SUPREME COURT OF THE UNITED STATES

No. 92–8841

KITRICH POWELL, PETITIONER
v. NEVADA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

[March 30, 1994]

JUSTICE THOMAS, with whom THE CHIEF JUSTICE joins, dissenting.

After concluding that the Nevada Supreme Court erred by failing to follow our decision in *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), the Court remands this case without deciding whether the ultimate judgment below, despite the error, was correct. In my view, the lower court's judgment upholding petitioner's conviction was correct under settled legal principles, and therefore should be affirmed.

The petition for certiorari in this case presented a single question for review—namely, whether a particular decision of this Court concerning criminal procedure should apply retroactively to all cases pending on direct review. This question was well settled at the time the petition was filed, and had been since our decision in *Griffith*, in which we stated that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final." 479 U. S., at 328. The Nevada Supreme Court made a statement to the contrary in a

footnote in its opinion. See *infra* this page and 3. Notwithstanding this obvious mistake, *Griffith*'s rule of retroactivity had generated little or no confusion among the lower courts. In my view, under these circumstances, the writ was improvidently granted.

According to this Court's Rule 10.1, "[a] petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Not only were there no special or important reasons favoring review in this case, but, as Justice Stewart once wrote: "The only remarkable thing about this case is its presence in this Court. For the case involves no more than the application of well-settled principles to a familiar situation, and has little significance except for the [parties]." *Butz* v. *Glover Livestock Commission Co.*, 411 U. S. 182, 189 (1973) (dissenting opinion). As the Court has observed in the past, "it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U. S. 387, 393 (1923). We make poor use of judicial resources when, as here, we take a case merely to reaffirm (without revisiting) settled law. See generally *Estelle* v. *Gamble*, 429 U. S. 97, 115 (1976) (STEVENS, J., dissenting); *United States* v. *Shannon*, 342 U. S. 288, 294–295 (1952) (opinion of Frankfurter, J.).

Now that we have invested time and resources in full briefing and oral argument, however, we must decide how properly to dispose of the case. The Court vacates and remands because the Nevada Supreme Court erred, not in its judgment, but rather in its "prospectivity declaration." *Ante*, at 4. The "declaration" to which the Court refers is the state

court's statement that our decision in *County of Riverside* v. *McLaughlin*, 500 U. S. 44 (1991), does "not apply retroactively." 108 Nev. 700, ___, n. 1, 838 P. 2d 921, 924, n. 1 (1992). The Court correctly rules that *McLaughlin* does apply retroactively. See *Griffith*, *supra*. Rather than remanding, I believe that the Court in this instance can and should definitively resolve the case before us: "Our job . . . is to review judgments, not to edit opinions . . . ." *Phillips Petroleum Co.* v. *Shutts*, 472 U. S. 797, 823 (1985) (STEVENS, J., concurring in part and dissenting in part). See also *K Mart Corp.* v. *Cartier, Inc.*, 485 U. S. 176, 185 (1988); *Black* v. *Cutter Laboratories*, 351 U. S. 292, 297 (1956).

Of course, when there is a need for further fact-finding or for proceedings best conducted in the lower courts, or where the ultimate question to be decided depends on debatable points of law that have not been briefed or argued, we regularly determine that the best course is to remand. See, *e. g.*, *Pierce* v. *Underwood*, 487 U. S. 552, 574 (1988) (vacating award of attorney's fees and remanding for recalculation of fee award). Those concerns, however, do not require a remand in this case. In defense of the judgment below, respondent and its *amici* have properly raised a number of arguments, see *Blum* v. *Bacon*, 457 U. S. 132, 137, n. 5 (1982), which have been fully briefed. As I explain below, at least one of those arguments provides a ground for decision that would require only the application of settled law to the undisputed facts in the record before us. Under these circumstances, remanding will merely require the needless expenditure of further judicial resources on a claim that lacks merit.

While in petitioner's care on November 2, 1989, 4-year-old Melea Allen suffered massive head and

spinal injuries. When petitioner took her to the hospital the following day, November 3, she was comatose and suffering respiratory failure. Petitioner told doctors and nurses that she had fallen from his shoulders during play. When emergency room personnel discovered that Melea also had numerous bruises and lacerations on her body—injuries that suggested she had been abused repeatedly—they called the police. Petitioner spoke to the officers who responded to the call and again explained that the child's injuries were the result of an accidental fall.

Several hours later, the police arrested petitioner for child abuse. Within an hour of the arrest, officers prepared a declaration of arrest that recited the above facts to establish probable cause. Petitioner was still in custody on November 7, when, after receiving *Miranda* warnings, he agreed to give a second statement to the police. He repeated the same version of events he had given at the hospital before his arrest, but in slightly more detail. On that same day, a magistrate, relying on the facts recited in the declaration of arrest described above, determined that petitioner's arrest had been supported by probable cause. The next day Melea died, and petitioner was charged with first-degree murder.

Petitioner contends that respondent's delay in securing a prompt judicial determination of probable cause to arrest him for child abuse violated the rule that a probable-cause determination must, absent extenuating circumstances, be made by a judicial officer within 48 hours of a warrantless arrest. *McLaughlin*, *supra*. The *McLaughlin* error, petitioner argues, required suppression of the custodial statement he made on November 7, which was introduced against him at trial.

