

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

CASE NO. 09-0364

Plaintiff-Appellant,

On Appeal from the  
Montgomery County  
Court of Appeals,  
Second Appellate District

vs.

DARNELL JONES

COURT OF APPEALS  
CASE NO. 22558

Defendant-Appellee.

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APPELLANT'S MERIT BRIEF

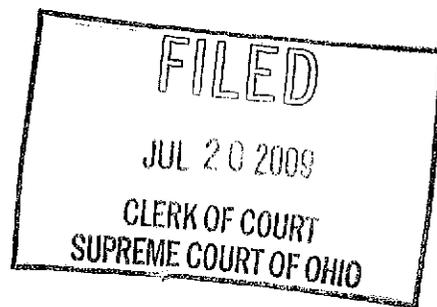
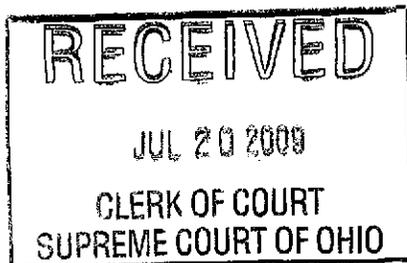
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### **Statement of the Case**

This is an appeal by the State of Ohio from a decision reversing the trial court's denial of Jones' motion to suppress evidence. The trial court found that Jones did not have standing to challenge the search of a motel room that he had no privacy interests in. The 2<sup>nd</sup> District Court of Appeals (court of appeals) reversed; while it agreed that Jones had no expectation of privacy in the motel room, it held that he did have standing to challenge the warrantless search of the bag he had left there, an issue not raised in the trial court or on appeal. *State v. Jones*, 2<sup>nd</sup> Dist. No. 22558, 2009-Ohio-61.

### **Statement of the Facts**

On January 18, 2007, at approximately 3:00 a.m., Darnell Jones and Terry Taylor went to the Royal Motel with a female Taylor picked up for the sole purpose of engaging in sexual relations. (June 11, 2007 Motion to Suppress Hearing Transcript, pp. 35, 37, 40-41, 45-51) The room was registered to Taylor, but Jones paid for it. (Tr. 37, 40, 45) Check out time was at noon. (Tr. 41)

At about 11:00 a.m. the next morning, police stopped Taylor, who had just pulled in front of Room 130 to pick up Jones and the female, for failing to signal his turn into the motel lot. (Tr. 6, 41, 47) Taylor, it turned out, did not have a valid driver's license, and the officers arrested him. (Tr. 7) At that same moment, Jones walked out of Room 130 toward Taylor's vehicle with a rolled up shopping bag in his hand and "looked like a deer in the headlights" when he unexpectedly saw the officers. (Tr. 8-9) The officer asked Jones if he had a driver's license because they arrested the driver and wanted someone to take possession of Taylor's vehicle. (Tr. 11) Jones told them he didn't, but said the female they were with did and immediately turned around and walked back into the room. (Tr. 8-9) Jones came out a few seconds later with the

female, but without the shopping bag. (Tr. 9) The female, as it turned out, had an active capias for her arrest, and the officers arrested her as well. (Tr. 10)

Jones, then, told the officers that the vehicle was "his girl's car." (Tr. 10) Due to numerous drug and prostitution complaints and "geeker deals" where people will trade cars for crack, in this particular area, the officers did not want to release the vehicle to anyone who did not have legitimate permission to take possession of it, so the officers attempted to ascertain who Jones was. (Tr. 12) The officers asked Jones for his identification and Jones admitted that he only "had a fake ID that he used to get in clubs." (Tr. 10) The officers then obtained a social security number from Jones, but it came back to a man at least two inches shorter than he was. (Tr. 12) Because Jones gave the police false information and admitted to possessing fraudulent identification, which is a felony, the officers pursued an investigation to identify him. (Tr. 12-13, 25-26)

Realizing that Jones had left a shopping bag in the motel room, the officers asked Jones who the room belonged to, and Jones promptly told the officers that "it was not his room" and Jones did not indicate that he had been staying there for any length of time. (Tr. 13, 15) All three, Jones, Taylor and the female had denied any possessory interest in the room. (Tr. 13, 27) The door to the room was not closed completely, so the officers entered the room to look for Jones' identifying information in the bag that the officers observed that he had left there. (Id.) The bag, stuffed between the night stand and the bed, contained drugs and drug paraphernalia. (Tr. 14) Jones was placed under arrest. (Id.)

## Argument

### Proposition of Law No. I.

**The Fourth Amendment does not protect a privacy interest in property a person leaves in a place in which that person has abandoned.**

The court of appeals found that Jones disclaimed any reasonable expectation of privacy in the place where he stashed his shopping bag of drugs, but that he did not abandon his bag. *Jones*, supra, at ¶42. The court of appeals based its decision upon Jones' subjective belief that because he stashed his bag out of public view and may have intended to retrieve it later, he did not abandon the bag. *Id.* The court of appeals has created a privacy interest in property left in a place – a motel room, an apartment, a garage, a house, a warehouse – in which that person has no expectation of privacy.

