No.

In the Supreme Court of the United States

PAUL B. MARTIN

Petitioner,

v.

STATE OF KANSAS

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Kansas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Police officers detain individuals in a variety of circumstances while conducting a check for an outstanding arrest warrant—for example, individuals may be stopped randomly on the street during "sweeps" of particular neighborhoods or detained in automobiles (as drivers or passengers). If the warrant check reveals an outstanding warrant, the individual seized is arrested and subjected to a search, which may reveal drugs or other contraband.

The lower courts are sharply divided on the frequently-recurring question whether—if the initial seizure of the individual was unlawful—evidence discovered pursuant to the search is admissible at trial. Some courts hold that the evidence should be suppressed because the detention was unlawful; others have concluded that the discovery of the outstanding warrant vitiates the taint of the illegal detention. The question presented is:

Whether an officer's discovery of an outstanding warrant during a concededly illegal detention initiated for the purpose of conducting a warrant check is an "intervening circumstance[]" (*Brown* v. *Illinois*, 422 U.S. 590, 603-04 (1975)) that removes the taint of the illegal detention and permits the introduction of evidence obtained in a search incident to an arrest on the outstanding warrant.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Paul B. Martin, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Kansas in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Kansas (App., *infra*, 1a-17a) is reported at 179 P.3d 457. The opinion of the Court of Appeals of Kansas (App., *infra*, 18a-22a) is reported at 151 P.3d 865. The district court's decision from the bench denying the motion to suppress (App., *infra*, 23a), is unreported.

JURISDICTION

The judgment of the Supreme Court of Kansas was entered on March 28, 2008. This Court's jurisdiction rests on 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Police officers frequently seize individuals in order to conduct a check for any outstanding arrest warrants for the individual seized. Under police de-

partment policies discussed in reported decisions, including the decision below, it is standard procedure in many jurisdictions to conduct such checks as part of virtually every encounter in which an officer participates. The number of decisions addressing this fact pattern confirms the widespread use of the procedure.

If a warrant is discovered, the individual is arrested and searched. That search may uncover illegal drugs or other contraband, which typically produces a new charge against the individual. When the seizure is lawful—either because the individual voluntarily agreed to remain with the officer or because the officer's actions were supported by reasonable suspicion—the contraband seized may be introduced into evidence to support the new charge.

But the seizure of the individual sometimes will be illegal because it violates the Fourth Amendment, typically on the ground that the police lacked reasonable suspicion to detain the individual in order to conduct the warrant check. Here, for example, the State did not challenge in the Kansas Supreme Court the holding of the court of appeals that the seizure of petitioner was unlawful. In that situation, because the contraband discovered in the post-arrest search is a fruit of the illegal seizure, the contraband is subject to suppression under the exclusionary rule.

Numerous courts have addressed the question whether evidence nonetheless is admissible because discovery of an outstanding warrant sufficiently attenuates the taint of the illegal seizure under this Court's decision in *Brown* v. *Illinois*, 422 U.S. 590 (1975). These courts have reached sharply conflicting results, with some holding that the discovery of the warrant does attenuate the taint and some holding that it does not. That means that similarly situated

individuals are subject to different legal rules depending on where in the country their case arises. This Court should grant review to resolve this disagreement among the lower courts.

A. Background

On the evening of June 16, 2005, police officers observed a man in an alley behind a church who appeared to be preparing to urinate on the church. After the man admitted his intention, the officers allowed him to leave, and the man picked up his bicycle and rode away. App., *infra*, 3a.

One of the officers then noticed a second bicycle on the sidewalk. Getting out of his car, he "saw another individual down the sidewalk about 20 feet or so" who "looked as though, to [the officer], he was also looking in the direction of the church possibly." Supp. Tr. 7.[1] Finding it "strange" that the two individuals had proceeded in different directions, the officer had "suspicions that we could possibly be looking at a burglary on the church, I don't know what, but it * * * seemed very strange." *Ibid.* The Kansas Court of Appeals observed that "[n]o such burglary had been reported, nor did the officers indicate any other aspect of the circumstances to justify such suspicion." App., *infra*, 20a-21a.

The officer stopped this second individual, petitioner Paul Martin, and requested his name and date of birth in order to run a warrant check. The officer testified that this request was "[s]tandard. We usually run peoples' names when we stop them. * * * I would say 90-plus percent of the time when we stop someone we do." Supp. Tr. 10.

