding him at that police station, Morales found the
11 resolve that would have stood him in good stead if he had been
12 in a position to assert that resolve at the time he was initially
13 taken into custody.

14 Q How old was Morales.

15 A Mr. Justice, at the time he was arrested he was
16 approximately 30 years of age and had been a narcotics addict
17 since he was 17 years old. He graduated from junior high
18 school; had some trade school experience. He had a yellow
19 sheet. The arrest record in New York is called, of course, the
20 yellow sheet, of some sizable dimensions.

21 And the Court of Appeals said, "This is no babe in the
22 woods; this is a man familiar with the criminal processes. And
23 to buttress their conclusion the Court of Appeals said that he
24 was so familiar with the criminal processes that he chose not
25 to rely on the fact that he was unlawfully arrested, but he --

1 now speaking of Morales -- chose to rely on the stronger
2 argument of his Fourth Amendment rights had been violated.

3 Your Honors, I thought up that argument; not Melvin
4 Morales, the experienced criminal. The mere fact that he was
5 30 years of age, Your Honor, I submit and the fact that he had
6 a rather extensive criminal record, doesn't make him an expert
7 on the ins and outs of the Fourth Amendment; Fifth; Sixth;
8 the 14th. And also the requirement that the issues be raised
9 from the moment of the course of events at the trial.

10 Here, however, we have the -- he couldn't afford a
11 better lawyer, so he got someone who made, really an error.
12 He raised the issue that this Court must now decide: Can this
13 confession or these confessions be admitted in light of the
14 violation of the Fourth Amendment rights.

15 Your Honors, thank you very much.

16 MR. CHIEF JUSTICE: Mr. Roberts.

17 ORAL ARGUMENT BY BURTON B. ROBERTS, DISTRICT

18 ATTORNEY, BRONX COUNTY, NEW YORK ON BEHALF

19 OF RESPONDENT

20 MR. ROBERTS: Mr. Chief Justice and may it please the
21 Court: Assuming there was no surrender -- assuming there was
22 no surrender in this case and if there was a surrender, cer-
23 tainly the Fourth Amendment would not come into play -- but
24 the taking into custody, the detention, the seizure, the arrest,
25 of Melvin Morales is, under the circumstances of this case, was

1 reasonable and appropriate within the meaning of the Fourth
2 Amendment.

3 The Fourth Amendment, as opposed to the Fifth and
4 Sixth Amendments, applies a flexible and variable standard that
5 is not absolute, like the Fifth and the Sixth. Guidelines
6 have been provided by Terry against Ohio. And I submit that
7 the people have the right to detain someone where there is a
8 reasonable basis for belief that that individual has informa-
9 tion concerning a crime which has been committed.

10 Justice Frankfurter stated it much more eloquently
11 than I in *Culombe*. He said, "There are things which cannot
12 speak and it is necessary to detain and to interrogate witnesses
13 who possibly may be suspects in order to ascertain who has
14 committed a particular crime."

15 This case, like all cases appearing before this Court
16 there has to be a balancing between society and the individual.
17 In this case the Petitioner who counsel has characterized as a
18 lamb, was found by a jury of his peers to have delivered 31
19 stab wounds to a 56-year-old woman in Bronx County, Mrs. Addie
20 Brown.

21 The police, arriving upon the scene, questioned
22 individuals and before this investigation was over, they
23 literally questioned over 100 individuals. What information
24 did they receive that first night? They knew that the indivi-
25 dual or possibly the individual who committed this crime,

1 lived in that building, because one of the tenants, after the
2 elevator arrived upon his floor, heard footsteps below this
3 particular floor and heard a door.

