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UTAH v. STRIEFF: THE GRATUITOUS EXPANSION OF THE ATTENUATION DOCTRINE

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In *Utah v. Strieff*,[1] the United States Supreme Court assessed whether the prohibition on admitting evidence found through an illegal stop dissipates if the officer makes the stop, finds an outstanding warrant for the person's arrest, and then discovers incriminating evidence.[2] The Court held that the evidence seized by the officer following the unlawful stop was admissible because the discovery of the outstanding warrant "attenuated the connection" between the seizure and the police misconduct.[3] In reaching its judgment, however, the Court incorrectly equated its "intervening circumstances" analysis to that prescribed under the independent source doctrine,[4] ignoring the requirement that the intervening circumstance must be unforeseeable.[5] Furthermore, the Court erred in concluding that the officer's actions were merely negligent, and not "purposeful or flagrant."[6] This conclusion drastically broadens the attenuation doctrine and ignores the prime purpose of the exclusionary rule: the deterrence of unlawful police conduct.[7] The Court should have weighed the "intervening circumstances" factor and the "purpose and flagrancy" factor in favor of the Respondent, Mr. Strieff, and affirmed the lower court's decision to suppress the incriminating evidence.

I. THE CASE

In December of 2006, a caller left an anonymous tip reporting "narcotics activity" at a home in Salt Lake City, Utah.[8] In response, Officer Douglas Fackrell conducted "intermittent surveillance" of the house over the course

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1. 136 S. Ct. 2056 (2016).
2. *Id.* at 2059.
3. *Id.*
4. *Strieff*, 136 S. Ct. at 2062; *see also infra* Part IV.A.2.
5. *Strieff*, 136 S. Ct. at 2073 (Kagan, J., dissenting); *see also infra* Part IV.A.1.
6. *Strieff*, 136 S. Ct. at 2063; *see also infra* Part IV.B.
7. United States v. Calandra, 414 U.S. 338, 347 (1974); *see also infra* Part IV.B.
8. State v. Strieff, 357 P.3d 532, 536 (Utah 2015), *rev'd sub nom.* Utah v. Strieff, 136 S. Ct. 2056 (2016).

of a week,[9] during which he observed "short term traffic" frequent enough to raise his suspicion.[10] During Officer Fackrell's surveillance, he saw Edward Strieff leave the home and walk towards a convenience store.[11] Officer Fackrell approached Mr. Strieff, ordered him to stop in the parking lot, and requested his identification.[12] Mr. Strieff complied.[13] Officer Fackrell then called dispatch to run Mr. Strieff's identification and was informed of "a small traffic warrant" for Mr. Strieff.[14]

Upon learning of Mr. Strieff's outstanding warrant, Officer Fackrell arrested Mr. Strieff and searched his person, finding drug paraphernalia and a plastic baggie filled with methamphetamine.[15] Mr. Strieff was consequently charged for these possessions.[16] At trial, Mr. Strieff moved to suppress the evidence seized during the search, arguing that it was the "fruit of an unlawful investigatory stop."[17] While the State conceded that Officer Fackrell did not have reasonable suspicion to stop Mr. Strieff and, therefore, the stop was illegal, it argued that the exclusionary rule did not bar the evidence seized because the attenuation exception applied.[18] The district court agreed with the State's argument and denied Mr. Strieff's motion to suppress.[19] The court found that Officer Fackrell had initiated the stop for investigatory purposes, and although he lacked the reasonable suspicion to stop Mr. Strieff, the stop was not a blatant violation of the Forth Amendment, but rather a "good faith mistake."[20] The court then weighed all of the factors and found that suppression was not a suitable remedy, as the search was conducted after Officer Fackrell discovered a warrant for Mr. Strieff's arrest, "an intervening circumstance" that he "did not cause and could not have anticipated."[21] Upon the district court's denial of Mr. Strieff's motion, he entered a conditional guilty plea but reserved the right to take an appeal to challenge the trial court's denial of his motions to suppress and reconsider.[22] The Utah Court of Appeals affirmed the decision of the district court, agreeing that Officer Fackrell's discovery of the outstanding warrant was an intervening circumstance that

9. *Id.* Officer Fackrell conducted irregular surveillance of the residence over the course of one week, which amounted to around three hours of surveillance in total. *Id.*

10. *Id.* Officer Fackrell observed visitors entering the house and then leaving within a couple of minutes. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 536–37; *see also infra* Part II.B.4.

19. *Strieff*, 357 P.3d at 537.

20. *Id.*; *see also infra* Part II.B.3.

21. *Strieff*, 357 P.3d at 537.

22. *Id.*

removed the taint from the evidence that was subsequently found on Mr. Strieff's person.[23] Additionally, the court noted that Officer Fackrell's actions were not a purposeful attack on Mr. Strieff's Fourth Amendment rights.[24]

On appeal to the Supreme Court of Utah, the high court did not determine that the facts of *Strieff* were insufficient to meet the requirements of the attenuation doctrine, but rather, that the facts of *Strieff* did not implicate the attenuation doctrine at all.[25] The court reasoned that the attenuation doctrine is limited to cases "involving a defendant's independent acts of free will,"[26] recognizing that the Supreme Court traditionally applied the doctrine in cases where a defendant has freely given a statement or consented to a search following an unconstitutional search or seizure.[27] The court then applied the three-factor attenuation test first set out in *Brown v. Illinois*,[28] the results of which explained why the attenuation doctrine was not implicated by the discovery of an arrest warrant.[29] That test considers: (1) "the presence of 'intervening circumstances,'" (2) "the 'temporal proximity' of the unlawful detention and the discovery of incriminating evidence," and (3) the "'purpose and flagrancy' of the official misconduct."[30] The court first focused on the intervening circumstances factor, explaining that an intervening circumstance must be "sufficiently distinguishable" from the initial illegality.[31] The court also noted that an intervening circumstance must be an unforeseeable and independent event in order to cut off the causal connection between the unlawful act and subsequent discovery.[32] The court asserted that the discovery of an arrest warrant could never be an intervening circumstance, as "[i]t is

23. *Id.*

24. *Id.*

25. *Id.* at 544.

26. *Id.*

27. *Id.* at 545. The court relied on Supreme Court cases that involved a defendant giving a confession after "an initial unlawful arrest." *Id.* at 544; *see, e.g.*, Kaupp v. Texas, 538 U.S. 626, 633 (2003) (suppressing the defendant's murder confession after the State failed to allege "'any meaningful intervening event' between the illegal arrest and [the defendant's] confession" (quoting Taylor v. Alabama, 457 U.S. 687, 691 (1982))); Brown v. Illinois, 422 U.S. 590, 604–05 (1975) (finding that the defendant's statement, made less than two hours after the illegal arrest, lacked an intervening circumstance that would trigger the attenuation doctrine); Wong Sun v. United States, 371 U.S. 471, 491 (1963) (finding that the confession given by the defendant several days after his unlawful arraignment was not fruit of the poisonous tree, as the connection between the arrest and the defendant's confession had "become so attenuated as to dissipate the taint" (first quoting Nardone v. United States, 308 U.S. 338, 341 (1939); then quoting State v. Arroyo, 796 P.2d 684, 690 n.4 (Utah 1990)).

28. 422 U.S. 590 (1975).

29. *Strieff*, 357 P.3d at 544–45.

