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No. 25-3344

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA Plaintiff-Appellee, v. JAMILL H. MCDONALD, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO OPINION

Before: GRIFFIN, BUSH, and HERMANDORFER, Circuit Judges.

The court delivered a PER CURIAM opinion. HERMANDORFER, J. (pp. 22–24), delivered a separate opinion concurring in part and concurring in the judgment.

PER CURIAM. Jamill McDonald called the Mayfield Heights Police Department and reported that someone was breaking into his apartment. When officers arrived, McDonald asked them to search the apartment for intruders. They agreed. The officers turned up no burglars during their safety check. But they did find a package—which officers immediately recognized as a brick of cocaine—sitting in plain view on a closet shelf. The officers then arrested McDonald, learned that he was on federal supervised release for a drug crime, and obtained and executed a search warrant covering the rest of the apartment. That search revealed more cocaine, an additional stash of fentanyl, heroin, and cannabis, a scale, burner phones, and $10,000 cash.

McDonald now challenges his resulting drug convictions. He argues that his trial proceedings violated the Speedy Trial Act. And he contends that all apartment-search evidence should have been suppressed. We disagree on both fronts and affirm.

I

A

In October 2023, Jamill McDonald saw a Ring notification that someone was at his front door. McDonald wasn't home, but the Ring app showed that someone wearing a hoodie was trying to break down the door. McDonald called the police and "reported that someone was trying to break into his apartment" with a "crowbar, sledge hammer, [or] something." Suppression Hr'g Tr., R.39, PageID 145. Dispatch logged the call as a burglary and sent officers to the scene.

Sergeant Bill Dvorak, a 27-year veteran of the Mayfield Heights force, responded alongside four other officers. They found McDonald's door "damaged" but "not open," and McDonald hadn't yet come home. *Id.* at PageID 146. McDonald arrived soon after, showed the officers the Ring video, and unlocked the battered door. Discussion ensued among McDonald and the officers, and all eventually agreed that they "didn't know" if a would-be burglar had "entered and resecured the door" and might still be in the apartment. *Id.* at PageID 147. So McDonald "authorize[d]" the police to "check the apartment for security" and "make sure the suspect . . . was not still inside." *Id.*

Sergeant Dvorak and his team did so. As they "look[ed] for a potential offender," *id.* at PageID 148, they followed a standard two-step procedure. The first stage, Dvorak explained, is "very fast." *Id.* at PageID 173. Officers move through the whole dwelling, "peeking in [each] room, making sure [they] don't get shot" by someone lying in wait, "and moving on to the next room." *Id.* As the district court later put it, the purpose of the "first entry" to each room is "to

determine if an intruder [i]s an immediate danger to the officers." Order on Motion to Suppress, R.21, PageID 72. As they proceed, officers confirm that each room is "clear" of attackers. Then, after stage one, officers perform a "secondary search" to check for "hiding" intruders. Suppression Hr'g Tr., R.39, PageID 173. At that stage, they might check "behind a shower curtain," on a "balcony," or inside a "closet"—"any place a person could theoretically hide." *Id.* at PageID 149, 140, 173.

Neither stage turned up a burglar. But during stage two, officers found a kilogram of cocaine when Sergeant Dvorak swept a bedroom closet, shined his flashlight behind the door, and spotted an unusual object "on a closet shelf right about [his] eye level." *Id.* at PageID 150. It immediately stood out from everything else in the closet because it reflected "the glare of shiny plastic, almost like Glad Cling wrap." *Id.* at PageID 152. The brick-shaped package was wrapped in "[d]ark brown or maroon paper wrapped in cellophane," *id.* at PageID 166, and its "size" and "packaging" were "consistent with a kilo of cocaine," *id.* at PageID 174. Sergeant Dvorak testified that he had no question in his mind that the package contained contraband. After studying policework at "numerous schools" and serving on the force for the better part of three decades, he knew "that's how drugs are packaged." *Id.* at PageID 157. His "immediate reaction was that" the brick-shaped package "was contraband." *Id.* at PageID 158.

When he saw the brick of cocaine, Sergeant Dvorak called for another officer on his team—one who had "trained very recently in drug interdiction traffic stops and narcotics"—and asked him to take a look. *Id.* The second officer "confirmed" Sergeant Dvorak's conclusions. *Id.* So did a third officer, a member of the department's "drug investigation unit" who "deals with" such packages "very frequently." *Id.*

Having learned that the apartment contained no burglars but did contain distribution quantities of drugs, the officers switched tasks. First, they asked McDonald about the package. McDonald declined to say what it was or how it got there. Warrant Affidavit, D.E. 24, p. 13. Then the officers "explained to Mr. McDonald that he was going to be detained." Suppression Hr'g Tr., R.39, PageID 159. They arrested him, searched his pockets (turning up two phones and $2,764 in cash), and took him outside. After that, the officers moved the package into the hallway for "evidence security." *Id.* The officers were concerned that the possible attempted burglary might be related to the cocaine they uncovered. They also worried that McDonald's balcony "did not lock," because they knew of "numerous occurrences" where local burglars entered similar apartments by "climb[ing] balcony to balcony." *Id.* at PageID 159-60.

