No. 14-1373

In the Supreme Court of the United States

STATE OF UTAH, PETITIONER,

v.

EDWARD JOSEPH STRIEFF, JR., RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UTAH SUPREME COURT

BRIEF OF *AMICI CURIAE* STATE OF MICHIGAN AND TWENTY-NINE OTHER STATES IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether evidence seized incident to a lawful arrest on an outstanding warrant should be suppressed because the warrant was discovered during an investigatory stop later held to be unlawful.

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INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

As the chief legal officers of their respective states, the State Attorneys General have a vital interest in ensuring that evidence obtained in objective good faith and pursuant to a valid arrest warrant is admissible. In its decision below, the Utah Supreme Court excluded evidence seized incident to a lawful arrest, made under a valid arrest warrant. At no point did the Utah courts question the good faith of the arresting officer or the validity of the warrant. But because the officer discovered the outstanding warrant during a stop that lacked probable cause, the state's highest court held that the evidence must be suppressed. That decision contravenes this Court's exclusionary-rule cases because it ignores that the officer acted in objective good faith and had no control over the intervening circumstance (the existence of a valid arrest warrant).

Most circuits and state high courts recognize that evidence seized incident to a lawful arrest on an outstanding warrant is admissible, as long as the illegality of the initial stop was not flagrant. These courts recognize that police lack control over the intervening circumstance (whether an outstanding warrant exists) and that the exclusionary rule's deterrent purpose is not furthered by excluding such evidence in the absence of sufficiently culpable police conduct.

In contrast, some jurisdictions exclude such evidence, giving little or no weight to the discovery of a valid arrest warrant or to the objective good faith of the officer, resulting in a functionally *per se* rule of

suppression. The Utah Supreme Court adopted a slightly different approach—also resulting in suppression—holding that this Court's attenuation doctrine is limited to voluntary acts of a defendant's free will.

This Court should confirm the majority rule and reaffirm the Court's longstanding jurisprudence that evidence is admissible at trial when it is obtained in objective good faith following an intervening circumstance beyond the officer's control.

ARGUMENT

This Court's exclusionary-rule cases entail that evidence seized during execution of a valid arrest warrant, even if the warrant is discovered during an otherwise unlawful search, is admissible at trial so long as the initial stop was not flagrantly illegal.

I. This Court's attenuation cases focus on the police officer's control over the intervening circumstance and on the officer's objective good faith.

This Court's seminal cases on the attenuation exception to the exclusionary rule focus on (1) the police officer's ability to control the intervening circumstance; and (2) the officer's objective good faith. See *Wong Sun* v. *United States*, 371 U.S. 471 (1963); *Brown* v. *Illinois*, 422 U.S. 590 (1975).

In *Wong Sun* v. *United States*, this Court examined statements made by two different defendants and treated them differently based on whether intervening events attenuated their initial illegal arrest. The Court first addressed the admissibility of state-

ments by a defendant, James Wah Toy, after police illegally entered his apartment, chased him into his bedroom, and failed to provide any *Miranda*-style warnings (the case pre-dated *Miranda*). The government had argued that Toy's ensuing statements were intervening acts of Toy's free will that broke the chain of causation from the officers' initial illegal entry. But the Court rejected that argument, explaining that it was "unreasonable to infer that Toy's response was sufficiently an act of free will to purge the primary taint of the unlawful invasion." 371 U.S. at 486. After all, "[s]ix or seven officers had broken the door and followed on Toy's heels into the bedroom where his wife and child were sleeping," and "[h]e had been almost immediately handcuffed and arrested." *Id*. The Court noted that "[i]t is probable that even today, when there is much less ignorance about these matters than formerly, there is still a general belief that you must answer all questions put to you by a policeman, or at least that it will be the worse for you if you do not." *Id*. at 486 n.12.

In contrast, the Court held that the confession of another defendant in that same case, Wong Sun, *was* admissible under the attenuation exception. The Court first agreed with the lower courts that police had initially arrested Wong Sun without probable cause or reasonable grounds. *Id*. at 491. But the Court held that the confession was admissible because the connection between his arrest and later confession "had become so attenuated as to dissipate the taint." *Id*. That is because Wong Sun had been released on his own recognizance after a lawful arraignment, and had returned voluntarily several days later to make his statement. *Id*.