4 They questioned individuals in the building. They
5 questioned Mrs. Morales. They questioned her son, Snooky.
6 And the evidence indicates in the record and that is all we
7 have to go on -- is that two individuals were interrogated by
8 the police at the stationhouse. Snooky Morales and a man by
9 the name of Shorty. They had no probable cause to arrest, in
10 the technical sense of the term, either Snooky or Shorty. But,
11 I respectfully submit, conducting this investigation, based
12 on the information which they had, they had a reasonable basis
13 to detain and take to the stationhouse, these two individuals
14 and question them and check out their alibis, ascertain whether
15 or not these individuals could clear themselves in order to
16 solve this crime involving Mrs. Addie Brown.

17 They could never revive Mrs. Addie Brown, but it was
18 incumbent upon these police officers, characterized as "petty
19 public officials," to work from daybreak to backbreak in order
20 to solve this crime so that there would not be more Addie
21 Browns, figuratively speaking, in Bronx County in the City of
22 New York. They had to work and they had to investigate and
23 they had to interzogate and I respectfully submit they went
24 into the streets and they knew, these police officers, they knew
25 Melvin Morales. They knew Melvin Morales to be a hustler and a

1 petty thief who had numerous convictions as a narcotic addict
2 and for policy. They knew this individual and they knew his
3 haunts and they looked in his haunts and this individual was
4 not seen in his familiar haunts.

5 During the course of this investigation prior to the
6 time that Melvin Morales was taken to the stationhouse, they
7 went and interviewed the mother. Detective Ferguson spoke to
8 the mother. Detective Ferguson was told by the mother that
9 her son was not around; that she had not seen her son for
10 some time. Subsequently, several days later, to Detective
11 Carroll, and Detective Daum, once she discovered they were
12 searching for her son and looking for her son, she gave an
13 alibi for her son. She said, "He was here; he was here in the
14 apartment."

15 A detective had gone through the premises; a detective
16 who knew Melvin Morales. He had not seen Melvin Morales in the
17 apartment.

18 The little boy -- and his age doesn't appear in the
19 record -- was a little boy who had a combie, a band and this
20 little boy was walking his friend home at approximately 3:20
21 in the morning and Everett Roberts, according to the testimony
22 in this record - and I'm not going to comment on what the
23 Assistant District Attorney stated concerning his testimony at
24 this time, but that little boy described to the police, prior
25 to the time that Melvin Morales was detained, or surrendered,

1 described to the police an individual of receding hairline,
2 a Puerto Rican, thin, and indeed, the description matched, in
3 the minds of the detectives who were working on this case,
4 Melvin Morales. And they intensified their search for Melvin
5 Morales.

6 And this boy in court identified Melvin Morales as
7 the individual he saw at the time of the homicide; and this
8 little boy stated that he saw this individual on the day --
9 on the Wednesday following the Saturday night or Sunday
10 morning that he saw the individual at the bench in front of
11 this woman.

12 Now, the Court's notion of probable cause is less
13 than the conservative attitude of both prosecutor and police
14 officials with regard to probable cause, as evidenced by the
15 Peters case.

16 And I say to this Court that if there was probable
17 cause or this Court was able to find probably cause from the
18 Peters case or in the Peters case, certainly the Court may
19 very well find from the record we have here, which we were
20 not able to develop because the question of unreasonable deten-
21 tion was never raised in the trial court; it was not raised in
22 the Appellate Division, our Intermediate Appellate Court; it
23 was first raised -- raised for the first time in the Court of
24 Appeals.

25 Certainly, if it was raised, I respectfully submit,

1 we would have had an opportunity to develop evidence and pro-
2 duce evidence which would show how all of this information
3 interweave, and whether or not we had, indeed, additional infor-
4 mation which would enable us to have probable cause to make the
5 arrest.

6 But I state that on the record itself, there was a
7 reasonable basis, which I contend is all that the Fourth Amend-
8 ment requires -- a reasonable basis to detain this individual
9 in order to interrogate him and all because there was a reason-
10 able belief that he had information concerning the commission
11 of this crime.

