Utah v. Strieff and the Attenuation Doctrine

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Categories : Evidence, Search and Seizure

Tagged as : exclusionary rule, fourth amendment, outstanding arrest warrant, Search and Seizure, US supreme court, Utah v. Strieff

Date : July 6, 2016

(Author's note: The concluding paragraph of this post was amended after its publication to include the number of outstanding warrants and orders for arrest on July 1, 2016.)

Every year, the June trifecta throws me off my game. First, school lets out so I have to acclimate to a schedule of camps that vary in operating hours, locations, necessary equipment, and participating child. Second, the district court judges convene for their annual conference where I join them to oversee the program and to lecture about criminal law cases decided since the previous October. Third, the United States Supreme Court winds up its term, invariably deciding significant criminal law cases the very week of the conference. Since judges are no better than my children in cutting me a little slack (Am I *really* the only mother who didn't know you needed to bring a racket to tennis camp?), they bombarded me the day the conference began to ask about the attenuation doctrine and its application in *Utah v. Strieff* (decided the day before). I mumbled something about the Christian burial speech and quickly asked how their summers were going. Now that June is behind me, I've collected my thoughts and am prepared to talk about *Strieff*.

Facts. Narcotics detective Douglas Fackrell of the South Salt Lake City police department was watching a suspected drug house in December 2006 when he saw Edward Strieff walk out. Fackrell stopped Strieff in the parking lot of a nearby convenience store and asked him for his identification. Strieff handed Fackrell his Utah identification card. Fackrell relayed Strieff's information to a dispatcher who told him that Strieff had an outstanding warrant for a traffic violation (an unpaid parking ticket). Fackrell then arrested Strieff and searched him, finding a baggie of methamphetamine and drug paraphernalia.

Procedural History. Strieff was charged with unlawful possession of methamphetamine and drug paraphernalia. He moved at trial to suppress the evidence obtained in the search, arguing that it was inadmissible because it was derived from an unlawful investigatory stop. The State conceded that Fackrell lacked reasonable suspicion to stop Strieff, but argued that the evidence should not be suppressed as the arrest warrant attenuated the connection between the stop and discovery of the contraband. The trial court agreed with the State and denied the motion to suppress. The Utah Supreme Court reversed, holding that the evidence was inadmissible because a voluntary act by the defendant is required to attenuate the connection between an illegal search and the discovery of evidence. The Supreme Court granted certiorari to resolve a split among state and federal courts as to how the attenuation doctrine applies when an unconstitutional detention leads to the discovery of a valid arrest warrant.

Holding. In a 5-3 decision with the majority opinion written by Justice Thomas, the Court held that the evidence found on Strieff's person was admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.

Analysis. The Court first reviewed the purpose of the exclusionary rule, which operates to exclude evidence obtained as a result of an illegal search or seizure as well as evidence later found as a result of that illegality, typically referred to as the fruit of the poisonous tree. The exclusionary rule is the principal judicial remedy to deter Fourth Amendment violations.

There are several exceptions to the exclusionary rule, three of which relate to the causal connection between the Fourth Amendment violation and discovery of the evidence: (1) the independent source rule, (2) the inevitable discovery rule, and, (3), the one at issue in *Strieff*, the attenuation doctrine.

The attenuation doctrine holds that evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by an intervening circumstance. The Court explained that contrary to the holding of the Utah Supreme Court, the attenuation doctrine does ***not*** require that the intervention consist of an independent act by the defendant.

To determine whether the officer's discovery of a valid arrest warrant minutes after detaining Streiff broke the causal chain between the unlawful seizure and the evidence obtained in the search of Strieff, the Court applied the three-factor test from *Brown v. Illinois*, 422 U.S. 590 (1975).

- First, the Court considered the temporal proximity between the unconstitutional conduct and the discovery of the evidence. The justices in the majority agreed with their dissenting colleagues that this factor favored suppression since Fackrell discovered drugs on Strieff minutes after the unlawful stop.
- Second, the Court considered the presence of intervening circumstances and determined that this factor strongly favored the State. The warrant for Strieff's arrest was valid and predated Fackrell's investigation. The majority further deemed the warrant to be "entirely unconnected with the stop." (Justice Kagan vehemently disagreed, characterizing the discovery of the warrant as "an eminently foreseeable consequence of stopping Strieff" particularly given the "staggering number of such warrants on the books." Slip op. at 4, 5 (Kagan, J., dissenting).) Once Fackrell discovered the warrant, he was required to arrest Strieff.
- Third, the Court considered the purpose and flagrancy of the official misconduct, a "particularly significant" factor given that the exclusionary rule exists to deter police misconduct. Slip op. at 6, 8. Again, the majority concluded that this factor strongly favored the State. In the Court's view, Fackrell's seizure of Strieff "was at most negligent" as the mere absence of proper cause for the seizure did not render it a flagrant violation. Slip op. at 8. The Court determined that Fackrell's actions following the unconstitutional seizure were lawful, deeming the warrant check a "negligibly burdensome precaution for officer safety" and the ensuing search of Strieff a lawful search incident to arrest. *Id.* The Court further noted that there was no indication that the unlawful stop "was part of any systemic or recurrent police misconduct." *Id.*

Applying all three factors, the Court determined that even though the illegal stop occurred within minutes of Strieff's arrest, the evidence discovered on Strieff was sufficiently attenuated by the preexisting arrest warrant.

The majority concluded its opinion by addressing Strieff's (and the dissenting justices') argument that its holding would result in police officers engaging in dragnet searches because of the prevalence of outstanding arrest warrants. The Court explained that the *Brown* factors account for flagrant misconduct by officers and that if evidence of a dragnet search had been presented in *Strieff*, the application of the factors might have been different. As it was, the Court found "no evidence that the concerns that Strieff raises with the criminal justice system are present in South Salt Lake City, Utah." Slip op. at 10.

Dissenting opinions. Justices Sotomayer and Kagan wrote separate dissenting opinions, which Justice Ginsburg joined in part. Sotomayer's dissent is passionate and personal.

She states that it "is no secret that people of color are disproportionate victims" of suspicionless stops like the one of Strieff, who happens to be white. Slip op. at 12 (Sotomayer, J., dissenting). "For generations," she writes, "black and brown parents have given their children 'the talk,'" telling them how to behave to avoid a negative encounter with an armed law enforcement officer. *Id.* The majority opinion, in her view, "tells everyone, white and black, guilty and innocent, that an officer can verify your legal status at any time" and "implies that you are not a citizen of a democracy

but the subject of a carceral state, just waiting to be cataloged." She concludes by calling the "countless people routinely targeted by the police" "canaries in the coalmine" who "warn us that no one can breathe in this atmosphere."

Impact in North Carolina. *Strieff* is nearly certain to impact cases in North Carolina. The reporters are replete with cases applying the exclusionary rule to bar the admission of evidence gathered as a result of an unlawful stop or arrest. And, on July 1, 2016, there were more than 500,000 unserved warrants and orders for arrest in the state's warrant repository. When an officer who makes an unlawful stop learns of an outstanding process before gathering further evidence, prosecutors will doubtless argue that the attenuation doctrine applies. And they'll be right . . . unless, of course, our state courts reject this expanded exclusionary rule exception under the North Carolina Constitution.