

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2905

UNITED STATES OF AMERICA

v.

DERRICK POLK,
Appellant

On Appeal from the U.S. District Court, W.D. Pa.
Judge Marilyn J. Horan, No. 3:21-cr-00016-025

Before: KRAUSE, FREEMAN, and ROTH, *Circuit Judges*
Argued: July 8, 2026; Filed: Sept. 2, 2026

NONPRECEDENTIAL OPINION*

FREEMAN, *Circuit Judge*. In this appeal, Derek Polk challenges the government's search of his safe deposit box during a raid on U.S. Private Vaults ("USPV")—a company the government was investigating for criminal activity. Based on a warrant to seize USPV's property, FBI agents opened Polk's safe deposit box and found \$399,000 in cash. The agents then presented that cash to a drug-sniffing dog, who alerted to the odor of drug residue. The search of Polk's box, along with a subsequent investigation, led to Polk's indictment for drug crimes.

Polk unsuccessfully moved to suppress the evidence the government recovered from his box at USPV. He then pleaded guilty to the charged drug crimes.

On appeal, Polk argues that the search of his safe deposit box was unconstitutional. His arguments track the Ninth Circuit's determination that the government violated the

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

Fourth Amendment rights of non-criminal USPV customers when it searched their boxes during the same USPV raid. *See Snitko v. United States*, 90 F.4th 1250 (9th Cir. 2024). But when Polk pleaded guilty, he expressly waived his right to appeal all but a limited set of arguments. Only one of his current arguments was carved out of that waiver, and that argument is unavailing. Accordingly, we will AFFIRM his judgment of conviction.

I

In March 2021, a grand jury returned an indictment charging USPV with conspiracy to launder money, distribute drugs, and unlawfully structure financial transactions. The indictment alleged that USPV sought to attract customers who would use the facility to store proceeds from crime.

After the indictment issued, the FBI obtained two warrants to search USPV’s facility and seize items related to the charged crimes. The seizure warrant authorized the seizure of “nests” of safe deposit boxes—*i.e.*, the containers in which safety deposit boxes are held—but “d[id] not authorize a criminal search or seizure of the contents of the safety deposit boxes.” App. 242–43. But the FBI agent who sought the warrant acknowledged that, “[b]y seizing the nests of safety deposit boxes, the government w[ould] necessarily end up with custody of what is inside those boxes initially.” App. 347. So the warrant specified that, when seizing the nests, agents must “follow their written inventory policies” and “inspect the contents of the boxes in an effort to identify their owners” to facilitate return of the owners’ property. App. 243. The warrant also referred to FBI policy that an inspection “should extend no further than necessary to determine ownership.” App. 348.

Per FBI policy, “[a]gents may not perform inventory searches solely for investigative purposes. Whenever there is probable cause to believe an inventory search would also yield items of evidence or contraband, agents must obtain a search warrant when feasible.” App. 379.

In preparation for the USPV raid, the FBI prepared more specific guidance for inventorying the safe deposit boxes. Those Supplemental Instructions on Box Inventory (“Supplemental Instructions”) required agents to “identify the contents of each box, creating an inventory list” and to “note if the box includes a USPV notification form identifying a contact person for the box.” App. 375. They also provide that “[a]gents cannot search the content of boxes for evidence, but may examine the contents to identify the box owner.” *Id.*

The Supplemental Instructions provide a specific protocol for cash recovered from the safe deposit boxes. Upon finding more than \$5,000 in cash, agents were to place the cash in evidence bags and then take it to a drug-sniffing dog. Agents were also required to note features of the cash, such as “how the cash is bundled . . . ; if it has a strong odor (marijuana, soil, gasoline, coffee, chemical, etc.); if there appears to be drug residue present; [and] if a gun is also present.” App. 376.

When agents executed the warrant, they found Box 5911 with Polk’s name and contact information on top. They opened the box, found \$399,000 in U.S. currency, and presented the cash to a drug-sniffing dog, who alerted to the odor of drugs. They then investigated Polk, obtained a warrant to seize Box 5911 and its contents, and obtained additional warrants to search Polk’s home and his person. All this led to issuance of a two-

count indictment charging Polk with (1) conspiracy to distribute illegal drugs, in violation of 21 U.S.C. § 846, and (2) distribution of illegal drugs, in violation of 21 U.S.C. § 841.