Last, the officers requested a detective to the scene. Todd Hanley, deputy commander of the department's drug unit, answered the call. As it happened, he'd crossed paths with McDonald "a year before," when he "traffic stopped [] McDonald" and learned "that he had a drug history . . . and that he was on federal probation." *Id.* at PageID 193-94. When he learned what the burglary team had found, Detective Hanley headed for the scene. And he "advised" the on-scene officers "to go ahead and take Mr. McDonald . . . to jail" in the meantime. *Id.* at PageID 183. On arrival, Detective Hanley had the same impression as everyone else: the size, plastic seal, and "numerous" layers of wrapping on the package made apparent that it was cocaine, and further suggested "wholesale drug trafficking." *Id.*

The next step was a field test. Detective Hanley made a small cut in the package, "maybe a quarter inch," and "pure white powder" spilled out. *Id.* at PageID 185. He added a dose to a "NIK test" (a standard narcotics field test, he testified) and the reagent turned blue—a presumptive positive for cocaine.

With that, Detective Hanley and others wrote their warrant application for the rest of the apartment. They woke a judge around 2:00 a.m., obtained the warrant, and went back to search the apartment for evidence of drug trafficking. When they did, they found fentanyl, heroin, more cocaine, cannabis, three more phones, a scale with residue, and more than $10,000 cash.

B

After McDonald posted bond in state court, federal officers arrested him on a warrant for violating the terms of his supervised release. Then federal prosecutors obtained a separate indictment for possession with intent to distribute cocaine and fentanyl.

From there, various procedural matters prolonged McDonald's case. We explain the procedural ins and outs during our discussion of McDonald's Speedy Trial Act arguments. For now, it is sufficient to note that McDonald's Speedy Trial Act clock (1) started with his first appearance on May 3, 2024; (2) stopped and started intermittently between May 30th and August 8th during the pendency of McDonald's pretrial motions and other requests; and (3) stopped between August 8th and McDonald's November 18th trial under a written agreed order, signed by both the Government and McDonald as well as the trial judge. During that time, McDonald pursued plea negotiations, engaged in several counsel changes, and ultimately decided to represent himself at trial.

The timing tradeoffs presented by McDonald's shifting strategy were no secret. The district court repeatedly informed McDonald that the steps he sought risked "delay[ing] the matter." 8/29/24 Pretrial Conf. Tr., R.137, PageID 1640. McDonald's ultimate decision to proceed pro se further compounded the delay by requiring the district court to hold a *Faretta* hearing and, later, to appoint standby counsel. *See Faretta v. California*, 422 U.S. 806, 835 (1975).

A mountain of pretrial motions and miscellaneous requests filed by McDonald also necessitated the district court's resolution.[1]

Nonetheless, McDonald twice moved to dismiss the Government's indictment on Speedy Trial Act grounds. The district court denied both motions. Relevant here is the district court's handling of McDonald's second dismissal motion, dated November 5, 2024. In its order denying that motion, the district court explained that, as of August 8, 2024, 58 countable days had elapsed on the Speedy Trial Act's 70-day clock. The district court then noted that, on August 8th, it had ordered an open-ended continuance with both parties' agreement; that order was based on a "find[ing] that the ends of justice" required giving McDonald and his lawyers additional time to prepare. 8/8/24 Order, R.22, PageID 74 (citing 18 U.S.C. §§ 3161(h)(7)(A) & (B)(iv)). Without challenging the continuance itself, the district court reasoned, McDonald couldn't count to the 70 elapsed days needed to show a Speedy Trial Act violation.[2]

McDonald's trial started on November 18, 2024. At the end of the two-day proceeding, the jury convicted him of possession with intent to distribute more than 500 grams of cocaine and more than 40 grams of fentanyl. The district court, applying enhanced mandatory minimums based on McDonald's status as a felon, imposed a sentence of 420 months' imprisonment. McDonald timely appealed, and we have jurisdiction. 28 U.S.C. § 1291.

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[1] To give a sampling, McDonald made two more motions to dismiss and another motion to suppress, all of which largely mirrored their predecessors; a motion in limine; a motion to compel discovery; and a miscellaneous "request for relief" premised (among other things) on the district court's statement "that it would not assist Defendant in preparing for trial or provide guidance on the procedural requirements for a federal criminal trial." Motion for Relief, R.47, PageID 243. The district court denied the substantive motions but appointed standby counsel to help McDonald navigate the trial process. McDonald's prolific motions practice persisted after trial.

[2] Contesting the lawfulness of the continuances that delayed his trial, McDonald calculates that 85 days elapsed between his first appearance and the start of his trial. If that calculation were correct, it would show McDonald's trial was untimely. But we needn't verify McDonald's calculation because we reject his premise that the continuances were improper.

