

## Supreme Court Says Police May Use Evidence Found After Illegal Stops

On June 20, 2016, the United State Supreme Court released its decision in *Utah v. Edward Strieff, Jr.*,<sup>1</sup> wherein it held that evidence is admissible even where an officer makes an unconstitutional investigatory stop when, during the stop, the officer learns that the individual has an outstanding arrest warrant, arrests the individual, and seizes the incriminating evidence as a result of a search incident to arrest.

### Background

In December 2006, Officer Fackrell investigated an anonymous tip to the South Salt Lake City Police Department's drug tip-line reporting "narcotics activity" at a particular residence. Over the course of a week, the officer conducted intermittent surveillance on the home, and observed visitors leaving within only a few minutes of arriving at the residence. These visits were of such frequency as to raise the officer's suspicion that the occupants of the residence were dealing drugs.

Officer Fackrell observed Edward Strieff exit the residence and walk to a nearby convenience store. In the store's parking lot, the officer detained Strieff, identified himself, and asked Strieff what he was doing at the residence. During the stop, Officer Fackrell requested Strieff's identification, which he produced. Police dispatch informed the officer that Strieff had an outstanding arrest warrant for a traffic violation. Officer Fackrell then arrested Strieff pursuant to the arrest warrant. When conducting a search incident to arrest, Officer Fackrell discovered a baggie of methamphetamine and drug paraphernalia.

### Procedural History

Strieff was charged with unlawful possession of methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence seized during the search, arguing that the evidence was obtained as a result of an unlawful investigatory stop. At the suppression hearing, the prosecutor conceded that Officer Fackrell lacked reasonable suspicion for the investigatory stop, but argued that the evidence should not be suppressed because the existence of the arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband.

The trial court admitted the evidence, finding that although the short time between the illegal stop and the search weighed in favor of suppressing the evidence, two countervailing considerations made it admissible. The trial court found that (1) the valid arrest warrant was an "extraordinary intervening circumstance," and (2) the court stressed the absence of flagrant misconduct on the part of the officer, who was conducting a legitimate investigation of suspected drug dealing.

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<sup>1</sup> 579 U.S. \_\_\_\_ (2016)

The Utah Supreme Court reversed the trial court, holding that the evidence was inadmissible because only a “voluntary act of a defendant’s free will (as in a confession or consent to search)” sufficiently breaks the connection between an illegal search and the discovery of evidence.

The United States Supreme Court granted certiorari to resolve disagreement between courts about how the “attenuation doctrine” applies where an unconstitutional detention leads to the discovery of a valid arrest warrant.

#### U.S. Supreme Court’s Holding

The United States Supreme Court reversed the Utah Supreme Court’s decision and held “that the evidence Officer Fackrell seized as part of his search incident to arrest is admissible because his discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to arrest.”

#### U.S. Supreme Court’s Reasoning

The Fourth Amendment protects individuals from unreasonable search and seizures. The exclusionary rule deters Fourth Amendment violations by excluding evidence in a criminal trial. The exclusionary rule includes both “primary evidence obtained as a direct result of an illegal search and seizure” and, “evidence later discovered and found to be derivative of an illegality.” This second principal is often referred to as “fruit of the poisonous tree.”

The U.S. Supreme Court recognizes, however, several exceptions to the exclusionary rule. One such exception, at issue in the present case, is the “attenuation doctrine,” which allows admissibility of evidence when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance. Here, the U.S. Supreme Court addressed whether “the discovery of a valid search warrant was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on Strieff’s person.”

The Court looked at three factors: (1) temporal proximity, (2) intervening circumstances, and (3) purpose and flagrancy of the police misconduct. (The Court noted that when evaluating these factors, it assumed without deciding (as the State conceded) that Officer Fackrell lacked reasonable suspicion to initially stop Strieff.)

The Court found that the first factor, temporal proximity between the unlawful stop and the search favored suppression of the evidence as Officer Fackrell discovered the evidence on Strieff’s person only minutes after the unlawful stop. The second factor, however, presence of intervening circumstances, weighed in favor of admitting the evidence. The Court reasoned that the arrest warrant was valid, it predated Officer’s Fackrell’s investigation into the residence, and was entirely unconnected to the investigatory stop. Once the officer was authorized to arrest Fackrell, it was lawful for him to conduct a search incident to lawful arrest, which led to the discovery of the illegal contraband. The third factor, purpose and flagrancy of the officer’s misconduct, always weighed in favor of admitting the evidence. As the exclusionary rule is meant to deter police misconduct, exclusion of evidence should occur only when the “police misconduct is most in need of deterrence—that, when it is purposeful or flagrant.”

The Court found that Officer Fackrell was at most negligent, and that he made two good faith mistakes. First, he did not observe Strieff enter the residence, so he lacked a sufficient basis to conclude that he was a short-term visitor participating in a drug transaction. Second, because he lacked confirmation that Strieff was a short-term visitor, the officer should have “asked” Strieff to speak with him, rather than demand it. The Court stated that nothing prevented Officer Fackrell from approaching Strieff “simply to ask.” The Court found, however, that Officer Fackrell’s actions following the unlawful stop were lawful, and the actual search was a lawful search incident to arrest. The Court further found that “neither the officer’s alleged purpose nor the flagrancy of the violation rise to the level of misconduct to warrant suppression.”

The Court held, therefore, that the evidence was admissible because the unlawful stop was sufficiently attenuated by the preexisting arrest warrant. The Court found that the discovery of the warrant “broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling Officer Fackrell to arrest Strieff.”

#### Dissent

The majority’s opinion, delivered by Justice Thomas, drew a fiery dissent from Justice Sonia Sotomayor, who said that “it is no secret that people of color are disproportionate victims of this type of scrutiny.” She wrote: “This case tells everyone, white and black, guilty and innocent, that an officer can verify your legal status at any time. It says that your body is subject to invasion while courts excuse the violation of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.” Justice Sotomayor’s dissenting opinion claims that the court had vastly expanded police power. “The court today holds that the discovery of a warrant for an unpaid parking ticket will forgive a police officer’s violation of your Fourth Amendment rights,” she wrote. “Do not be soothed by the opinion’s technical language: This case allows the police to stop you on the street, demand your identification and check it for outstanding traffic warrants — even if you are doing nothing wrong.”

#### Conclusion

The practical takeaway from this case is that this opinion will have very limited application in law enforcement operations. It is clear that there was no justifiable reason to stop Strieff, but after checking his identification an active arrest warrant was discovered. As his arrest was based on the active arrest warrant, and the admissibility of the evidence was based on a search incident to a valid arrest, this decision will only protect those searches where, after an unlawful stop, an active warrant is found. The lesson from this case is that officers must always ensure that the stop is lawful. If this officer had not discovered the existence of a valid arrest warrant, any evidence obtained during that unlawful stop would have been inadmissible. The existence of the active arrest warrant is what created the “intervening circumstances” so as to satisfy the “attenuation doctrine.” An active arrest warrant, however, will not always lurk in the background to save the day. If, however, officers conduct lawful stops, the admissibility of the evidence obtained as a result of that stop does not become an issue.

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