



LEOLAT

LEGAL ALERT

Law Enforcement Officer Legal Advice and Training

Utah v. Strieff, 579 U.S. ___ (June 26, 2016)

The United States Supreme Court recently decided *Strieff*. The case considers whether the exclusionary rule should be applied to evidence recovered by the police.

Facts

Based on an anonymous tip, South Salt Lake City's police department began intermittent surveillance of a house where narcotics were (according to a tipster) narcotics were being sold. Office Fackrell observed visitors entering and leaving the house within a short time. One of the visitors was Strieff. As Strieff exited the house, Fackrell detained Strieff. During the stop, Fackrell asked Strieff to produce identification. Fackrell relayed the pedigree information to dispatch. Dispatch informed Fackrell that Strieff was the subject of an outstanding warrant. Fackrell arrested Strieff on the warrant. Methamphetamine was recovered in the search of Strieff's person incident to arrest.

Issue

Does the Fourth Amendment require the evidence to be suppressed under the exclusionary rule?

Analysis

Under the exclusionary rule (also call the fruit of the poisonous tree doctrine), evidence secured through an illegal search may not be used by the prosecution in its direct case (see *Mapp v. Ohio*, 367 U.S. 643 (1961)). The rule is designed to encourage law enforcement officers to collect evidence lawfully. Physical evidence, statements, and the results of identifications are subject to suppression. The suppression rule has, though, been limited by the United States Supreme Court. Thus, as of 1984, the rule is inapplicable to evidence recovered by the police in good faith, e.g. upon reasonable reliance on a search warrant later deemed to be invalid (see *United States v. Leon*, 468 U.S. 897 (1984); *Massachusetts v. Sheppard*, 468 U.S. 981 (1984)). Another exception to the exclusionary rule is the attenuation doctrine: where the causal connection between the unlawfully police activity and the subsequently discovered evidence is so distant (that is, attenuated) that the taint of the initial illegality is dissipated. See *Wong Sun v. U.S.*, 371 U.S. 471 (1963). (Note: there are other exclusionary rule exceptions which will be discussed in future LEOLAT articles).

In *Strieff*, the defense argued that the detention of defendant was unlawful and thus the evidence recovered (the narcotics) should be suppressed.

Was the detention (a stop authorized by *Terry v. Ohio*, 392 U.S. 1 (1968)) lawful? The legal standard for *Terry* stops is reasonable suspicion that the detainee had committed, was committing, or was about to commit a crime. Reasonable suspicion is less than probable cause, but more than a “hunch” is needed to detain a suspect. In order to make a *Terry* stop, officers must have an objective basis for the detention. An “objective basis” means that the officer can testify in court as to what factors gave him or her reasonable suspicion. Common reasonable suspicion factors include time of day, proximity to a recently committed crime, officer observation of unusual activity, and flight from the police.

In the case at hand, the State conceded that the police did not have reasonable suspicion to detain Strieff. Why would the State throw in the towel on this issue? Evidently the prosecution did not believe that Officer Fackrell has reasonable suspicion because he did not record when Strieff entered and how long he remained at the residence in question. Absent confirmation that Strieff was a short-term visitor, there was not enough evidence that he had made a drug transaction in the house (for an important case where a different result was reached, see *Minnesota v. Dickerson*, 508 U.S. 366 (1993)). In hindsight, the preferred course of conduct would have been for Fackrell to request to speak with Strieff. This type of consensual encounter is not a seizure a thus no suspicion is needed (see *Florida v. Bostick*, 501 U.S. 429 (1991)).

The issue in *Strieff* is whether the narcotics should be suppressed, given that the stop of the suspect violated the Fourth Amendment. The United States Supreme Court ruled that the evidence was lawfully recovered. Why? Because of the attenuation doctrine, noted above.

Under the attenuation rule, evidence will be admitted when the connection between the unconstitutional acts of the police and the recovery of the evidence is remote. In other words, have there been intervening events which have broken the chain of the illegality such that application of the exclusionary rule serves no purpose (see *Hudson v. Michigan*, 547 U.S. 586 (2006)). What was the intervening fact which would break the illegality chain? The answer is the discovery of a valid arrest warrant which, of course, had been issued prior to the time Fackrell stopped Strieff. The warrant was unconnected to the stop. Once Fackrell became aware of the warrant, he has an obligation to execute it

(that is, to make an arrest). Once the arrest was made, it was lawful to search Strieff incident to arrest (see Arizona v. Gant, 556 U.S. 332 (2009)).

The United States Supreme Court noted that *Strieff* is not a case involving intentional misconduct. Suppression may apply if there was a flagrant violation of the suspect's rights, but we do not have such facts in the *Strieff* case (see Kaupp v. Texas, 538 U.S. 626 (2003)). The case did not involve a "fishing expedition" where the suspect was part of a "dragnet".

What This Case Means for Law Enforcement:

Strieff decides that evidence recovered as a result of an unlawful stop will not necessarily be suppressed. Should the State be able to argue successfully that an exception to the exclusionary rule applies, the evidence will be admissible. The exception involved in *Strieff* is the attenuation doctrine. In deciding whether the recovery is so remote from the illegality that the fruit of the poisonous tree doctrine should not apply, the Court will examine a number of factors. First, was there a substantial time between the unlawful act and the recovery of the evidence? Here, the facts are not good for the prosecution, since the recovery of the narcotics occurred shortly after the detention. On the other hand, the presence of intervening circumstances supports the State's argument. What were the intervening factors? First, the officers had reason to believe that at least some of the apartment occupants were dealing drugs. Second, the arrest warrant was valid and it predated Fackrell's investigation. Third, Fackrell was compelled to make the arrest once the warrant was discovered. Fourth, the police misconduct was not flagrant. Remember: the purpose of the exclusionary rule is to deter police misconduct, and "misconduct" in this context means a knowing or reckless disregard of a suspect's right. At worst, Fackrell acted negligently (as noted above, in hindsight it would have been better to attempt a consensual "chit-chat" with Strieff).

*What This Case **Does Not** Mean for Law Enforcement:*

Strieff **should not** be read to authorize to allow indiscriminate stops of individuals in an attempt to ascertain whether they have outstanding warrants. To stop a person (or a vehicle), there must be objective factors amounting to reasonable suspicion (reasonable suspicion is less than probable cause but more than a hunch). Hunch stops are not allowed. The Court will frown (at a minimum) on stops made as a result of any systematic or recurrent police misconduct. Thus, whenever a *Terry* stop is made, officers should be sure to document all of the factors which gave rise to reasonable suspicion.

If you have any questions, please feel free to contact Andrew Tallmer, Esq.:

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