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Traffic Stops and the New Exclusionary Rule Regime: Why Harris, Hudson, and Herring Mandate That the Discovery of an Outstanding Arrest Warrant Attenuate the Taint of an Illegal Traffic Stop Except in the Case of A Flagrant Fourth Amendment Violation

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Traffic Stops and the New Exclusionary Rule Regime: Why *Harris, Hudson,* and *Herring* Mandate That the Discovery of an Outstanding Arrest Warrant Should Attenuate the Taint of an Illegal Traffic Stop Except in Cases of A Flagrant Fourth Amendment Violation

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**ABSTRACT**

Suppose that during the course of an illegal traffic stop officers discover an outstanding arrest warrant for the driver, make the arrest, and then discover evidence such as narcotics in the driver’s pocket. Under the exclusionary rule, should the narcotics be considered the “fruit” of the illegal stop or does the discovery of the arrest warrant attenuate the taint? This article explores the longstanding circuit split on this question and contends that the discovery of an outstanding arrest warrant should attenuate the taint unless the initial illegal traffic stop was a flagrant violation of the Fourth Amendment.

Almost all courts analyze this question under the traditional multi-factor attenuation standard found in *Brown v. Illinois*. This article advances a new argument based on a trio of much more recent exclusionary rule cases—*New York v. Harris*, *Hudson v. Michigan*, and *Herring v. United States*. This article explains why these precedents provide a sounder basis on which to resolve the issue. Finally, the article addresses these precedents in light of the causation and culpability foundations of the Fourth Amendment exclusionary rule.

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INTRODUCTION

Suppose a driver, pulling up to a crowded intersection, makes a hasty left hand turn immediately after the light changes from green to yellow. An officer mistakenly pulls the driver over, citing the running of a red light. After conducting a records check with the driver’s license, the officer learns the driver is wanted on an outstanding federal arrest warrant. The officer then conducts a search of the driver’s person and vehicle incident to that arrest—finding narcotics hidden behind the glove compartment. Should the narcotics be suppressed as fruit of the illegal traffic stop or does the discovery of the outstanding arrest warrant sufficiently attenuate the taint?

This scenario is based on the facts of United States v. Faulker, the most recent case of its kind to be denied certiorari by the Supreme Court. Jurisdictions continue to wrestle with the complex legal issues arising from what this article terms “Faulkner stops.” All courts seem to agree that the traditional multi-factor attenuation test in Brown v. Illinois provides the framework for undertaking the analysis.

What these courts fail to recognize is the relevance of the new principles underpinning the attenuation doctrine that the Court has devised in its most recent era of exclusionary rule jurisprudence. The keys to analyzing Faulkner stops can be found in a trio of recent exclusionary rule cases: Harris, Hudson, and Herring. Taken together, these precedents suggest that the discovery of an outstanding arrest warrant should attenuate the taint of the initial illegality in Faulkner stop cases unless the police misconduct rises to the level of a “flagrantly abusive” violation.

This article contends that there have been three major cases affecting the traditional attenuation doctrine. In New York v. Harris, the Court amplified the weight that preexisting probable cause should be given in exclusionary rule analysis—despite a later Fourth Amendment violation. In a similar vein, Hudson v. Michigan recognized the overriding importance of a preexisting valid search warrant—despite an incidental Fourth Amendment violation during its execution, and analysis that examines attenuation in terms of the “zones of interest” protection by constitutional rules at issue in light of mode by which the evidence was discovered. And Herring v. U.S. indicated the continuing importance of deterring flagrant police misconduct through the exclusionary rule.

To blueprint the framework for this discussion, this article will review the traditional Brown v. Illinois test, then turn attention to the Court’s recent line of attenuation cases, and finally examine the governing concepts attenuation. Then, this article will explain the underlying foundation of proximate cause, remoteness, and intervening-superseding events, and how these cases hinge upon these concepts. In part III, this article will provide examples from each group of courts in the circuit split and discuss the critical flaws of each approach.

Building upon that framework, this article will propose why the discovery of an arrest warrant attenuates the taint. Beginning with a re-examination of New York v. Harris and Hudson v. Michigan, Part IV will demonstrate why their implications mandate this result. Lastly, Part IV will clarify why the underlying foundations of the proximate cause doctrine complement this rule.

Then, Part V will evaluate the flagrancy exception that should qualify the rule in these cases. Part V will also consider the flagrancy exception’s pedigree in attenuation.

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cases—culminating with the Court’s decision in *Herring v. U.S.* Part V will further explain why this rule/exception format essentially utilizes the central aspects from the *Brown v. Illinois* balancing test, but restructures them to better serve the Court’s principles and the Fourth Amendment rights of criminal defendants.

I. EXCLUSIONARY RULE

Since the Fourth Amendment guarantees, “[t]he right of the people to be secure in [our] persons, houses, papers, and effects, against unreasonable searches and seizures,” the Court was beckoned to determine the remedy for a violation of our Fourth Amendment rights. In *Weeks v. United States*, the Court determined that evidence gathered in violation of the Fourth Amendment is inadmissible at criminal trials, because otherwise, the Fourth Amendment would be reduced to a mere “form of words.”

Over time, however, the Court has developed several exceptions that have significantly modified the exclusionary rule’s application. The Court has observed, “[a]s with any remedial device, the application of the [exclusionary] rule [should be] restricted to those areas where its remedial objectives are thought most efficaciously served.” And in *Nardone v. United States*, the Court held that evidence derived from a police illegality is nevertheless admissible if the connection between the evidence and the illegality has “become so attenuated as to dissipate the taint.”

A. Attenuation

1. Cases


In *Brown v. Illinois*, the Court—considering the scope of the attenuation exception—analyzed whether the exclusionary rule should apply in context of an illegal arrest resulting in a confession. In *Brown*, the defendant was illegally arrested and then gave inculpatory statement while in a police custody a few hours later.

The Court’s approach—based on proximate cause—was a multi-factor examination of the relationship between the officer’s misconduct and the discovery of tainted fruit to determine whether the chain of causation between the two was “attenuated.” Gearing its analysis to focus on the factual chain of events, the Court announced “the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct are all relevant.”

