When police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply.

The United States Supreme Court summarized the facts in *United States v. Herring* as follows:

“On July 7, 2004, Investigator Mark Anderson learned that Bennie Dean Herring had driven to the Coffee County Sheriff’s Department to retrieve something from his impounded truck. Herring was no stranger to law enforcement, and Anderson asked the county’s warrant clerk, Sandy Pope, to check for any outstanding warrants for Herring’s arrest. When she found none, Anderson asked Pope to check with Sharon Morgan, her counterpart in neighboring Dale County. After checking Dale County’s computer database, Morgan replied that there was an active arrest warrant for Herring’s failure to appear on a felony charge. Pope relayed the information to Anderson and asked Morgan to fax over a copy of the warrant as confirmation. Anderson and a deputy followed Herring as he left the impound lot, pulled him over, and arrested him. A search incident to the arrest revealed methamphetamine in Herring’s pocket, and a pistol (which as a felon he could not possess) in his vehicle. There had, however, been a mistake about the warrant. The Dale County sheriff’s computer records are supposed to correspond to actual arrest warrants, which the office also maintains. But when Morgan went to the files to retrieve the actual warrant to fax to Pope, Morgan was unable to find it. She called a court clerk and learned that the warrant had been recalled five months earlier. Normally when a warrant is recalled the court clerk’s office or a judge’s chambers calls Morgan, who enters the information in the sheriff’s computer database and disposes of the physical copy. For whatever reason, the information about the recall of the warrant for Herring did not appear in the database. Morgan immediately called Pope to alert her to the mix up, and Pope contacted Anderson over a secure radio. This all unfolded in 10 to 15 minutes, but
Herring had already been arrested and found with the gun and drugs, just a few hundred yards from the sheriff’s office.”

The issue in the case was whether or not the evidence, the gun and drugs, should be suppressed as the fruit of a bad arrest. Herring’s argument was that since the arrest was in error, the evidence which resulted from the search incident to arrest should not be used against him.

Chief Justice Roberts delivered the 5-4 decision of the Court holding that the evidence in this case need not be suppressed because the mistake was merely negligence. At the outset, Justice Roberts wrote: “When a probable-cause determination was based on reasonable but mistaken assumptions, the person subjected to a search or seizure has not necessarily been the victim of a constitutional violation.” He then noted that since the parties to the case had agreed that a constitutional violation had occurred, the Court would assume that there was a violation of the Constitution for purposes of their decision.

In rejecting Herring’s argument the majority pointed out that the exclusionary rule is not a constitutional right but rather a Court created rule to deter law enforcement misconduct. The Court said that the rule should be used as a last resort and not as a first impulse.

The majority noted that the Court had previously decided in *Arizona v. Evans,* the Court had “applied [the] good-faith rule to police who reasonably relied on mistaken information in a court’s database that an arrest warrant was outstanding. We held that a mistake made by a judicial employee could not give rise to exclusion for three reasons: The exclusionary rule was crafted to curb police rather than judicial misconduct; court employees were unlikely to try to subvert the Fourth Amendment; and “most important, there [was] no basis for believing that application of the exclusionary rule in [those] circumstances” would have any significant effect in deterring the errors.” *Evans* left open the issue which occurred here, what if the mistake was made by someone in law enforcement, but not the arresting officer?

The Court then turned to a culpability type of analysis. In other words, how flagrant and how intentional was the violation? The opinion pointed out that the early exclusionary rule cases involved intentional conduct by law enforcement that was patently unconstitutional, thus the Court’s need to deter that conduct.

The majority held: “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 systemic negligence. The error in this case does not rise to that level.”

The Court warned: “We do not suggest that all recordkeeping errors by the police are immune from the exclusionary rule. In this case, however, the conduct at issue was not so objectively culpable as to require exclusion… If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation.”
The Court concluded: “Petitioner’s claim that police negligence automatically triggers suppression cannot be squared with the principles underlying the exclusionary rule, as they have been explained in our cases. In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not pay its way. In such a case, the criminal should not go free because the constable has blundered.”

The Bottom-Line:

Where an officer relies upon the validity of a warrant from another law enforcement agency and makes an arrest, evidence seized incident to that arrest is admissible even if it turns out that due to a negligent omission by the agency holding the warrant that the warrant was not valid.

If the mistake is the result of deliberate, reckless, or grossly negligent conduct or the result of systemic problems (pattern of repeated mistakes on validity of warrants) the exclusionary rule may apply to evidence seized incident to arrest on a bad warrant.

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