After the District Court denied Polk’s motion to suppress the evidence from his box at USPV, Polk pleaded guilty. In a written plea agreement, he waived his right to appeal the conviction on most grounds, with the exception of arguments raised in his suppression motion and two other filings, identified by docket number. He was sentenced to 120 months’ imprisonment and timely appealed.

II¹

A

In his plea agreement, Polk waived the right to take a direct appeal, subject to enumerated exceptions. As relevant here, he preserved the right to appeal the “issue and arguments raised” in three filings: his Motion to Suppress (Doc. 1266), one Reply brief (Doc. 1314),² and his Supplemental Motion to Suppress (Doc. 1457) (together, the “Carve-Out Filings”). App. 638.

¹ The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 18 U.S.C. § 3731. “We review the validity and scope of an appellate waiver de novo.” *United States v. Grimes*, 739 F.3d 125, 129 (3d Cir. 2014). We enforce an appellate waiver when “(1) the issues a defendant pursues on appeal fall within the scope of the waiver; (2) the defendant knowingly and voluntarily agreed to the waiver; and (3) enforcing the waiver would not work a miscarriage of justice.” *United States v. Langley*, 52 F.4th 564, 575 (3d Cir. 2022). We strictly construe the language of a plea agreement. *United States v. Corso*, 549 F.3d 921, 927 (3d Cir. 2008).

² The list does not include a second reply brief Polk filed regarding his Motion to Suppress: Doc. 1378.

Cumulatively, the Carve-Out Filings comprise fewer than ten pages of double-spaced text. After providing factual background, the Motion to Suppress argues: (a) The government lacked probable cause to search Polk’s box, (b) “[A]n inventory search is only reasonable if conducted according to standardized procedures. [It] must not be a ruse for a general rummaging in order to discover incriminating evidence. . . .,” App. 114 (citation modified), (c) The government’s professed reason for an inventory search—identifying box owners to facilitate return of their property—did not permit it to open Polk’s box, which had his name and contact information on the lid, and (d) There was no need to conduct an inventory search when Polk was the only person who had a key to his box.³

The Reply reiterates some of those arguments and adds four more: (e) Polk had an expectation of privacy in his locked safe deposit box, (f) The USPV warrant affidavit does not mention Polk, (g) The purported inventory search was really a fishing expedition, and (h) The government’s argument that the agents were merely following the Supplemental Instructions fails because “FBI instructions cannot supersede the search warrant’s lack of authorization,” Supp. App. 425 (internal quotation marks and emphasis omitted).

Finally, the Supplemental Motion provides the District Court with a link to a recording of the Ninth Circuit’s oral argument in *Snitko* and asserts that the panel of judges “skeptically questioned the Government on the very same issue that is central to Defendant’s instant motion to suppress, to wit, the FBI’s unlawful inventory search

³ In the affidavit seeking the USPV search warrant, an FBI agent attested that each USPV customer keeps all keys to his or her box.

conducted during the execution of the search warrant on U.S. Private Vaults’ safe deposit boxes in March 2021.” App. 633.⁴

B

On appeal, Polk raises four arguments: (1) Safe deposit boxes do not qualify for the inventory search exception to the Fourth Amendment’s warrant requirement—an exception that has been applied only to impounded automobiles and arrestees’ immediate possessions; (2) The Supplemental Instructions made the search of Polk’s box inapplicable for the inventory search exception, which requires adherence to longstanding generalized procedures; (3) The government exceeded the scope of the warrant when it opened Polk’s box despite knowing who owned it; and (4) The government exceeded the scope of the warrant when it subjected the cash in Polk’s box to a dog sniff.

Only the third argument is preserved in the Carve-Out Filings.

None of the Carve-Out Filings contain an argument that safe deposit boxes categorically fall outside of the inventory search exception. Polk points us to his preserved arguments that “[t]he search of [his] safe deposit box . . . was not supported by probable cause or subject to an exception thereto,” App. 113, and “[a]s a lessee, Polk had a good faith expectation in the privacy of his locked safe deposit box,” Supp. App. 423. But those

⁴ After the Ninth Circuit issued its *Snitko* opinion, Polk’s counsel sent the District Court’s law clerk a copy of that opinion via email. The government then filed a supplemental brief arguing that (1) the oral argument in *Snitko* is not a basis to suppress evidence, (2) referring to that oral argument does not preserve any arguments for appeal, and (3) the email to the District Court’s law clerk is not part of the record.

arguments do not come close to preserving his current argument about the limited scope of the inventory search exception.