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2 U.S. CONST. amend. IV.
7 *Id.*
8 *Id.* at 603-04.
Weighing these factors, the Court suppressed the defendant’s statement, because it was not sufficiently remote from the underlying illegality of the arrest. Brown's statements came only two hours after the illegal arrest, “and there was no intervening event of significance whatsoever.” The Court also found that the manner in which police conducted the arrest gave “the appearance of having been calculated to cause surprise, fright, and confusion.” To date, the Brown test has remains the controlling inquiry in determining whether attenuation has occurred.

b. New York v. Harris

In New York v. Harris, the Court notably modified the basic Brown attenuation test in two primary ways. In Harris, the police had probable cause to arrest the defendant for murder; but they failed to get a warrant before entering his home, removing him from his home, and obtaining a confession. This violated the Payton rule—which requires that police obtain a warrant in addition to probable cause before gaining entry to a suspect’s home.

Despite the lack of a warrant, the Court first determined that the “continued custody of the suspect” was lawful. The Court reasoned that even if immediate release—the remedy for an illegal seizure—was given, the police could “immediately re-arrest” the suspect under the authority of the preexisting probable cause. The Court remarked that there could be “no valid claim that the defendant was immune from prosecution because his person was the fruit of an illegal arrest,” because the bell could not be un-rung. Distinguishing Brown, the Court noted that the evidence in Brown was suppressed because the police lacked probable cause to arrest.

In addition, the Harris Court introduced a second doctrinal concept for attenuation cases by observing that, “suppressing the statement taken outside the house would not serve the purpose of the rule that made Harris’ in-house arrest illegal.” The Court explained that the Payton arrest warrant requirement stands to protect the home and any evidence gathered from it. And since all evidence from the home was excluded, “the purpose of the rule has thereby been vindicated.”

The statement made outside the home, however, fell outside the Payton warrant requirement’s ambit of constitutional protection. In rejecting deterrence as sufficient to justify suppression in this case, the Court opined that, “it does not follow from the

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10 Id.
11 Id. at 604.
12 Id.
13 See, e.g., Golphine v. State, 945 So.2d 114 (Fla. 2006); Myers v. State, 909 A.2d 1048 (Md. 2006).
16 Harris, 495 U.S. at 18.
17 Id.
18 Id.
19 Id.
20 Id. at 17 (citing U.S. v. Ceccolini, 435 U.S. 268 (1978)).
21 Id.
22 Id.
23 Id.
emphasis on the exclusionary rule's deterrent value that ‘anything which deters illegal searches is thereby commanded by the Fourth Amendment.’”

The Court ostensibly proposed that the “purpose of the rule” at issue should play a role in the analysis of the causal connection between the police misconduct and the evidence. Specifically, the evidence should not be deemed a “fruit” of the constitutional violation unless it is causally connected—not just to the violation—but also to the realization of the risks that make the police conduct wrongful.

c. Hudson v. Michigan

In Hudson v. Michigan, the police possessed a valid search warrant to enter a suspect’s home but executed it unconstitutionally in violation of the knock-and-announce rule. Regardless, the Court said that attenuation had occurred, because the violation of the interests protected by the knock-and-announce rule—in this particular case—had “nothing to do with the seizure of evidence.” The Court proceeded to explain two fundamental concepts for lower courts to employ in an attenuation analysis.

First, the Court reminded that it has consistently rejected the proposition that “any and all evidence is fruit-of-the-poisonous-tree simply because it would not have come to light but for the illegal actions of the police.” Instead, “but-for causality is only a necessary, not a sufficient condition” to justify application of the exclusionary rule. Second, Justice Scalia explained:

\[\text{[E]ven if the illegal entry here could be characterized as a but-for cause of discovering what was inside, we have “never held that evidence is “fruit of the poisonous tree” simply because “it would not have come to light but for the illegal actions of the police” “…Rather, but-for cause…can be too attenuated to justify exclusion….Attenuation can occur, of course, when the causal connection is remote…Attenuation also occurs when, even given a direct causal connection, the interest protected by the constitutional guarantee that has been violated would not be served by the suppression of the evidence.}\]

Referring to one commentator as “impaired interest” attenuation, the Hudson majority reasoned that the interests served by the knock-and-announce rule—a narrow form of privacy, protection of life, limb, and property, and suppression of violence—would not be served by the exclusion of evidence otherwise validly obtained under the authority of a search warrant. Instead, “[t]he interests protected by the knock-and-

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25 Id.
26 Id.
28 Id. at 594.
30 Id.
31 Id. at 592-93.
33 Hudson, 547 U.S. at 594.
announce requirement are quite different—and do not include the shielding of potential evidence from the government’s eyes.”

2. Attenuation, Flagrancy, & Deterrence

   a. Technical Violations, *Faulkner* Stops, and Flagrantly Abusive Violations

   As the Brown Court recognized, the seriousness or flagrancy of the police misconduct must be considered in an attenuation analysis—in addition to causal connection. Because at its core, the flagrancy of police misconduct signifies the need for its deterrence.

   If the misconduct was flagrant, then the exclusionary rule will nevertheless suppress the tainted evidence. Thus, the seriousness, or flagrancy, accompanying a Fourth Amendment violation has always had a significant bearing on the Court’s attenuation analyses. The main school of thought driving this component is that the more flagrant a violation, the more of need there is to deter that behavior.

   This particular inquiry has never been simple. On the one hand, this Court has stated that “whether a stop is reasonable under the Fourth Amendment is an objective question, one in which the actual motivations of individual officers plays no role.” So, whether a violation was flagrant should not take into account the subjective mens rea of the officer. But on the other hand, examining an officer’s actions in the context of the facts roughly imputes the officer’s mental state.

   Certainly, the simplest analyses involve technical violations on the one end and obvious “flagrantly abusive” violations on the other. Without question, flagrantly abusive violations call for “the clearest indication of attenuation,” for the exclusionary rule to be inapplicable. But what about *Faulkner* stops?