II

McDonald renews the argument that his trial proceedings violated the Speedy Trial Act. The Act, in relevant part, requires the Government to try a defendant "within seventy days" of his initial appearance. 18 U.S.C. § 3161(c)(1). Failure to meet that deadline can lead to dismissal of an indictment. *See id.* § 3162(a)(2). But the Act's 70-day clock isn't absolute. Rather, trial judges may exclude time from the Speedy Trial Act calculation for various reasons. Some exclusions—like delay for pending pretrial motions—are automatic by statute. *See id.* § 3161(h)(1)(D); *United States v. Tinklenberg*, 563 U.S. 647, 656, 659 (2011). Other exclusions result from judicial orders.

By now, McDonald appears to agree that the district court properly applied the pretrial-motions exclusion to count 58 days as of August 8, 2024. *See* 18 U.S.C. § 3161(h)(1)(D).[3] His challenge instead centers on the district court's handling of his proceedings between August 8, 2024, when McDonald agreed to a delay in proceedings to further consider a plea, and November 5, 2024, when McDonald again moved for dismissal on Speedy Trial Act grounds. In particular, McDonald contends that the district court either never excluded any additional Speedy Trial Act time or, alternatively, improperly ordered an open-ended exclusion of such time. That is so despite both sides' agreement in the district court that some continuance was warranted.

McDonald's argument implicates the Speedy Trial Act's exclusion for "continuance[s] granted by [the] judge on his own motion or at the request of the defendant or his counsel." 18 U.S.C. § 3161(h)(7)(A). The Act provides instructions for evaluating whether a continuance-based exclusion of Speedy Trial Act time is warranted. A judge "shall consider," among other factors, "[w]hether the failure to grant such a continuance . . . would deny counsel for the

[3] The Government calculates the countable days at 55 but accepts that the three-day difference doesn't affect our Speedy Trial Act analysis.

defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." *Id.* § 3161(h)(7)(B). If those factors warrant a continuance, the trial judge must "set[] forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the bests interests of the public and the defendant in a speedy trial." *Id.* § 3161(h)(7)(A). A trial court needn't "put its express findings on the record" until "the time [it] rules on" any Speedy Trial Act-based motion to dismiss. *United States v. Brown*, 100 F.4th 703, 712 (6th Cir. 2024). Still, the court should "make findings, even if only in the judge's mind," "before granting the continuance." *Id.* (quotation marks omitted).

We interpret the meaning of the Speedy Trial Act de novo, review findings of fact for clear error, and evaluate the "decision to grant an ends-of-justice continuance under an abuse-of-discretion standard." *United States v. White*, 920 F.3d 1109, 1112 (6th Cir. 2019) (quotation marks omitted). Applying those standards, we conclude that the district court's management of McDonald's proceedings satisfied the Speedy Trial Act.

A

We begin with the district court's August 8th exclusion order. During the August 8, 2024, pretrial hearing, it became apparent that McDonald might qualify as a career offender—a status that would increase his sentencing exposure. A discussion between McDonald and his lawyer ensued. McDonald then sought extra time before his trial to allow the probation office to create a pre-plea criminal history report; that report, in turn, would permit McDonald to "make an educated decision" about whether to pursue a plea. 8/8/24 Hr'g Tr., R.140, PageID 1694. Faced with that

request, the district court repeatedly asked McDonald whether he was seeking a continuance. Three times, McDonald answered yes.

The district court granted McDonald's motion and memorialized its reasoning both during the hearing and later via written order. During the hearing, it concluded on the record that "the ends of justice [we]re served by granting this motion" for a continuance and explained that "failure to grant such a continuance would deny counsel for the defendant, as well as the defendant [himself], reasonable time necessary for effective preparation, taking into account the exercise of due diligence." *Id.* at PageID 1699. That finding tracked the terms of the Speedy Trial Act's continuance provision to a T. *See* 18 U.S.C. § 3161(h)(7)(B)(iv).

Further, the district court gave McDonald a written order—captioned "waiver of rights pursuant to Speedy Trial Act of 1984"—to sign. 8/8/24 Order, R.22, PageID 74. That written order, entered the same day, includes the district court's ends-of-justice findings and cites subsection (h)(7) of the Act. And it bears McDonald's and the lawyers' signatures. The order did not set any further timeline for the proceedings. Although the district court had proposed a 30-day continuance during the hearing, the parties agreed to start trial later, on September 23rd. So they agreed, in writing, to the August 8th order with no stated expiration for the exclusion of time. Though captioned as a "waiver," that order memorialized the parties' agreement at the hearing and relied on the Act's provisions authorizing trial judges to order exclusions of time.