12 Q Did the officers who picked Morales up at his
13 mother's beauty shop -- did they testify?

14 A Mr. Justice Harlan, they did. And they testified
15 if I might add -- and if I may just go off the subject that I
16 have now, and go back to voluntary surrender for a moment. They
17 testified that they saw the mother and they stated to the mother
18 that they were looking for her son, Melvin Morales. And she
19 said, "Why, he's been around. He's not hiding. I'll tell my
20 son that you're looking for him, Detective Carroll." And,
21 indeed, she called up her son, and this is the testimony in the
22 trial; testimony of Mrs. Morales, substantiated in part by
23 Melvin Morales himself when he testified. And she said, "Melvin,
24 Detective Carroll wants to see you," and he said, "Well, I'll
25 see him." And she said, "Well, come up to the beauty parlor."

1 And the same day he arrived at the beauty parlor she
2 spoke to that son and told him where she would be and she then
3 told Detective Daum and Detective Carroll that her son would be
4 at the beauty parlor, later that evening. And at 8:00 o'clock
5 the son arrived. Now, he knew that Detective Carroll was
6 looking for him. The mother stated, "come to the beauty parlor."
7 He did arrive at the beauty parlor; Detective Daum and Detec-
8 tive Carroll were there; he voluntarily went with Detective
9 Daum and Detective Carroll to the stationhouse, which certainly
10 is different from the Davis case in that this 30-year-old man,
11 as contrasted to a 40-year-old boy -- this 30-year-old man
12 voluntarily went with the police officers to the stationhouse;
13 no handcuffs, no chains, no guard, with detectives whom he knew
14 and whom he had seen, certainly for the last 13 years of his
15 life; was taken to the stationhouse and there in the station-
16 house, interposing his own free will within ten to 15 minutes
17 after Detective Carroll questioned him; advised of his rights,
18 prior to Miranda; told that he didn't have to say anything;
19 that anything he said could be used against him; and that the
20 detective would testify in court concerning what he said.

21 Q Mr. Roberts, when was he arrested?

22 A He was arrested on October 13th with --

23 Q Where?

24 A At the beauty shop; outside the beauty shop, sir.

25 Q You mean arrested outside the beauty shop and went

1 Voluntarily with them?

2 A I use the term arrest -- the constitutional term
3 arrest. When a person's right to freedom and movement is inter-
4 fered with, I consider it an arrest. I consider --

5 Q So from then on he wasn't voluntarily free; was
6 he? From that moment on.

7 A From that moment on he was not voluntarily free
8 to go.

9 Q And what basis did you have to arrest him?

10 A Sir?

11 Q What basis did you have to arrest him?

12 A The basis --

13 Q In the record.

14 A From the records, sir?

15 Q Yes, sir.

16 A From the record the basis that we had to arrest
17 him was circumstantial evidence, indicating that the person who
18 committed this crime was a tenant in that building; that this
19 individual, Melvin Morales, was seen outside the premises of
20 the building, contemporaneous with the time just before or just
21 after Mrs. Addie Brown was killed; that this individual was a
22 narcotic addict; had been an addict for many years; that this
23 individual was a petty thief; that this individual was missing
24 from his haunts; that his mother --

25 Q Now, where in the record is that. You are --

1 I want to know what do you have independently of what you got
2 from Morales or his criminal record?

3 A I just stated, sir, what's in the record.

4 Q Well, who told the police that he had a long
5 record?

6 A They knew it, sir. They were --

7 Q I mean, how did they know that the person who
8 committed this crime had a long criminal record?

9 A They did not know that the person who committed
10 the crime had a long criminal record, but --

11 Q I didn't think they did.

12 A -- but based on their expertise -- the expertise
13 of a police officer in the 42nd Squad; a person with a narcotic
14 background; a person with a record for petty thefts; a person
15 who needed to make a score in order to support his habit, would
16 be more likely to commit a crime such as this in an elevator
17 at 3:00 o'clock in the morning that the President of the Chamber
18 of Commerce.