   As the Court noted in *Michigan v. Tucker*, “the deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right.” In cases where this underlying premise is lacking, deterrence would presumptively not be achieved by suppression. Of course, the difficulty forever lies in determining at what point borderline misconduct—such as that found in *Faulkner* stops—is flagrant-enough to justify suppression.

   b. *Herring v. United States*

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34 Id.
35 Supra note 2; see also U.S. v. Leon, 468 U.S. at 911 (announcing that an “assessment of the flagrancy of the police misconduct constitutes an important step in the calculus” of applying the exclusionary rule).
36 Id.
37 Id.
38 Id.
39 Id.
41 Id.
42 Supra note 2, at 610 (Powell, J., concurring in part).
While the Court’s opinion in *Herring* dealt with an application of the good faith exception—which is not at issue in *Faulker* stops—*Herring* disseminated significant guidance for determining when misconduct becomes flagrant such that evidence must be suppressed.\(^{44}\)

Culminating with the *Herring* decision, once attenuation has evidently occurred, the Court has tended to require nothing short of a “flagrantly abusive” or “deliberate” violation in order for the exclusionary rule to suppress the tainted evidence.\(^{45}\) Further, the *Herring* Court did not mince words as it reminded, “the abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional.”\(^{46}\)

In light of this, the Court’s most recent rulings have required a substantial degree of flagrancy in order to justify deterrence and suppression of evidence. So, it appears that the Court has ratcheted up the standard for misconduct that is flagrant enough to deter via suppression.

In an effort to crystallize a standard for lower courts, the *Herring* Court prescribed the level of culpability an officer’s misconduct must have in order to warrant suppression of tainted fruit:

To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systematic negligence.\(^{47}\)

While the good faith exception—the rule at issue in *Herring*—does not apply to attenuation, the *Herring* Court made clear that, “[w]hen police mistakes are the result of negligence rather than systematic error or reckless disregard of constitutional requirements, any marginal deterrence doesn’t pay its way.”\(^{48}\)

Under present law, this pivotal reformulation has important implications for the exclusionary rule’s application—particularly in *Faulkner* stop cases. Because, the Court has been applying a narrower view of what constitutes “flagrantly abusive” misconduct—along with much broader latitude of excusable misconduct.

3. The Foundation of the Court’s Exclusionary Rule Jurisprudence is Proximate Causation

A causal connection is paramount when determining whether attenuation has occurred.\(^ {49}\) And this causal connection limitation has been consistently threaded throughout the Supreme Court's attenuation cases.\(^ {50}\) If an officer’s misconduct was the


\(^{45}\) *Id.* at 143.

\(^{46}\) *Id.* (citing *Weeks* v. U.S., 232 U.S. 383 (1914))

\(^{47}\) *Id.* at 145.

\(^{48}\) *Id.* at 147-48 (quoting *U.S.* v. *Leon*, 468 U.S. at 909-10).

\(^{49}\) *Supra* note 2.

factual or “but-for” cause and the proximate cause of the discovery of the evidence, then there is no attenuation.\textsuperscript{51} In fact, a statement that the “taint” of a violation has “attenuated” is a statement that the violation is not the proximate cause of obtaining the evidence.

Thus, one must first ask, “but for” the officer’s conduct, would the evidence have been discovered?\textsuperscript{52} If the evidence would not have been discovered absent the officer’s conduct, then factual or “but-for” causation has been established.\textsuperscript{53}

Yet, as the Court instructed in \textit{Hudson}, factual or “but-for” causation alone will not guarantee that attenuation never occurred.\textsuperscript{54} Proximate causation must also be established. Proximate cause, or lack thereof, can be viewed as a “legal construct” that gauges when the connection between an officer’s misconduct and the discovery of tainted fruit is viewed as too remote—and thus attenuated.\textsuperscript{55} For an officer’s misconduct to be regarded as the proximate cause, the discovery of the fruit must be a “direct and natural result” of the officer’s actions.\textsuperscript{56}

Even if the officer’s misconduct is not remote from the discovery of the tainted fruit, the analysis does not end there. Then, one must examine whether there was an intervening-superseding cause that broke the causal link between the officer’s misconduct and the discovery of the evidence.\textsuperscript{57} If an intervening cause did indeed supersede\textsuperscript{58} the officer’s misconduct as a legally significant causal factor, then the officer’s conduct was not the proximate cause.\textsuperscript{59} If not the proximate cause, then the officer’s misconduct is attenuated from the discovery of the tainted fruit, and the exclusionary rule is not applied.\textsuperscript{60}

Yet still, there is one more step in the analysis. Even though an intervening-superseding cause has ostensibly attenuated the officer’s misconduct from the discovery

\textsuperscript{51} Torcia, Wharton’s Criminal Law (15th ed.), § 26; Perkins, Criminal Law (2d ed.), pp. 687-688; LaFave & Scott, Handbook on Criminal Law, § 35, p. 249 (1972) (“In order that conduct be the [factual] cause of a particular result it is almost always sufficient that the result would not have happened in the absence of the conduct; or, putting it another way, that ‘but for’ the antecedent conduct the result would not have occurred.”).

\textsuperscript{52} \textit{Id.}

\textsuperscript{54} \textit{Supra} note 23.


\textsuperscript{60} \textit{Supra} note 23.
of the evidence, if the misconduct was intended in some way, then deterrence is needed, and the exclusionary rule will suppress the evidence—notwithstanding the apparent attenuation.\textsuperscript{61} Indeed, the doctrine of intended consequences—mandating that liability should ensue if a person “acts with the purpose of producing that [specific] consequence\textsuperscript{62}—can be paralleled to the flagrancy principle in criminal procedure. In sum, the doctrine of intended consequences dictates that an actor should be held liable “even if there is an intervening cause, if the [actor] intended the result that occurred.”\textsuperscript{63} Thus, “the legal eye reaches further in the examination of intentional crimes….”\textsuperscript{64}

II. OUTSTANDING ARREST WARRANT CIRCUIT SPLIT

Notably, the \textit{Brown v. Illinois} test is applied uniformly in \textit{Faulkner} stop cases.\textsuperscript{65} But since the concepts of remoteness, intervening factors, and flagrancy entail considerable chance for interpretation, similar cases have spawned unpredictable outcomes.\textsuperscript{66} And since the Court has never directly examined a \textit{Faulkner} stop case, the debate continues to generate a split of decisions.\textsuperscript{67} In fact, several Circuits have explicitly acknowledged the conflict.\textsuperscript{68}

A. “\textit{Brown}” Courts

The Sixth, Ninth, and Tenth Circuits, as well as the state courts of last resort in South Carolina, Texas, and Tennessee employ a traditional proximate cause attenuation analysis while examining all of the \textit{Brown} factors through the prism of remoteness.\textsuperscript{69} Typically, this analysis looks at the causal chain of events that occurred—giving equal consideration the “temporal proximity” or timeframe that they occurred in. And since the factual events in \textit{Faulkner} stops always escalate quickly, the police misconduct is virtually never remote from the discovery of the fruit.\textsuperscript{70}