Under circuit precedent, the August 8th order provided a sufficient basis to deny McDonald's Speedy Trial Act objections. We have recognized that the Act is flexible and that "much of the Act's flexibility" lies in the ends-of-justice continuances authorized by subsection (h)(7). *White*, 920 F.3d at 1115 (cleaned up). We have also specified that "the time spent on pretrial plea negotiations may be excludable under subsection (h)(7)" so long as the district court

"show[s] its work" by making the "express findings" that subsection requires. *Id.* at 1116 (quotation marks omitted). As just discussed, the district court made on-the-record findings here, orally and in writing, that a § 3161(h)(7)(A) exclusion was warranted so that McDonald and his lawyer could receive additional information about McDonald's sentencing exposure and thoroughly consider a plea. McDonald doesn't challenge the accompanying findings of fact, and we see no abuse of discretion in the resulting decision. Though trial didn't start until November 18th, further delays followed McDonald's decisions concerning counsel and additional motions.

McDonald's efforts to evade the consequences of the district court's August 8th exclusion-of-time order are not persuasive.

First, McDonald challenges the order under *Zedner v. United States*, 547 U.S. 489 (2006). In *Zedner*, the Supreme Court held that criminal defendants cannot "opt out of the Act" altogether, and that "defense continuance requests" therefore need to "fit within one of the specific exclusions set out in subsection (h)." *Id.* at 500. If that isn't so, or "if a judge fails to make the requisite findings regarding the need for an ends-of-justice continuance, the delay resulting from the continuance must be counted" and "harmless-error review is not appropriate." *Id.* at 508-09. According to McDonald, the August 8th written order was an improper "prospective waiver" of his speedy trial rights and thus "ineffective" to exclude time. McDonald Br. 21-22 (cleaned up) (quoting *Zedner*, 547 U.S. at 503).

But the record belies McDonald's prospective-waiver argument. To be sure, the district court referred to the August 8th order as a "waiver." Any "inartful language," however, cannot trump the order's contents. *United States v. Montgomery*, 395 F. App'x 177, 184 (6th Cir. 2010). And those contents plainly tracked the Speedy Trial Act's parameters. The order articulated a finding—made after extensive discussion of McDonald's motion in open court—that a

"continuance" was warranted under subsection (h). 8/8/24 Order, R.22, PageID 74. No such analysis would be needed had McDonald "opt[ed] out of the" whole statute. *Zedner*, 547 U.S. at 500. Further, the district court identified the "specific reason[s]," Reply Br. 8, why a continuance was appropriate—McDonald wanted more time to consider a plea—and cited the relevant Speedy Trial Act provision. 8/8/24 Hr'g Tr., R.140, PageID 1696-99; 8/8/24 Order, R.22, PageID 74 (citing 18 U.S.C. §§ 3161(h)(7)(A) & (B)(iv)). Any "waiver" was wholly unnecessary given the district court's authority to exclude time under subsection (h). And read as a whole, the August 8th order exercised just that authority, relying on the ends-of-justice findings at the hearing.

Second, McDonald suggests that the order's "indefinite[]" continuance timeline renders it invalid. McDonald Br. 22-23. Yet "this Court, along with many other circuits, permits reasonable open-ended continuances." *United States v. Richardson*, 681 F.3d 736, 743 (6th Cir. 2012). Here, the open-ended continuance in the August 8th order reflected the parties' agreed-to response to McDonald's request for more time to consider a plea. And it delayed McDonald's trial by only about two months. McDonald nowhere explains why the district court's indulgence of his request was an unreasonable abuse of discretion warranting Speedy Trial Act relief. *See United States v. Brown*, 498 F.3d 523, 531 (6th Cir. 2007). Nor do we see a basis for that conclusion when the district court (1) warned McDonald about the prospect of delay and (2) faced uncertainty about whether and how quickly the probation office could complete McDonald's request to issue a pre-plea criminal-history report.

B

Regardless, the August 8th written order was not the only basis for the district court's continuances. Even had the August 8th order expired on the planned trial date of September 23rd—which we do not hold—the clock would have stopped again as McDonald filed more

motions and the district court granted further ends-of-justice continuances. The record reflects that, each time McDonald took a litigation step that necessitated further delays, the district court ventilated timing concerns in a manner sufficient to pass Speedy Trial Act muster. So even if the August 8th order was not alone sufficient to answer McDonald's Speedy Trial Act objection, the district court's further subsection (h) continuances would permissibly exclude the remainder of any contested time. *See* 18 U.S.C. § 3161(h)(7)(A).[4]

McDonald's post-August 8th moves were myriad. Most relevant here is his request to replace his counsel at the August 29, 2024, pretrial conference. The district court warned McDonald that such a step would "delay the matter further" and mean he "likely" would not be "scheduled for trial until probably sometime in January." 8/29/24 Pretrial Conf. Tr., R.137, PageID 1640. Despite that, McDonald confirmed that he "want[ed] another lawyer." *Id.* at PageID 1641. The district court granted that request, began the appointment process anew, and postponed the next status conference for new counsel's appointment. *Id.*

