

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2118

UNITED STATES OF AMERICA

v.

DAVONE DESEAN WALKER,
Appellant

On Appeal from the U.S. District Court, E.D. Pa.
Judge Joshua D. Wolson, No. 5:24-cr-00051-001

Before: BIBAS, CHUNG, and MASCOTT, *Circuit Judges*
Argued: June 25, 2026; Filed: Sept. 15, 2026

OPINION OF THE COURT

BIBAS, *Circuit Judge*. Suppressing evidence is a grave measure designed to deter blameworthy misconduct, not to second-guess a police officer's mistakes. An officer applied for a warrant to track and secure a box of drugs scheduled for delivery. He got an order letting him track the box, but not secure it anywhere other than the mailing address, Apartment 2. But after Davone Walker brought the box into Apartment 1, the officer went in to secure it there. Walker wants to use this discrepancy to exclude the drugs from his criminal trial. Yet suppression is for misconduct, not mistakes. Because the officer made at most an isolated mistake, the drugs are admissible, and we will AFFIRM the denial of Walker's suppression motions.

I. TROOPER MONTZ THOUGHT HE HAD A HIT-AND-HOLD WARRANT

Three years ago, Pennsylvania State Police learned of a suspicious package at a UPS shipping facility. All the seams were heavily taped (perhaps to conceal odors), and the box had been sent by next-day air (an expensive choice). Trooper Cody Montz arrived to investigate. He could find no record of the addressee at the delivery address, suggesting that the name was fake. And the return address matched another package that had turned out to contain drugs. A drug-sniffing dog alerted that the box contained drugs. After getting a search warrant, Montz opened it; inside, he found six pounds of methamphetamine in a camouflage-colored case.

Hoping to ferret out the true recipient, a county prosecutor applied for two warrants—a GPS tracker order plus a search warrant. To complete the application, Trooper Montz swore out an affidavit, explaining his plan: He would put a GPS tracker into the box. The tracking device would contain a sensor to notify police when the box was opened. If someone took the box into the listed address and opened it, he would use the search warrant to search that apartment. The affidavit also requested permission, “[i]n the event that the package is taken into a secondary location ... to enter that secondary location and secure the package and apply for” a search warrant for that location. App. 50. That procedure (first secure the package, then apply for another warrant) is called a hit-and-hold. Montz discussed this plan with the prosecutor.

The judge issued both a tracker order and a search warrant. The tracker order not only let officers put the GPS tracker into

the box, but also “monitor” it “continually ... even if the tracking device was moved within any area protected by a reasonable expectation of privacy.” App. 39–41 (cleaned up). The warrant let officers search the address on the package: [****] Dorney Park Road, Apartment 2, Allentown, Pennsylvania. App. 39. Trooper Montz understood that the warrant would be used only if the box was taken into Apartment 2 and opened. Though neither the tracker order nor the warrant mentioned a hit-and-hold, the tracker order said the warrant application (including Montz’s affidavit) was “incorporated for all purposes.” App. 39.

Armed with the tracker order, the search warrant for Apartment 2, and a GPS tracker, officers took the box of drugs to the delivery address: [****] Dorney Park Road. At the address was a house split into a couple of apartments. An undercover officer delivered the box to the porch. Then Davone Walker came out of Apartment 1, a different apartment in the same house, and brought the box back inside with him. Officers waited five hours to see if Walker would open the box or move it elsewhere. He did not.

As night fell, Montz ordered a hit-and-hold. Officers entered Apartment 1 and secured the scene. They found the box unopened, and next to it another camouflage case matching the one inside the box. As planned, Montz applied for a search warrant for Apartment 1, reporting what had happened that day, including his “pre approved hit and hold.” App. 73. Officers got that warrant and used it to search Apartment 1. They found five pounds of meth, a thousand fentanyl pills, another kilo of fentanyl, bags of cocaine, and other drug paraphernalia.

Walker was charged with possession of meth and fentanyl with intent to distribute. He moved to suppress the evidence from the search of Apartment 1, because the original search warrant listed only Apartment 2 and the tracker order did not permit officers to enter any other residence. The District Court denied the motion. Though Montz believed that the tracker order let him enter Walker's apartment because it referred to his affidavit, the court found that belief unreasonable. Even so, it declined to exclude the evidence because Montz's mistake was no more than isolated negligence.

Walker pleaded guilty conditionally, reserving the right to appeal the suppression ruling. We review the court's findings of fact for clear error and its legal conclusions de novo. *United States v. Tracey*, 597 F.3d 140, 146 (3d Cir. 2010).

II. THE EXCLUSIONARY RULE DOES NOT APPLY HERE

With few exceptions, police violate the Fourth Amendment if they enter a home without a warrant. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). The government concedes that Montz's hit-and-hold was not authorized by the warrant or tracker order. So we assume that Montz's search was unlawful. But not every unlawful search calls for suppressing evidence. That drastic measure is reserved for officer misconduct that is deliberate, reckless, or grossly negligent. Montz's conduct was not.

A. Suppressing evidence requires sufficiently culpable and deliberate officer misconduct

For more than a century, courts have excluded some unconstitutionally gotten evidence from trial under the exclusionary

rule. *Mapp v. Ohio*, 367 U.S. 643, 648, 655, 657 (1961); *Weeks v. United States*, 232 U.S. 383, 398 (1914). But exclusion is never automatic. It is not a remedy for past wrongs, but a deterrent for future ones.

Excluding evidence is strong medicine. A fair, accurate trial depends on an informed jury, so keeping it in the dark is a “last resort.” *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). Courts should thus suppress evidence only when there is a very good reason that outweighs the “substantial social costs.” *Id.* (quoting *United States v. Leon*, 468 U.S. 897, 907 (1984)).