Twelve years later, the Court again addressed the attenuation exception in *Brown* v. *Illinois*, 422 U.S. 590 (1975). In *Brown*, police officers broke into Brown's apartment without a warrant or probable cause and searched it. *Id.* at 592. When Brown later returned home and "was climbing the last of the stairs leading to the rear entrance of his [] apartment," "he happened to glance at the window near the door. He saw, pointed at him through the window, a revolver held by a stranger who was inside the apartment." *Id.* The stranger said, "Don't move, you are under arrest," and another man with a gun came up behind him. *Id.* The strangers took him to the police station, questioning him along the way. *Id.* at 592–94. When they arrived at the station, the strangers, who were police officers, informed Brown of his *Miranda* rights. *Id.* at 594.

The state argued that Brown's subsequent statements were admissible because the intervening *Miranda* warnings broke the chain of causation and sufficiently dissipated the taint of the initial unlawful entry and arrest. *Id.* at 597–600. But the Court rejected the state's argument, highlighting the possibility that the statement could have been "induced by the continuing effects of unconstitutional custody." *Id.* at 597. Indeed, the Court noted that the illegality "had a quality of purposefulness": "The imp[ro]priety of the arrest was obvious"; "awareness of that fact was virtually conceded by the two detectives"; and "[t]he manner in which Brown's arrest was [e]ffected gives the appearance of having been calculated to cause surprise, fright, and confusion." *Id.* at 605.

This Court made clear in *Brown* and *Wong Sun* that it was concerned with: (1) the police officer's ability to control the alleged intervening circumstance (i.e., the giving of *Miranda* warnings, and the degree to which police behavior may have induced the defendant's incriminating statements); and (2) how flagrantly unlawful the officer's conduct was, viewed objectively (e.g., whether the officer acted to exploit the illegality of the initial stop). And these concerns—which focus on the officer's conduct and control, not on whether there is an intervening act of free will by the defendant—also run through this Court's other attenuation cases. See *Johnson* v. *Louisiana*, 406 U.S. 356, 365 (1972) (lineup identification not forbidden fruit of allegedly invalid arrest where lineup followed commitment by independent magistrate); *United States* v. *Ceccolini*, 435 U.S. 268, 279–80 (1978) (live witness testimony not forbidden fruit where officer did not act culpably and where testimony was given of witness's own free will).

The Court expressly rejected the idea that but-for causation is sufficient to require suppression: "We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police." *Wong Sun*, 371 U.S. at 487–88. Instead, the focus is on whether the police exploited their own illegal conduct: "[T]he more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at *by exploitation of that illegality* or instead *by means sufficiently distinguishable* to be purged of the primary taint." *Id.* at 487–88 (emphasis added).

Thus, when the Court thought that the statements in *Wong Sun* and *Brown* were not truly voluntary and had instead been induced by the officers' exploiting the initial illegality, it suppressed them. *Wong Sun*, 371 U.S. at 486; *Brown*, 422 U.S. at 597, 605. Cf. *Missouri* v. *Seibert*, 542 U.S. 600, 612–14 (2004) (ordering suppression where police deliberately, in strategy calculated "to undermine the *Miranda* warnings," delayed *Miranda* warnings until after unwarned interrogation had produced a confession). But when a defendant's statement had been truly voluntary, as it was for defendant Wong Sun, *Wong Sun*, 371 U.S. at 491, the Court was satisfied that the statement was not subject to the police officer's control and had not been caused by any culpable conduct by the officer. See also *Oregon* v. *Elstad*, 470 U.S. 298, 309, 313, 315–16 (1985) (suppression not required where pre-*Miranda* discussion "was not to interrogate the suspect," incident had "none of the earmarks of coercion," and officer's initial failure to warn was an "oversight" and not "calculated to undermine the suspect's ability to exercise his free will," making the causal connection between defendant's first and second responses to police "speculative and attenuated"); *Seibert*, 542 U.S. at 614 (distinguishing *Elstad* as involving "good-faith *Miranda* mistake" and "posing no threat to warn-first practice generally").