McDonald's second counsel was appointed in early September. A status hearing followed a few weeks later. At the hearing, McDonald's second counsel noted that he had just received discovery in the case. In response, the district court established a new, mid-November trial date in order to allow McDonald's lawyer time to review case files and prepare a defense. During the third (and last) final pretrial conference, the trial judge reiterated that he didn't "intend to delay the case" any further. 10/31/24 Pretrial Conf. Tr., R.138, PageID 1653. And in the end the court

[4] McDonald asserts that the Government "waived" an implicit-finding argument while litigating below. Reply Br. 4-5. But the Government's appellate argument relates to McDonald's pro se motion for Speedy Trial Act dismissal dated November 5, 2024. The district court denied that motion on November 8, 2024, prior to any response from the Government.

maintained the mid-November trial date—even after McDonald opted to terminate his second lawyer and proceed pro se.

McDonald does not dispute that those delays were of his own making. Nor does he contest that he agreed to postpone his trial. Yet he insists that the district court's continuances did not stop the Speedy Trial Act clock because the district court never made an express "ends-of-justice finding." McDonald Br. 15.

We disagree. At the outset, we take McDonald's point that the district court's oral discussion could have been clearer. And we note that issuing contemporaneous Speedy Trial Act findings is "best practice," even if not required. *Zedner*, 547 U.S. at 507 n.7. That said, we have long counseled against reading "magic words" requirements into the Speedy Trial Act. *See, e.g.*, *White*, 920 F.3d at 1117 (quotation marks omitted). Along similar lines, a district court need not "repeat all of the details of its findings on the record each time it grants an ends-of-justice continuance," especially if "the circumstances" were "essentially unchanged." *United States v. Bikundi*, 926 F.3d 761, 778 (D.C. Cir. 2019). Thus, even if a Speedy Trial Act "delay is not designated as such by the court," we will uphold "a continuance when the reasons for it are clear from the context or record." *White*, 920 F.3d at 1117 (quotation marks omitted).

The reasons are clear here. The district court repeatedly discussed how McDonald's shifting representation strategies weighed against his timing concerns. Though not every hearing transcript "recite[s] specific statutory language," *United States v. Orozco-Barron*, 72 F.4th 945, 959 (9th Cir. 2023) (quotation marks omitted), the context makes clear that the district court considered the time needed to afford McDonald adequate opportunity to prepare, *cf. Brown*, 100 F.4th at 712. In so doing, the court weighed the factors enumerated in the Act—and in particular, whether "the ends of justice [we]re served by a period of delay," *Orozco-Barron*, 72 F.4th at 959—

and tried the case as soon as it could. The district court was not required to "repeat all of the details of its findings on the record." *Bikundi*, 926 F.3d at 778. Doubly so here, where—as the district court explained in its dismissal order—McDonald knew full well that obtaining new "counsel would delay his trial and result in him spending longer in pretrial detention," yet chose to do so anyway. Order Denying Motion to Dismiss, R.49, PageID 250. The district court did not err in accommodating McDonald's various counsel-related requests, relying "on its previous determination that a continuance was necessary in the best interest of justice," and allowing McDonald's new lawyer time to learn the case. *United States v. Williams*, 314 F. App'x 656, 660 (5th Cir. 2009).

* * *

Looking at the dates corresponding to the Speedy Trial Act, we adopt the district court's finding that 58 days elapsed as of the August 8th hearing. We assume that the August 8th hearing and "waiver" constituted an "ends-of-justice" continuance until the originally planned September 23rd trial date. But when the district court granted McDonald's request for new counsel on August 29th, the district court appropriately provided a continuance to allow the new counsel to prepare for trial. This kept the clock stopped in the ends of justice. *See* 18 U.S.C. § 3161(h)(7)(A). And at the hearing on September 19th, McDonald's counsel affirmatively agreed to a trial date outside the Speedy Trial limit. We therefore do not find that the November 18th trial date violated the Speedy Trial Act.

To reiterate, the trial proceedings reflect that the district court gave McDonald the litigation leeway he requested—all while warning that delays would result from firing two lawyers at the eleventh hour. We see no error, nor abuse of discretion, in the district court's approach to

balancing McDonald's counsel-related changes with McDonald's and the public's interests in a speedy trial.

III

McDonald next argues that he should never have been tried at all. That is because, in his view, the key evidence giving rise to his charges—the brick of cocaine that led to the search warrant and thus the other drugs—should have been suppressed on Fourth Amendment grounds.

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Violations of the prohibition on unreasonable searches and seizures can result in courts' suppressing evidence. When reviewing a district court's denial of a motion to suppress, "[w]e review findings of fact for clear error and questions of law de novo." *United States v. Gardner*, 32 F.4th 504, 514 (6th Cir. 2022) (citing *United States v. Young*, 847 F.3d 328, 342 (6th Cir. 2017)). And we conduct that review deferentially, "consider[ing] the evidence in the light most favorable to the government." *United States v. Simmons*, 129 F.4th 382, 386 (6th Cir. 2025) (citation omitted).

