

occupants appeared disabled because its hood was opened. A maroon car with three occupants drove away as the trooper approached. The trooper did not check on the disabled pickup, but instead pursued and stopped the maroon car because it had a cracked windshield and an inoperable third brake light. The trooper asked the occupants for identification, including Appellee Alexander who was the front seat passenger. Alexander identified himself and explained that he had no identification with him. The trooper had Alexander come back to his cruiser "to get [Alexander's] information" because he identifies all car occupants during every stop for officer safety. (P.H. 8, 13) At preliminary hearing the trooper testified he detected the strong odor of an alcoholic beverage emanating from Alexander while in his cruiser and noticed Alexander had slurred speech and lethargic movements. (P.H. 9) The trooper confirmed Alexander's identity and learned he had an outstanding warrant. (P.H. 9) The trooper said he placed Alexander under arrest for the outstanding warrant and for public intoxication. (P.H. 9)

At the suppression hearing, the trooper's account of the traffic stop differed in several respects. He claimed that he detected the odor of alcohol when the driver opened his door. (Supp.Hrg. 23) He said he asked for identification and "began to separate the suspects, the subjects, to see where the alcohol was coming from." (Supp.Hrg. 25) He testified he had Alexander exit the car because of suspicions from Alexander's behavior that he was intoxicated. (Supp.Hrg. 25-27) The trooper said he immediately smelled the odor of alcohol about Alexander as Alexander exited the car. (Supp.Hrg.27) Although he denied handcuffing

Alexander before putting him in the cruiser, he changed his position after the prosecutor asked if he would disagree if the dashcam video showed otherwise. (Supp.Hrg. 28) The trooper claimed he had no intention of arresting Alexander at that point and told Alexander explicitly that he was not under arrest. (Supp.Hrg. 28) He verified Alexander's identity and discovered Alexander had an outstanding warrant. (Supp.Hrg. 29) The trooper conceded that he omitted information from his report concerning Alexander's intoxication because he made a deal that if Alexander was honest about the location of any contraband on his person the trooper would not include a charge of public intoxication.¹ (Supp.Hrg. 35-36) Alexander admitted he had marijuana in his shoe in response to the trooper's questions.

DISCUSSION

The State argues the district court abused its discretion in sustaining Alexander's motion to suppress evidence and ultimately dismissing the charges against him. The State contends that the traffic stop was justified at its inception and that Alexander's removal from the car was reasonable. The State concedes that handcuffing Alexander before placing him in the trooper's cruiser "does not comport to the dictates of current case law" and that the trooper's continued questioning of Alexander after handcuffing him was "inappropriate." The State argues suppression of the marijuana and rolling papers found on Alexander, however, was unwarranted because the trooper's subsequent discovery of Alexander's outstanding warrant constituted an intervening

¹ The trooper did not list public intoxication in his report, but the District Attorney elected to file that charge against Alexander. (Supp. 40-41)

circumstance breaking the connection between the illegal arrest and discovery of contraband. The State insists that the trooper's actions were not flagrantly illegal and exclusion of the evidence is unwarranted.

When reviewing a ruling on a motion to suppress, we give great deference to the factual findings and credibility determinations of the district court, and review those findings only for clear error. *See Terry v. State*, 2014 OK CR 14, ¶ 6, 334 P.3d 953, 955, *cert. denied*, ___U.S.___, 135 S. Ct. 2053, 191 L. Ed. 2d 958 (2015). We consider the evidence in the light most favorable to the prevailing party. *Id.* We review the district court's legal conclusions *de novo* and exercise our independent judgment as to whether an officer's encounter with a criminal defendant was lawful. *Id.*

Generally, the discovery of an outstanding warrant is a significant intervening event that gives police probable cause to arrest a defendant independent from any illegal stop and seizure. *See Jacobs v. State*, 2006 OK CR 4, ¶¶ 9-11, 128 P.3d 1085, 1088-89. We adopted the rule in *Jacobs* that

If, during a non-flagrant but illegal stop, the police learn the defendant's name, and the disclosure of that name leads to the discovery of an outstanding warrant for the defendant's arrest, and the execution of that warrant leads to the discovery of evidence, the existence of the arrest warrant will be deemed an independent intervening circumstance that dissipates the taint of the initial illegal stop vis-à-vis the evidence discovered as a consequence of a search incident to the execution of the arrest warrant.