30. *Id.* at 541 (quoting Brown v. Illinois, 422 U.S. 590, 603–04 (1975)).

31. *Id.* at 544 (quoting Hudson v. Michigan, 547 U.S. 586, 592 (2006)).

32. *Id.* at 544–45.

part of the natural, ordinary course of events arising out of an arrest or detention."[33]

The court then turned to the temporal proximity factor, remarking that, usually, "an extended time lapse" supports a finding of attenuation.[34] The court asserted that applying the temporal proximity factor to a case involving the discovery of a warrant, however, "turn[s] the inquiry on its head," as it would incentivize the government to exchange one constitutional right for another.[35] The court explained that a significant time lapse between the initial unlawful detention and the warrant check would weigh in favor of the government in an attenuation doctrine analysis.[36] This time lapse, however, would be in direct conflict with the government's constitutional duty to avoid "unreasonable delay associated with an individual's detention by the government."[37] The court found that the temporal proximity factor could only apply in cases where there was an independent act perpetuated by the defendant, separate from the initial police misconduct, not in an instance where the officer searched for and discovered an outstanding warrant himself.[38] Turning to the final factor, the court found that the "purpose and flagrancy" factor was also ill suited for cases involving an outstanding warrant, because the factor considers how the offending officer's actions affected the defendant's arrest.[39] In particular, the court found that this factor was meant to evaluate whether the officer's conduct was "calculated to cause surprise, fright, and confusion."[40] The court determined that whether law enforcement's illegal arrest causes "surprise, fright, and confusion" is irrelevant to cases involving outstanding warrants.[41] The court ultimately held that the attenuation doctrine only applies to instances involving a defendant's "independent acts of free will" and that the doctrine is not applicable when an officer makes an unconstitutional stop and subsequently finds an outstanding warrant.[42]

The court then declared that when there are "two parallel acts of police work—one a violation of the Fourth Amendment (detention without reasonable suspicion) and the other perfectly legal (execution of an outstanding arrest warrant)," the inevitable discovery doctrine is implicated.[43] Even so, the

33. *Id.* at 545.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* (citing United States v. Sharpe, 470 U.S. 675, 686 (1985)).

38. *Id.*

39. *Id*.

40. *Id.* (quoting Brown v. Illinois, 422 U.S. 590, 605 (1975)).

41. *Id.* The court found that the use of actions meant to cause "surprise, fright, and confusion" were typically intended to illicit a confession from a defendant. *Id.*

42. *Id.*

43. *Id.* The court stated further: "[T]his exception exempts from exclusion evidence that is the but-for result of police misconduct but that also would inevitably have been produced by untainted police work." *Id.*

court found that under the inevitable discovery doctrine, suppression would still be necessary, as it would be impossible to determine if the Defendant would have been in possession of the contraband "on any future date on which he may have been arrested on the outstanding warrant."[44] The Supreme Court of Utah ultimately reversed the decision of the Utah Court of Appeals, granted Mr. Strieff's motion to suppress, and found that the attenuation doctrine was not an applicable exception to the exclusionary rule.[45] The Supreme Court of the United States granted certiorari to determine whether the "attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest."[46]

II. LEGAL BACKGROUND

The exclusionary rule is a tool used by the courts to protect citizens' rights guaranteed under the Fourth Amendment.[47] Specifically, the rule provides a remedy for evidence discovered through an unconstitutional search or seizure.[48] The rule's protections, while significant, are not limitless, and are applicable only when the benefits of excluding evidence seized in violation of the Fourth Amendment outweigh the costs.[49] Part II.A of this Note will review the implementation of the exclusionary rule in both federal and state courts and will explain the scope of the exclusionary rule.[50] Additionally, Part II.A will examine the purpose behind the exclusionary rule.[51] Part II.B of this Note will explore the exceptions to the exclusionary rule, where the Court has determined the costs of its implementation are too substantial.[52]

A. The Exclusionary Rule Forbids the Use of Evidence Obtained Though Unconstitutional Means Under the Fourth Amendment

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[53] In *Boyd v. United States*,[54] the

44. *Id.* at 546.
45. *Id.*
46. Utah v. Strieff, 136 S. Ct. 2056, 2059 (2016).
47. Boyd v. United States, 116 U.S. 616, 635 (1886).
48. Byars v. United States, 273 U.S. 28, 29–30 (1927).
49. Hudson v. Michigan, 547 U.S. 586, 591 (2006) (quoting Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 363 (1998)).
50. *See infra* Part II.A.
51. *See infra* Part II.A.
52. *See infra* Part II.B.
53. U.S. CONST. amend. IV.
54. 116 U.S. 616 (1886).

Supreme Court created a judicial remedy for Fourth Amendment violations with what is now known as the exclusionary rule.[55] Simply put, the exclusionary rule mandates that evidence obtained in violation of the Fourth Amendment is inadmissible in a criminal trial.[56] In *Weeks v. United States*,[57] the Court emphasized that the Fourth Amendment is moot without a judicial remedy in place[58] and that the protections of the Fourth Amendment are granted to all citizens, whether they are accused of a crime or not.[59]

The Court expanded the protections of the exclusionary rule in *Silverthorne Lumber Co. v. United States*,[60] holding that any evidence acquired as a result of the assistance of illegally obtained information is also inadmissible in a criminal trial.[61] The Court explained that the Fourth Amendment requires not only that evidence acquired through unconstitutional means shall not be used in court, "but that it shall not be used at all."[62] In *Segura v. United States*,[63] the Court elaborated, "the exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, but also evidence later discovered and found to be derivative of an illegality[,]" a doctrine now known as "fruit of the poisonous tree."[64] In *Mapp v. Ohio*,[65] the Supreme Court held that these restrictions apply equally in state courts, ruling that evidence obtained through the violation of the Fourth Amendment is inadmissible in state and federal courts alike.[66]

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55. *Id.* at 635.

56. Byars v. United States, 273 U.S. 28, 29–30 (1927). In *Byars*, the Court stated:

> A search prosecuted in violation of the Constitution is not made lawful by what it brings to light; and the doctrine has never been recognized by this Court, nor can it be tolerated under our constitutional system, that evidences of crime discovered by a federal officer in making a search without lawful warrant may be used against the victim of the unlawful search where a timely challenge has been interposed.

Id. (citing Agnello v. United States, 269 U.S. 20, 33 (1925); Gouled v. United States, 255 U.S. 298, 306 (1921); Amos v. United States, 255 U.S. 313 (1920); Silverthorne Lumber Co. v. United States, 251 U.S. 385, 391 (1920); Weeks v. United States, 232 U.S. 383, 393 (1914)).

57. 232 U.S. 383 (1914).

58. *Id.* at 393. In *Weeks*, the Court asserted:

> If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.

Id.

59. *Id.* at 392.

60. 251 U.S. 385 (1920).

61. *Id.* at 392.

62. *Id.*

63. 468 U.S. 796 (1984).

64. *Id.* at 804 (first citing Weeks v. United States, 232 U.S. 383, 398 (1914); then quoting Nardone v. United States, 308 U.S. 338, 341 (1939)).

65. 367 U.S. 643 (1961).

66. *Id.* at 655. The Supreme Court initially declined to apply the exclusionary rule to the states, assuming that each state had other means of protection, making the application to the states unnecessary. Wolf v. Colorado, 338 U.S. 25, 29–31 (1949).