Justice Powell, in his *Brown* concurrence, clarified the relevance of control and absence of culpability in the Court's attenuation cases. "[R]ecognizing that the deterrent value of the . . . exclusionary rule is limited to certain kinds of police conduct," he suggested dividing cases into categories: at one extreme,

"the flagrantly abusive violation of Fourth Amendment rights," and at the other extreme, merely "technical Fourth Amendment violations." Where "official conduct was flagrantly abusive" he would require "the clearest indication of attenuation"—"some demonstrably effective break in the chain of events leading from the illegal arrest to the statement"—because "[i]n such cases the deterrent value of the exclusionary rule is most likely to be effective, and the corresponding mandate to preserve judicial integrity most clearly demands that the fruits of official misconduct be denied." *Id.* at 610–11 (Powell, J., concurring) (citations omitted). But as to technical violations, "where, for example, officers in good faith arrest an individual . . . , the deterrence rationale of the exclusionary rule does not obtain," and therefore there is "no legitimate justification for depriving the prosecution of reliable and probative evidence." *Id.* at 610–12 (Powell, J., concurring).

This Court similarly focused on the deterrence rationale in *United States* v. *Leon*, 468 U.S. 897 (1984). The *Leon* Court explained that "*Brown*'s focus on the causal connection between the illegality and the confession reflected the two policies behind the use of the exclusionary rule to effectuate the Fourth Amendment." *Id.* at 911 n.7 (quotation marks omitted). "Where there is a close causal connection between the illegal seizure and the confession, not only is exclusion of the evidence more likely to deter similar police misconduct in the future, but use of the evidence is more likely to compromise the integrity of the courts." *Id.* (quotation marks omitted).

Consistent with this focus on deterrence, the Court emphasized in its attenuation cases the importance of assessing the officer's control and culpability on a case-by-case basis: "[T]he *Miranda* warnings, alone and *per se*, cannot always make the act sufficiently a product of free will [to break] . . . the causal connection between the illegality and the confession. They cannot assure in every case that the Fourth Amendment violation has not been unduly exploited." *Brown*, 422 U.S. at 603. But while the Court rejected a *per se* rule that *Miranda* warnings *always* break the chain of causation, it also rejected "any alternative *per se* or 'but for' rule" that the chain is *never* broken. *Id*. "The question whether a confession is the product of a free will under *Wong Sun* must be answered on the facts of each case." *Id*. The Court considered other circumstances that would be of relevance in cases that, like *Brown* and *Wong Sun*, address the voluntariness of a defendant's statement in light of potential coercive police behavior, including the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct. *Id*. at 603–04.

II. This Court's attenuation principles follow from its exclusionary-rule jurisprudence, including the well-established exception for actions taken in objective good faith.

By assessing the officer's ability to control the intervening circumstance and his or her culpability, the Court's reasoning in *Brown* and *Wong Sun* aligns with its exclusionary-rule jurisprudence more broadly—and in particular, with the well-established exception for errors made in objective good faith.

The sole purpose of the exclusionary rule is to deter misconduct by law enforcement. *Davis* v. *United States*, 131 S. Ct. 2419, 2426–27, 2432 (2011). Exclusion is not constitutionally mandated and is not an individual right of criminal defendants. *Herring* v. *United States*, 555 U.S. 135, 141 (2009). This Court has thus repeatedly reminded courts to apply the exclusionary rule *only* when application will further the rule's deterrence purpose. E.g., *id.*; *Davis*, 131 S. Ct. at 2426–27; *Leon*, 468 U.S. at 907–08. And the deterrence benefits of suppression must outweigh its heavy costs—namely, the exclusion of relevant evidence of guilt and "letting guilty and possibly dangerous defendants go free—something that offends basic concepts of the criminal justice system." *Herring*, 555 U.S. at 141.