There is one good reason to exclude ill-gotten evidence: to prevent future police misconduct. *Herring v. United States*, 555 U.S. 135, 139–41 (2009). Suppressing the fruits of illegal searches could deter officers from flouting the law or recklessly disregarding it. *See id.* at 143. So “[t]o 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.” *Id.* at 144. “[D]eliberate, reckless, or grossly negligent [mis]conduct” fits the bill, as can some “recurring or systemic negligence.” *Id.* Relying on these passages from *Herring*, we have excluded evidence because the police misconduct in that case “was, at a minimum, ‘grossly negligent.’” *United States v. Vasquez-Algarin*, 821 F.3d 467, 484 (3d Cir. 2016) (quoting *Herring*, 555 U.S. at 144).

Conversely, the exclusionary rule does not apply when officers reasonably believe they are following the law or even when they make isolated mistakes. *Davis v. United States*, 564 U.S. 229, 238 (2011). Even “negligence,” if “isolated,” will not be

grounds for suppression, because “deterring isolated negligence is not worth the social cost of excluded evidence.” *United States v. Wright*, 777 F.3d 635, 642 (3d Cir. 2015). Except in cases of deliberate, reckless, grossly negligent, or systemic misconduct, evidence is admissible. *Davis*, 564 U.S. at 238–39; *see also United States v. Katzin*, 769 F.3d 163, 171 (3d Cir. 2014) (en banc).

B. Trooper Montz’s isolated mistake was not grossly negligent

As the District Court reasonably found, Trooper Montz did not mean to violate the Fourth Amendment or the warrant requirement. Nor did he disregard them. Instead, he testified credibly that he thought that the tracker order authorized him to enter Apartment 1 to secure the drugs. Yet we assume, as the government concedes, that it did not. So we treat the hit-and-hold as an entry without a valid warrant, in violation of the Fourth Amendment. We ask whether it was grossly negligent and so calls for suppression. The District Court thought that Montz’s mistake was, at most, isolated negligence. We agree.

Walker argues for suppression by claiming that Montz did not read the tracker order. Walker does not say that tracker orders can never authorize a hit-and-hold. He just claims that this one did not. And he says that if Montz had read the order with even “scant care,” he would have thought the hit-and-hold was out of bounds. *See Appellant’s Br. 14, 19–20* (quoting *United States v. Wright*, 777 F.3d 635, 638 (3d Cir. 2015)). We disagree.

Trooper Montz did read the tracker order, and his reading was not grossly negligent. The order’s first paragraph said it

“attached and incorporated” the warrant application (which includes the affidavit) “for all purposes.” App. 39. That language gave Montz reason to think he had permission for a hit-and-hold, since his affidavit sought permission to “enter” any “secondary location” if the package wound up there. App. 50. Police are not lawyers, so they are not grossly negligent simply because they mistakenly rely on incorporation language. *Cf. United States v. Rosario*, 180 F.4th 512, 526 n.35 (3d Cir. 2026). That is what we held in a similar case. There, as here, an officer assumed that a judicial order incorporated a police affidavit. *Tracey*, 597 F.3d at 152. The order was a warrant which, on its face, was not particular enough to satisfy the Fourth Amendment. *Id.* Even so, we held that the officer “understandably” thought it valid. *Id.* Though nothing in that warrant said it incorporated the affidavit, it was enough that the officer had attached it to the warrant application and wrote in the application that it was attached. *Id.*

Arguing for his own reading of the tracker order, Walker cites a canon of statutory interpretation: *expressio unius*. Because the order expressly authorized tracking, he argues, it could not have implicitly authorized anything else. But we do not hold police to the same standard as lawyers. *Rosario*, 180 F.4th at 526 & n.25. We do not expect them to apply canons flawlessly and construe documents technically. Montz’s failure to do so here does not amount to gross negligence worthy of suppression.

Nor does this case match others where suppression was called for. Montz did not conduct a full evidentiary search without trying to get a warrant. *Herring*, 555 U.S. at 143–44 (describing the “patently unconstitutional” conduct that first inspired the exclusionary rule). He did not enter Walker’s

apartment without “specific and reliable information” that the box of drugs was there. *Vasquez-Algarin*, 821 F.3d at 484 (holding that evidence should have been excluded because officers lacked such information and so were “grossly negligent”). Instead, Montz tried to get a warrant for a hit-and-hold, and he thought he had one. His mistake was not the kind of deliberate and culpable conduct the exclusionary rule seeks to prevent.

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Excluding reliable evidence is costly. It threatens the truth and can derail the wheels of justice. We pay that price when police have already gone off the rails by flouting the law while snatching evidence. But when police make an understandable mistake, the evidence comes in. Trooper Montz mistakenly thought the tracking order authorized him to enter Apartment 1 because his attached affidavit asked for that permission. That mistake was at most isolated negligence, so we will AFFIRM both the District Court’s denial of Walker’s suppression motions and his conviction.*

* Judge Mascott joins in this opinion as setting forth governing Supreme Court precedent. She would note that, as the officer’s behavior may not have been a mistake and, as the opinion already points out, certainly was not “grossly negligent,” the “bitter pill” of the Court’s “last resort” exclusionary rule doctrine, *Davis v. United States*, 564 U.S. 229, 231–32 (2011), is not triggered here. In her view, the officer’s good-

Counsel for Appellant

Gina A. Amoriello [Argued]
LAW OFFICE OF GINA A. AMORIELLO

Counsel for Appellee

Lizmar Bosques
Robert A. Zauzmer [Argued]
U.S. ATTORNEY'S OFFICE

faith conduct fell outside of it, and so ultimately exclusionary-rule analysis is unnecessary for the judgment.