Searches Incident to Arrest: *Utah v. Strieff* (2016) and the Exclusionary Rule

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AZ v. Gant (2009) SITTA of a vehicle only if arrestee is within reaching distance of the passenger compartment at the time of the search

Or it is reasonable to believe the vehicle contains evidence of the offense of the arrest
EXCLUSIONARY RULE EXCEPTIONS

1. INDEPENDENT SOURCE
2. INEVITABLE DISCOVERY
3. ATTENUATION

Mistakes About the Law
Supporting an Arrest


- Held: If the arrest was made based on P/C that a crime had been committed, the arrest is valid regardless of any state statute
Mistakes About Law Supporting an Arrest

- *Heien v. NC* (2014)

- **Held:** Reasonable suspicion to stop a motorist can rest on the officer’s mistaken understanding of the law at the time of the stop

Mistakes in Computer Databases Leading to an Arrest


- **Held:** Based on *Arizona v. Evans* (1995): Deterrent effect of the exclusionary rule would not punish the police for a record keeping error

Edward J. Strieff, Jr.
Mistakes in Whether Probable Cause Exists

_Utah v. Strieff_ (2016)

• Held: Discovery of a valid arrest warrant attenuated the connection between the unconstitutional stop and the evidence seized incident to a lawful arrest

**ATTENUATION**

1. Temporal proximity between unlawful stop and search
2. Presence of intervening circumstances
3. Purpose and flagrancy of the official misconduct

Justice Sotomayor’s dissent
Excluding the Evidence Is a Benefit That WILL Prevent Future Misconduct by the Police and They will Be More Careful

Excluding the Evidence Is A High Cost to Society In Letting the Guilty Go Free and Exclusion WILL NOT “Pay Its Way”

Deliberate disregard for 4th Am. rights
Objectively reasonable, but mistaken, belief behavior was lawful

Reckless or grossly negligent disregard for 4th Am. rights
Simple negligence

Recurring or systemic negligence
Isolated negligence
COURTS WILL RARELY FIND GOOD FAITH

- Deliberately false affidavit
- Magistrate not neutral and detached
- No objective person could find P/C
- Warrant invalid on its face (*Groh*, 2004)

MOTION PRACTICE TIPS

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  - Discovery motions are limited only by your own imagination
  - Try and establish the "recurring or systemic" pattern of 4th Am. violations
  - Ask fellow defense counsel for pre-trial hearing transcripts involving department personnel

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  - The burden is to prove that a mistake, if any, was unintentional and in accordance with the officer’s belief about the status of the law at the time of the search