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What would high court Justice Aristotle say if *Utah v. Strieff* came up?

This past term, the Roberts Court continued its decadelong assault on the Fourth Amendment exclusionary rule.

In *Utah v. Strieff*, the court refused to suppress evidence seized pursuant to an arrest warrant discovered as a result of an unconstitutional stop. No. 14-1373 (June 20, 2016).

To understand what happened, we must discuss Aristotle.

Stay with me on this one.

Let's begin with some history. A half-century ago, the Warren Court extended the federal exclusionary rule to the states in *Mapp v. Ohio*, 367 U.S. 643 (1961). The rule at that time appeared to be "Fourth Amendment violation equals exclusion."

Things began to change when Warren E. Burger became chief justice in 1969. First, in a series of decisions, the court limited the rule's operation only to criminal trials. See, e.g., *U.S. v. Calandra*, 414 U.S. 338 (1974) (exclusionary rule inapplicable to grand jury proceedings); *U.S. v. Janis*, 428 U.S. 433 (1976) (exclusionary rule inapplicable to civil trials).

Second, both the Burger and Rehnquist Courts began to allow unconstitutionally seized evidence at criminal trials as long as the police were acting in "good faith."

They first used this doctrine where police were relying on outside sources that assured them that what they were doing was constitutional. See, e.g., *U.S. v. Leon*, 468 U.S. 897 (1984) (police relying on a judge's finding that a warrant was supported by probable cause); *Illinois v. Krull*, 480 U.S. 340 (1987) (police relying on a state statute later determined to allow unconstitutional searches); *Arizona v. Evans*, 514 U.S. 1 (1995) (police relying on an invalid arrest warrant where problem was caused by a clerical error committed by a court employee).

But the Roberts Court made a major doctrinal change when it held for the first time a decade ago that the "good faith" exception could apply even without police reliance on outside sources.

In *Hudson v. Michigan*, 547 U.S. 586 (2006), the police violated the Fourth Amendment's "knock and announce" requirement by not giving the occupant a reasonable amount of time to get to the door to allow the police to enter.

The constitutional violation was caused entirely by police behavior; there was no reliance on any outside source. Nevertheless, the court held that suppression "has always been our last resort, not our first impulse" and held the evidence admissible.

Three years later, the court confronted a case where the police relied on an invalid arrest warrant that appeared in a police database. The police were solely responsible for the erroneous listing of the invalid warrant. As in *Hudson*, the police were not relying on an outside source.

The Roberts Court held that exclusion was only warranted where the degree of police culpability was great enough. Unless the Fourth Amendment violation was caused by deliberate, reckless or grossly negligent police conduct, the evidence would not be excluded. Finding the police error here to be simple negligence at the worst, the court allowed the evidence. *Herring v. U.S.*, 555 U.S. 135 (2009).

Herring leads to the result in *Strieff*. The officer made an investigatory stop of Edward Strieff based on the authority of *Terry v. Ohio*, 392 U.S. 1 (1968). He ordered him to produce identification, and records indicated that Strieff had an outstanding warrant.

The officer then placed him under arrest, searched him and recovered contraband drugs. After being charged with possession of drugs, Strieff moved to suppress them.

The Supreme Court agreed with the lower courts that the officer's stop of Strieff violated *Terry* because the police lacked reasonable suspicion. The issue was whether the discovery of the warrant that justified the arrest attenuated the connection between the unlawful stop and the discovery of the contraband.

Holding in part that there was a lack of flagrant or purposeful police misconduct, the court refused to suppress the evidence. It characterized the police conduct that resulted in the unconstitutional stop as simply "good-faith mistakes."

Arguably, each one of the above decisions finding exceptions to the exclusionary rule could be separately justified. But here is where Aristotle can shed some light.

Aristotle described a logical flaw called the "fallacy of composition." This occurs when one infers that something is true of the whole from the fact that it is true of some part of the whole. For example, the fact that a man on three different occasions has carried 100-pound loads does not mean that he can carry a 300-pound load.

Professor Donald Dripps has applied this insight to the Supreme Court's Fourth Amendment rulings. Dripps, "The Fourth Amendment and the Fallacy of Composition," 74 Mississippi Law Journal 341 (2004).

For example, Dripps asserts that it may be reasonable to allow an officer to search any arrestee. *U.S. v. Robinson*, 414 U.S. 218 (1973). It may be reasonable to allow an arrest for any offense. *Atwater v. Lago Vista*, 532 U.S. 318 (2001). It also may be reasonable to never examine the subjective motivation of an arresting officer. *Whren v. U.S.*, 517 U.S. 806 (1996).

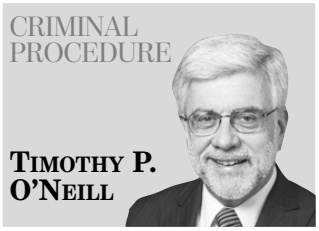
But combining these three cases would allow for a system of racist police officers hounding minorities and making arrests for the most trivial offenses to do full searches. This most definitely is not reasonable, and Aristotle understood why more than 2,000 years ago.

And this is why Justice Sonia M. Sotomayor's dissent was so powerful in *Strieff*. Although not mentioning the fallacy of composition, she certainly uses its reasoning. She complained that the majority erred by insisting that the officer's conduct was simply an "isolated" occurrence. Instead, she bluntly asserts, "[N]othing about this case is isolated."

Sotomayor notes that there are more than 7.8 million outstanding warrants on national databases, the vast majority of which are for minor offenses. What *Strieff* now does is to encourage officers to make unconstitutional stops, knowing that if they happen to stop one of the millions of citizens with an outstanding warrant who may be carrying contraband, then all will be forgiven.

She concludes: "We must not pretend that the countless people who are targeted by police are 'isolated.' ... They are the ones who recognize that unlawful police stops corrode all our civil liberties."

Illinois, of course, does not have to accept *Strieff*. The Illinois Supreme Court has in the past rejected a pro-prosecution exclusionary rule decision from the U.S. Supreme Court. See *People v. Krueger*, 175 Ill.2d 60 (1996) (rejecting *Illinois v. Krull*). *Strieff* deserves similar treatment.



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This (three police stops combined) most definitely is not reasonable, and Aristotle understood why more than 2,000 years ago.

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