19 Q How many people in the Bronx fit that description?

20 A There are many people --

21 Q How many narcotics addicts do you have there?

22 A I can't give you -- my opinion, sir, there are
23 about 60,000 narcotic addicts in the City of New York, and we
24 have our fair share.

25 Q And a fair share of those commit crimes?

1 A A fair share --

2 Q What more cause did you have that this was
3 Morales?

4 A The evidence --

5 Q At the time of the arrest.

6 A -- the fact, sir, that he was not seen in his
7 usual haunts for a period of nine days subsequent to this
8 crime; that the mother stated at first that he was not in the
9 apartment; stated subsequently that he was in the apartment;
10 that a boy saw him sitting on a bench at the time that the crime
11 had been committed.

12 And I state further, sir, that when I use the term
13 arrest I equate it with seizure; I equate it with detention and
14 I state that the people or the state has the right to seize
15 someone when they have a reasonable basis or believing that
16 that person has information with respect to a crime. And, in
17 equating that with his Fourth Amendment rights we take into
18 consideration the entire totality of circumstances: the nature
19 of the crime that was committed; the state of the investigation;
20 the individual himself who has been seized; whether or not the
21 atmosphere of the stationhouse would be so coercive to such an
22 individual who was ring-wise, that he would not be able to
23 cope or would be so cowed that his statement that he would make
24 after being advised of his rights would not be voluntary; how
25 long he had been detained and certainly I believe that when one

1 is seized on the basis that he may reasonably have information
2 with regard to a crime that that detention can only be for a
3 short period of time, rather than for a lengthy period of time.

4 The extent of time that this man was seized, as far as
5 his statement concerning his complicity in this crime was
6 concerned, was from 10 to 15 minutes, sir.

7 And based on those facts, sir, I believe that under the
8 Fourth Amendment, recognizing that the standards applied by the
9 Fourth Amendment are flexible and variable; that the totality of
10 this situation warrants the action taken by the state.

11 Q When was he booked?

12 A Pardon, Mr. Justice?

13 Q When was he booked?

14 A He was booked the next morning.

15 Q When did he -- I thought you said he confessed all
16 of this ten minutes after his arrest.

17 A He did, Mr. Justice Marshall.

18 Q Why wasn't he booked then?

19 A He was not booked at that particular time because
20 at that time in the City of New York there was no 24-hour
21 arraignment and he could not be arraigned until the following
22 morning. He was questioned --

23 Q Well, when was he booked? Is booking arraignment,
24 or are they different?

25 A They are different. He was not --

1 Q He could have been booked that day.

2 A He could have been booked that night and he was
3 -- I just don't know; I just don't know that offhand. I do
4 know that prior to the time that he would be booked it is a
5 procedure that was established that an Assistant D.A. who
6 is on felony duty reports to the scene of the crime in order to
7 interrogate the individual, advise him of his rights, even
8 prior to Miranda; ascertain whether the police department has
9 also advised this individual of his rights in order to ascer-
10 tain the voluntariness of the statement which this individual
11 has given. That was done in this case.

12 Q Is that in all crimes, or just felonies or
13 homicides?

14 A That is felonies. All homicides and also impor-
15 tant felonies. That has been instituted in Bronx County before
16 I came up there as Chief Assistant.

17 Q Does this record show in any way how many narcotics
18 addicts lived in the particular building or apartment this man
19 and the victim lived?

20 A There is nothing in the record to so indicate.
21 There --

22 Q Does the record show how large an apartment it is;
23 how many units?

24 A The record does show that it was a 21-floor
25 apartment building and if I may just speak to my -- 21 floors.

1 We just don't know how many units?

2 Q It was a large apartment.

3 A Over 100 units. It was a large apartment house.

4 Q What was the defense at the trial, Mr. Roberts?

5 A The defense at the trial was alibi. And the
6 defense at the trial was that this confession which was offered
7 in evidence was not voluntary.