The Supreme Court has viewed the exclusionary rule as a multipurpose tool that both deters unlawful police conduct and upholds judicial integrity.[67] In *Elkins v. United States*,[68] the Supreme Court noted that the rule was meant to "prevent, not to repair" injustices associated with the violation of Fourth Amendment rights.[69] According to the Court, the exclusionary rule's "purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it."[70] The Court has also emphasized the importance of the exclusionary rule as a limitation on courts that, when followed, upholds the protections guaranteed under the Fourth Amendment.[71] The Court stressed that the judiciary could not allow consideration of evidence obtained through violation of the Constitution without being "accomplices in willful disobedience of law."[72] Although the *Weeks* Court found that both deterrence and judicial integrity guided the exclusionary rule,[73] more recent cases have understated the judicial integrity justification and instead emphasized the deterrence rationale.[74] In *United States v. Calandra*,[75] for example, the Court has emphasized that the "prime purpose" of the exclusionary rule "is to deter future unlawful police conduct."[76] In *Davis v. United States*,[77] the Court went as far to say that the "sole purpose" of the exclusionary rule "is to deter future Fourth Amendment violations"[78] and emphasized that in cases "[w]here suppression fails to yield 'appreciable deterrence,' exclusion is 'clearly . . . unwarranted.'"[79]

B. Exceptions to the Exclusionary Rule

While the Court has recognized the exclusionary rule's "broad deterrent purpose," it has still noted that the rule was never meant to forbid "the use of

67. Wong Sun v. United States, 371 U.S. 471, 486 (1963). The Court in *Wong Sun* found that the policies underlying the exclusionary rule were "deterring lawless conduct by federal officers" and "closing the doors of the federal courts to any use of evidence unconstitutionally obtained." *Id.* (first citing Rea v. United States, 350 U.S. 214 (1956); then citing Elkins v. United States, 364 U.S. 206 (1960)).

68. 364 U.S. 206 (1960).

69. *Id.* at 217.

70. *Id.*

71. Weeks v. United States, 232 U.S. 383, 391–92 (1914).

72. McNabb v. United States, 318 U.S. 332, 345 (1942).

73. *Weeks*, 232 U.S. at 391–92.

74. *See* United States v. Calandra, 414 U.S. 338 (1974); *see also* Davis v. United States, 564 U.S. 229 (2011).

75. 414 U.S. 338 (1974).

76. *Id.* at 347.

77. 564 U.S. 229 (2011).

78. *Id.* at 236–37.

79. *Id.* at 237 (quoting United States v. Janis, 428 U.S. 433, 454 (1976)). The Court acknowledged the heavy toll associated with the application of the exclusionary rule, namely the release of criminals without just punishment through the suppression of otherwise reliable evidence. *Id.*

illegally seized evidence in all proceedings or against all persons."[80] The Supreme Court has acknowledged the "substantial social costs"[81] of the exclusionary rule, finding that the "[s]uppression of evidence . . . has always been our last resort, not our first impulse."[82] Consequently, the Court has deemed the exclusionary rule to be "applicable only . . . 'where its deterrence benefits outweigh its substantial social costs.'"[83] Consistent with this consideration, the Court has laid out several specific exceptions to the exclusionary rule in circumstances where the social costs of not admitting the illegally seized evidence outweigh the deterrence benefits.[84] Pertinent here are the independent source doctrine, inevitable discovery doctrine, good faith exception, and attenuation doctrine.

1. Independent Source Doctrine

In *Nix v. Williams*,[85] the Supreme Court declared that "[t]he independent source doctrine allows admission of evidence that has been discovered by means wholly independent of any constitutional violation."[86] The Court explained that the public interest in both "deterring unlawful police conduct" and providing juries with "all probative evidence of a crime are properly balanced by putting the police in the same, not a *worse*, position that [sic] they would have been in if no police error or misconduct had occurred."[87] The *Nix* Court found that the exclusion of evidence that came from an independent source, entirely unconnected to any purported Fourth Amendment violation, "would put the police in a worse position than they would have been in absent any error or violation."[88] Ultimately, the independent source doctrine turns on the primary purpose of the exclusionary rule: deterrence of police misconduct.[89] In *Murray v. United States*,[90] the Court concluded that when evidence is "'wholly independent of' the constitutional violation, then exclusion arguably will have no effect on a law enforcement officer's incentive to commit an unlawful search," and, therefore, the evidence should not be excluded.[91]

80. *Calandra*, 414 U.S. 338 at 348.

81. Hudson v. Michigan, 547 U.S. 586, 591 (2006) (quoting United States v. Leon, 468 U.S. 897, 907 (1984)).

82. *Id.*

83. *Id.* (quoting Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 363 (1998)).

84. *See supra* Part II.B.1–4.

85. 467 U.S. 431 (1984).

86. *Id.* at 443.

87. *Id.*

88. *Id.*

89. Murray v. United States, 487 U.S. 533, 544–45 (1988) (Marshall, J., dissenting).

90. 487 U.S. 533 (1988).

91. *Id.* at 545 (Marshall, J., dissenting) (quoting *Nix*, 467 U.S. at 443).

2. Inevitable Discovery Doctrine

The inevitable discovery doctrine is similar to the independent source doctrine, as it also seeks to prevent the government from being in a worse position than it would have been absent the police error or misconduct.[92] The Supreme Court first adopted the inevitable discovery doctrine in *Nix v. Williams*.[93] The Court again turned to the primary purpose of the exclusionary rule in its holding—deterrence of police misconduct—to find that if the evidence ultimately "would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received."[94] The Court concluded "[e]xclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial."[95] The Court ultimately held that when "the evidence in question would inevitably have been discovered without reference to the police error or misconduct," that evidence should not be suppressed.[96]

3. Good Faith Exception

The good faith exception to the exclusionary rule was established through two companion cases and, again, focused on the deterrence of police misconduct.[97] In *United States v. Leon*,[98] the Court restated, the "deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right."[99] The Court then noted that because of the deterrent purpose behind the exclusionary rule, "evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."[100] This exception has traditionally been applied in cases where the constitutional violation

92. *Nix*, 467 U.S. at 443–44.

93. *Id.* at 440–41, 444. In *Nix v. Williams*, the defendant led local police to the remains of a missing girl after making an incriminating statement that was illegally obtained. *Id.* at 435–36. The Court held that the evidence would not be suppressed because the search party would have inevitably discovered the girl's body had their search continued. *Id.* at 449–50.

94. *Id.* at 444.

95. *Id.* at 446.

96. *Id.* at 448.

97. *See* United States v. Leon, 468 U.S. 897, 921 (1984) (finding that "[p]enalizing [an] officer for [a] magistrate judge's error cannot logically contribute to the deterrence of Fourth Amendment violations"); Massachusetts v. Sheppard, 468 U.S. 981, 990–91 (1984) (noting that suppressing evidence because of a magistrate judge's clerical errors "will not serve the deterrent function that the exclusionary rule was designed to achieve").

98. 468 U.S. 897 (1984).

99. *Id.* at 919 (quoting United States v. Peltier, 422 U.S. 531, 539 (1975)).

