

INFORMANT

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SUPREME COURT RULES POLICE ERROR DOES NOT REQUIRE EXCLUSION OF EVIDENCE

In a 5-4 decision, the United States Supreme Court ruled that evidence seized in an improper arrest does not always have to be thrown out by the courts, provided the error was the “result of isolated negligence” on the part of the police as opposed to “deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” *Herring v. United States*. This view of the “exclusionary rule” is favorable to law enforcement but critics say it could be a green light for law enforcement abuse.

The case began back in July 2004, when Bennie Dean Herring arrived at an Alabama Sheriff’s Department’s impound yard to retrieve property from his impounded truck. Herring was no stranger to law enforcement and officers checked to see if there were any outstanding warrants for his arrest. A computer error in a neighboring county incorrectly showed there was an outstanding warrant and Herring was placed under arrest. In a search incident to the mistaken arrest, police found methamphetamine in Herring’s pockets. They also found a pistol in his truck, which Herring, as a felon, was forbidden to possess. About 15 minutes after the arrest, a clerk from the neighboring county called back to say that the computer had made an error and that the warrant had been withdrawn months earlier.

Herring was subsequently indicted on the drug and gun charges and convicted in federal court. His conviction was later affirmed by the Court of Appeals for the Eleventh Circuit, which held that the negligence that resulted in the improper arrest was not enough to exclude the evidence seized incident to the erroneous arrest. Herring argued to the lower courts that the evidence of the drugs and pistol should have been suppressed because the rescinded warrant meant his arrest was illegal. The United States Supreme Court agreed to hear the appeal of Herring’s conviction.

In upholding the use of the evidence to convict Herring, Chief Justice Roberts wrote that the judicially created exclusionary rule did not provide that such evidence be automatically kept from juries. He said justices decided in 1995 that a similar computer mistake — in that case, attributable to judicial personnel — was a “good-faith” error that did not warrant throwing out an arrest.

Dissenting Justice Ruth Bader Ginsberg wrote that the decision would give law enforcement great leeway in justifying arrests and little incentive to correct problems such as defective computer databases.

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