

1 The other concern is if he thought --

2 JUSTICE KENNEDY: You're asking us to say
3 that, as a matter of law, you want us to hold that the
4 purpose of this stop was to run the warrants check? I
5 thought the purpose of the stop was to find out what was
6 going -- what was going on in the house.

7 MS. WATT: I -- I think that when -- when
8 an --

9 JUSTICE KENNEDY: The record just doesn't
10 support the first proposition that I made.

11 MS. WATT: When an officer detains someone
12 as part of a fishing expedition in the hope that
13 something will turn up, that is -- that is the purpose
14 that is a problem.

15 JUSTICE SOTOMAYOR: There was no suspicion
16 here. He was -- your client wasn't frisked.

17 MS. WATT: I'm sorry. Wasn't frisked?

18 JUSTICE SOTOMAYOR: No. There was no
19 activity that the officer is alleged to have seen that
20 would put the officer in fear of any -- that this
21 gentleman was violent or was going to turn on him or do
22 anything else.

23 MS. WATT: No.

24 JUSTICE SOTOMAYOR: Correct?

25 MS. WATT: Correct.

1 JUSTICE SOTOMAYOR: So the purpose, as I
2 understand what you're trying to say is, he is now
3 routinely checking every single person that he stops,
4 whether with or without reasonable suspicion. There
5 can't be any other reason other than he wants to find
6 the warrant or not.

7 MS. WATT: But that's --

8 JUSTICE SOTOMAYOR: So part of the stop may
9 be to investigate, but the other part of the stop is
10 he's doing this routinely, with no reasonable suspicion,
11 with no articulable fear of his -- for his own safety.
12 He's demanding peoples' names, and he's running a
13 warrant to do what? You're saying to find the warrant.

14 MS. WATT: Find the warrant.

15 JUSTICE SOTOMAYOR: Exactly.

16 CHIEF JUSTICE ROBERTS: How often are -- are
17 cars -- people stopped driving, an officer walks up to
18 the car and they're shot? Has that happened a fair
19 amount of times?

20 MS. WATT: It does happen.

21 CHIEF JUSTICE ROBERTS: It does happen. So
22 is there no other reason for checking to see if there
23 are warrants out for that person before you walk up to
24 the car? Or before you conduct an inquiry with a
25 ticket?

1 MS. WATT: So --

2 CHIEF JUSTICE ROBERTS: It seems to me not
3 wanting to get shot's a pretty good reason.

4 MS. WATT: But this presents a completely
5 different scenario. This officer approached
6 Mr. Strieff. He knew very little about him. You know,
7 as a matter of deterrence, a reasonably well-trained
8 officer would have known, should have known that there
9 wasn't enough there. Because he didn't know anything
10 about my client, there was no individualized suspicion.
11 And --

12 JUSTICE ALITO: Well, we really don't know
13 very much about exactly what happened here, which is
14 unfortunate. But what the officer testified was that he
15 didn't just grab this guy and say give me an ID and
16 then -- and then run a warrants check. He did say that
17 he -- he approached him and he said -- identified
18 himself. He said he thought there might be drug
19 activity going on in the house, and he asked him to
20 tell -- he said, "I asked him to tell me what he was
21 doing there."

22 Now, we don't even know what he -- unless
23 I'm -- it's someplace else in this record, we don't even
24 know what your client said. But he could have said,
25 what am I doing there, yeah, I live there, or, my mother

1 lives there, or, my best friend lives there.

2 But whatever -- we don't know what he said.

3 But then at some later point he ran a warrants check.

4 So how can we infer from that, that the whole point of
5 the stop was to run the warrants check?

6 MS. WATT: So -- so a really important part
7 of the officer's testimony was that he didn't remember
8 what that answer was. So if my client had said, I went
9 in there because there's someone who's ill and I've been
10 visiting for, you know, 20 minutes, or -- or, this is
11 where my friend lives; that's why I was there, end of
12 inquiry, and -- and the warrants check shouldn't have
13 been run. A reasonably well-trained officer should
14 know.

15 The -- the important part of this case is
16 that if we're only looking at -- we're not just looking
17 at deterring Officer Fackrell, we're looking at
18 deterring future conduct by officers. And the -- the
19 Terry limitation is something we want our officers to
20 know. It's fairly straightforward. This is a fairly
21 straightforward case that is going on every day in this
22 country where officers are looking at houses, watching
23 houses that maybe, might have drug trafficking going on.
24 They're trying to establish probable cause. Case law is
25 relatively clear about what you need to get probable

1 cause on a house.

