



JUNE 20, 2016

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Utah v. Strieff

Attenuation Doctrine Allows Evidence Seized as Part of Search Incident to Arrest on an Outstanding Arrest Warrant to be Admissible Despite Fact That Initial Stop Was Unlawful

In *Utah v. Strieff*, No. 14-1373 (June 20, 2016), an officer was conducting surveillance on a residence based on an anonymous tip of drug activity. Based on his intermittent observations over a two-week period, he suspected that the occupants were dealing drugs. When the officer observed Strieff leave the residence, the officer detained him, identified himself and asked what Strieff was doing in the residence. Strieff produced a Utah identification card. The officer relayed this information to a police dispatcher, who responded that Strieff had an outstanding warrant on a traffic violation. The officer then arrested Strieff and a search incident to arrest revealed methamphetamine. It was conceded that the initial stop of Strieff was not based on reasonable suspicion and was unlawful.

The Court stated that as the primary judicial remedy for deterring Fourth Amendment violations, the exclusionary rule encompasses both the primary evidence obtained as a direct result of an illegal search or seizure and, as relevant here, evidence later discovered and found to be derivative of an illegality. But to ensure that those deterrence benefits are not outweighed by the rule’s substantial social costs, there are several exceptions to the rule: 1) the independent source doctrine; 2) the inevitable discovery doctrine; and 3) the attenuation doctrine. It is the attenuation doctrine that was implicated here.

Under this doctrine, evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained. The Court noted that the Utah Supreme Court refused to apply the attenuation doctrine, finding that the doctrine only applies to circumstances involving an independent act of a defendant’s “free will” in confessing to a crime or consenting to a search. But, the Court stated, the attenuation doctrine evaluates the causal link between the government’s unlawful act and the discovery of evidence, which often has nothing to do with a defendant’s actions. Thus, the doctrine is not limited to independent acts by the defendant.

In determining whether the doctrine applies, a court must look at three factors: 1) the “temporal proximity” between the initially unlawful stop and the search; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the official misconduct. In evaluating these factors, the Court found the first factor favored suppressing the evidence because the officer discovered the drugs on Strieff only minutes after the illegal stop.

State Prosecution Support Division



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However, under the second factor, the existence of a valid warrant, predating the investigation and entirely unconnected with the stop, favored finding sufficient attenuation between the unlawful conduct and the discovery of evidence. In fact, the Court stated, the officer had an obligation to arrest Strieff on the warrant, and once the arrest was authorized, his search of Strieff incident to that arrest was undisputedly lawful.

Finally, the Court found, the third factor also strongly favored the State. The officer made “two good-faith mistakes.” First, because the officer had not observed what time Strieff entered the suspected drug house, he could not know how long Strieff had been there. Consequently, he lacked a sufficient basis to conclude that Strieff was a short-term visitor who may have been consummating a drug transaction. Second, because he lacked confirmation that Strieff was a short-term visitor, the officer should have asked Strieff whether he would speak with him, instead of demanding that Strieff do so. Nothing prevented him from approaching Strieff simply to ask. But, the Court found, the officer’s conduct “was at most negligent” and “these errors in judgment hardly rise to a purposeful or flagrant violation of Strieff’s Fourth Amendment rights.”

Thus, in applying these factors, the Court concluded that the evidence discovered on Strieff’s person was admissible because the unlawful stop was sufficiently attenuated by the pre-existing arrest warrant. In so holding, the Court rejected Strieff’s argument that the officer’s conduct was flagrant because he detained Strieff without even reasonable suspicion. The Court noted that this argument conflates the standard for an illegal stop with the standard for flagrancy. For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure. And here, the Court found, neither the officer’s alleged purpose nor the flagrancy of the violation rose to a level of misconduct to warrant suppression. The Court also rejected Strieff’s argument that, because of the prevalence of outstanding arrest warrants in many jurisdictions, police will engage in dragnet searches if the exclusionary rule is not applied. The Court responded that “[w]e think that this outcome is unlikely. Such wanton conduct would expose police to civil liability.” And the Court stated, such conduct is taken into account under the third factor and there was no evidence of such conduct here.