As this Court has recognized, "the deterrence benefits of exclusion vary with the culpability of the law enforcement conduct at issue." *Davis*, 131 S. Ct. at 2427. Exclusion is warranted only when the police conduct is "deliberate enough to yield meaningful deterrence, and culpable enough to be worth the price paid by the justice system." *Id.* at 2428 (quotation marks and citation omitted). "When the police exhibit deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs." *Id.* at 2427. "Indeed, the abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional." *Herring*, 555 US at 143. But "when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrence ra-

tionale loses much of its force, and exclusion cannot pay its way." *Id.* at 2427–28 (citations and quotation marks omitted).

Because the deterrence benefits of targeting non-flagrant police behavior are so low, this Court has long applied an objective good-faith exception to the exclusionary rule. See, e.g., *Leon*, 468 U.S. at 907–08 ("Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system."); *Michigan* v. *Tucker*, 417 U.S. 433, 447 (1974) (noting that when a police officer acts in complete good faith, the deterrence rationale for suppression loses much of its force); *Herring*, 555 U.S. at 142 (detailing the development of the good-faith exception); *Davis*, 131 S. Ct. at 2428 (same). Thus, the good-faith exception both allows evidence to be admitted and protects officers from civil liability via qualified immunity. *Heien* v. *North Carolina*, 135 S. Ct. 530, 539 (2014) (collecting cases).

Relatedly, this Court has routinely declined to apply the exclusionary rule when suppression would have no deterrent effect because the police officer lacks control over the relevant circumstances. As but one example, this Court declined to apply the exclusionary rule when police carry out a search in objectively reasonable reliance on a warrant later held invalid. *Leon*, 468 U.S. at 913, 922. The Court explained that "[t]he error in such a case rests with the issuing magistrate, not the police officer, and punishing the errors of judges is not the office of the exclu-

sionary rule." *Davis*, 131 S. Ct. at 2428 (quotations and citations omitted) (discussing *Leon*). Cf. *Leon*, 468 U.S. at 912–13 (noting that "no Fourth Amendment decision marking a 'clear break with the past' has been applied retroactively"); *Arizona* v. *Evans*, 514 U.S. 1, 14 (1995) (applying good-faith exception where police reasonably rely on erroneous information concerning an arrest warrant in a database maintained by judicial employees); *Herring*, 555 U.S. at 146–47 (applying good-faith exception where police reasonably relied on erroneous information from other police employees).

The Court's attenuation decisions in *Brown* and *Wong Sun* thus align logically with this Court's broader exclusionary-rule jurisprudence. The Court excluded evidence in *Brown* and *Wong Sun* when the police exercised control over the intervening circumstance and when they acted culpably. But when the officers proceeded in objective good faith or the intervening circumstance was beyond their control, the Court allowed the evidence.

III. Absent flagrant illegality, suppression of evidence seized during execution of a valid arrest warrant will not appreciably deter police misconduct.

The majority rule in outstanding arrest-warrant cases aligns logically with this Court's precedent. First, those courts recognize that police lack control over the intervening circumstance—*i.e.*, whether an outstanding arrest warrant exists. To the extent such a warrant exists, it was issued independently in the past by a neutral magistrate after a determination that probable cause supports arrest. It does not

exist because of anything the arresting officer did or did not do. Second, the majority rule deters misconduct of the type targeted by this Court's exclusionary rule jurisprudence by ordering suppression if the illegality of the initial stop was flagrant.

The majority rule also more faithfully executes this Court's directive that suppression be ordered only on a case-by-case basis. *Brown*, 422 U.S. at 603–04; see also *Leon*, 468 U.S. at 918 ("[S]uppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule.").

In contrast, the minority rule contravenes this Court's jurisprudence because it ignores both police control (or lack of it) over the intervening circumstance and objective good faith. This case is a prime example. The Utah courts at no point suggested that Detective Fackrell acted with any culpability beyond, at most, isolated negligence—not even if one looked at it (improperly) by a subjective standard. See Pet. App. at 70 ("There is no indication in the record that the officer stopped Strieff with the purpose of checking for outstanding warrants, and the district court found that he did not target Strieff in knowing or obvious disregard of constitutional limitations."); Pet. App. at 1 (raising no disagreement). Further, it is evident that Detective Fackrell had no control over whether there was a warrant out for Strieff's arrest. Suppression is unjustified under those circumstances.