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[1] "Supp. Tr." Refers to the transcript of the July 20, 2005 suppression hearing.

Mr. Martin provided the requested information; and the warrant check revealed an outstanding warrant. Mr. Martin was arrested on that warrant and a search incident to the arrest revealed a tin containing marijuana. App., *infra*, 3a.

B. Proceedings Below

Mr. Martin was charged with unlawful possession of marijuana. He moved to suppress the tin of marijuana on the grounds that it was obtained as the result of an unlawful seizure.

The district court denied the motion. App., *infra*, 23a. It held that it was permissible for the officer to run the warrant check because "[a]n officer can always run a search. * * * Once there is a warrant confirmed, the arrest is fine. The search incident to arrest is also fine pursuant to statute and case law." *Ibid.*

The Court of Appeals of Kansas reversed. App., *infra*, 18a-22a. It observed at the outset that petitioner's counsel had conceded that the officers' initial encounter with Mr. Martin was voluntary, but contended that it became involuntary when Mr. Martin was detained for the warrant check. The court "disagree[d] that any stop was justified" because the officers had no reasonable articulable suspicion that Mr. Martin was engaged in criminal activity. *Id.* at 20a.

Assuming that the initial encounter was voluntary, the court concluded that it lost its consensual character when Mr. Martin was detained for the warrant check. "Even though the detention was as brief as 5 minutes, an individual is seized when an officer restrains his or her freedom, even if that detention is brief." App., *infra*, 22a. Because "[w]hether one focuses on the initial stop or the detention as an extension of a purported voluntary encounter, * * *

Martin should not have been detained for a wants and warrants check under these circumstances," the court held that the evidence should have been suppressed. *Ibid.*

The Supreme Court of Kansas reversed the court of appeals, holding that the trial court properly denied the suppression motion. App., *infra*, 1a-17a. Because the State had failed to seek review of the court of appeals' determination that "Martin was being unlawfully detained during the warrant check," the supreme court restricted its analysis to "whether the discovery of an outstanding arrest warrant during an unlawful detention is an intervening event which removes the taint of the unlawful detention from evidence retrieved in a search incident to the warrant arrest." *Id.* at 6a-7a.

The supreme court looked to this Court's decision in *Brown* v. *Illinois*, 422 U.S. 590 (1975), "to determine whether the causal chain has been sufficiently attenuated, so as to dissipate the taint of illegal conduct." App., *infra*, 14a. The first factor—"the time elapsed between the illegality and the acquisition of the evidence"—"weigh[ed] heavily against the State" because the officers' actions "were continuous; there was no temporal break in the causal chain between illegality and evidence acquisition." *Id.* at 14a, 15a.

The court next considered the discovery of the warrant, stating that "the lawful warrant arrest for a prior crime, and ensuing lawful search incident to arrest, represent a potential break in the causal chain between the unlawful conduct of illegally detaining Martin and the retrieval of the challenged evidence." App., *infra*, 15a. Finally, it observed that "[w]hile the circumstances might suggest that the officers' purpose in requesting identification to run a

warrant check was a fishing expedition, we do not perceive the conduct to be flagrant" and "the intrusion upon Martin's privacy was a brief conversation in which Martin cooperatively engaged." *Id.* at 16a.

Based on "the minimal nature and extent of official misconduct, the outstanding arrest warrant was an intervening circumstance which sufficiently attenuated the taint of the unlawful detention" to permit the admission of the evidence. App., *infra*, 16a-17a.

REASONS FOR GRANTING THE PETITION

Evidence generally may not be admitted against a defendant when it has been obtained through unconstitutional means. See, *e.g.*, *Wong Sun* v. *United States*, 371 U.S. 471 (1963). Although "evidence is [not] 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police," evidence will be inadmissible if it "has been come at by exploitation of that illegality." *Hudson* v. *Michigan*, 547 U.S. 586, 592 (2006) (quoting *Wong Sun*, 371 U.S. at 487-88). That determination turns on whether, "granting establishment of the primary illegality, the evidence * * * has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Brown* v. *Illinois*, 422 U.S. 590, 599 (1975) (citation and internal quotation marks omitted).