100. *Id.* (quoting *Peltier*, 422 U.S. 531 at 539).

was in response to an error made by someone other than the offending officer.[101] In instances where the offending officer has acted in good faith, the Court has held, "the marginal or nonexistent benefits produced by suppressing evidence obtained . . . cannot justify the substantial costs of exclusion."[102]

4. Attenuation Doctrine

The exclusionary rule exception at issue in *Utah v. Strieff* was the attenuation doctrine.[103] Under the attenuation doctrine, evidence is admissible when the connection between the discovery of the evidence and the unconstitutional misconduct has become "so attenuated as to dissipate the taint" of the misconduct.[104] In *Wong Sun v. United States*,[105] the Court found that evidence is not considered "'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police."[106] Instead, the Court must assess whether the evidence in question was discovered through the exploitation of the unlawful police conduct, or instead, by "sufficiently distinguishable" means.[107] In *Brown v. Illinois*,[108] for example, the Court evaluated whether the use of *Miranda* warnings was enough to dissipate the taint of a confession obtained after an illegal arrest.[109] The Court found that the police officer's use of *Miranda* warnings alone could not attenuate the connection between the officer's unconstitutional arrest of the defendant and the defendant's subsequent confession.[110] In reaching its holding, the Court proposed a three-factor test to determine whether sufficient attenuation exists: (1) the "temporal proximity" between the unlawful police conduct and the discovery of the challenged evidence,[111] (2) "the presence of intervening circumstances,"[112] and (3) "the purpose and flagrancy of the official misconduct."[113]

101. *See generally* Arizona v. Evans, 514 U.S. 1 (1995). In *Arizona v. Evans*, an officer pulled over the defendant for a traffic violation, ran his name, and found an outstanding warrant for his arrest. *Id.* at 4. The officer then arrested the defendant and located drugs on his person. *Id.* After the arrest, it was discovered that the outstanding warrant had been quashed and was no longer valid. *Id.* The Court still determined that the evidence was admissible because its suppression would not have any significant deterrence effect. *Id.* at 14–15.

102. *Leon*, 468 U.S. at 922.

103. Utah v. Strieff, 136 S. Ct. 2056, 2061 (2016).

104. Nardone v. United States, 308 U.S. 338, 341 (1939).

105. 371 U.S. 471 (1963).

106. *Id.* at 487–88.

107. *Id.* at 488 (quoting JOHN MACARTHUR MAGUIRE, EVIDENCE OF GUILT: RESTRICTIONS UPON ITS DISCOVERY OR COMPULSORY DISCLOSURE 221 (1959)).

108. 422 U.S. 590 (1975).

109. *Id.* at 591–92.

110. *Id.* at 604–05.

111. *Id.* at 603 (citing United States v. Owen, 492 F2d 1100, 1107 (5th Cir. 1974), *cert. denied*, 419 U.S. 965 (1974) (mem.)).

112. *Id.* at 604 (citing Johnson v. Louisiana, 406 U.S. 356, 365 (1972)).

113. *Id.* (citing Wong Sun v. United States, 371 U.S. 471, 491 (1963)).

Ultimately, the Supreme Court offered these four separate exceptions to the exclusionary rule to highlight the "prime purpose" of the rule: the deterrence of unlawful police conduct.[114] While the Court's precedent has valued the protections guaranteed under the Fourth Amendment, it has also acknowledged the balance between those protections and the need for a fair and thorough criminal justice system.[115] Under these four exceptions to the exclusionary rule, the Court has found that the "substantial social costs" outweigh any deterrence benefits.[116]

III. THE COURT'S REASONING

In *Utah v. Strieff*, the Supreme Court reversed the Supreme Court of Utah's decision, holding that the incriminating evidence seized from Mr. Strieff following his arrest was "admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized."[117] The Court first noted that the scope of the exclusionary rule includes "both the 'primary evidence obtained as a direct result of an illegal search or seizure'" and, relevant in this case, evidence discovered using knowledge gained through an illegal search or seizure, also known as "fruit of the poisonous tree."[118] The Court then acknowledged the significant costs associated with the exclusionary rule, deeming it appropriate only "where its deterrence benefits outweigh its substantial social costs."[119] As a result, evidence should not be suppressed under the exclusionary rule when the causal connection between the unlawful search or seizure and the discovery of the evidence is broken by an intervening circumstance.[120] The Court specifically noted that in such a case, the interests protected by the Fourth Amendment "would not be served by [suppressing] the evidence obtained."[121]

The Court first evaluated whether the attenuation doctrine applied and, more generally, whether the doctrine is implicated in cases involving the discovery of a pre-existing arrest warrant.[122] The Court rejected the Supreme Court of Utah's assertion that the attenuation doctrine only applies to cases "involving an independent act of a defendant's 'free will' in confessing to a

114. United States v. Calandra, 414 U.S. 338, 347 (1974).
115. Nix v. Williams, 467 U.S. 431, 443 (1984).
116. *See supra* Part II.B.
117. 136 S. Ct. 2056, 2059 (2016).
118. *Id.* at 2061 (quoting Segura v. United States, 468 U.S. 796, 804 (1984)).
119. *Id.* (quoting Hudson v. Michigan, 547 U.S. 586, 591 (2006)).
120. *Id.*
121. *Id.* (quoting *Hudson*, 547 U.S. 586 at 593).
122. *Id.*

crime or consenting to a search."[123] Instead, the Court found that the attenuation doctrine more broadly examines the causal connection between the unconstitutional police conduct and the discovery of the evidence at issue, a connection that does not require an independent act of a defendant.[124] Thus, the attenuation doctrine may apply in circumstances involving the discovery of a pre-existing warrant.[125] Upon reaching this preliminary conclusion, the Court applied the three-factor test articulated in *Brown*.[126] The Court concluded that although the temporal proximity of the illegal stop and the search weighed in favor of suppressing the evidence, countervailing considerations supported the conclusion that the evidence was admissible under the attenuation doctrine.[127]

On the first *Brown* prong, the Court considered the temporal proximity between the illegal stop and the discovery of the evidence on Mr. Strieff's person.[128] The *Strieff* Court reasoned that the temporal proximity factor will support the suppression of the evidence unless a "'substantial time' elapses between an unlawful act and when the evidence is obtained."[129] The Court noted that Officer Fackrell discovered the methamphetamine and drug paraphernalia only minutes after Mr. Strieff was illegally stopped, and this short time frame favored suppressing the evidence that was discovered during the search.[130]

The Court then addressed the second attenuation doctrine factor, the "presence of intervening circumstances," and found that Officer Fackrell's discovery of Mr. Strieff's outstanding warrant was an intervening circumstance that attenuated the causal connection between the unconstitutional police conduct and the discovery of the incriminating evidence.[131] The Court compared the discovery of the outstanding warrant to the facts at issue in *Segura v. United States*, where agents of the state sought a warrant and, while waiting for that warrant, illegally entered the apartment to conduct a security sweep.[132] While inside the apartment, the agents "discovered evidence of drug activity."[133] The next day, a judge issued a search warrant for the apartment.[134] The Supreme Court held that the evidence of the drug activity was

123. *Id.* (quoting State v. Strieff, 357 P.3d 532, 544 (Utah 2015), *rev'd sub nom.* Utah v. Strieff, 136 S. Ct. 2056 (2016)).

124. *Id.*

125. *Id.*

126. *Id.* at 2061–62 (citing Brown v. Illinois, 422 U.S. 590, 603–04 (1975)).

127. *Id.* at 2063.

128. *Id.* at 2062.

129. *Id.* (quoting Kaupp v. Texas, 538 U.S. 626, 633 (2003)).

