

1 But whatever -- we don't know what he said.
2 But then at some later point he ran a warrants check.
3 So how can we infer from that, that the whole point of
4 the stop was to run the warrants check?

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

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

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

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

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

16 MS. WATT: Right.

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

21 MS. WATT: Right. Right.

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

24 MS. WATT: Well, when an -- when an officer
25 makes a stop --

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

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

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

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

11 CHIEF JUSTICE ROBERTS: Okay.

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

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

24 JUSTICE GINSBURG: In -- in your brief you
25 took the position that -- that an event is intervening

1 only if it is unforeseeable.

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

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

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

24 The -- the rule that we are really asking
25 the Court to -- to adopt follows settled exclusionary

1 rule case law, and that is that -- that if there is the
2 bad stop, it's suppressed unless there is attenuation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 MS. WATT: So --

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

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

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

18 MS. WATT: I -- I suppose --

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

21 MS. WATT: Yes.

22 (Laughter.)

23 MS. WATT: In those communities, then you're
24 going to see much less of this behavior, you know, much
25 less of the running of warrants checks in order to find

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

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

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

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

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

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

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

23 JUSTICE SOTOMAYOR: I'm very surprised that
24 Justice Alito doesn't know that most of these warrants
25 are automatic. If you don't pay your fine within a

1 certain amount of days, they're issued virtually
2 automatically.

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

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

8 MS. WATT: I'm sorry.

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

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

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

1 incentive for police officers to walk up to people on
2 the street and simply stop them.

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

6 CHIEF JUSTICE ROBERTS: Thank you, Ms. Watt.

7 Mr. Green, you have four minutes remaining.

8 REBUTTAL ARGUMENT OF TYLER R. GREEN

9 ON BEHALF OF THE PETITIONER

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

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

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

19 If you look at page --

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

25 MR. GREEN: He -- he runs them, Justice

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

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

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

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

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

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

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

22 We've cited four cases from four different
23 State courts in our reply brief, in footnote 1 of our
24 reply brief. That's Illinois, Missouri, New Jersey.
25 And Oregon, where the courts that have applied this rule

1 have undertaken the flagrancy inquiry and have, in fact,
2 suppressed evidence because the initial stop was
3 flagrant.

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

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

23 If there are no further questions.

24 CHIEF JUSTICE ROBERTS: Thank you, counsel.

25 Case is submitted.

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

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