Though some courts in this camp tacitly concede an arrest warrant to be an intervening-superseding cause, it is given minimal weight.\textsuperscript{71} These opinions have

\textsuperscript{61} Supra note 2.
\textsuperscript{62} Restatement (Third) of Torts § 1 Intent.
\textsuperscript{63} Id.
\textsuperscript{64} State v. Cummings, 265 S.E.2d 923 (N.C. Ct. App. 1980) at 927 (quoting Perkins, Criminal Law 693 (2nd ed, 1969))
\textsuperscript{65} Supra note 9.
\textsuperscript{66} See infra note 65.
\textsuperscript{67} However, the Court has denied certiorari to several cases factually similar to \textit{Faulkner}.
\textsuperscript{68} See U.S. v. Gross 662 F.3d 393 (6th Cir. 2011) (“Although the dissent is in accord with the Seventh Circuit, other circuits have applied the exclusionary rule despite the discovery of an outstanding arrest warrant during the course of an illegal search”, amending; U.S. v. Williams (“Although we have observed that the Seventh Circuit treats the discovery of an arrest warrant as an intervening circumstance sufficient to render incriminating evidence admissible, we have never adopted its approach as the law of this circuit.”).
\textsuperscript{69} See Gross, 662 F.3d 393, amending 624 F.3d 309 (6th Cir. 2010); U.S. v. Luckett, 484 F.2d 89 (9th Cir. 1973); U.S. v. Lopez, 443 F.3d 1280 (10th Cir. 2006); State v. Daniel, 12 S.W.2d 420 (Tenn. 2000); St. George v. State, 237 S.W.3d 720 (Tex. Crim. App. 2007); Sikes v. State, 448 S.E.2d 560 (S.C. 1994).
\textsuperscript{70} Supra note 66.
\textsuperscript{71} See, e.g., Gross, 662 F.3d at 403.
remarked that even “technical” violations outweigh any presence of an arrest warrant—the intervening-superseding “factor.” Ultimately, if the police misconduct is essentially the “but-for” cause of the discovery of the arrest warrant, then the violation is typically considered flagrant enough to stifle an intervening-superseding cause.

In one such case, *U.S. v. Gross*, the Sixth Circuit Court of Appeals determined that the discovery of an outstanding arrest warrant failed to attenuate the officer’s misconduct from subsequently discovered contraband weapon. In *Gross*, while the officer was patrolling a high-crime area during early morning hours, he encountered a running, parked vehicle with no apparent driver. After seeing the passenger act suspiciously in response to the presence of the police vehicle, the officer approached the vehicle. Seeing that Gross had been consuming alcohol in the car, the officer got his identifying information and ran a warrants check. The check revealed a felony arrest warrant for Gross for carrying a concealed weapon. Pursuant to Gross’s arrest, a .380 caliber firearm was discovered.

After Gross made a motion to suppress the firearm as fruit-of-the-poisonous tree, the Sixth Circuit considered whether the officer’s misconduct had been sufficiently attenuated by the arrest warrant. Exploring other circuit’s position on the issue, the court acknowledged that the discovery of an outstanding arrest warrant was “a relevant factor in the intervening circumstance analysis,” but it was not dispositive.

Turning to the flagrancy inquiry, the Court—focusing intensely on the officer’s purpose for approaching Gross’s vehicle—determined that suppression of the firearm was warranted. The Court announced that “[t]o allow an outstanding arrest warrant to dissipate the taint of illegal conduct would create ‘a new form of police investigation, whereby an officer patrolling a high crime area may, without consequence, illegally stop a group of residents where he has a ‘police hunch.’” Indeed, nearly every court adjudicating a *Faulker* stop case acknowledges this general policy concern.

### B. “Brown Plus” Courts

In marked contrast, the other camp—consisting of the Seventh Circuit, Eighth Circuit, and state courts of last resort in Florida, Idaho, Kansas, Louisiana, Maryland, and Oklahoma—add another layer to their evaluation. Consistent with “*Brown*” courts,

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72 *Id.*
73 *Id.*
74 *Id.*
75 *Id.*
76 *Id.*
77 *Id.*
78 *Id.*
79 *Id.*
80 *Id.*
81 *Id.*
82 *Id.* at 404.
83 U.S. v. Young, --F.3d--., 6 (6th Cir. 2012) (acknowledging it would be unwise “to create a system of post-hoc rationalization through which the Fourth Amendment prohibition against illegal searches and seizures can be nullified” by outstanding warrants).
84 U.S. v. Green, 111 F.3d 515 (7th Cir. 1997); U.S. v. Simpson, 439 F.3d 490 (8th Cir. 2006); State v. Frierson, 926 So.2d 1139 (Fla. 2006); State v. Martin, 179 P.3d 457 (Kan. 2008).
“Brown plus” courts acknowledge that “but for” causation is necessary but insufficient for suppression. And despite the fact that the police illegality is not very remote from the discovery of evidence in the chain of events sense, these courts label an outstanding arrest warrant as an intervening-superseding event that breaks the causal chain. In addition, a majority of these courts maintain that a warrant discovery greatly diminishes the importance of the first Brown factor—“temporary proximity.” Notably, this group of courts exhibits a narrower view of what degree of flagrant misconduct sufficiently outweighs an intervening-superseding cause. But this group of courts tends to skirt around a thorough flagrancy inquiry—leading to somewhat cursory attenuation conclusions.

In Green v. State, for example, the Seventh Circuit conducted an analysis of whether the discovery of an arrest warrant attenuated earlier police misconduct. In Green, officers pulled over a vehicle for no other reason except that they had seen it parked in front of a suspected felon’s house the day before. After obtaining identification for the driver and passenger, the officers discovered an outstanding arrest warrant for the passenger. The officers discovered crack cocaine while searching the passenger.

After determining that the police had conducted an illegal traffic stop, the Court proceeded to consider whether an outstanding arrest warrant was a sufficient intervening circumstance. While the illegal traffic stop was a categorically a “but for” cause in discovering the contraband, the court declared that “but for” cause was insufficient for suppression. Announcing that the arrest warrant indeed served as an intervening circumstance, the court expounded:

It would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to be wanted on a warrant—in a sense requiring an official call of “Olly, Olly, Oxen Free.” Because the arrest is lawful, a search incident to the arrest is also lawful. The lawful arrest of Avery constituted an intervening circumstance sufficient to dissipate any taint caused by the illegal automobile stop.