The decision below rests upon the remarkable conclusion that an illegal seizure for the purpose of conducting a warrant check is sufficiently distinguishable from the discovery of an outstanding warrant during that very warrant check to permit the introduction of evidence that is the product of that illegal seizure. If that reasoning is correct, police offi-

cers may conduct street sweeps, detaining citizens at will for the purpose of conducting warrant checks, without fear of any consequence for such violations of the Fourth Amendment. *Brown*'s principle does not apply where its effect would be to eliminate entirely the deterrent effect of the exclusionary rule. Given the conflict among the lower courts, the frequently-recurring nature of the issue, and the stark inconsistency between the rationale adopted below and this Court's decisions, review by this Court is plainly warranted.

A. The Lower Courts Are Divided On The Question Presented.

State and federal courts have reached conflicting conclusions as to whether the discovery of an outstanding arrest warrant is an "intervening circumstance" permitting the introduction of evidence that is the product of an illegal seizure when the purpose of the seizure was to enable the police to conduct the warrant check.

Several courts have determined that the discovery of an outstanding warrant from a warrant check conducted during an unlawful seizure does not permit the introduction of evidence uncovered in a search incident to arrest on the warrant charge—precisely the opposite of the result reached by the court below.

In *State* v. *Daniel*, 12 S.W.3d 420 (Tenn. 2000), the Tennessee Supreme Court determined that the defendant, a pedestrian, was unlawfully seized when he was detained so that the officer could conduct a warrant check. It held that discovery of the warrant did ***not*** permit introduction of the evidence: "the drugs found in [the defendant's] pocket [after discovery of the arrest warrant] * * * must be suppressed

as fruit of the poisonous tree since no intervening event or other attenuating circumstance purged the taint of the initial illegal seizure." *Id.* at 422 n.2 & 428 (internal quotation marks omitted); see also *United States* v. *Luckett*, 484 F.2d 89 (9th Cir. 1973) (per curiam) (police impermissibly detained the defendant to run a warrant check and found an outstanding warrant; evidence found in the subsequent search was properly suppressed).

People v. *Mitchell*, 824 N.E.2d 642, 650 (Ill. App. Ct. 2005), involved a defendant walking on the street who was subjected to an unlawful seizure while a police officer ran a warrant check. The officer testified that "it is his practice, whenever he comes into contact with people, to run warrant checks on them." *Id.* at 644. The check revealed a warrant, the defendant was arrested, and the subsequent search uncovered narcotics.

The court held that "the purpose of the stop"—to run a warrant check—"was directly related to the arrest of defendant, which then led directly to the search of defendant. * * * * [T]he answer to the question, whether the evidence was obtained by exploiting the original illegality, is undeniably yes." 824 N.E.2d at 649-50. The court accordingly affirmed the suppression of the evidence.

Other courts—by contrast—agree with the conclusion reached by the court below, holding that the discovery of an arrest warrant dissipates the taint of an unlawful seizure even though the purpose of the seizure was to conduct the warrant check that revealed the outstanding warrant. See *Cox* v. *State*, 916 A.2d 311, 316 (Md. 2007); *Golphin* v. *State*, 945 So.2d 1174, 1193 (Fla. 2006); *United States* v. *Simpson*, 439 F.3d 490, 496 (8th Cir. 2006); *State* v. *Page*,

103 P.3d 454, 459-60 (Idaho 2004); *State* v. *Hill*, 725 So.2d 1282, 1286-87 (La.1998).

The conflict among the lower courts is clear.

B. This Case Squarely Presents An Issue Of Substantial Practical Importance.

The question presented here arises frequently, and the conflict among the lower courts produces substantial disparity and uncertainty in the administration of criminal justice. The Court should grant review to provide much-needed guidance to lower courts and law enforcement.

Police officers routinely perform a check for outstanding warrants when they encounter individuals in a variety of circumstances. During routine traffic stops, field interviews, even when dealing with jaywalkers (see *United States* v. *Luckett*, *supra*), police "view a warrants check as a routine feature of almost any citizen encounter." *Golphin*, 945 So.2d at 1202 (Pariente, J., concurring). See also *Mitchell*, 824 N.E.2d at 644 (officer testified that "whenever he meets someone on the street, he runs a warrant check on that individual"); *State* v. *Baez*, 894 So.2d 115, 116 (Fla. 2004) (per curiam) (policy during police-initiated encounters to "run a routine warrant check"); *State* v. *Topanotes*, 76 P.3d 1159, 1160 (Utah 2003) (performing a warrant check is "routine procedure" or "common practice"); *State* v. *Jones*, 17 P.3d 359, 360 (Kan. 2001) (officer testified that "it was his standard operating procedure to obtain identification from every person in a vehicle and run a records check on the passengers") (internal quotation marks omitted); *Magee* v. *State*, 759 So.2d 464, 466 (Miss. Ct. App. 2000) (warrant checks are "routine" during police-initiated encounters with pedestrians); *Hill*, 725 So.2d at 1288 (Lemmon, J., concurring) (describ-