Similarly, the Carve-Out Filings do not raise the argument that the search of the boxes at USPV was not an inventory search because of the specialized Supplemental Instructions. The Carve-Out Filings mention the Supplemental Instructions once: when Polk argued that FBI instructions “cannot supersede the search warrant’s lack of authorization.” Supp. App. 425 (emphasis omitted). Whatever that sentence may mean, it bears no resemblance to the current argument that “the fact that the Supplemental Instructions were created specifically for the USPV search takes this case out of the realm of a standardized ‘inventory’ procedure.” Polk Br. 33 (quoting *Snitko*, 90 F.4th at 1262).

The Carve-Out Filings make no argument based on dog sniffs; when the Motion to Suppress provides factual background, it simply states that the cash from Polk’s box “was subjected to a drug dog sniff search.” App. 113. So his dog-sniff argument is waived, too.⁵

⁵ Judge Krause would find that Polk preserved this argument but would nevertheless affirm based on the inevitable discovery doctrine, under which evidence that is otherwise tainted as “fruit of the poisonous tree,” see *Wong Sun v. United States*, 371 U.S. 471 (1963), will survive a motion to suppress if “routine police procedures inevitably would have led to the discovered evidence,” see *United States v. Alexander*, 54 F.4th 162, 174 (3d Cir. 2022) (quoting *United States v. Stabile*, 633 F.3d 219, 245 (3d Cir. 2011)). For the doctrine to apply, the Court must have a “high level of confidence that each of the contingencies necessary to the legal discovery of the contested evidenced would be resolved in the government’s favor.” *United States v. Alexander*, 54 F.4th 162 (3d Cir. 2022) (quoting *United States v. Heath*, 455 F.3d 52, 60 (2d Cir. 2006)). In Judge Krause’s view, because an agent contacted Polk in response to Polk’s filing a property claim before this agent learned of the canine alert, the conversation in which Polk provided a false box number and acknowledged the cash contents of his box would have occurred in any event, prompting the further investigation that disclosed his criminal history and his large cash jewelry purchase while purportedly unemployed. Those discoveries would have sufficed,

See United States v. Joseph, 730 F.3d 336, 342 (3d Cir. 2013) (“[T]o preserve an argument and avoid waiver, the argument presented in the Court of Appeals must depend on both the same legal rule and the same facts as the argument presented in the District Court.”).⁶

C

Turning to the preserved argument, Polk contends that the government exceeded the scope of the warrant when it opened his safe deposit box despite his name and contact information on the lid. He argues that the warrant only authorized the officers to inspect boxes to identify their owners, so they were prohibited from opening a box with his information on the outside.

Polk relies on *Horton v. California*, 496 U.S. 128, 140 (1990) for the proposition that a search may not exceed the scope of a validly issued warrant—*i.e.*, a warrant based on probable cause. But he elides that the government purported to conduct an *inventory search* of Polk’s box, and an inventory search is an exception to the warrant requirement. And Polk did not preserve an argument that the search of his box exceeded the “character of the relevant exception from the warrant requirement.” *Id.* So the narrow argument that he preserved is unavailing.

* * *

We are mindful that one of our sister circuits deemed the search of the safe deposit boxes at USPVS unconstitutional. Some of the arguments Polk seeks to raise on appeal

even without the canine alert, to establish probable cause for the searches of Polk’s box, home, and person.

⁶ Polk does not challenge the knowing and voluntary nature of his appellate waiver, nor does he argue that enforcement of the waiver would work a miscarriage of justice.

implicate serious Fourth Amendment questions. But the serious nature of Polk’s arguments gives way to his valid appellate waiver. Accordingly, we will AFFIRM the judgment.

Counsel for Appellant

Mark W. Mosier
Patricia S. Engle **[Argued]**
COVINGTON & BURLING

Counsel for Appellee

Donovan J. Cocas **[Argued]**
Laura S. Irwin
OFFICE OF THE UNITED STATES ATTORNEY

Counsel for Amicus Appellant

Robert P. Frommer
Robert E. Johnson
INSTITUTE FOR JUSTICE