



# DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 333  
February 2, 2009

## NEGLIGENT BOOKKEEPING ERROR ON EXISTENCE OF ARREST WARRANT DOES NOT REQUIRE EXCLUSION OF EVIDENCE

<u><b>Reference:</b></u>	Bennie Dean Herring v. United States	United States Supreme Court No. 07-513 _____U.S._____ January 14, 2009
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### **FACTS:**

A police investigator learned that HERRING had driven to the Sheriff's office to retrieve something from his impounded truck. Because the investigator was aware of HERRING's criminal background, he asked the police warrant clerk to check for any outstanding warrants. When the clerk reported that she found no outstanding warrants, the investigator asked her to call the warrant clerk in a nearby county. That warrant clerk reported there was an outstanding warrant for HERRING's arrest for failure to appear on a felony charge. The investigator requested that a copy of the warrant be faxed to him. At about this same time, HERRING had driven away from the impound lot. The investigator stopped HERRING and arrested him. As an incident to that arrest, the investigator seized methamphetamine from HERRING's pocket and a pistol from his vehicle. This entire incident lasted somewhere between ten and fifteen minutes. While HERRING was being arrested, the warrant clerk searched for a warrant but was unable to find one. The clerk called the court and learned that the warrant had been recalled about five months ago. As soon as the clerk received the information that the warrant had been recalled, the investigator was informed. It was the normal practice of the court to notify the Sheriff's office when warrants were recalled. For some unknown reason, the Sheriff's office did not receive word that this warrant had been recalled.

HERRING argued that this was obviously a violation of his Fourth Amendment right to unlawful seizure and that the evidence must be suppressed.

**ISSUE:**

Must the contraband found during a search incident to arrest that violated the Fourth Amendment be excluded?

**HELD:**

No. 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. (See Legal Bulletin No. 86 - Good Faith Exception to Exclusionary Rule.)

**REASONING:**

1. The conduct in question was a negligent failure to act (on the part of the court or records department) not a tactical choice (by the police) to act.

2. 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.

3. The exclusionary rule was crafted to curb police rather than judicial misconduct; court employees were unlikely to try to subvert the Fourth Amendment.

4. 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. The exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct.

5. 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.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 333 numerically under Section R of the manual.