ing police policy to run a "check for outstanding warrants" during consensual police-pedestrian encounters as "routine police procedure"); *Wilson* v. *State*, 874 P.2d 215, 222 (Wyo. 1994) (officer testified that department's policy was to conduct national and local warrant checks of everyone police "contact" late at night).

Indeed, the officer testifying at the suppression hearing in this case stated that "[w]e usually run peoples' names [to conduct a warrant check] when we stop them. * * * I would say 90-plus percent of the time when we stop someone we do." Supp. Tr. 10.

The sheer frequency with which intermediate state appellate courts address the question presented confirms the commonplace nature of the procedure. See, *e.g.*, *Birch* v. *Commonwealth*, 203 S.W.3d 156, 157 (Ky. Ct. App. 2006) ("regardless of the potential illegality of the police officer's initial contact with Birch, the outstanding arrest warrant was an independent, untainted ground for the arrest"); *People* v. *Rodriguez*, 49 Cal. Rptr. 3d 811, 813 (Ct. App. 2006) ("evidence seized in a lawful search incident to a lawful arrest based upon an outstanding warrant should be suppressed if the police invented the ground for the traffic stop which led to the discovery of the warrant"); *McBath* v. *State*, 108 P.3d 241, 242 (Alaska Ct. App. 2005) ("regardless of the potential illegality of the investigative stop, the pre-existing arrest warrant was an independent, untainted ground for McBath's arrest"); *Mitchell*, 824 N.E.2d at 650 (finding the "evidence was obtained by exploiting the original illegality" regardless of discovery of outstanding arrest warrant); *State* v. *Affsprung*, 87 P.3d 1088, 1095 (N.M. Ct. App. 2004) (conducting "a wants and warrants check constituted an unlawful detention of Defendant" that tainted the evidence ob-

tained); *Hardy* v. *Commonwealth*, 149 S.W.3d 433, 436 (Ky. Ct. App. 2004) ("discovery of the outstanding warrant for [the defendant's] arrest was "sufficient to dissipate any taint caused" by an illegal detention).

The pervasive uncertainty surrounding the question presented in this case creates unseemly and divergent outcomes within the Nation's courts and intolerable confusion in the policing of the Nation's streets. These inconsistencies warrant immediate resolution by this Court.

The practical result of the lower courts' divergent views of the question presented is that the governing legal rule varies from State to State, producing inconsistent treatment of defendants and unclear standards for police officers. Police in Tennessee, for instance, have since 2000 operated under the clear constitutional rule that they may not detain citizens to conduct a warrant check in the absence of reasonable suspicion of criminal activity. If this rule is violated, even if an outstanding warrant is discovered, any evidence obtained through a search incident to arrest on that warrant is inadmissible.

Maryland's highest court has held that regardless of the legality of such a detention, any evidence found in a search incident to arrest resulting from an outstanding warrant discovered during the detention is admissible. These contradictory approaches to the question presented can only be reconciled by this Court's review.

The Court should not tolerate continued application of these conflicting legal standards with respect to an issue that recurs so frequently. The Fourth Amendment should be enforced in the same manner throughout the country. Review by this Court is necessary to achieve that uniformity.

C. Discovery Of An Outstanding Warrant Does Not Vitiate The Taint From The Illegal Seizure Of An Individual To Conduct A Warrant Check.

This Court held in *Brown* v. *Illinois*, *supra*, that the exclusionary rule will not apply if the connection between the illegality and the seizure of the evidence "ha[s] become so attenuated as to dissipate the taint." 422 U.S. at 598 (citation and quotation marks omitted). The Court identified three considerations relevant in determining whether the evidence "'has been come at by exploitation of [the] illegality or instead by means sufficiently distinguishable to be purged of the primary taint'"—the "temporal proximity" between the illegal seizure and obtaining the evidence; "the presence of intervening circumstances"; and "the purpose and flagrancy of the official misconduct." *Id.* at 599, 603-04 (citation and footnote omitted)

The *Brown* inquiry is fact-dependent, but cases involving an illegal detention for a warrant check all follow an identical pattern: an individual is seized unlawfully for the purpose of conducting a warrant check; the warrant check is conducted and a warrant is discovered; and the individual then is arrested and searched. These facts provide no basis for a finding of attenuation. Rather, they demonstrate why exclusion of the evidence found in the post-arrest search is essential to fulfill the purposes of the exclusionary rule.