In effect, the minority rule leads courts to order suppression regardless of the culpability of the police

conduct, and regardless of the officers' ability to control the intervening circumstance. Cf., e.g., *Brown*, 422 U.S. at 603–05; *Wong Sun*, 371 U.S. at 486–88; *Leon*, 468 U.S. at 907–08, 912–13, 922; *Davis*, 131 S. Ct. at 2427–28; *Herring*, 555 U.S. at 137, 143; *Evans*, 514 U.S. at 14. The minority rule also contravenes this Court's requirement of case-by-case assessment by imposing a *de facto* rule of suppression. Cf. *Brown*, 422 U.S. at 603–04; *Leon*, 468 U.S. at 918.

A. The concerns undergirding the minority rule are unfounded.

Moreover, the concerns that led to the minority rule are unfounded, and analogous concerns have been rejected by this Court.

First, the majority rule does not encourage dragnet-style suspicionless stops. "[T]he value of deterrence depends upon the strength of the incentive to commit the forbidden act." *Hudson* v. *Michigan*, 547 U.S. 586, 596 (2006). Here, the incentive is low.

As an initial matter, seizing an individual without probable cause or reasonable suspicion is illegal. This Court has stated that it is "unwilling to believe that officers will routinely and purposely violate the law as a matter of course." *Segura* v. *United States*, 468 U.S. 796, 812 (1984).

The majority rule itself also deters suspicionless stops by threatening exclusion for flagrantly illegal behavior. That is, if the officer has no objective reason for the stop other than to check for outstanding arrest warrants, the evidence will be suppressed. See, e.g., *State* v. *Grayson*, 336 S.W.3d 138, 148 (Mo.

2011) (en banc) (ordering suppression where officer knew detainee, "knew that a lot of times there were warrants for him," and stop was nothing more than "fishing expedition"); *State* v. *Shaw*, 64 A.3d 499, 512 (N.J. 2012) (affirming suppression where stop was "random detention of an individual for the purpose of running a warrant check"); *People* v. *Mitchell*, 824 N.E.2d 642, 650 (Ill. App. 2005) (affirming suppression where "the sole apparent purpose of the detention [wa]s to check for a warrant"); *State* v. *Soto*, 179 P.3d 1239, 1245 (N.M. App. 2008) (affirming suppression where officers stopped defendant based on "vague notion that they would obtain [his] personal information"), *cert. quashed*, 214 P.3d 793 (N.M. 2009). Knowing this, police officers are not motivated to make illegal stops.

Even setting aside the question of incentive levels for misconduct, this Court has been reluctant to indulge the specter of systemic misconduct without any evidence that a feared police tactic is actually occurring. In *Herring*, for example, this Court held unfounded "Petitioner's fears that our decision will cause police departments to deliberately keep their officers ignorant": "[T]here is no evidence that errors in Dale County's system are routine or widespread. . . . Because no such showings were made here, the Eleventh Circuit was correct to affirm the denial of the motion to suppress." 555 U.S. at 146–47. The Court explained that "[i]f the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified[.]" *Id.*; cf. *Hudson*, 547 U.S. at 604 (Kennedy, J., concurring) ("Today's decision does

not address any demonstrated pattern of knock-and-announce violations. If a widespread pattern of violations were shown, and particularly if those violations were committed against persons who lacked the means or voice to mount an effective protest, there would be reason for grave concern.").