130. *Id.*

131. *Id.*

132. *Id.* (citing Segura v. United States, 468 U.S. 796, 800–01 (1984)).

133. *Id.* (citing *Segura*, 468 U.S. at 800–01).

134. *Id.*

admissible because the information that the agents used to obtain the legal search warrant was known before they entered the apartment and was unconnected to the initial illegal entry.[135] The *Strieff* majority acknowledged that the *Segura* Court applied the independent source doctrine, and not the attenuation doctrine, but still found that the decision "suggested that the existence of a valid warrant favors finding that the connection between unlawful conduct and the discovery of evidence is 'sufficiently attenuated to dissipate the taint.'"[136] The Court reasoned that Mr. Strieff's warrant was issued prior to Officer Fackrell's investigation, and thus, the issuance was unrelated to this investigation.[137] Additionally, the Court noted that "once Officer Fackrell discovered the warrant, he had an obligation to arrest Strieff."[138] The Court found that following Mr. Strieff's arrest, it was completely lawful for Officer Fackrell to search Mr. Strieff as a means of protecting the officer's safety.[139]

The Court then turned to the final factor, which considers "the purpose and flagrancy of the official misconduct."[140] The Court noted that the purpose of the exclusionary rule is to deter police misconduct and that police misconduct involving purposeful or flagrant actions is when deterrence is most needed.[141] The Court determined that Officer Fackrell's actions were negligent at most and not purposeful or flagrant, finding that he only made two good-faith mistakes.[142] First, Officer Fackrell did not see Mr. Strieff enter the "suspected drug house," only exit it.[143] Therefore, Officer Fackrell lacked a sufficient basis to conclude that Mr. Strieff was a "short-term visitor" there to complete a drug transaction.[144] Second, because there was insufficient information to suggest that Mr. Strieff was a "short-term visitor," Officer Fackrell should have only requested to speak with Mr. Strieff instead of demanding it,[145] as he was simply trying to investigate what was happening inside the house.[146] Despite the faults in Officer Fackrell's conduct, the Court determined that these faults did not amount to "a purposeful or flagrant violation of Strieff's Fourth Amendment rights."[147] The Court found that

135. *Id.* (citing *Segura*, 468 U.S. at 814).
136. *Id.* (quoting *Segura*, 468 U.S. at 815).
137. *Id.*
138. *Id.*
139. *Id.* at 2063.
140. *Id.* (quoting Brown v. Illinois, 422 U.S. 590, 604 (1975)).
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*

"[w]hile Officer Fackrell's decision to initiate the stop was mistaken, his conduct thereafter was lawful."[148] Additionally, the majority found that there was "no indication that this unlawful stop was part of any systemic or recurrent police misconduct" and instead found that it was "an isolated instance of negligence."[149] After applying all three factors, the Court held that the evidence Officer Fackrell found on Mr. Strieff's person was admissible, because the discovery of the arrest warrant attenuated the connection between the unconstitutional stop and the incriminating evidence.[150] The Court found that although the temporal proximity factor weighed in favor of suppression, it was offset by the other two factors.[151] Ultimately, the Court held that the discovery of the pre-existing arrest warrant was an intervening circumstance and that there was "no evidence that Officer Fackrell's illegal stop reflected flagrantly unlawful police misconduct."[152]

Justice Sotomayor filed a dissenting opinion criticizing the majority's holding, which she characterized as permitting "the discovery of a warrant for an unpaid parking ticket [to] forgive a police officer's violation of [a person's] Fourth Amendment rights."[153] Justice Sotomayor reasoned that admitting this evidence "would tell officers that unlawfully discovering even a 'small traffic warrant' would give them license to search for evidence of unrelated offenses."[154] Justice Sotomayor noted that an officer breaches the protections guaranteed under the Fourth Amendment when he detains a citizen to run a warrant check without reasonable suspicion[155] and then "deepens the breach when he prolongs the detention just to fish further for evidence of wrongdoing."[156] She rejected the argument that the officer's actions should have been forgiven simply because his instincts were correct,[157] noting "[w]hen 'lawless police conduct' uncovers evidence of lawless civilian conduct,"[158] the Supreme Court has mandated that criminal courts suppress the unlawfully obtained evidence.[159]

Justice Sotomayor then explored the policy issues that could arise from this decision arguing that the exclusionary rule "removes [the] incentive for officers to search us without proper justification."[160] She also acknowledged

148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.* at 2064 (Sotomayor, J., dissenting).
154. *Id.* at 2065.
155. *Id.*
156. *Id.* (citing Rodriguez v. United States, 135 S. Ct. 1609 (2015)).
157. *Id.*
158. *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 12 (1969)).
159. *Id.*
160. *Id.* (citing *Terry*, 392 U.S. at 12).

the other well-known purpose of the rule: to uphold judicial integrity and to keep the courts from sanctioning a police officer's encroachment on a person's Fourth Amendment rights.[161] Justice Sotomayor noted that by admitting unlawfully obtained evidence, courts are rewarding a police officer's "manifest neglect if not open defiance" of the protections of the Constitution.[162]

Justice Sotomayor went on to apply the factors articulated in *Brown v. Illinois*, rejecting the majority's conclusion that when looked at in totality, the factors weigh in favor of the State and the admission of the evidence.[163] Justice Sotomayor agreed that the temporal proximity factor weighed in favor of Mr. Strieff, as Officer Fackrell stopped Mr. Strieff "and immediately ran a warrant check."[164] Still, she argued that the "discovery of a warrant was not some intervening surprise that [Officer Fackrell] could not have anticipated" as there is an exceedingly large "backlog of outstanding warrants" in Salt Lake County, Utah.[165] Justice Sotomayor also asserted that Officer Fackrell stopped Mr. Strieff for the sole purpose of procuring evidence, describing Officer Fackrell's stop as an "expedition for evidence in the hope that something might turn up."[166] Ultimately Justice Sotomayor concluded that the drugs should have been excluded as Officer Fackrell found them "by exploiting his own constitutional violation,"[167] she reasoned, "[t]he officer found the drugs only after learning of Strieff's traffic violation; and he learned of Strieff's traffic violation only because he unlawfully stopped Strieff to check his driver's license."[168]

Justice Kagan also wrote a dissenting opinion, recognizing that "[t]he exclusionary rule serves a crucial function—to deter unconstitutional police conduct" but acknowledged that the "suppression of evidence also 'exacts a heavy toll,'" with consequences including the "release of criminals without just punishment."[169] Subsequently, Justice Kagan reasoned that there must be "sound balance between those two competing considerations," applying

161. *Id.*

162. *Id.* at 2065–66 (quoting Weeks v. United States, 232 U.S. 383, 394 (1914)).

163. *Id.* at 2066.

164. *Id.*

165. *Id.* (citing DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2014 (2015), https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf).

166. *Id.* (quoting Brown v. Illinois, 422 U.S. 590, 605 (1975)).

167. *Id.* at 2066–67.

168. *Id.* at 2066.