8 There was no defense that he was unreasonably detained.
9 In fact, there was a contention of the defense during the
10 course of this trial that this man was a suspect; that this man
11 was thought by these police officers to have committed this
12 crime. In fact, Defense Counsel did everything but state that
13 these officers had probable cause or reasonable basis for
14 believing in their own minds subjectively that this individual
15 had committed this crime.

16 Q Is the entire trial record in the Court here?

17 A Yes, sir.

18 Q How long is it?

19 A There are two volumes: 1340 pages.

20 I might -- may it please the Court, in the event that
21 you do not find that the guidelines established by Terry should
22 be adhered to in this case, though I certainly think that the
23 situation of Officer McFadden arresting --arresting Terry by
24 seizing him, preventing him from movement because he saw Terry
25 looking into various windows and talking to somebody and then

1 looking into these windows again. If that is appropriate
2 police action, and indeed, I do believe it is appropriate
3 police action, then certainly in this case where police officers
4 have interrogated numerous individuals; where they have a
5 reasonable basis for interrogating this individual, Melvin
6 Morales, and do, in fact interrogate him; and when Melvin
7 Morales has an opportunity to interpose his own free will, and
8 within ten minutes, readily admits and confesses to this crime
9 I respectfully submit that his Fourth Amendment rights have
10 not been violated.

11 Q How soon after the -- or how long before the
12 arrest -- I'll put it that way -- did the police discover that
13 he had not been coming to his home to sleep and was not around?

14 A I believe it was two days -- it was two days
15 thereafter they suddenly discovered that he was not around.

16 Q Presumably sometime after the person of Morales
17 description was identified as being near the entrance of the
18 building before or after the crime?

19 A That is correct, sir, Mr. Chief Justice.

20 Q And does the record indicate that after that the
21 police made inquiry of his mother or of other people in the
22 house, in the building?

23 A They made inquiry of his mother prior thereto.
24 They made inquiry of his mother due to the fact that they found
25 the brother, Snooky, in the hallway that same morning. They did

1 make inquiry of the mother following the description given to
2 them by Everett Roberts on three different occasions and went
3 to the house on three different --

4 Q He didn't live with his mother; did he?

5 A The record does not indicate whether he lived
6 with the mother. There is an indication from the record that
7 he did stay several times a week with his mother.

8 And according to the mother, he was with the mother on
9 the night of the murder; or was in that apartment on the night
10 of the murder, where the crime was committed. And this evidence
11 was known to the police prior to the time that they took Mr.
12 Morales into custody; or when he surrendered.

13 Q Did the mother and any testimony pinpoint how she
14 knew that he was in her apartment, the family apartment at 3:00
15 a.m. or whatever the time of this crime was?

16 A She stated that he was sleeping on the dining
17 room table at that particular time and that when the police
18 arrived at the apartment he was then sleeping on the table.
19 And this is refuted by one of the detectives, I believe Detec-
20 tive Teixeira, who testified that he walked through the apart-
21 ment and actually walked through this room and did not observe
22 anyone sleeping on the dining room table.

23 Q What did the alibi show about where he was during
24 the time of the murder?

25 A Pardon?

1 Q What was the alibi? You say he put up an alibi.
2 What was that alibi. Where was he testifying that he was at
3 that time?

4 A Mr. Justice Black, Mrs. Morales testified that
5 he was sleeping on the dining room table.

6 Q During the time of the murder?

7 A During the time of the murder and during the
8 whole evening; he was there.

9 And that during the time the police came to interro-
10 gate the mother -- the Morales family, and in particular,
11 Snooky, the brother, he was sleeping on the dining room table.

12 That is in the record.

13 Q And you say that the detective testified that when
14 he went through the apartment he did not see Morales anywhere
15 in the apartment?