I. The Fourth Amendment only protects against unreasonable searches and seizures. The Fourth Amendment to the United States Constitution provides “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated \* \* \*.” The Ohio Constitution, Article I, Section 14, virtually identical to the Fourth Amendment, provides, “[t]he right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures, shall not be violated \* \* \* .” The United States Supreme Court held that the Fourth Amendment is applicable to the states through the Fourteenth Amendment in *Wolf v. Colorado* (1949), 338 U.S. 25, 69 S.Ct. 1359, and applied the exclusionary rule to the states twelve years later in *Mapp v. Ohio* (1961), 367 U.S. 643, 81 S.Ct. 1684.

Although, “[i]ndividual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution,” the United States Supreme Court has, “never intimated, however, that whether or not a search is reasonable

within the meaning of the Fourth Amendment depends on the law of the particular State in which the search occurs[, but] \* \* \* that the Fourth Amendment analysis must turn on such factors as ‘our *societal* understanding that certain areas deserve the most scrupulous protection from government invasion.’” *California v. Greenwood* (1988), 486 U.S. 35, 108 S.Ct. 1625, ¶7 citing *Oliver v. United States*, 466 U.S., at 178, 104 S.Ct., at 1741 (emphasis added); see, also, *Rakas v. Illinois* (1978), 439 U.S. 128, 143-144, n. 12, 99 S.Ct. 421, 430-431, n. 12, 58 L.Ed.2d 387.

Fourth Amendment rights are personal in nature, and they may not be asserted vicariously by third parties. *Rakas v. Illinois* (1978), 439 U.S. 128, 133-34, 99 S.Ct. 421, 58 L.Ed.2d 387. “A person aggrieved by the introduction of evidence secured by an illegal search of a third person’s premises or property has not suffered any infringement upon his Fourth Amendment rights.” *Id.*, at 134. Consequently, the person challenging the legality of a search bears the burden of proving that he has a legitimate expectation of privacy in the place or property searched that society is prepared to recognize as reasonable. *Id.*, at 143; *State v. Williams* (1995), 73 Ohio St.3d 153, 166.

II. To establish a legitimate expectation of privacy in the place searched, the individual must have (1) a subjective expectation of privacy in the place searched; and (2) that expectation must be one that society is prepared to recognize as objectively reasonable and justifiable. *Rakas*, at 143; *Smith v. Maryland* (1979), 442 U.S. 735; *State v. Buzzard*, 112 Ohio St.3d 451, 2007-Ohio-373, ¶14. More or less, “the two inquiries merge into one: whether governmental officials violated any legitimate expectation of privacy held by [a person.]” *Rawlings v. Kentucky* (1980), 448 U.S. 98, 106, 100 S.Ct. 2556.

III. A person has no legitimate expectation of privacy in property they have abandoned. “A defendant has no standing under the Fourth Amendment to the United States

Constitution to object to a search and seizure of property that he has voluntarily abandoned.” *State v. Freeman* (1980), 64 Ohio St.2d 291, 297, 414 N.E.2d 1044, paragraph two of the syllabus. As this Court has stated, “[a]bandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other *objective* facts. \* \* \* All relevant circumstances existing at the time of the alleged abandonment should be considered. \* \* \* Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary. \* \* \* The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search. *Id.*, at 297, citations omitted, quoting *United States v. Colbert* (C.A.5, 1973), 474 F.2d 174, 176. (Emphasis added.)

IV. “\* \* \*[W]here a person places his property is relevant to the determination of whether society would recognize his or her expectation of privacy in the property as reasonable.” *United States v. Denny*, 441 F.3d 1220, 1229 (10<sup>th</sup> Cir. 2006). Generally, “[a]n individual has a ‘legitimate expectation of privacy’ and, therefore, standing to challenge law enforcement’s warrantless search on property that the individual lawfully possesses.” *Rakas*, at 143, fn. 12. However, an individual has no legitimate expectation of privacy in a “public” place because “the police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public. Hence, ‘[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.’” *Greenwood*, at \*41, quoting *Katz v. United States* (1967), 389 U.S. 347, 361, 88 S.C. 507. Cf. *Buzzard*, *supra*.