169. *Id.* at 2071 (Kagan, J., dissenting) (quoting Davis v. Unites States, 564 U.S. 229, 237 (2011)).

the exclusionary rule only when the suppression of evidence will lead to substantial deterrence of unlawful state action.[170] In balancing these two considerations, Justice Kagan turned to the three factors articulated in *Brown v. Illinois*.[171] While Justice Kagan agreed with the majority's conclusion that the temporal proximity factor weighed in favor of Mr. Strieff, she differed from the majority's finding that Officer Fackrell's actions were not purposeful or flagrant.[172] Justice Kagan instead stated that "the seizure of Strieff was a calculated decision, taken with so little justification that the State has never tried to defend its legality."[173] Finally, Justice Kagan, in evaluating the "intervening circumstance" factor, found that in order for an occurrence to be intervening, it must be unforeseeable.[174] Justice Kagan made clear that Officer Fackrell's discovery of Mr. Strieff's outstanding warrant could not be intervening because checking for outstanding warrants is part of Salt Lake City's normal detention procedure, and these checks often result in the discovery of arrest warrants.[175] Ultimately, Justice Kagan found that all three *Brown* factors required the suppression of the evidence.[176] In closing, she argued that the majority's misapplication of the test, in fact, incentivizes an officer to violate the Fourth Amendment of the Constitution by stopping an individual without reasonable suspicion, as the stop could yield admissible evidence.[177]

IV. ANALYSIS

In *Utah v. Strieff*, the Supreme Court evaluated "whether the prohibition on admitting evidence [obtained through an illegal stop] dissolves if the officer discovers, after making the stop but before finding the [evidence], that the person has an outstanding arrest warrant."[178] The Court ultimately held that the evidence "seized as part of the search incident to arrest is admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest."[179] In coming to this conclusion, the Court applied the three-factor test for the attenuation doctrine articulated in *Brown v. Illinois*.[180] The Court's reasoning in this case is flawed, as it misinterpreted the "intervening circumstances"

170. *Id.* (first citing *Davis*, 564 U.S. at 238; then citing Herring v. United States, 555 U.S. 135, 141 (2009)).
171. *Id.* at 2071–72.
172. *Id.* at 2072.
173. *Id.*
174. *Id.* at 2073.
175. *Id.*
176. *Id.* at 2072.
177. *Id.* at 2073–74.
178. *Id.* at 2071.
179. *Id.* at 2059 (majority opinion).
180. *Id.* at 2061–62.

factor from *Brown*[181] by equating it to the independent source doctrine[182] and ignored the requirement of unforeseeability.[183] Furthermore, the Court erred in concluding that Officer Fackrell's conduct was merely "negligent," and, in doing so, disregarded the prime purpose of the exclusionary rule: deterrence of "unlawful police conduct."[184] The Court's holding in *Strieff* has significantly broadened the scope of the attenuation doctrine, which has the effect of narrowing the application of the exclusionary rule and the protections guaranteed under the Fourth Amendment.

A. The Court Incorrectly Applied the "Intervening Circumstances" Factor

In reaching its holding, the *Strieff* Court strongly relied on the second factor articulated in *Brown v. Illinois*: "the presence of intervening circumstances."[185] The Court determined that this factor weighed heavily in favor of the state, and the discovery of a pre-existing warrant is an intervening circumstance that attenuates the causal relationship between the illegal stop and the evidence found.[186] In reaching this conclusion, the Court compared the facts relevant to the "intervening circumstances" analysis in Mr. Strieff's case to the facts in *Segura v. United States*, a case where the Court applied a different exception to the exclusionary rule: the independent source doctrine.[187] The Court found that the pre-existence of Mr. Strieff's warrant compelled Officer Fackrell to arrest him, an event unrelated to the initial illegal stop.[188] The Court's analysis of the "intervening circumstances" factor in *Strieff* was flawed because it disregarded the true intention of the attenuation doctrine[189] and incorrectly compared the intervening circumstances factor to the independent source doctrine.[190]

1. The Court Ignored the Correct Meaning of "Intervening Circumstance"

The *Strieff* majority plainly stated that the discovery of an outstanding warrant was enough to meet the threshold of what constitutes an "intervening circumstance."[191] In reaching this decision, however, the Court ignored the

181. *See infra* Part IV.A.1.
182. *See infra* Part IV.A.2.
183. *See infra* Part IV.A.1.
184. United States v. Calandra, 414 U.S. 338, 347 (1974); *see infra* Part IV.B.
185. *Strieff*, 136 S. Ct. at 2062–63.
186. *Id.* at 2062 (citing Segura v. United States, 468 U.S. 796, 805 (1984)).
187. *Id.* at 2062–63.
188. *Id.*
189. *See infra* Part IV.A.1.
190. *See infra* Part IV.A.2.
191. *Strieff*, 136 S. Ct. at 2062.

primary inquiry under the attenuation doctrine: whether the evidence at issue has been discovered through the "exploitation of [an] illegality or instead by means sufficiently distinguishable to be purged of the primary taint."[192] The Court's application of the attenuation doctrine—and more specifically, the "intervening circumstance" factor—has strayed so far from this primary inquiry that it no longer serves the intended purpose of the exclusionary rule "to deter future unlawful police conduct."[193]

The Court's divergence from the original meaning of "intervening circumstances" becomes clear when analyzing the *Strieff* holding in light of the Court's precedent. Although the attenuation cases that followed *Brown* did not apply the three-factor test that *Brown* initially proposed,[194] the Court's application of the "intervening circumstances" factor can still be critiqued by looking at the case from which the three factors were derived: *Wong Sun v. United States*.[195] In *Wong Sun*, the Court first assessed the facts surrounding the arrest of the defendant, James Wah Toy, who gave a statement to the police following his illegal arrest that led the police to a second target, Johnny Yee.[196] Upon Yee's arrest, the police found heroine at his place of residence; however, the Court noted that "Toy's illegal arrest led directly to his statements implicating Yee, which led directly to the discovery of the drugs."[197] The Court rejected the State's notion that Toy's statement was an intervening circumstance,[198] and instead held that the narcotics must be suppressed because they "were 'come at by the exploitation of [the police's] illegality.'"[199]

The Court then turned its attention to another defendant, Wong Sun, who was illegally arrested in his home after Yee and Toy made statements implicating him.[200] After Wong Sun's arrest and arraignment, he was released on his own recognizance and then voluntarily returned to the police station several days later to give a statement.[201] Although the Court was unable to determine what events transpired between Wong Sun's release and subsequent return to the police station, it still held that the statement was admissible, as "the connection between the [illegal] arrest and the statement had

192. Wong Sun v. United States, 371 U.S. 471, 488 (1963) (quoting MAGUIRE, *supra* note 107, at 221).

193. United States v. Calandra, 414 U.S. 338, 347 (1974).

194. Orin Kerr, *Opinion Analysis: The Exclusionary Rule is Weakened but it Still Lives*, SCOTUSBLOG (June 20, 2016, 9:35 PM), http://www.scotusblog.com/2016/06/opinion-analysis-the-exclusionary-rule-is-weakened-but-it-still-lives/#more-244171.

195. 371 U.S. 471 (1963).

196. *Id.* at 474–75.

197. RIC SIMMONS & RENÉE MCDONALD HUTCHINS, LEARNING CRIMINAL PROCEDURE 651 (2014) (citing *Wong Sun*, 371 U.S. at 488).

198. *Wong Sun*, 371 U.S. at 487.

199. *Id.* at 488 (quoting MAGUIRE, *supra* note 107, at 221).

200. *Id.* at 475.

201. *Id.* at 475–76.