2 It's also relatively clear about what you
3 need to get individualized suspicion. We know from
4 Cortez we need those two elements. We -- we also know
5 from Ybarra that just being in proximity to other people
6 is not enough. Being around -- even when the officers
7 have probable cause to search or probable cause to
8 arrest someone if you're standing right there, it's not
9 enough.

10 So it should be clear to an officer that my
11 client leaving a house that he doesn't even have
12 probable cause on, that he's trying to find something
13 out about --

14 JUSTICE SOTOMAYOR: Well, all he did was go
15 from the house to a convenience store, not in a car but
16 walking.

17 MS. WATT: Right.

18 JUSTICE SOTOMAYOR: He walks to a
19 convenience store, he's stopped in the parking garage
20 but without a car. And I go back to this is not coming
21 up to a parked automobile and getting shot, correct?

22 MS. WATT: Right. Right.

23 CHIEF JUSTICE ROBERTS: Would your rule
24 apply in that situation?

25 MS. WATT: Well, when an -- when an officer

1 makes a stop --

2 CHIEF JUSTICE ROBERTS: Would your rule
3 apply in a situation where the officer approaches the
4 car for a purpose that is later found to be insufficient
5 under Terry? You would suppress whatever evidence is
6 find -- found in that situation too, right?

7 MS. WATT: If the -- if the officer did not
8 have a reasonable suspicion for the stop.

9 CHIEF JUSTICE ROBERTS: Okay. So it would
10 apply in the stopping of the automobile situation.

11 MS. WATT: It would. But it's --

12 CHIEF JUSTICE ROBERTS: Okay.

13 MS. WATT: But again, in these cases, if
14 there is a warrant, we haven't argued about the warrant
15 itself. What we've -- our concern is the random stops.
16 And our concern is not just for my client. It's for all
17 of those innocent citizens that will -- that are walking
18 around, that are stopped, that a warrants check is run
19 and nothing comes up and then they're sent on their way.
20 There's no oversight.

21 The -- the officer is encouraged to engage
22 in -- in a catch-and-release type of approach with our
23 citizenry. And Utah's rule would be something that --
24 that would create that incentive.

25 JUSTICE GINSBURG: In -- in your brief you

1 took the position that -- that an event is intervening
2 only if it is unforeseeable.

3 MS. WATT: Well, our position is that an
4 intervening circumstance needs to be independent, and
5 it -- it needs to be a break in the -- the causal chain.
6 And that when -- when a warrant is run -- and it needs
7 to be something that is not directly related to the
8 officer's conduct.

9 And so because the warrants check is an
10 inherent part of -- of the detention, it's not an
11 intervening circumstance. And that's something that --
12 that the Utah Supreme Court unanimously agreed with in
13 the dissent in the Utah court of appeals as well, agreed
14 that this is -- it's a natural and foreseeable
15 consequence. It is the intended result. It -- it is
16 not something that -- that is independent, that -- that
17 comes as a surprise.

18 And that -- that's really consistent with
19 this Court's case law in dealing with intervening
20 circumstances. Spontaneous confessions are something
21 that are independent; they -- they break the chain. We
22 look at free will, and that's independent and breaks the
23 chain. Witness testimony. But here there was no break.
24 It was a direct result of the officer's conduct.

25 The -- the rule that we are really asking

1 the Court to -- to adopt follows settled exclusionary
2 rule case law, and that is that -- that if there is the
3 bad stop, it's suppressed unless there is attenuation.

4 And of course, if there hadn't been a
5 warrant, if -- if the officer had just stopped my client
6 and searched him, I don't think anyone's contesting that
7 that would just simply be suppressed without
8 attenuation.

9 And in this case there was -- there was no
10 attenuation as well because all three of the factors
11 that this Court has looked at work in favor of
12 suppression. The temporal proximity works with us,
13 obviously. It was -- it was contemporaneous. It was
14 immediate. It was inherent.

15 It's not an intervening circumstance because
16 it's not independent and it's not a break in the causal
17 chain. And it was deliberate conduct on this officer's
18 part that was blatantly unconstitutional.

19 CHIEF JUSTICE ROBERTS: You -- you disagree
20 with Judge Friendly's analysis in the Friedman case?

21 MS. WATT: That -- in -- in what respect?

22 CHIEF JUSTICE ROBERTS: Well, with -- with
23 his analysis. As -- as I understand, it took the
24 position opposite to what you're arguing, and I just
25 want to know if you have a basis for distinguishing that

1 precedent.