As evidenced by the split, similar situations come out on diametrically opposite sides. Consequently, similarly situated defendants are being treated differently across jurisdictions based on a court’s subjective determination of the Brown factors. In fact, in some jurisdictions, Fourth Amendment protections hinge entirely on whether the

85 Supra note 81.
86 Supra note 81.
87 Supra note 1.
89 Green, 11 F.3d 515.
90 Id.
91 Id.
92 Id.
93 Id.
94 Id.
96 See supra, notes 63-92.
defendant is prosecuted in state or federal court. Likewise, because conflicting Circuits border one another, an arbitrary factor such as defendants’ traffic routes could be the key to their fate. Thus, lower courts are in dire need of a more workable analysis.

III. Why Discovery of an Outstanding Arrest Warrant Attenuates the Taint: The Implications of Harris and Hudson

Though the Court has repeatedly declined to address this scenario, the key to a workable analysis lies in the Court’s overarching attenuation jurisprudence. Lower courts across the board have failed to recognize, consolidate, and employ the important concepts articulated in Harris, Hudson, and Herring as they apply to Faulkner stop cases.98 The implications of the Court’s central concepts have simply gone unnoticed. Regardless, the Court’s principles provide the correct structure for resolution, and for the most part, can even be traced to proximate cause.

A. New York v. Harris

1. “Continued Custody” Principle

In regards to Faulkner stops, the Harris Court formulated two important concepts. First, the Harris Court introduced what I call the “continued custody” principle in Fourth Amendment violation cases.99 This “continued custody” principle dictates that while an officer—lacking an arrest warrant—may have initially detained a citizen unlawfully, the custody becomes lawful in light of either probable cause or an arrest warrant that pre-existed the initial illegality.100 Consequently, any evidence that results from the “continued custody” of that citizen thereafter is not the product of the initial illegality.101

For example, in Harris, the officer had probable cause to arrest a citizen. The officer gained entry into the citizen’s home, arrested him, and removed him from his home. The pre-existing probable cause was not extinguished by the warrantless arrest inside the home. And once the citizen was outside his home, the arrest from that point forward was lawful, because the officer had probable cause to arrest the citizen outside his home. And since “continued custody” of the citizen was lawful, any subsequent incriminating statement or discovered evidence was not the product of the initial illegality.

2. “Zone of Interest” Principle

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97 See supra, notes 63-94.
99 Supra note 10, at 18.
100 Supra note 10, at 18.
101 Supra note 10, at 18.
Second, the *Harris* Court determined that the “purpose of the [constitutional] rule” at issue must be furthered by suppression of the evidence.\(^{102}\) For example, since the *Payton* rule is meant to protect privacy in the home, suppressing evidence discovered outside the home does not serve the purpose of the *Payton* rule.\(^{103}\) So, one might say the “zone of interest” protected by the *Payton* rule is limited to the confines of the home.\(^{104}\) But once outside the home, the *Payton* rule’s zone of interest ends and what begins is the zone of interest protected by the requirement of probable cause to arrest.\(^{105}\) In *Harris*, the police complied with that requirement. Thus, the *Harris* Court began the formulation of an additional strand of attenuation analysis, one centered on zones of interest.

3. Application of the “Continuing Custody” Principle to *Faulkner* Stops

For *Faulkner* stops, the *Harris* Court indicated just how significant the discovery of an arrest warrant is. In *Harris*, since the police had preexisting probable cause to arrest Harris, it was irrelevant to the lawfulness of the arrest that they had previously violated the *Payton* arrest warrant requirement in removing Harris from his home.\(^{106}\) Thus, the lack of an arrest warrant did not trump the valid preexisting probable cause to arrest.\(^{107}\) The “continuing custody” principle holds that the preexisting probable cause justifies the arrest.

By logical extension, lack of probable cause to make a traffic stop certainly cannot trump a preexisting arrest warrant supported by probable cause to arrest. The “continuing custody” principle applies here as well. On this view, despite having deficient probable cause to make the initial traffic stop, once an officer discovers that a citizen is subject to an arrest warrant, he now has authority to make an arrest. It cannot seriously be contended that the officer should instead release the citizen, give him a good head start, and then engage in fresh pursuit.\(^{108}\) The right to immediately re-arrest indicates that this approach would defy all logic, because the “continued custody” of the citizen is lawful.\(^{109}\) Though a citizen may be initially wrongfully detained due to an officer’s illegality, the detention is legitimized when an arrest warrant validates the “continued custody” of the citizen. As a result, any evidence derived from the “continued custody” of that citizen should not be suppressed.

B. *Hudson v. Michigan*

1. “Zone of Interest” Attenuation

With *Harris* serving as the precursor, *Hudson* confirmed and elaborated upon *Harris*’s zone of constitutional interest analysis. Laying the groundwork, Justice Scalia outlined the specific “zones of interest” protected by knock-and-announce rule—

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\(^{102}\) *Supra* note 10, at 16.
\(^{103}\) *Supra* note 10, at 16.
\(^{104}\) *Supra* note 10, at 16.
\(^{105}\) *Supra* note 10, at 16.
\(^{106}\) *Supra* note 10.
\(^{107}\) *Supra* note 10.
\(^{108}\) *Supra* note 10.
\(^{109}\) *Supra* note 10.
property, safety, and narrow form of privacy (e.g., the right to dress before confronting the police).110 Next, the Hudson Court noted that the knock-and-announce violation implicated these interests, but when police searched for and seized evidence within the home after violating the knock-and-announce rule, none of these interests were at stake.111 As Justice Scalia explained, the knock-and-announce rule was never meant to protect a citizen’s ability to shield evidence from the government’s eyes.112 As such, shielding evidence falls outside the knock-and-announce rule’s zone of constitutional interest.

Of special import here, however, is that there were two rules in play in Hudson—the knock-and-announce rule and the search warrant requirement, each protecting different zones of interest. Though the police violated the knock-and-announce rule to enter the house, once in, their actions were cloaked with the lawful authority of a valid search warrant. Significantly, the Fourth Amendment doctrine that protects the zone of general privacy within the home is the search warrant requirement, and the officers in Hudson fully complied with that doctrine.113 Thus, the discovered evidence was attenuated from the illegal entry by what can be called an “independent constitutional justification” to invade the zone of interest where the evidence was found—police compliance with the search warrant requirement. In sum, the discovery of the evidence inside the house fell squarely within the zone of interest of the search warrant requirement and outside the zone of interest of the knock-and-announce rule.