16 A That is correct, Mr. Chief Justice.

17 Q And what time did the police go through the
18 apartment?

19 A I would say about 4:00 or 4:30 in the morning,
20 Mr. Chief Justice.

21 Q And then he was absent from that apartment for
22 nine or ten days thereafter?

23 A According to her he came to the apartment --

24 Q According to whom?

25 A According to Mrs. Morales, Mr. Chief Justice.

1 According to the detectives they did not see him at the apart-
2 ment; they did not see him at his usual haunts.

3 And Mrs. Morales stated that on the night in question,
4 or the early morning of October 4th, Mr. Chief Justice, that
5 the detectives did not enter the apartment. This was refuted
6 by the detectives who said they did enter the apartment and
7 went through the apartment and did not see Mr. Morales asleep
8 on the dining room table.

9 Q This has to do with the alibi defense, primarily;
10 doesn't it? This colloquy.

11 With respect to what's really an issue here, as I under-
12 stand it, and that is the Fourth Amendment claim, the mother
13 testified that she telephoned her son when the police told her
14 that they would like to interrogate her son; is that correct?

15 A That is correct, Mr. Justice Stewart.

16 Q And was he when she telephoned to him?

17 A The record does not indicate where he was at that
18 time, Mr. Justice Stewart.

19 Q He did not make his home regularly or all the time
20 permanently with his mother; did he?

21 A According to the record, he live there sporadi-
22 cally. He lived there two or three times a week and then lived
23 elsewhere.

24 Q And also visited her at her beauty shop, which was,
25 as I gather, in the vicinity; is that right?

1 A That is correct, Mr. Justice Stewart.

2 Q How far away from the apartment house was the
3 beauty shop?

4 A The record does not so indicate.

5 Q I should think, Mr. Roberts that when the police
6 came and the police detectives went through the apartment and
7 compared that with his mother's statement that he had been
8 there, this might have put them on notice of the suspicious
9 circumstance relating to Morales.

10 A Mr. Chief Justice, they were on notice. They
11 were --

12 Q You suggest that on this record they had a basis
13 even as early as that to suspect that Morales may have been one
14 of the people involved; or might be a person involved?

15 A Mr. Chief Justice, on that night they did not
16 know that he had been there. It was only subsequently when the
17 mother stated that her son Melvin was in the apartment, that
18 they were able to piece that together.

19 Q That's when they began to make inquiry about
20 seeing him; was it?

21 A They had made inquiry about seeing him prior
22 thereto, but they had made inquiry to the mother -- as soon as
23 they made inquiry to the mother about seeing him she then alibied
24 and stated that he was in the apartment; he wasn't outside the
25 apartment. He was here sleeping on the dining room table.

1 May it please the Court: Inthe event that this Court
2 finds that there was a violation of the Fourth Amendment rights
3 of this defendant, I respectfully submit it was attenuant.

4 MR. CHIEF JUSTICE: We will continue after lunch.

5 (Whereupon, at 12:00 o'clock p.m. the above-entitled
6 matter was recessed, to reconvene at 12:30 o'clock p.m. this
7 same day)

1 AFTERNOON SESSION

2 12:35 o'clock p.m.

3 MR. CHIEF JUSTICE BURGER: Mr. Roberts, you may pro-
4 ceed. You have approximately two minutes left.

5 MR. ROBERTS: Mr. Chief Justice, and may it please the
6 Court: As to the attenuation in the event finds that it was an
7 unreasonable seizure; in Miranda there was discussed the taint
8 of the coercive atmosphere of the stationhouse. And the Miranda
9 case decided that this could be moved by a full and fair
10 disclosure of Defendant's rights to silence and to counsel. By
11 identical reason, we contend here that the confession was not
12 the product of illegal custody, but was the result of this man
13 interposing his own free will and confessing to a detective of
14 his own choice: Detective Carroll. He refused to talk to
15 Detective Daum and insisted on talking to Detective Carroll, and
16 when Detective Carroll asked him whether he believed in God and
17 asked him whether or not between God and himself, did he commit
18 this crime, he stated that he did.