Here, no evidence has been presented that police are routinely and systematically stopping people without reasonable suspicion or probable cause, solely to check for outstanding warrants. Indeed, the vast bulk of intervening-warrant attenuation cases do not suggest bad faith. See, e.g., *United States* v. *Faulkner*, 636 F.3d 1009, 1017 (8th Cir. 2011); *United States* v. *Gross*, 662 F.3d 393, 406 (6th Cir. 2011); *United States* v. *Simpson*, 439 F.3d 490, 496 (8th Cir. 2006); *United States* v. *Green*, 111 F.3d 515, 523 (7th Cir. 1997); *State* v. *Hummons*, 253 P.3d 275, 279 (Ariz. 2011); *People* v. *Brendlin*, 195 P.3d 1074, 1080 (Cal. 2008); *Cox* v. *State*, 916 A.2d 311, 323 (Md. 2007); *Jacobs* v. *State*, 128 P.3d 1085, 1089 (Okla. 2006); *State* v. *Frierson*, 926 So. 2d 1139, 1145 (Fla. 2006); *State* v. *Page*, 103 P.3d 454, 459 (Ida. 2004); *State* v. *Hill*, 725 So. 2d 1282, 1287 (La. 1998); *State* v. *Mazuca*, 375 S.W.3d 294, 309 (Tex. Crim. App. 2012); *People* v. *Reese*, 761 N.W.2d 405, 413 (Mich. App. 2008); *McBath* v. *State*, 108 P.3d 241, 250 (Alaska Ct. App. 2005); *Hardy* v. *Commonwealth*, 149 S.W.3d 433, 436 (Ky. App. 2004); *Quinn* v. *State*, 792 N.E.2d 597, 602 (Ind. Ct. App. 2003).

Second, any fears of "recurring or systemic negligence" would be misplaced here. *Davis*, 131 S. Ct. at 2428–29 ("Unless the exclusionary rule is to become a strict-liability regime, it can have no application in

a case that does not involve any recurring or systemic negligence on the part of law enforcement and in which law enforcement officers did not violate a defendant's Fourth Amendment rights deliberately, recklessly, or with gross negligence." (quotation marks omitted)). Indeed, negligence is not what the minority jurisdictions are concerned about. Instead, they are concerned about police officers employing dragnet-style stops solely to conduct warrant checks. See, e.g., *Gross*, 662 F.3d at 404–05; *State* v. *Moralez*, 300 P.3d 1090, 1102 (Kan. 2013). As addressed above, that concern is negated through several different mechanisms, including the rule itself.

B. Any supposed incremental value of the minority rule is outweighed by its great social costs.

The fact that the minority rule provides little, if any, incremental deterrence puts it at odds with this Court's precedent. "Quite apart" from issues of causation, "the exclusionary rule has never been applied *except* where its deterrence benefits outweigh its substantial social costs." *Hudson*, 547 U.S. at 594 (quotation marks omitted) (emphasis added).

Just some deterrence value is not enough. *Id.* at 2427. "[M]arginal" or incremental deterrence will not justify "the substantial costs of exclusion." *Herring*, 555 US at 146. That is because suppression "exacts a heavy toll on both the judicial system and society at large." *Davis*, 131 S. Ct. at 2426–27. That is, it requires courts to ignore reliable, trustworthy evidence bearing on guilt and potentially to set criminals loose in the community without punishment. *Id.* Exclusion is thus a "bitter pill" that society must swallow only

as a "last resort" when the benefits of suppression outweigh its heavy costs. *Id.*; see also *Hudson*, 547 U.S. at 591. The burden is on those urging its application to show that application in a particular setting meets this test. *Hudson*, 547 U.S. at 591.

"Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system." *Leon*, 468 U.S. at 907–08. In that instance, "[i]ndiscriminate application of the exclusionary rule . . . may well generate disrespect for the law and administration of justice." *Id.*

Such is the case here. At worst, Detective Fackrell's conduct involved "only simple, isolated negligence," *Davis*, 131 S. Ct. at 2427–28, and he lacked control over the existence of Strieff's outstanding arrest warrant. "An error that arises from nonrecurring and attenuated negligence is [] far removed from the core concerns that led [this Court] to adopt the [exclusionary] rule in the first place." *Id.* at 144. This Court should reverse the judgment of the Utah Supreme Court and hold that absent flagrant police misconduct, the discovery of an outstanding arrest warrant attenuates any taint from an initial unlawful stop.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Utah Supreme Court.

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