McDonald offers four arguments for suppressing the drugs discovered in his apartment. First, he contends that officers shouldn't have looked in the closet—where they found the brick of cocaine—during the consented-to sweep for burglars. Second, he claims that the brick of cocaine wasn't in plain view in any event. Third, he asserts that officers were not authorized to field-test the brick of cocaine. Fourth, and following from his first three arguments, McDonald insists that the search warrant for his apartment should never have issued because the application depended upon the unlawfully discovered cocaine brick. None of those arguments succeed.

A

McDonald's first argument contests the officers' search of the apartment closet. All agree that McDonald gave officers some level of consent to search his apartment for a suspected burglar. The dispute is over how closely he authorized the police to look. That "scope" question turns on what a "typical reasonable person" would "have understood by the exchange" with officers. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (citation omitted). Whether someone consented, and "whether a search exceeded the scope of consent," are "question[s] of fact that we review for clear error." *United States v. Garrido-Santana*, 360 F.3d 565, 570 (6th Cir. 2004).

The district court, citing the officers' uncontradicted testimony at the suppression hearing, concluded that "McDonald consented to a protective sweep of his property." Suppression Order, R.21, PageID 72. That consent, the district court continued, in turn permitted the burglary team's standard two-stage operating practice. "[T]he first entry to the bedroom was simply a cursory view to determine if an intruder was an immediate danger to the officers. A second entry was made to check in all locations, the closet included, where an intruder could be hiding." *Id.* The district court explained that both stages were part of the "consensual protective sweep of the house." *Id.*

McDonald retorts that "the search was completed" after stage one. Reply Br. 9. For support, McDonald notes that officers announced "clear" as they initially moved through each room. *See id.* At that point, McDonald contends, officers were bound to terminate the search rather than prolong it for evidence-discovery purposes.

We recognize that consent to search for a burglar doesn't license officers to linger and look for unrelated items or evidence. *Shamaeizadeh v. Cunigan*, 338 F.3d 535, 548 (6th Cir. 2003). But here, a "typical reasonable person" would have understood McDonald's consent to sweep the apartment as consent to conduct that sweep under standard protocol—in this case, a quick

preliminary sweep and a secondary sweep of hidden areas. No evidence controverted the officers' accounts concerning the scope of consent. The district court therefore did not err in crediting their testimony and finding that officers' sweep of the closet stayed within the scope of McDonald's request.

B

McDonald's second argument—that the cocaine brick wasn't in plain view—also fails. Just as it's reasonable for police to search when they have permission, it's reasonable for them to seize "evidence in 'plain view'"—that is, "evidence that an officer saw from a lawful vantage point, the 'incriminating character' of which was 'immediately apparent,' and for which the officer had 'a lawful right of access to the object itself.'" *United States v. Clancy*, 979 F.3d 1135, 1137 (6th Cir. 2020) (quoting *Horton v. California*, 496 U.S. 128, 136-37 (1990)).

Based on the authorized search, Sergeant Dvorak had consent to aim his flashlight into the closet to check for burglars. And McDonald offers no evidence to contradict the district court's finding, based on Dvorak's uncontroverted testimony, that the brick rested at eye level on the closet shelf. "Such a plain viewing and seizure, even if accomplished with the aid of a flashlight, does not exceed the scope of a search" under the plain-view doctrine. *United States v. Reed*, 141 F.3d 644, 649 (6th Cir. 1998) (citation omitted). Nor does any record evidence suggest that Sergeant Dvorak had to manipulate any items in the closet to see or identify the package.

McDonald instead focuses on the outward appearance of the brick, arguing that "the package's incriminating nature was not immediately apparent." McDonald Br. 32. To assess that argument, we apply a series of factors that this Court has set out in plain-view cases. As relevant here, we ask whether the item's appearance "gives probable cause to believe it is associated with criminal activity," whether the searching officers "can determine probable cause of the item's

incriminating nature" based on the "facts then available," and "whether the officer can recognize the incriminating nature of the item as the result of his instantaneous sensory perception." *United States v. Mathis*, 738 F.3d 719, 732 (6th Cir. 2013) (citing *United States v. Garcia*, 496 F.3d 495, 510-11 (6th Cir. 2007)).

None of those factors favors McDonald. Sergeant Dvorak testified that he instantly recognized the cellophane-wrapped, brick-shaped package as contraband, and the district court credited that testimony. That "sensory perception" of the package's shape, size, and wrapping, along with Dvorak's training and experience, rendered the item's drug connection apparent. And the "intrinsic nature" of a brick of cocaine—itself contraband—"gives probable cause to believe it is associated with criminal activity." *Mathis*, 738 F.3d at 732. Nothing in the record contravenes Sergeant Dvorak's testimony. Therefore, it was not clearly erroneous to conclude that the illicit nature of the brick-shaped package was immediately apparent.

McDonald presses three counterarguments. None persuades.