2. Application to Faulkner Stops

In light of these principles, courts should conduct their analyses of Faulkner stop cases through the lens of Harris and Hudson. In particular, the Hudson Court’s unveiling of the independent constitutional justification principle is paramount. Although an unreflective application of Brown’s attenuation analysis may suggest that the discovery of an arrest warrant does not attenuate the taint in a typical Faulkner stop case, the critical inquiry must focus on the zones of constitutional interest and whether there was an independent constitutional justification for procuring the evidence at issue. On this view, it becomes obvious that an outstanding arrest warrant breaks the causal chain between the illegal traffic stop and the later-discovered evidence.

Consider the typical Faulkner stop. Police stop a motorist without a proper justification, discover an arrest warrant, make an arrest under the authority of the warrant, and discover narcotics during a search of the arrestee’s pockets incident to arrest. The police have conceded failed to comply with the Fourth Amendment probable cause requirement for the traffic stop—implicating a general zone of personal liberty to be free from traffic-stop detentions. But the evidence found by police is located in a different zone of interest—the privacy interest in the arrestee’s pockets. That interest is protected by a different Fourth Amendment doctrine requiring probable cause for the arrest, which in turn is the predicate for the search of the pocket incident to arrest. As a result, the police fully complied with that doctrine because their arrest is pursuant to a valid arrest

110 Supra note 23.
111 Supra note 23.
112 Supra note 23.
113 Supra note 23.
warrant. Above all, police compliance with the requirement in the second zone of interest served as an independent constitutional justification.

As with Hudson, a Faulkner stop is marked by an initial police illegality implicating a first zone of interest followed by police conduct which is lawful—under a preexisting arrest warrant—implicating a second zone of interest. In both cases, the evidence found by police is in the second zone of interest—the zone where police have complied with the Fourth Amendment rather than violated it. And, in both cases, the lawful police conduct in question is the execution of a preexisting warrant, which is independent of the initial policy illegality. Thus, the outcome should be the same in both cases: attenuation.

In the words of the Hudson Court, “what the knock-and-announce rule has never protected . . . is one's interest in preventing the government from seeing or taking evidence described in a warrant....[s]ince the interests that were violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable.”\textsuperscript{114} Likewise, what the probable cause requirement for a traffic stop has never protected, “is one’s interest in preventing the government from seeing or taking evidence” discovered in a search incident to a valid arrest under the authority of a warrant.\textsuperscript{115} Since the interests that are violated in Faulkner stop cases “have nothing to do with the seizure of evidence, the exclusionary rule is inapplicable.”\textsuperscript{116} Put differently, the probable cause requirement for the traffic stop protects a general liberty interest, but it has never protected a citizen from escaping a valid arrest warrant or a search incident to an arrest. And because that arrest warrant is an independent constitutional justification for the search, the discovery of evidence is attenuated from the illegal traffic stop.

\textbf{C. Independent Constitutional Justification as the Intervening-Superseding Event of the Proximate Cause Analysis}

Of course, some commentators have sharply criticized “zone of interest” attenuation as a break with traditional proximate cause analysis.\textsuperscript{117} Perhaps due to an incomplete explanation, Hudson has been accused of ignoring proximate causation altogether as scholars have scoured Fourth Amendment doctrines to grapple with its implications.

Admittedly, zone of interest attenuation is analytically distinct from the traditional chain of events attenuation. Brown’s chain of events attenuation fixates on the length and number of links in the chain between the violation and the evidence in terms of factual events.\textsuperscript{118} So, the longer the chain of factual events, the more likely it is that the violation

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{114} Supra note 23.
\item \textsuperscript{115} Supra note 23.
\item \textsuperscript{116} Supra note 23.
\item \textsuperscript{118} Supra note 2.
\end{enumerate}
\end{footnotesize}
is remote and thus attenuated from the discovery of the evidence. Where \textit{Hudson}'s zone of interest attenuation focuses on factual events in terms of what zones they occurred in and the applicable constitutional rules that specifically protect those zones. Thus, if a Fourth Amendment violation implicates only Zone X but the evidence was found in Zone Y, then the violation is attenuated from the discovery of the evidence.

However, \textit{Hudson}'s zone of interest attenuation is also grounded in a proximate cause analysis. In fact, one need not look further than the Model Penal Code to see that zone of interest attenuation draws heavily upon proximate cause. \textsuperscript{120} As the Code dictates, the chain of proximate causation can be broken if a result is either too remote or too accidental. Thus remoteness is only one form of established proximate cause analysis. What can be called accidentality (or perhaps incidentality or coincidentality) is also a recognized form of proximate cause analysis.

In any given case addressing a Fourth Amendment violation, the inquiry only begins with remoteness—but that is not where it ends. One must also determine accidentality: whether there was an intervening-superseding cause within the chain of events. In any area of law, an intervening-superseding cause is essentially accidental, incidental, or coincidental.

One can see this point more clearly with an illustration: suppose a person haphazardly fires a shot while in a room with a second person—causing the second person to jump out of a window in flight. As the second person is fleeing, a bolt of lightning strikes him. The lightning strike is a complete accident or coincidence. Though the short was not at all remote in time from the fatality, it was not the proximate cause of the fatality, because it was a coincidental intervening-superseding cause.

Consider the implications of this view for \textit{Hudson}. In that case, the officers’ violation of the knock-and-announce rule, while not remote from the execution of the search warrant and discovery of the evidence, was “accidental” to them. The search warrant was a preexisting and independent constitutional justification for the search which the violation of the knock-and-announce rule could not impair. In fact, the violation of the knock-and-announce rule, a side issue and matter of happenstance, had so little to do with the discovery of the evidence under the search warrant it is properly viewed as accidental, incidental, or coincidental to that discovery. Thus the chain of proximate cause is broken not because of remoteness—but because of accidentality.