To begin with, the discovery of the evidence is always proximate in time to the unlawful seizure. The reason the individual is seized is to conduct a warrant check; the check therefore occurs within minutes of the seizure, and the arrest and search follow quickly when the officer learns of the out-

standing warrant. As the Kansas Supreme Court acknowledged here, "[t]here was no temporal break in the causal chain between illegality and evidence acquisition." App., *infra*, 15a.

Deeming the discovery of an outstanding warrant an "intervening circumstance," the second *Brown* factor, would ignore the fact—again common to all of these cases—that the interaction was initiated by the police for the purpose of finding an outstanding warrant.

An intervening circumstance is one that breaks the relationship between the illegal conduct and the evidence obtained. That a warrant might be discovered is predictable—indeed, it is the reason for the illegal seizure—and the warrant accordingly cannot vitiate the taint from the intimately-related illegal seizure.

For the same reason, the third factor—the purpose of the illegal conduct—weighs heavily against a finding of attenuation. The purpose of these illegal seizures is to enable the warrant checks. That close linkage precludes a finding of attenuation. This plainly is a situation in which—in the words used by this Court in *Brown*—the evidence "has been come at by exploitation of" the illegal seizure not by "means sufficiently distinguishable to be purged of the primary taint." 422 U.S. at 599 (citation and internal quotation marks omitted).[2]

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[2] The court below stated that "[t]he warrant arrest of [petitioner] was a lawful, perhaps mandatory, act" and that the arrest and subsequent search "represent a potential break in the causal chain" vitiating the taint of the illegal seizure. App., *infra*, 15a. But those circumstances are always present when a person is illegally seized for the purpose of conducting a warrant check. The court's rationale would therefore apply in every

Indeed, if police illegally detain someone to conduct a warrant check, it is obviously foreseeable that they might discover a warrant. Allowing the admission of evidence obtained incident to the arrest on the warrant gives officers an extremely strong incentive to engage in suspicionless seizures for the purpose of warrant checks. Discovery of a warrant accordingly cannot logically be viewed as attenuating illegality in the manner contemplated by this Court's decisions.

This conclusion is especially appropriate because the concept of attenuation is intended to avoid the suppression of evidence in circumstances in which suppression would not deter unconstitutional police conduct. As Justice Powell suggested in his concurring opinion in *Brown*, "[t]he notion of the 'dissipation of the taint' attempts to mark the point at which the detrimental consequences of illegal police action become so attenuated that the deterrent effect of the exclusionary rule no longer justifies its cost." *Brown*, 422 U.S. at 609 (Powell, J., concurring).

"[T]he value of deterrence depends upon the strength of the incentive to commit the forbidden

case. And the court ignored the fact that, far from breaking the chain, the discovery of the warrant that authorized the search was the very purpose of the illegal seizure and thus closely tied to the Fourth Amendment violation.

The Kansas court also stated that the officers' conduct was not flagrant because their goal was not to search petitioner for drugs. App., *infra*, 16. As in all of these warrant check cases, however, the objective goal of their illegal seizure was to conduct the warrant check. The conduct was flagrant because of this direct connection between the reason for the unlawful act and the search that uncovered the contraband. See *Brown*, 422 U.S. at 605. (finding conduct flagrant where "[t]he impropriety of the arrest was obvious").

act." *Hudson*, 547 U.S. at 595. If the exclusionary rule were inapplicable in this category of cases, police officers would have a powerful incentive to conduct unconstitutional fishing expeditions for open warrants.

Suppressing the evidence is "the only way to deter the police from randomly stopping citizens for the purpose of running warrant checks"; under the contrary rule adopted by the court below "there would be no reason for the police not to stop whomever they please to check for a warrant." *Mitchell*, 824 N.E.2d at 650. "To hold that the discovery of a warrant * * * remove[s] the taint of the [illegal seizure] * * * would be akin to holding that the substance of a confession obtained by coercion removes the taint of the coercive practices used to obtain it." *Ibid.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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