First, McDonald contends that our precedent forecloses application of the plain-view doctrine when "further investigation is required to establish probable cause as to" an object's "association with criminal activity." McDonald Br. 33 (quoting *Garcia*, 496 F.3d at 510). But *Garcia* lends no help to McDonald. Unlike *Garcia*, where officers did not understand the incriminating nature of a document until they had finished reading it, 496 F.3d at 510, Sergeant Dvorak *did* instantly recognize the brick of cocaine as a brick of cocaine. Dvorak's seeking confirmation from two other experienced officers does not alter the plain-view analysis. As this Court has previously held in affirming application of the plain-view doctrine, "that an officer's

initial impression was reinforced by subsequent investigation does not undermine the initial existence of probable cause." *Mathis*, 738 F.3d at 733.

Second, McDonald insists that the plain-view doctrine applies only when an object's incriminating nature is apparent based on "sensory perception" rather than "specialized knowledge." McDonald Br. 34 (quotation marks omitted). But any such limit is absent from our precedents. To the contrary, we've consistently "recognized that a law enforcement officer may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person." *United States v. Pacheco*, 841 F.3d 384, 396 (6th Cir. 2016) (quoting *Texas v. Brown*, 460 U.S. 730, 746 (1983) (Powell, J., concurring in the judgment)); *see also United States v. Loines*, 56 F.4th 1099, 1108-09 (6th Cir. 2023) ("In considering whether evidence was apparent to the executing officers, courts should be duly mindful of the executing officers' particular, subjective training and experiences." (cleaned up)).

Third, McDonald cites our decision in *United States v. McLevain*, 310 F.3d 434, 442 (2002), for the proposition that objects with "some other explanation" than crime lie outside the purview of the plain-view doctrine. That argument only works, however, if McDonald is right that officers couldn't or shouldn't have realized the package was a brick of cocaine. But for reasons given above, McDonald's other-explanation premise does not withstand the district court's contrary factual findings that the cocaine's nature was immediately apparent to officers.

C

McDonald next asserts that even if the officers could seize the brick-shaped package, they needed a warrant to search it. From there, he argues that officers committed an unlawful warrantless search by cutting the package open and field-testing the powder inside. Again, we

review the district court's factual findings for clear error and the questions of law de novo. *Gardner*, 32 F.4th at 514 (citation omitted).

To be sure, "[t]he plain-view doctrine permits certain warrantless *seizures*, not searches." *United States v. Lewis*, 81 F.4th 640, 654 (6th Cir. 2023). Even when the plain-view doctrine justified a seizure, officers therefore need a warrant or an exception to the warrant requirement to conduct any further search of a package. *Horton*, 496 U.S. at 133-34. The Supreme Court has made clear that packages of all kinds are subject to the Fourth Amendment. *United States v. Ross*, 456 U.S. 798, 822 (1982). But a person has "no legitimate privacy interest" in contraband. *United States v. Jacobsen*, 466 U.S. 109, 123 (1984). And the Court has explained that when "the distinctive configuration of a container proclaims its contents, the contents cannot fairly be said to have been removed from a searching officer's view." *Robbins v. California*, 453 U.S. 420, 427 (1981) (plurality op.), *overruled on other grounds by Ross*, 456 U.S. at 824. Examples of that single-purpose-container rule include gun cases, a kit of burglary tools, *Arkansas v. Sanders*, 442 U.S. 753, 764 n.13 (1979), or when the "container [is] transparent," *Robbins*, 453 U.S. at 427.

Here, officers observed what they knew as "a sealed wrapped kilogram of drugs." Suppression Hr'g Tr., R.39, PageID 183. It was a distinctive opaque brick wrapped in cellophane, and its size was consistent with containing approximately one kilogram of drugs—undoubtedly indicative of "wholesale drug trafficking." *Id.* Although officers could not see through the brown or maroon packaging, the contents were clear. *See United States v. Prandy-Binett*, 995 F.2d 1069, 1072 (D.C. Cir. 1993) (remarking that a distinctive, rectangular, "wrapped block thus conveyed the message 'one kilo of narcotics' just as surely as if the words were written on the tape"). Given the officers' "knowledge approaching certainty as to the contents of the container, the search of the container d[id] not unreasonably infringe upon the individual interest in preserving the privacy

of those contents." *United States v. Jackson*, 381 F.3d 984, 989 (10th Cir. 2004) (quoting *United States v. Corral*, 970 F.2d 719, 725-26 (10th Cir. 1992)). To the contrary, officers' "virtual certainty that [they] w[ere] going to find contraband and little else in the package" allowed them to "open[]" it "and remove[] a trace amount of the powder for an on-site field test." *United States v. Lichtenberger*, 786 F.3d 478, 482 (6th Cir. 2015) (quotation marks omitted); *see also United States v. Portales*, 52 F. App'x 290, 292 (7th Cir. 2002) ("[W]here police conclude, based on a 'practical, nontechnical probability,' that a package in plain view contains illegal drugs, they may seize and open that package without a warrant." (citation omitted)).