2 MS. WATT: I guess I don't, no.

3 So -- so our position is that that this
4 falls squarely within the -- the Court's settled case
5 law. We're asking that the Utah Supreme Court be upheld
6 and --

7 JUSTICE ALITO: You agree that attenuation
8 is based on -- on deterrence; that the attenuation
9 determination is based on a calculation of the deterrent
10 effect of the ruling.

11 MS. WATT: I do. I do. I -- I agree that
12 the focus is on deterrence. And I think that in this
13 circumstance, there's powerful deterrence to -- to adopt
14 our position and to not follow Utah's position.

15 If -- if Utah's position is -- part of
16 deterrence is looking at the incentive to violate the --
17 the -- the Constitution, and looking forward to see --
18 see what would happen with the rule.

19 And under Utah's rule, we -- there would be
20 nothing to stop police officers from -- from stopping
21 people on the street, articulating something. Terry
22 doesn't take much. Most -- most officers can articulate
23 some sort of justification, looking for the warrant, and
24 then sending people on their way. So -- so we believe
25 that deterrence would be very well served by adopting

1 our rule.

2 JUSTICE ALITO: And -- and your deterrence
3 argument doesn't depend at all on statistics?

4 MS. WATT: With -- even without the
5 statistics, our deterrence argument works because the
6 point is a reasonably well-trained officer would --
7 should know what the parameters of Terry are. This
8 officer did not.

9 JUSTICE ALITO: So if one in a thousand
10 people has an outstanding warrant, that's enough?

11 MS. WATT: So --

12 JUSTICE ALITO: That statistic would -- that
13 statistic wouldn't upset your argument?

14 MS. WATT: It wouldn't upset my argument
15 because we -- we run -- officers run warrants checks
16 because they're likely to find them --

17 JUSTICE ALITO: One -- one in 10,000, would
18 that upset your argument?

19 MS. WATT: I -- I suppose --

20 JUSTICE ALITO: I've got to get to a number
21 where you're going to say --

22 MS. WATT: Yes.

23 (Laughter.)

24 MS. WATT: In those communities, then you're
25 going to see much less of this behavior, you know, much

1 less of the running of warrants checks in order to find
2 a warrant. It's going to self-correct. But for the
3 most part, the -- I mean, and the flip side is there's
4 then no reason not to run them if that's the rule. But
5 for the most part, in -- in most communities, the -- the
6 incentive there -- the other thing is, with Utah's rule,
7 it could create an incentive to have even more warrants
8 for even more minor infractions. This was a traffic
9 matter. Many of these warrants in the cases down below
10 are minor traffic matters. The -- it --

11 JUSTICE GINSBURG: But what was it? We
12 know -- was it a -- a ticket? Do we know --

13 MS. WATT: It's not in the record.

14 JUSTICE GINSBURG: It's not in the record.

15 MS. WATT: Yeah. But -- but -- but it was
16 referred to as a minor traffic --

17 JUSTICE ALITO: Do you think the judges in
18 the traffic -- in the traffic courts are going to start
19 issuing lots of warrants because they want to provide a
20 basis for -- for randomly stopping people?

21 MS. WATT: My point is only that it -- it
22 creates an incentive to not be as careful. It
23 creates --

24 JUSTICE SOTOMAYOR: I'm very surprised that
25 Justice Alito doesn't know that most of these warrants

1 are automatic. If you don't pay your fine within a
2 certain amount of days, they're issued virtually
3 automatically.

4 MS. WATT: Right. And that's exactly what
5 this one was.

6 CHIEF JUSTICE ROBERTS: So it doesn't create
7 an incentive of the kind you were arguing, you were
8 worried about before.

9 MS. WATT: I'm sorry.

10 CHIEF JUSTICE ROBERTS: The warrants -- the
11 warrants are automatic. You were suggesting that, oh,
12 one thing that will happen is they'll be issuing all
13 these warrants if they know they can get evidence from
14 illegal stops. And because the warrants are automatic,
15 they're not going to be issuing all these warrants, are
16 they?

17 MS. WATT: They're automatic in certain
18 circumstances, and those circumstances would increase.
19 So they're automatic right now for no insurance or for
20 speeding. They would increase. And -- and they'd be
21 automatic for infractions. They'd -- and the other
22 aspect is the databases and the incentive to keep those
23 databases accurate and up-to-date.

24 It's our position that this absolutely plays
25 into a deterrence, and that Utah's rule would have an

1 overwhelming impact that would create a powerful
2 incentive for police officers to walk up to people on
3 the street and simply stop them.