19 And I submit that there seems to coincide with the
20 State's theory that this is a voluntary surrender. The fact
21 that shortly after he was brought to the stationhouse he con-
22 fessed to this crime within ten minutes after he was questioned
23 by Detective Carroll.

24 In conclusion: the People submit that the seizure was
25 proper under the Fourth Amendment; that this man was seized, not

1 based on or primarily on the fact that he was a narcotics addict,
2 but based on the fact that he was present in the vicinity at the
3 time the crime was committed; that a false alibi had been given
4 for him by his mothers that he was not found in the usual
5 haunts; that he had a reputation of being a petty thief who had
6 numerous convictions and was known to have numerous convictions
7 by the detectives assigned to this case.

8 I respectfully submit that there was voluntary sur-
9 render in this case, and therefore the Fourth Amendment may not
10 even come into play in regard to the fact situation in a case
11 known as People of the State of New York against Morales.

12 Thank you very much.

13 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Roberts.

14 Mr. Farrell, you have five minutes left.

15 ORAL ARGUMENT BY RICHARD T. FARRELL, ESQ.

16 ON BEHALF OF PETITIONER

17 MR. FARRELL: Mr. Chief Justice and may it please the
18 Court: I would very briefly like to return the Court's atten-
19 tion to two items of testimony that appear in the record.

20 In spite of the intricate complex of facts upon which
21 the police officers might have operated to seize Morales, we
22 have summarized in our brief on Pages 13 and 14 and over to 15,
23 the facts upon which they actually did operate. They actually
24 operated on the slimmest of evidence; so slim that one police
25 officer, when asked whether Morales was a suspect or not, was

1 led to this remark: He said, "Was"--- he was asked was Morales
2 a suspect. After he was given a lead by the trial judge, the
3 officer said, "I concur with the judge, everybody is a suspect."
4 The reach of the police officers here -- it's not limited to
5 Melvin Morales -- but these petty officials, to borrow from
6 --- I was wrong, it was from James Otis's speech in 1761 --- the
7 police officers here, these petty officials, have in their
8 power to determine who is a suspect and we know now from the
9 police officers, who is a suspect. It is thee and me, Your
10 Honors.

11 And the second point to which I would like to address
12 the Court's attention was the attack on the admissibility of
13 Morales's confession was not an attempt to find a way around
14 otherwise overwhelming proof of guilt. Absent of Morales's
15 confessions, there is nothing to tie him to the crime committed
16 in this case.

17 As a matter of fact, the clothes that it is clear that
18 he was wearing on the night in question had been turned into a
19 cleaning establishment on October 5th. The woman in the clean-
20 ing establishment found no traces of blood on those clothes.
21 The police laboratory in examining those clothes, found no
22 traces of blood.

23 If Your Honors look at the pictures in the r of
24 the scene of the crime, there is blood on the floor; there is
25 blood on the wall; there is blood on the door. Morales's

1 clothes showed no signs of blood and it is the People's own
2 testimony that points to these clothes as the clothes as being
3 worn by Morales on the night the crime was supposed to have
4 been committed.

5 The only item of clothing missing was his shoes, but
6 his trousers -- if you look at the pictures in the record,
7 Your Honors, how his trousers could escape from being covered
8 with blood and gore; how his 31-stab-wound victim, or alleged
9 victim, could not have blood on him, entrenches upon almost a
10 lack of proof of guilt, beyond a reasonable doubt, absent these
11 confessions.

12 And Your Honors, as I think the Court well understands
13 our position is that the confessions are the produce of an
14 unlawful seizure and therefore, should be denied from use on
15 this trial.

16 Thank you, Your Honors.

17 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Farrell
18 for your submission, and thank you, Mr. Roberts for yours.
19 The case is submitted.

20 (Whereupon, at 12:43 o'clock p.m. the argument in the
21 above-entitled matter was concluded)
22
23
24
25