\textsuperscript{120} The Model Penal Code instructs that proximate cause is not met:

(3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

(a) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense

Model Penal Code § 203.
In *Faulkner* stop cases, there is a similar relationship between the illegal traffic stop and the ultimate arrest under a valid arrest warrant. While discovery of the arrest warrant may not be “remote” from the illegal traffic stop, it is most certainly an accident or coincidence. The arrest warrant is a preexisting and independent constitutional justification for the arrest that the illegal traffic stop cannot impair. The relationship of the traffic stop to the preexisting arrest warrant is essentially one of accident or coincidence. The arrest warrant in no sense flows from the traffic stop, and its existence or not is a matter of happenstance unconnected to the traffic stop. In fact, the discovery of the arrest warrant is a metaphorical bolt of lightning striking the arrestee in the middle of the stop. Thus, the chain of proximate cause is broken in the Faulkner stop not because of remoteness, but because of accidentality.

Placed in the context of zones of interest, this analysis still takes into account the factual chain of events and remoteness—it simply asks the imperative next question: was there a coincidental intervening-superseding cause that broke the causal chain? Thus, consider the above illustration where a violation only implicates Zone X, but the evidence is discovered in Zone Y. Viewed chronologically, it looks like this: Officer and motorist in Zone X, constitutional violation in Zone X, discovery of arrest warrant, Officer and motorist in Zone Y, discovery of evidence in Zone Y. As a result, the arrest warrant breaks the causal chain in the series of factual events while simultaneously serving as the barrier between Zone X and Zone Y.

D. Applying *Harris* and *Hudson* to resolve Faulkner stops

The principles from *Harris* and *Hudson* reveal that when a warrant is discovered during a *Faulkner* stop, the discovery of evidence is attenuated from the initial illegality. *Harris* introduced the practical significance of an arrest warrant, the “continued custody” principle, and planted the seed for zone of interest attenuation. *Hudson* determined that when evidence was discovered within the zone of interest that was not violated, then the violation is attenuated from the discovery of evidence—rendering suppression an inappropriate remedy.

When applied to *Faulkner* stop cases, the discovery of an arrest warrant attenuates the initial violation, because it is a coincidental intervening-superseding cause in the chain of events. What is more, this principle has deep roots in criminal law since accidental and coincidental events are an explicit exception to proximate causation in the Model Penal Code.

As a note of caution, it should be understood that anything the police attain before the discovery of an arrest warrant still must be suppressed. For example, if an officer observes something illegal or if the defendant makes a voluntary inculpatory statement, then these fruits must be suppressed if they precede the discovery of an arrest warrant. This stands to reason because this evidence would have been discovered in the very zone that the probable cause requirement stands to protect.

IV. THE CASE FOR THE FLAGRANCY EXCEPTION TO “ZONE OF INTEREST” ATTENUATION

A. The Flagrancy Attenuation Principle
At a closer examination of the Court’s precedent, *Faulkner* stops should be resolved using “zone of interest” attenuation; but there should also be a tailored exception to this rule in order to safeguard citizens’ Fourth Amendment right. As the Court has consistently maintained, “The extent to which the exclusionary rule is justified by...deterrent principles varies with the culpability of the law enforcement conduct.”121 Thus, at a certain point, an exception to “continued custody” and “zone of interest” attenuation should be recognized once an officer’s conduct crosses over to flagrant—reaching an unacceptable level of culpability.

Certainly, the Court has unfailingly recognized an exception to attenuation when flagrant misconduct is afoot.122 Though establishing what constitutes flagrant misconduct with reasonable precision has never been an easy task, the Court has provided the tools to do so. Thus, this already familiar flagrancy standard should simply be applied as an exception in *Faulkner* stop cases.

Even though the flagrancy principle has virtually always existed in exclusionary rule jurisprudence, notions of its contours have gradually been revised—most recently with the Court’s decision in *Herring*. Of course, under the *Brown* test, flagrancy is a factor—one that has notably been subject to manipulation.123 But the *Brown* test was fashioned in light of indisputably flagrant police misconduct. One should remember that in *Brown*, the Chicago police admitted at trial that they arrested the defendant without a warrant solely because they wanted to question him in connection with a murder.124 Accordingly, there could be no doubt that police exploited the illegal arrest with the goal of obtaining a confession; this sort of conduct plainly meets the *Herring* standard.

However, the *Brown* test is persistently deployed in an astounding number of *Faulkner* stop cases that fall short of the “flagrantly abusive” conduct in the *Brown* facts. Consequently, many courts view an officer’s mere negligence as flagrant, while others regard flagrancy to be similar to that of the *Herring* Court. In fact, some lower courts have cautiously begun to cite *Herring* as the standard for finding flagrancy.125 But in order to foster consistency, this article proposes that the *Herring* Court’s standard of “deliberate, reckless, or grossly negligent conduct” should be uniformly applied as the exception to zone of interest attenuation in *Faulkner* stop cases.

**B. The Flagrancy Principle’s Application is Still a Viable Safeguard in the Wake of Harris and Hudson**

To allay any doctrinal concerns, *Harris*’s continuing custody principle can harmoniously exist with the flagrancy exception. In *Harris*, the majority opinion didn’t address the question of flagrancy. As a result, the continuing custody principle merely means that if officers have committed a garden-variety police mistake, then the State

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121 *Supra* note 42.
122 See George C. Thomas III & Barry S. Pollack, *Balancing the Fourth Amendment Scales: The Bad-Faith Exception to the Exclusionary Rule Limitations*, 45 Hastings L. J. 21 (1993) arguing that bad faith conduct in obtaining evidence not only requires a more extensive application of the exclusionary rule to secondary evidence, but also justifies use of the rule when it otherwise would not be available—e.g. when victims of bad-faith conduct lack standing and in civil actions brought by the government.)
124 *Supra* note 2.
should be able to keep whatever comes out of a defendant’s pocket pursuant to a search incident to a discovered arrest warrant. But, if the officer’s violation is “flagrantly abusive,” then they should still be able to effectuate the arrest, but whatever comes out of the defendant’s pocket pursuant to that arrest should be suppressed.

Still yet, one might contend that Hudson extinguished the possibility of a flagrancy exception to “zone of interest” attenuation. This is incorrect. There was no indication that the violation in Hudson was flagrant. Given how muddled the parameters of the knock and announce rule were previous to Hudson, the Court ostensibly didn’t see it necessary to address the possibility that a knock and announce violation could be so flagrant as to constitute an exception to “zone of interest” attenuation.