Against that argument, respondent and its *amici* raise several contentions: first, that suppression of evidence would never be an appropriate remedy for a

McLaughlin violation; second, that the statement at issue here was not a product of the *McLaughlin* error, or at least that the connection between the *McLaughlin* violation and the statement is so attenuated that suppression is not required; third, that suppression is inappropriate under *Illinois* v. *Krull*, 480 U. S. 340 (1987), because the officers acted in good-faith reliance on a state statute that authorized delays of up to 72 hours (excluding weekends and holidays) in presenting a defendant to a magistrate; and finally, that even if the statement should have been suppressed, admitting it at trial was harmless error. Even assuming, *arguendo*, that suppression is a proper remedy for *McLaughlin* errors, see *ante*, at 5, I believe that, on the facts of this case, suppression of petitioner's statement would not be appropriate because the statement was not a product of the *McLaughlin* violation.

Our decisions make clear "that evidence will not be excluded as `fruit' [of an unlawful act] unless the illegality is at least the `but for' cause of the discovery of the evidence." *Segura* v. *United States*, 468 U. S. 796, 815 (1984). As *Segura* suggests, "but for" causation is a necessary, but not sufficient, condition for suppression: "we have declined to adopt a *per se* or but for rule that would make inadmissible any evidence . . . which somehow came to light through a chain of causation that began with a [violation of the Fourth or Fifth Amend-ments]." *New York* v. *Harris*, 495 U. S. 14, 17 (1990) (internal quotation marks omitted). See also *United States* v. *Ceccolini*, 435 U. S. 268, 276 (1978).

Contrary to petitioner's arguments, the violation of *McLaughlin* (as opposed to his *arrest* and *custody*) bore no causal relationship whatsoever to his November 7 statement. The timing of the probable cause determination would have affected petitioner's statement only if a proper hearing at or before the 48-hour mark would have resulted in a finding of no

probable cause. Yet, as the magistrate found, the police had probable cause to suspect petitioner of child abuse, cf. *Illinois* v. *Gates*, 462 U. S. 213 (1983), and there is no suggestion that the delay in securing a determination of probable cause permitted the police to gather additional evidence to be presented to the magistrate. On the contrary, the magistrate based his determination on the facts included in the declaration of arrest that was completed within an hour of petitioner's arrest. Thus, if the probable cause determination had been made within 48 hours as required by *McLaughlin*, the same information would have been presented, the same result would have obtained, and none of the circumstances of petitioner's custody would have been altered.

Moreover, it cannot be argued that the *McLaughlin* error somehow made petitioner's custody unlawful and thereby rendered the statement the product of unlawful custody. Because the arresting officers had probable cause to arrest petitioner, he was lawfully arrested at the hospital. Cf. *Harris*, *supra*, at 18.[1] The

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[1]The fact that the arrest was supported by probable cause and was not investigatory in nature fully distinguishes this case from our decisions in *Taylor* v. *Alabama*, 457 U. S. 687 (1982), *Brown* v. *Illinois*, 422 U. S. 590 (1975), and *Dunaway* v. *New York*, 442 U. S. 200 (1979). Where probable cause for an arrest is lacking, as it was in each of those cases, evidence obtained as a result of the Fourth Amendment violation "bear[s] a sufficiently close relationship to the underlying illegality [to require suppression]." *New York* v. *Harris*, 495 U. S. 14, 19 (1990). The presence of probable cause, by contrast, validates the arrest and attendant custody, despite "`technical' violations of Fourth Amendment rights" that may have occurred during either. *Brown*, *supra*, at 611 (Powell, J., concurring in part). See also *Harris*, *supra*, at 18 (holding that even though the police violated the rule

presumptively unconstitutional delay in securing a judicial determination of probable cause during a period of lawful custody did not render that custody illegal. We have never suggested that lawful custody becomes unlawful due to a failure to obtain a prompt judicial finding of probable cause—that is, probable cause does not disappear if not judicially determined within 48 hours. Cf. *United States* v. *Montalvo-Murillo*,

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of *Payton* v. *New York*, 445 U. S. 573 (1980), by arresting a suspect in his house without a warrant, the resulting custody was lawful because the arrest was supported by probable cause, and that therefore the suspect's subsequent custodial statement was admissible).

As the Court notes, *ante*, at 6, n. *, a different rule applies to search warrants. In that context, we have insisted that, absent exigent circumstances, police officers obtain a search warrant, even if they had probable cause to conduct the search, see, *e. g.*, *Coolidge* v. *New Hampshire*, 403 U. S. 443, 454–455 (1971), and we have required suppression of all fruits of an unlawful search, unless an exception to the exclusionary rule applies. See generally *Illinois* v. *Krull*, 480 U. S. 340, 347–349 (1987). The same rule has not been applied to arrests. "[W]hile the Court has expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Gerstein* v. *Pugh*, 420 U. S. 103, 113 (1975) (citations omitted). Nor has the Court required suppression of voluntary custodial statements made after an arrest supported by probable cause based solely on the officers' failure to obtain a warrant. See *Harris*, *supra*. Petitioner's statement was the product of his arrest and custody, and there is no reason to think that the rules we have developed in the search warrant context should apply in this case.

495 U. S. 711, 722 (1990) ("[A] person does not become immune from detention because of a timing violation").

In short, the statement does not even meet the threshold requirement of being a "product" of the *McLaughlin* violation.[2] Petitioner's statement, "while the product of an arrest and being in custody, was not the fruit of the fact" that a judicial determination of probable cause was not made within the 48-hour period mandated by *McLaughlin*. *Harris*, 495 U. S., at 20. Under these circumstances, suppression is not warranted under our precedents.

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For the foregoing reasons, the judgment below should be affirmed.

I respectfully dissent.

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[2]Thus, conventional attenuation principles are inapplicable in this case, for as we pointed out in *Harris*, "attenuation analysis is only appropriate where, as a threshold matter, courts determine that `the challenged evidence is in some sense the product of illegal governmental activity.'" 495 U. S., at 19 (quoting *United States* v. *Crews*, 445 U. S. 463, 471 (1980)).