In the same sense, when an “individual places his effects upon premises where he has no legitimate expectation of privacy (for example, in an abandoned shack or as a trespasser upon another’s property) he has no legitimate reasonable expectation that they will remain undisturbed upon these premises” by any member of the public or any resident therein, and “consequently, has no standing or right to contest a search.” *United States v. Jackson*, 585 F.2d 653, 658 (4<sup>th</sup> Cir. 1978, internal citations omitted (vacant house); see, also, *United States v. Figueroa* (1998), 187 F.3d 623 (trespasser in another’s apartment). Therefore, when an individual intentionally and voluntarily places his or her property in a place where he has no legitimate expectation of privacy, “he had no more expectation of privacy than if he had placed the bag ‘in plain view in a public place[.]’ \* \* \*” *Jackson*, at 658, citing *United States v. Lisk*, 522 F.2d 228 (7<sup>th</sup> Cir. 1975).

A person must seek to preserve property as private, such as keeping it on one’s person or securing it in a place where one can reasonably expect that it will not be disturbed by any member of the public, in order to claim the privacy protections of the Fourth Amendment. If they don’t, any privacy expectation they may have in their property is unreasonable.

### **Proposition of Law No. II.**

**Where an issue is raised neither at trial nor on appeal, the sua sponte raising of such error by an appellate court deprives the parties of notice and an opportunity to respond to the challenged error.**

The court of appeals’ sua sponte recognition of a purported error wholly deprived the State of the opportunity to defend the admissibility of the evidence. App.R. 12(A) provides that appellate courts must determine an appeal on its merits based on the assignments of error presented for review, and it confers upon the courts discretion to review assignments not presented in conformity with App.R. 16, App.R. 12(A)(1)(b) and (2). In any event, the plain language of the rule provides that a court of appeals may only consider errors actually presented.

Nonetheless, this Court's prior case law has found appellate courts do have discretion to review errors neither raised nor briefed on appeal, but, just as in reviewing matters actually presented but not brought to the attention of the trial court, the discretion should be exercised cautiously and only to prevent a manifest miscarriage of justice. *State v. 1981 Dodge Ram* (1988), 36 Ohio St.3d 168, 169-170, 171, 522 N.E.2d 524. Thus, whether an error was not brought to the attention of the trial court and then presented for review on appeal, or whether the error was neither presented to the trial court nor to the appellate court, a reviewing court should only notice an error if it is obvious and outcome determinative. *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804, paragraph three of the syllabus; *Dodge Ram Van*, at 171.

In the trial court and again on appeal, the only purported error raised was whether or not Jones had standing to contest the search of the motel room. Both courts decided he did not. The sua sponte raising of an error which has been neither raised at the trial level nor on appeal defies the definition of plain, or "obvious," error.

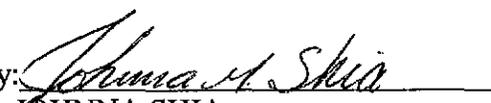
What's more, in *State v. Peagler*, 76 Ohio St.3d 496, 501, 1996-Ohio-73, this Court held that an appellate court may decide an issue on grounds different from those determined by the trial court, so long as the evidentiary basis on which the appellate court decides a legal issue was adduced before the trial court and made a part of the record thereof. The record in this case does not satisfy the standard required by *Peagler*. The error found by the court of appeals concerned the issue of abandoned property. Whether Jones intended to relinquish his privacy interests in his bag is determined by objective facts, including where he left his property. The issue should have been explored more thoroughly on the record.

**Conclusion**

In this case, the purported "error" was neither error, nor obvious because it was not addressed by either party. The growing trend of addressing issues, raised neither at the trial court nor appellate levels, threatens both the appellate process and the public's ability to rely on the finality of criminal convictions. This case presents the perfect opportunity for this Court to address the practice of reviewing courts in sua sponte raising and finding error.

Respectfully submitted,

**MATHIAS H. HECK, JR.**  
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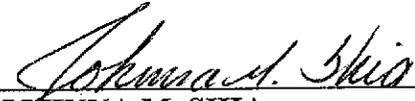
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Appellant's Merit Brief was sent by first class on this 17<sup>th</sup> day of July, 2009, to Opposing Counsel: Lucas W. Wilder, 120 W. Second Street, Suite 400, Dayton, OH 45402.

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# APPENDIX

## IN THE SUPREME COURT OF OHIO

State of Ohio

Plaintiff-Appellant,

vs.

Darnell Jones

Defendant-Appellee.

Case No. 09-0364

On Appeal from the  
Montgomery County Court  
of Appeals, Second  
Appellate DistrictCourt of Appeals  
Case No. 22558

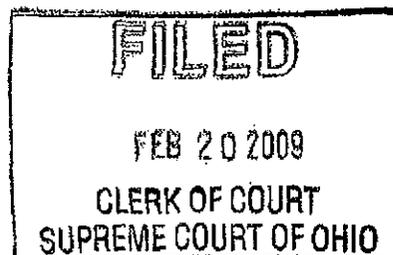
## NOTICE OF APPEAL OF APPELLANT, THE STATE OF OHIO

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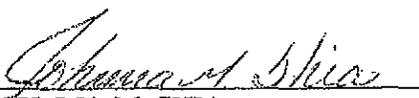
**NOTICE OF APPEAL OF APPELLANT, THE STATE OF OHIO**

Appellant, the State of Ohio, through the Office of the Prosecuting Attorney for Montgomery County, hereby gives notice of appeal to the Supreme Court of Ohio, from the judgment of the Montgomery County Court of Appeals, Second Appellate District, entered in *State of Ohio v. Darnell Jones*, Case No. 22558 on January 9, 2009. .