'become so attenuated as to dissipate the taint.'"[202] These two examples illustrate the error committed by the *Strieff* majority in applying the "intervening circumstances" factor. As in the first example in *Wong Sun*, where the illegal conduct of the officer led directly to the discovery of the heroine,[203] Officer Fackrell's illegal stop of Mr. Strieff led directly to his discovery of the outstanding warrant, which led, in turn, directly to the discovery of the drugs.[204] Although *Wong Sun* demonstrated that an intervening circumstance does not always need to be palpable, the Court here inserted an intervening circumstance where none existed.

The *Strieff* majority, however, ignored the fact that the warrant would not have been discovered if not for Officer Fackrell's illegal actions and claimed that the mere existence of the outstanding warrant was enough to constitute an intervening circumstance.[205] This logical jump discounts the key detail that Officer Fackrell "discovered Strieff's drugs by exploiting his own illegal conduct,"[206] the exact type of transgression that the exclusionary rule is designed to prevent.[207] The Court's focus "on the *existence* of the warrant prior to the stop . . . seemed somewhat to obscure the fact that the *discovery* of the warrant . . . seemed to follow quite naturally from the deliberate actions of the officer[,]"[208] an obscurity that allows an officer to create his own intervening circumstance.

Additionally, as Justice Kagan pointed out in her dissent, a circumstance is considered intervening only if it is unforeseeable.[209] In this case, Officer Fackrell made the illegal stop and then immediately called a police dispatcher to run a warrant check.[210] The subsequent discovery of the warrant "was not some intervening surprise that [Officer Fackrell] could not have anticipated."[211] Instead, it was a result of the normal procedure that police officers in South Salt Lake City follow.[212] Given Utah's exceptional number of outstanding warrants, Officer Fackrell's discovery of Mr. Strieff's outstanding

202. *Id.* at 491 (quoting Nardone v. United States, 308 U.S. 338, 341 (1939)).

203. SIMMONS & HUTCHINS, *supra* note 197, at 651.

204. Utah v. Strieff, 136 S. Ct. 2056, 2066 (2016) (Sotomayor, J., dissenting).

205. *Id.* at 2067.

206. *Id.* at 2066.

207. *Id.* at 2071 (Kagan, J., dissenting).

208. Sherry F. Colb, *A Potential Landmine in Waiting in* Utah v. Strieff, VERDICT (June 28, 2016), https://verdict.justia.com/2016/06/28/potential-landmine-waiting-utah-v-strieff.

209. *Strieff*, 136 S. Ct. at 2072–73 (Kagan, J., dissenting). The concept of an intervening circumstance "comes from the tort law doctrine of proximate causation" and "in the tort context, a circumstance counts as intervening only when it is unforeseeable—not when it can be seen coming from miles away." *Id.*

210. *Id*. at 2066 (Sotomayor, J., dissenting).

211. *Id.*

212. *Id.* at 2073 (Kagan, J., dissenting).

warrant was not an unforeseeable occurrence that should be deemed an intervening circumstance.[213] As Justice Kagan articulated in her dissent, "rather than breaking the causal chain, predictable effects . . . are its very links."[214] Officer Fackrell knew or should have known that the warrant check he was about to run could conceivably result in the discovery of an outstanding warrant for Mr. Strieff's arrest—knowledge that eliminates the possibility of this action yielding unforeseeable results.[215] Ultimately, the *Strieff* majority set a precedent that is in conflict with the purpose behind the exclusionary rule—the deterrence of unlawful police conduct[216]—and broadened the attenuation doctrine to encompass more than was ever originally intended.

2. The Court Incorrectly Equated the "Intervening Circumstances" Factor with the Independent Source Doctrine

While evaluating the "intervening circumstances" factor, the Court heavily relied on a comparison of the facts at issue to the facts that the Court evaluated in *Segura v. United States*.[217] The *Strieff* majority acknowledged that the *Segura* Court applied the independent source doctrine and not the attenuation doctrine, but still deemed the comparison appropriate in the evaluation of the "intervening circumstances" factor, as the facts were "similar."[218] In *Segura*, state officials applied for a warrant to search a suspect's apartment.[219] While the warrant application was pending, the state officials entered the apartment and conducted a security sweep.[220] After the warrant was granted, the agents then did another sweep of the apartment and collected evidence.[221] Although the Court agreed that the initial entry and security sweep of the apartment violated the Fourth Amendment, it found that suppression of the evidence obtained during the search warrant's execution was not necessary because "there was an independent source for the warrant under which that evidence was seized."[222] The *Strieff* majority interpreted this language to mean that the mere existence of an outstanding warrant is enough to justify the admission of evidence seized as a direct result of an illegal stop.[223]

213. *Id*. at 2066 (Sotomayor, J., dissenting).
214. *Id.* at 2073 (Kagan, J., dissenting).
215. *Id*. at 2066 (Sotomayor, J., dissenting).
216. United States v. Calandra, 414 U.S. 338, 347 (1974).
217. *Strieff*, 136 S. Ct. at 2062.
218. *Id.*
219. Segura v. United States, 468 U.S. 796, 800 (1984).
220. *Id.* at 800–01.
221. *Id.* at 801.
222. *Id.* at 814.
223. *Strieff*, 136 S. Ct. at 2062 (quoting *Segura*, 468 U.S. at 815).

As Justice Sotomayor pointed out in her dissent, the majority's interpretation of the *Segura* holding has no application in cases like *Strieff*.[224] The *Segura* Court came to its holding by relying on the fact that the agents did not use the information that they illegally procured in order to obtain the search warrant.[225] The Court emphasized that the search warrant was requested prior to the agents' illegal entry into the apartment and was granted on grounds that were known to the agents before that entry occurred.[226] For that reason, the Court held that the evidence discovered was admissible because the warrant was procured through an independent source.[227] The *Segura* Court's reasoning makes it clear that its holding has no bearing on the *Strieff* case, as Officer Fackrell only found the drugs on Mr. Strieff's person after discovering Mr. Strieff had an outstanding warrant, and Officer Fackrell only discovered that Mr. Strieff had an outstanding warrant because he illegally stopped him on the street and ran a warrant check, a clear exploitation of Officer Fackrell's own illegal conduct.[228] As Justice Sotomayor indicated, the facts of "*Segura* would be similar only if the agents used information they illegally obtained from the apartment to procure a search warrant."[229] Instead, in *Segura*, there was a very clear separation between the information obtained through the illegality and the procurement of the search warrant,[230] a separation that is not seen when the warrant is only discovered through the unlawful conduct of a police officer.

