

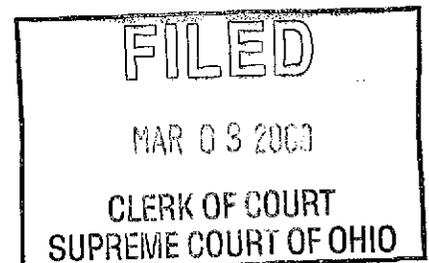
IN THE SUPREME COURT OF OHIO

State of Ohio : CASE NO. 2007-2007
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 Plaintiff/Appellee :
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 : On Appeal from the
 : Stark County Court
 v. : of Appeals, Fifth
 : Judicial District
 :
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 Belinda Rife Anello :
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 : Court of Appeals
 Defendant/Appellant : Case No. 2006CA00340
 : 2007-Ohio-4822
 :
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MOTION FOR RECONSIDERATION
OF DENIAL OF DISCRETIONARY APPEAL
OF APPELLANT BELINDA RIFE ANELLO

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**WHY THIS COURT SHOULD RECONSIDER AND ACCEPT THIS CASE FOR
REVIEW**

In the present case, a law enforcement officer went to a barn based on several complaints about dogs being kept therein. Upon arrival, he heard numerous dogs barking inside. Finding a brand new padlock on one of the barn doors, the officer went to the other side of the barn, and found a closed but unlocked sliding door. The officer opened the door and entered the barn, where he found seventeen dogs in cages, in what he described as neglected condition. He reported his observations to Humane Society personnel, who went to the barn the next day, and entered without a warrant. The evidence gathered in these warrantless searches ultimately led to charges of Cruelty to Animals against Appellant Belinda Rife Anello and two co-defendants, and to their convictions on two counts each of those charges.

While the Fifth District Court of Appeals also erred in finding the searches to be justified by exigent circumstances, plain smell, and curtilage issues, the most egregious error by the court of appeals in its affirmance of these convictions was the determination that the “inevitable discovery” doctrine justified the warrantless searches. The inevitable discovery doctrine holds that if there is a reasonable probability that illegally obtained evidence would have ultimately been discovered during a lawful investigation, notwithstanding the government's misconduct, then that evidence will not be suppressed. *Nix v. Williams* (1984), 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377; *State v. Perkins* (1985), 18 Ohio St.3d 193. In his dissent on other grounds in *Nix*, Justice Brennan cogently summed up the ruling of the majority in that case: “* * * the Court concludes that unconstitutionally obtained evidence may be admitted at trial if it inevitably would have been discovered in the same condition by an independent line of investigation that was already being pursued when the

constitutional violation occurred.”

The State bears the burden of showing within a reasonable probability that police would have discovered the evidence apart from the unlawful conduct. *Perkins*, supra. In doing so, the State must show that the police possessed the leads making the discovery inevitable at the time of the misconduct, and that the police were actively pursuing an alternate line of investigation prior to the misconduct. *State v. Taylor* (2000), 138 Ohio App.3d 139. A legitimate, alternative line of investigation that would inevitably have resulted in the same evidence being discovered is necessary in order to apply the inevitable discovery rule. *Id.* In the present case there was absolutely no evidence of any such independent line of investigation that would have inevitably led to discovery of the evidence.

The court of appeals effectively and egregiously expanded the narrow applicability of the inevitable discovery doctrine when it held that because “the evidence in this case clearly would have been discovered if a warrant had been obtained”, the inevitable discovery rule was applicable. (Decision at 7). This reasoning swallows up the warrant requirement and the Fourth Amendment entirely, and is clearly erroneous. If such a precedent is allowed to stand, the inevitable discovery rule would be used to justify virtually every illegal search, since in virtually every circumstance a court could justify an illegal search by observing that the evidence would have been ultimately found if a warrant had been obtained.

Such a faulty precedent must not be allowed to stand, as it clearly has major constitutional implications. This Court should therefore reconsider its decision dismissing this appeal as not involving any substantial constitutional question, accept this case for review, and reverse the ruling of the Fifth District Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion was sent by regular U.S. Mail to Derek C. McClowry, Canton City Hall, 7th Floor, 218 Cleveland Ave. S.W., Canton OH 44702, this _____ day of _____, 2008.

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