Id. at ¶ 10, 128 P.3d at 1089 *quoting McBath v. State*, 108 P.3d 241, 248 (Alaska Ct. App. 2005). We observed that this rule balanced a defendant's right against illegal search and seizure with the community's expectation that a valid arrest

warrant may be served upon a subject, even if police learned about the arrest warrant after an illegal stop. *Id.* at ¶ 11. We also found the rule discouraged police from flagrantly illegal, investigatory seizures while at the same time avoided punishing police for mistakes or errors made in good faith. *Id.*

The United States Supreme Court recently considered whether police discovery of a valid arrest warrant sufficiently attenuated the connection between an unconstitutional detention and the evidence seized incident to the arrest for the warrant. See *Utah v. Strieff*, ___U.S.___, ___S.Ct.___, ___L.Ed.2d___, 2016 WL 3369419 (June 20, 2015). The Court framed the question under review as whether the “attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest.” *Strieff* at *3. The Court answered affirmatively, holding that “the evidence the officer seized as part of the search incident to arrest is admissible because the officer’s discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.” *Id.*

The Court in *Strieff* analyzed three factors identified in *Brown v. Illinois*² in deciding whether the discovery of a valid arrest warrant was a sufficient intervening event to break the causal chain between the unlawful detention and the discovery of drug-related evidence on the accused. The factors considered

² 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975)(holding administration of *Miranda* warnings cannot always make act of confession sufficiently a product of free will to break, for Fourth Amendment purposes, the causal connection between illegality of arrest and confession)

were (1) the temporal proximity between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. *Id.* at *5. The Court held that the short time frame between the illegal stop and the search weighed in favor of suppression. The discovery of the defendant's arrest warrant constituted an intervening circumstance that strongly weighed in favor of the State. The third factor—the purpose and flagrancy of the official misconduct—also favored the State because the officer was at most negligent.

The district court in Alexander's case did not explicitly address the first two factors considered in *Strieff* (and *Brown*); the circumstances, however, are similar to those in *Strieff* with the first factor favoring suppression because of the short time frame between the detention and the search and the second factor favoring the State because of the discovery of Alexander's warrant. The district court concentrated on the third factor, finding in this case it favored suppression because the trooper's actions during the traffic stop amounted to conduct that should be deterred rather than good faith, honest mistakes. The court found portions of the trooper's testimony inconsistent and unbelievable including his reasons for the traffic stop, his suspicions of Alexander's intoxication and his handcuffing of Alexander in the name of officer safety. The court was particularly troubled by the trooper's removal of Alexander from the car to verify his identity and the trooper's immediate restraint of Alexander with handcuffs. The court found the restraint amounted to an arrest in spite of the trooper's assurances to

Alexander that he was not under arrest. The court was further troubled by the trooper's failure to warn Alexander of his constitutional rights following the discovery of his arrest warrant and by the manner in which the trooper obtained Alexander's unwarned confession that he had "weed" in his shoe. The trooper elicited the incriminating statement by offering to forgo a public intoxication charge if Alexander was honest and volunteered the location of any contraband on his person.

The district court found the illegality had a quality of purposefulness and that the impropriety of the arrest and subsequent unwarned questioning was obvious and flagrantly abusive. That court was fairly convinced the trooper embarked upon the traffic stop in the hope that something beyond the vehicle's defective equipment problems might turn up. The district court's factual findings and credibility choices are not clearly wrong and we defer to them. Moreover, the district court applied the correct legal standard. The first and third of the *Strieff/Brown* factors support suppression. The unlawful arrest, the failure to give *Miranda* warnings and the coercive questioning prompting Alexander's confession demonstrate a flagrant abuse of Alexander's Fourth Amendment rights.

DECISION

The ruling of the trial court sustaining Alexander's Motion to Suppress and Dismiss is AFFIRMED. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKMULGEE COUNTY
THE HONORABLE KENNETH E. ADAIR, DISTRICT JUDGE

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