D

Last, McDonald attacks the post-warrant search of his apartment, which yielded more drugs and paraphernalia. His premise is that the police never should've found the brick of cocaine and wouldn't, or couldn't, have gotten a warrant without it. Our reasoning above forecloses this argument. Because police lawfully found the cocaine brick in plain view and properly searched its contents, nothing prevented the officers from citing their findings to show probable cause in their warrant application.

For that reason, we needn't consider McDonald's and the Government's dueling contentions about whether and how the good-faith exception interacts with the district court's suppression decision.

* * *

We affirm.

HERMANDORFER, Circuit Judge, concurring in part and concurring in the judgment. Like the majority, I would reject McDonald's attempt to suppress evidence about the contents of the brick-shaped cocaine package. But I'd take a different path to that disposition. It seems to me that officers' warrantless opening and field test of that package was no harm, no foul. As the district court explained, there is no doubt that officers, upon coming across an apparent brick of cocaine in the home of a convicted drug dealer on federal supervised release, would have sought and obtained a warrant permitting the package search. And indeed, seeking and obtaining a search warrant is just what officers did. So this seems to me a case where officers inevitably would have discovered the challenged evidence about the package's contents.

The relevant facts are undisputed. Sergeant Dvorak and Detective Hanley both testified that, as soon as they saw the brick in plain view, they decided to seek a warrant to search McDonald's home for evidence of drug-trafficking crimes. The district court credited that testimony, and I see no clear error there. The evening's events provide confirmation: As Sergeant Dvorak took McDonald to the station, Detective Hanley arrived on the scene, recognized the package as a brick of cocaine, performed a field test, and successfully applied for a warrant. That evidence of what the police "*actually did*" leaves little room for "speculation." *See United States v. Ford*, 184 F.3d 566, 577 (6th Cir. 1999). The plain-view discovery of the package itself was inevitably bound to prompt—and in fact did prompt—officers' warrant attempt. That conclusion stands without any opening or field test of the package.

And even if we "excise[d]" the positive field-test results from the warrant application, the remainder easily established probable cause to believe drug crimes were afoot. *See United States v. Cooper*, 24 F.4th 1086, 1095 (6th Cir. 2022). Put simply, a mountain of other evidence in the warrant affidavit connected McDonald and his home to evidence of drug trafficking.

Officers reported encountering a package that was a brick of cocaine, cited McDonald's suspicious behavior when confronted, as well as his two phones and $2,764 in pocket cash, and noted the fact that McDonald was serving a term of federal supervised release for conspiracy to distribute cocaine. None of those facts turned on officers' challenged opening and testing of the cocaine package. So even an abridged version of the warrant application, without any "tainted information," established "probable cause" to search McDonald's apartment for drug evidence. *United States v. Jenkins*, 396 F.3d 751, 760 (6th Cir. 2005).

Nor is there any real question that the resulting warrant justified officers' package search. A warrant to search McDonald's apartment for narcotics would encompass containers where narcotics could be found, including the package of cocaine officers had located in plain view. *See, e.g.*, *United States v. Church*, 823 F.3d 351, 356-57 (6th Cir. 2016); *United States v. Garcia*, 496 F.3d 495, 507-08 (6th Cir. 2007); *United States v. Calarco*, 668 F.2d 920, 921 (6th Cir. 1982); 2 Wayne R. LaFave, *Search And Seizure* § 4.10(d) (6th ed., supp. Oct. 2026). And indeed, the warrant that issued authorized officers to search "storage areas" and seize any "illegal drugs and or preparation of illegal drugs for sale, use, possession, or shipment." Search Warrant, D.E. 24, pp. 8-10.

Those "compelling facts establish[] that the disputed evidence inevitably would have been discovered" by way of officers' "routine procedures." *United States v. Keszthelyi*, 308 F.3d 557, 574 (6th Cir. 2002) (citation omitted); *Cooper*, 24 F.4th at 1091 (quoting *United States v. Kennedy*, 61 F.3d 494, 500 (6th Cir. 1995)). McDonald doesn't meaningfully dispute as much. Instead, he objects that applying the inevitable-discovery rule would "obviate the warrant requirement." Reply Br. 20 (quoting *United States v. Haddix*, 239 F.3d 766, 768 (6th Cir. 2001)). But that

objection falls flat here, where officers in fact obtained a warrant on a basis that was sufficient without the challenged field-test evidence.

If anything, the facts and sequence of officers' investigatory steps highlight that suppressing the field-test evidence would "put the police (and society) not in the *same* position they would have occupied if no violation occurred, but in a *worse* one." *Murray v. United States*, 487 U.S. 533, 541 (1988). Enforcing the Fourth Amendment does not require such overcorrection. I'd therefore affirm even accepting (just for argument's sake) that officers committed a foot fault by opening and field-testing the cocaine package prior to the inevitable issuance of the search warrant they later obtained.