However, when “zone of interest” attenuation occurs, it must withstand an examination of the police violation’s culpability. As such, the police violation should be viewed on a misconduct continuum of sorts—with “deliberate, reckless, or grossly negligent conduct” being the dividing line that triggers suppression.

So, although the discovery of an arrest warrant conclusively results in “zone of interest” attenuation, if the police engaged in “deliberate, reckless, or grossly negligent conduct,” then the need for deterrence mandates that suppression must apply.

C. The Flagrancy Exception Complements the Court’s Overarching Principles and Criminal Defendant’s Fourth Amendment Rights

Moreover, the Herring standard also comports with the archetypal attenuation concept of “exploitation.” The Court has routinely articulated that the requisite for suppression is exploitative conduct:

We need not hold that all evidence is ‘fruit-of-the-poisonous tree’ simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is ‘whether granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’

Actually, the Court’s concept of exploitation is strikingly comparable to the Herring Court’s standard for culpability of officer misconduct, because both allow considerable leeway for pardoning “the primary illegality.” Moreover, both of the adjectives “exploitative” and “flagrant,” for example, share numerous synonyms in

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126 It is telling that the Court, in concluding this analysis of the causal connection between the evidence and the violation, limited its reasoning to Hudson's case. The Court did not say that the interests protected by the knock-and-announce requirement never can play a causal role in the discovery of evidence. It said, rather, that “the interests that were violated in this case have nothing to do with the seizure of the evidence.” Supra note 23.

127 Supra note 42, at 143 (In considering flagrancy of police conduct and whether the exclusionary rule should be applied, lower courts should consider “if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.”).

common—including but not limited to “unethical,” “shameless,” and “corrupt.”

Therefore, both the standard of “exploitation” and “flagrant misconduct” plainly call for more severely culpable conduct than the mere negligent discovery of an arrest warrant. This is because the discovery of an arrest warrant constitutes “means sufficiently distinguishable” which purges “the primary taint.”

Thus, a flagrancy exception indicates a clearly demarcated line where certain violations will not go unpunished. Contrary to criticism of Herring’s culpability standard, this exception indicates that constitutional harms from truly inexcusable Fourth Amendment violations will be vindicated. So, using the Herring standard as an exception to the rule would provide clear protection for citizens against intolerable police misconduct. While some commentators view the Herring standard as threatening, Herring actually creates an exception to Hudson’s “zone of interest” attenuation, which stiffens the spine of the exclusionary rule. On this view, the Herring standard expands protection for defendants against unacceptable police misconduct, because a court can no longer subjectively adjudicate it.

V. PROXIMATE CAUSATION, “ZONE OF INTEREST” ATTENUATION, AND THE FLAGRANCY EXCEPTION

Despite laments over Hudson’s supposed evisceration of the exclusionary rule by trampling on proximate causation, Hudson and its core principles boil down to traditional proximate cause thoughts. Proximate cause has been and will continue to be the framework from which every Faulkner stop case is initially examined. But, looking closer at proximate cause in Faulkner stop cases, there are three separate interlocking facets that have a bearing on whether misconduct has been sufficiently attenuated from the discovery of the fruit: remoteness, coincidental intervening-superseding events, and the doctrine of intended consequences.

When viewed properly, Hudson’s “zone of interest” attenuation embodies the coincidental exception to proximate causation. In the context of proximate cause, coincidences are a form of intervening-superseding causes. If a coincidental intervening-superseding event lies between a constitutional violation and the discovery of evidence, then an officer’s misconduct should not be deemed to have been the proximate cause. And in Faulkner cases in particular, the discovery of the arrest warrant—embodying an independent constitutional justification—serves as the coincidental intervening-superseding cause that breaks the causal chain. In other words, although an officer’s misconduct may not be very remote from the discovery of fruit, if the discovery of an arrest warrant separates the two, proximate causation is destroyed.

This coincidental exception to proximate cause is further justified when considered in tandem with the flagrancy exception. In essence, this is because the flagrancy exception’s existence ensures that a coincidental intervening-superseding event in a traffic stop case was genuine. And, the flagrancy exception itself is also rooted in an interrelated tort law doctrine, the doctrine of intended consequences. Thus, the doctrine

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129 Available at: http://thesaurus.com/browse/flagrant?ss=t.
131 Joshua Dressler, Understanding Criminal Procedure at 389 (5th ed. 2010).
of intended consequences’ relationship to the flagrancy principle indicates that courts should keenly focus on whether the officer’s actions objectively demonstrate intent to violate the probable cause requirement for commencing a traffic stop.

Inevitably, the three interlocking facets of proximate cause in traffic stop violations rub up against each other. The more coincidental an event was, the less relevant remoteness becomes in the analysis. The more flagrant a violation, then it is less likely that it could have been an accident or a coincidence, and consequently, the more important remoteness becomes to the analysis. In turn, the less flagrant a violation, the more likely that an event was a coincidence. Therefore, establishing the chain of events that occurred is merely the backdrop from which to weigh coincidences and flagrant misconduct.

**Conclusion**

While *Brown*’s traditional exclusionary rule analysis should still control for the large majority of Fourth Amendment violation cases, it simply does more harm than good in the context of *Faulkner* stops. A pure application of the *Brown* test in these cases allows lower courts to place too much emphasis on the remoteness in proximate cause analysis. This approach is mistaken because it ignores the “continuing custody” principle, the “zone of interest” principle, and the full recognition of coincidentality analysis as a matter of proximate cause.

*Harris, Hudson,* and *Herring* indicate that the discovery of an arrest warrant renders the question of remoteness irrelevant in a *Faulkner* stop case. The practical effect of an arrest warrant implicates a wholly independent ground for attenuation: the coincidentality exception to proximate cause.

Instead of fixating on remoteness, lower courts facing *Faulkner* stop cases should follow the teachings of *Harris, Hudson,* and *Herring* and focus their energy and resources on whether application of the flagrancy exception is appropriate. While examining officer’s conduct will always entail a degree of uncertainty, adjusting the focus on this single determination will certainly produce more consistent results. If facts tend to demonstrate that an officer exhibited “deliberate, reckless, or grossly negligent conduct, or recurring or systematic negligence” then the flagrancy exception should be applied—resulting in suppression of evidence. This abridged framework will surely alleviate the injustice of unpredictable decisions that criminal defendants currently face in the wake of an indiscriminate application of the *Brown* test.