The comparison of *Segura* to *Strieff*, while erroneous, also appears to ignore the objective of the independent source doctrine as articulated in *Nix v. Williams*, which balances:

> [T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime . . . by putting the police in the same, not a *worse*, position that [sic] they would have been in if no police error or misconduct had occurred.[231]

The majority in *Strieff*, instead, used the independent source doctrine as a means to place the police in a better—not the same—position than they would have been in had the illegal stop not occurred. Although, the police would have been able to arrest Mr. Strieff at any other time upon the legal discovery of his outstanding warrant, as the Supreme Court of Utah pointed out, it would be impossible to determine if he would have been in possession

224. *Id.* at 2067 (Sotomayor, J., dissenting).
225. *Segura*, 468 U.S. at 812.
226. *Id.* at 814.
227. *Id.*
228. *Strieff*, 136 S. Ct. at 2066 (Sotomayor, J., dissenting).
229. *Id.* at 2067.
230. *Segura*, 468 U.S. at 814.
231. 467 U.S. 431, 443 (1984).

of the contraband "on any future date on which he may have been arrested on the outstanding warrant."[232] The Court not only interjected the independent source doctrine where it does not belong, but it also ignored the doctrine's purpose by using it to give an advantage to the State when it clearly calls for an equal playing field.[233]

B. The Court Incorrectly Applied the "Purpose and Flagrancy" Factor

In reaching its holding, the Court also found that the "purpose and flagrancy" factor weighed strongly in favor of the State on the grounds that Officer Fackrell's actions did not rise to a level in need of deterrence.[234] Specifically, the Court concluded that "Officer Fackrell made two good-faith mistakes" in his detention of Mr. Strieff and found that Officer Fackrell was negligent at most.[235] In categorizing Officer Fackrell's actions as "good-faith mistakes," the Court has turned the analysis of this factor into one akin to the good faith doctrine.[236] Under the good faith doctrine, however, an officer's mistake is forgiven only if the officer "did not willfully violate the Fourth Amendment."[237] In applying the good faith doctrine, the Court has acknowledged that "the purpose of the exclusionary rule is to deter unlawful police conduct,"[238] and determined that its prime purpose was not promoted through the suppression of evidence that was discovered through an officer's good faith mistake.[239] In this case, however, Officer Fackrell's actions were not in "good faith" as the majority seems to believe, and even when accepting the majority's opinion that Officer Fackrell's actions were merely negligent, this "negligent" behavior is still susceptible to deterrence.[240] As Justice Sotomayor stated in her dissent, "the Fourth Amendment does not tolerate an officer's unreasonable searches and seizures just because he did not know any better[,]"[241] and "officers prone to negligence" can still be deterred from conducting unconstitutional stops and seizures in the future through the precedent set in court.[242]

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232. State v. Strieff, 357 P.3d 532, 546 (Utah 2015), *rev'd sub nom.* Utah v. Strieff, 136 S. Ct. 2056 (2016).

233. *Nix*, 467 U.S. at 443.

234. *Strieff*, 136 S. Ct. at 2063.

235. *Id.*

236. *See supra* Part II.B.3.

237. SIMMONS & HUTCHINS, *supra* note 197, at 653.

238. United States v. Leon, 468 U.S. 897, 919 (1984) (quoting United States v. Peltier, 422 U.S. 531, 542 (1975)).

239. SIMMONS & HUTCHINS, *supra* note 197, at 653.

240. Utah v. Strieff, 136 S. Ct. 2056, 2067–68 (2016) (Sotomayor, J., dissenting).

241. *Id.* at 2068.

242. *Id.*

The Court not only erroneously concluded that negligent actions could not be deterred, but also erred in deeming his actions only negligent.[243] Instead, Officer Fackrell's seizure of Mr. Strieff "was a calculated decision, taken with so little justification that the State has never tried to defend its legality."[244] Officer Fackrell stated that he stopped Mr. Strieff to ascertain what was going on in the house, but openly admitted that he had no basis for his actions aside from seeing Mr. Strieff leave the suspected drug house.[245] The Court asserted that Officer Fackrell's "decision to run the warrant check was a 'negligibly burdensome precautio[n]' for officer safety."[246] But Officer Fackrell, by his own account, did not fear Mr. Strieff.[247] Instead, Officer Fackrell's actions were a deliberate attempt to discover criminal wrongdoing where Officer Fackrell would have otherwise hit a dead end.[248] Although the majority stated that Officer Fackrell's actions did not constitute a "fishing expedition,"[249] these are the exact kind of actions that the Court has previously held unconstitutional because they were conducted "in the hope that something would turn up."[250] Officer Fackrell's conduct was so flagrant—such a constitutional misstep—that the Court's decision to deem it negligent was a complete blunder in light of its own precedent.[251]

In the Court's misapplication of the purpose and flagrancy factor, it seemed to ignore the prime purpose of the exclusionary rule, "to deter unlawful police conduct."[252] Justice Powell once explained that the attenuation doctrine "attempts to mark the point at which the detrimental consequences of illegal police action become so attenuated that the deterrent effect of the exclusionary rule no longer justifies its cost."[253] In this case, the Court has broadened the attenuation doctrine to a point where it will not only fail to

243. *Id.* at 2072 (Kagan, J., dissenting).

244. *Id.*

245. *Id.*

246. *Id.* at 2063 (majority opinion) (quoting Rodriguez v. United States, 135 S. Ct. 1609, 1616 (2015)).

247. *Id.* at 2067 (Sotomayor, J., dissenting).

248. *Id.* (citing Rodriguez v. United States, 135 S. Ct. 1609 (2015)).

249. *Id.* at 2064 (majority opinion).

250. *See* Taylor v. Alabama, 457 U.S. 687, 693–94 (1982) (finding that the police conduct was purposeful and flagrant as "the police effectuated an investigatory arrest without probable cause, based on an uncorroborated informant's tip"); *see also* Dunaway v. New York, 442 U.S. 200, 218 (1979) (finding that an arrest had "purposefulness" because "it was an 'expedition for evidence' admittedly undertaken 'in the hope that something might turn up.'" (quoting Brown v. Illinois, 422 U.S. 590, 605 (1975)).

251. *See Strieff*, 136 S. Ct. at 2072 (Kagan, J., dissenting) (finding that the facts of *Strieff* are almost identical to those in *Brown* where the Court held that the officer's actions were purposeful and favored suppression).

252. United States v. Leon, 468 U.S. 897, 919 (1984) (quoting United States v. Peltier, 422 U.S. 531, 542 (1975)).

253. *Brown*, 422 U.S. 590 at 609 (Powell, J., concurring in part).

deter unlawful police conduct, it will incentivize it.[254] Justice Kagan, in her dissent, adeptly articulated this point. Justice Kagan noted that, in the past, an officer would be deterred from stopping someone without cause for investigative reasons, as this stop would likely yield evidence that would be deemed inadmissible in court.[255] The majority's holding, however, ignores the intended deterrent effects of the exclusionary rule and instead relays that an illegal "stop may well yield admissible evidence: So long as the target is one of the many millions of people in this country with an outstanding arrest warrant . . . ."[256] This new precedent set by the *Strieff* majority will allow officers to retroactively claim grounds for making an unconstitutional stop, eliminating the deterrent purpose of the rule all together.[257]

V. CONCLUSION

In *Utah v. Strieff*, the Supreme Court held that the evidence "seized as a part of the search incident to arrest is admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest."[258] Ultimately, this judgment was flawed, as the Court erroneously equated the "intervening circumstances" factor to the independent source doctrine,[259] and ignored the requirement of unforeseeability, a condition that is not met by the facts of *Strieff*.[260] Furthermore, the Court incorrectly held that the officer's actions were merely negligent, and not "purposeful and flagrant."[261] The Court's inconsistent analysis has deemed the purpose of the exclusionary rule—the deterrence of police misconduct—moot, while simultaneously narrowing the protections guaranteed under the Fourth Amendment.[262]

254. *Strieff*, 136 S. Ct. at 2073–74 (Kagan, J., dissenting).
255. *Id.*
256. *Id.* at 2074.
257. *Id.*
258. *Id.* at 2059 (majority opinion).
259. *See supra* Part IV.A.2.
260. *See supra* Part IV.A.1.
261. *See supra* Part IV.B.
262. *See supra* Parts IV.A–B.