4 We're asking, unless there's further
5 questions, that the Court affirm the -- the Utah Supreme
6 Court. Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you, Ms. Watt.
8 Mr. Green, you have four minutes remaining.

9 REBUTTAL ARGUMENT OF TYLER R. GREEN

10 ON BEHALF OF THE PETITIONER

11 MR. GREEN: Thank you, Mr. Chief Justice.

12 If I could just make three brief points in
13 response.

14 First, to the suggestion that officers make
15 random stops in order to find a warrant to conduct
16 searches of this type. There's actually no evidence of
17 the -- in this record that that's what happened here, or
18 that it happens more broadly. In fact, I think the
19 opposite is true.

20 If you look at page --

21 JUSTICE SOTOMAYOR: It's routine practice
22 to -- to run warrant checks. Every stop, legal or
23 illegal, he says it's -- he runs warrants, on the street
24 or in a car. Meaning, that's what the police officer
25 testified to.

1 MR. GREEN: He -- he runs them, Justice
2 Sotomayor, for the purposes I think that have been
3 discussed today, for safety rationales and other
4 reasons. But there's no actual evidence that he runs --

5 JUSTICE SOTOMAYOR: So we now have a new
6 rule. We've taken running warrants for traffic stops
7 that we've thought were legitimate because they had to
8 do with highway safety. Now we're saying to police
9 officers, run warrants on any name you get because all
10 you have to do is wave the flag of safety.

11 MR. GREEN: No, Your Honor. That's not what
12 we're saying. We're saying that there is a safety
13 rationale for the warrant check. But beyond that,
14 there's also the important flagrancy safety valve that
15 we've talked about here.

16 And with respect to this particular warrant
17 check on page 101 of the Appendix to our petition, there
18 is actually a finding from the district court that the
19 reason that this officer stopped this particular
20 defendant was on suspicion of drug possession or
21 distribution. It wasn't for something else. So that
22 finding is here.

23 And more broadly, this rule, as we've noted
24 in our papers, is, in fact, the majority rule among the
25 courts that have addressed this issue throughout the

1 country.

2 In the United States, and -- excuse me, in
3 the Seventh Circuit, the case of United States v. Green
4 was decided in 1997, almost 20 years ago. And that, of
5 course, involves States with a large number of
6 metropolitan areas, Chicago and Milwaukee and
7 Indianapolis. And there's no evidence in this record or
8 before this Court that these sort of random stops in
9 order to check for warrants is happening in those
10 jurisdictions. So I think the actual practice and the
11 way it bears out, and has borne out in -- in areas where
12 this has been adopted undermines that particular
13 argument.

14 Second, Your Honor, with respect to the
15 question of whether a subjective purpose should come in,
16 responding to Justice Kennedy's question to this -- to
17 this inquiry. I think if this Court were to do that, it
18 would become an outlier of sorts in the case -- in this
19 Court's Fourth Amendment jurisprudence. And I think,
20 with respect, if -- if it remains an objective inquiry
21 and consistent with the rest of this Court's cases, that
22 objective inquiry will capture the flagrant cases.

23 We cited four cases from four different
24 State courts in our reply brief, in footnote 1 of our
25 reply brief. That's Illinois, Missouri, New Jersey.

1 And Oregon, where the courts that have applied this rule
2 have undertaken the flagrancy inquiry and have, in fact,
3 suppressed evidence because the initial stop was
4 flagrant.

5 Finally, a third point, the -- as we've
6 noted in our briefs, Your Honor, the -- the Respondent
7 here has abandoned the Utah Supreme Court's rule that an
8 intervening circumstance must, in fact, be something
9 attributable to the defendant's own free will. We think
10 that's appropriate based on that concession that it
11 would -- that this Court should -- should reverse the
12 judgment of the Utah Supreme Court, and leaves the
13 question, of course, of what rule to adopt instead.

14 And we think, Your Honor, this -- this
15 intervening circumstance here, this arrest on a
16 preexisting warrant that arises from probable cause
17 based on facts completely unrelated to the circumstances
18 and the facts of this stop, is exactly like what
19 happened in Johnson v. Louisiana, which is the case that
20 this Court pointed to in Brown v. Illinois. Where --
21 where it adopted and said the intervening circumstance
22 is critical to the attenuation inquiry. It's a
23 straightforward application of that particular test.

24 If there are no further questions.

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

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Case is submitted.

(Whereupon, at 12:05 p.m., the case in the
above-entitled matter was submitted.)

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