

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

-vs-

DARNELL JONES

Defendant-Appellee.

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CASE NO. 2009-0364

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MEMORANDUM IN RESPONSE TO "MEMORANDUM IN SUPPORT OF  
JURISDICTION OF APPELLANT, THE STATE OF OHIO"

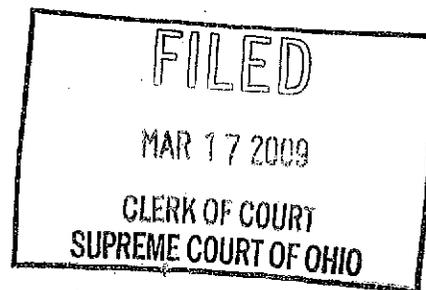
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## STATEMENT OF APPELLEE'S POSITON

The 4<sup>th</sup> Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In interpreting the 4<sup>th</sup> Amendment, Ohio and federal courts have consistently ruled that a person may not have a reasonable expectation of privacy in a place (i.e., hotel room, apartment, public place, residence, etc.), but still have a justifiable expectation of privacy in items (i.e., letters, duffel bags, plastic bags, suitcases, etc.).

In this case, the Court of Appeals has not misapplied the law. Rather, the Court of Appeals has simply followed a long line of cases supporting a person's privacy interest in items such as the plastic bag. Lack of standing to complain about the search of the room does not equate to lack of standing to complaint about a search of one's items in a room.

Further, this case does not present a question of great and public interest. The State argues that a great and public interest is involved because parties need to be put on notice of alleged errors at the trial and appellate levels in order to address those errors. Admittedly, former trial counsel for Darnell Jones did not argue that the lawfulness of the plastic bag's search; instead opting to argue the search of the room alone. However contrary to the State's statement, on pages 6-8 of Darnell Jones' appellate brief the undersigned counsel specifically argued the unlawful search of the grocery bay within the hotel room. The State had every chance to address this argument on appeal but failed to do so.

## **APPELLEE'S STATEMENT OF FACTS**

Between 2:00 a.m. and 3:00 a.m. on January 18, 2007, Appellee Darnell Jones (hereinafter "Jones") and his friend accompanied a woman to a local motel. Jones provided money for the room and obtained a key to the room. The room, however, was registered to his friend because Jones had no valid identification. Jones and his friend were both going to use the room to have sex with a girl.

Later that morning, at approximately 11:00 a.m., an officer observed Jones' friend enter the motel parking lot without using his turn signal. The friend parked his car in front of the motel room. According to the friend, check-out time was 12:00 p.m. and he was returning to pick Jones up.

At about the same time as the friend was approaching the motel room parking lot in his car, the officer observed Jones walk out of the motel room with a multi-colored, plastic grocery bag. The officer asked Jones if he had a driver's license. Jones replied "no", but indicated that the woman in the motel room did. Jones re-entered the room, and then exited with the woman but without the bag.

The officer then, without a warrant, entered the motel room. The officer found the bag that Jones had been carrying stuffed in between a mattress and a nightstand. The bag was closed and wrapped up. Upon search of the bag, drugs were found.

## **ARGUMENT IN SUPPORT OF APPELLEE'S POSITION**

A person may fail to have a reasonable expectation of privacy in a place, but may still have a privacy interest in an item in the place.

The 4<sup>th</sup> Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The protections of the Fourth Amendment apply to searches of articles and places which, by their nature and condition, demonstrate that the public has a justifiable expectation of privacy in them and their contents.

A criminal defendant is not required to have an ownership or possessory interest in premises in order to have standing to complain of a Fourth Amendment violation with respect to a law enforcement officer's entry into those premises; a defendant is only required to have a reasonable expectation of privacy in those premises. Minnesota v. Olson (1990), 495 U.S. 91, 95.

Receptacles that are closed and have been secured against intrusion demonstrate that expectation. United States v. Chadwick (1977), 433 U.S. 1. Typical examples are: foot lockers, Chadwick, supra; suitcases, Florida v. Royer (1983), 560 U.S. 491, purses, Rawlings v. Kentucky (1980), 448 U.S. 98; duffel bags, Frazier v. Cupp (1969), 394 U.S. 731; letters, United states v. Van Leeuwen (1970), 397 U.S. 249; and boxes of all types. Even brown paper bags, California v. Acevedo (1991), 500 U.S. 565, and cigarette packages, United States v. Robinson (1973), 414 U.S. 218, qualify. And, at least one federal court has expanded protection to a plastic bag. See United States v. Most, 876 F.2d 191, 197-98 (D.C. Cir. 1989) (finding reasonable expectation of privacy in contents of plastic bag left with grocery store clerk).

Jones had a reasonable expectation of privacy in the plastic bag. First, the bag was wrapped, closed and placed (between a mattress and nightstand) in

a manner suggesting that Appellant was preserving his privacy in the bag.

Second, the bag may have been found in plain view, but the contents of the bag were not readily discernible without opening it. Finally, there was no evidence that the search of the bag was justified under any exception to the warrant requirement.

Moreover, Jones never abandoned a privacy interest in the plastic bag. There is a very long line of case law establishing the principle that police may freely seize and search abandoned items, such as items thrown from vehicles during a police chase, items placed in trash containers, or items dropped by a pedestrian while fleeing from the police. *State v. Dubose*, 2005 Ohio 6602 (7<sup>th</sup> App. District) citing to *Abel v. United States* (1960), 362 U.S. 217, 241; *State v. Freeman* (1980), 64 Ohio St.2d 291, 296; *United States v. Flynn* (C.A.10, 2002), 309 F.3d 736; *United States v. Mustone* (C.A.1, 1972), 469 F.2d 970; *State v. Hill* (1998), 127 Ohio App.3d 265, 269. Since the Fourth Amendment only protects those places and items that a person expects to remain private, and since abandoned items are available for anyone to find and peruse, courts have consistently denied Fourth Amendment protection over abandoned items. *Bond v. United States* (C.A.7, 1996), 77 F.3d 1009, 1013.

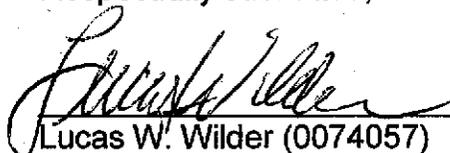
However, the facts of this case do not fit into any of the standard examples of 4<sup>th</sup> Amendment abandonment. With respect to the plastic bag, Jones never: denied ownership; threw it away; deposited it into a trash container; dropped it on the sidewalk and kick it out of view. The officers saw him enter the hotel room with the closed plastic Aldi's bag, but exit without the bag. The

officers did ask about whether the hotel room was his, but the inquiry ended. There is no evidence that he abandoned his interest in the plastic bag he took into the room.

**CONCLUSION**

For the foregoing reasons, this Court should not accept jurisdiction of this case. This case does not present a substantial constitutional question and is not a case of public or great general interest.

Respectfully submitted,

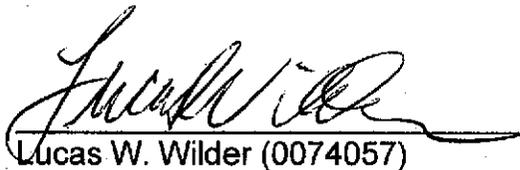


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**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was hand-delivered to the APA's office on March 16, 2009. A copy was also hand-delivered to Darnell Jones at the Montgomery County Jail on March 17, 2009.



Lucas W. Wilder (0074057)