This felony case presents a question of public or great general interest.

Respectfully submitted,

**MATHIAS H. HECK, JR.**  
PROSECUTING ATTORNEY

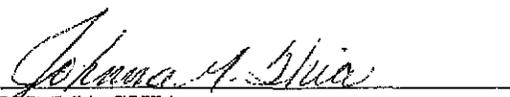
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal was sent by first class mail on this 19<sup>th</sup> day of February, 2009, to the following: Lucas Wilder, Counsel of Record, 120 West Second Street, Suite 400, Dayton, Ohio 45402 and Timothy Young, Ohio Public Defender Commission, 8 East Long Street – 11<sup>th</sup> Floor, Columbus, Ohio 43215-2998.

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COURT OF APPEALS

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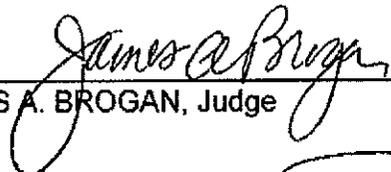
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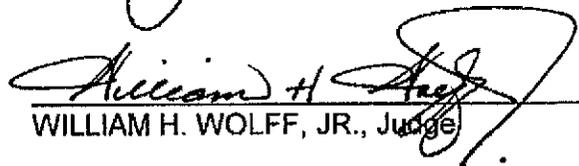
IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY

STATE OF OHIO	:	Appellate Case No. 22558
	:	
Plaintiff-Appellee	:	Trial Court Case No. 07-CR-0211
	:	
v.	:	(Criminal Appeal from Common Pleas Court)
	:	
DARNELL JONES	:	<b>FINAL ENTRY</b>
	:	
Defendant-Appellant	:	

Pursuant to the opinion of this court rendered on the 9th day  
of January, 2009, the judgment of the trial court is **Reversed**, and this cause  
is **Remanded** for further proceedings consistent with the opinion.

Costs to be paid as stated in App.R. 24.

  
\_\_\_\_\_  
JAMES A. BROGAN, Judge

  
\_\_\_\_\_  
WILLIAM H. WOLFF, JR., Judge

  
\_\_\_\_\_  
MIKE FAIN, Judge

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FILED  
COURT OF APPEALS

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**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

DARNELL JONES

Defendant-Appellant

:  
: Appellate Case No. 22558  
:  
: Trial Court Case No. 07-CR-0211  
:  
: (Criminal Appeal from  
: Common Pleas Court)  
:  
:  
:

.....  
OPINION

Rendered on the 9<sup>th</sup> day of January, 2009.  
.....

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FAIN, J.

Defendant-appellant Darnell Jones appeals from his conviction and sentence,  
following a no-contest plea, upon one count of possession of cocaine in an amount

exceeding 100 grams, but not exceeding 500 grams. Jones contends that the trial court erred in overruling his motion to suppress evidence based upon an alleged unlawful search and seizure.

The parties' arguments mainly center around the propriety of a police officer's having entered a motel room without probable cause, and without a search warrant, but Jones also argued at trial, and on appeal, that a police officer's search of a shopping bag that he initially carried out of the motel room, but left in the motel room after having gone back inside to bring out another person to whom the police wished to speak, was unlawful. We agree with the State that Jones disclaimed any privacy interest he may otherwise have had in the motel room when he told the police officers that it was not his room, but we agree with Jones that he had not abandoned his privacy interest in the bag, and that the officer's having opened it without probable cause and without a search warrant, was unlawful. All of the evidence against Jones was obtained from the bag, not from elsewhere in the motel room. Accordingly, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings.

I

The chain of events germane to this appeal began when Dayton police officers Scott Florea and Officer Olmsted<sup>1</sup> pulled alongside a car being driven by Terry Taylor, a friend of Jones. Taylor made an abrupt right turn into the parking lot of the Royal Motel, without signaling.

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<sup>1</sup>Olmsted, who did not testify, was identified by Florea, who did testify, simply as "Officer Olmsted."

Florea and Olmsted decided to cite Taylor for the traffic violation. They had to turn around and come back to the motel. They pulled up behind the car being driven by Taylor, who was still inside, thereby effecting a stop. During the course of establishing Taylor's identity for the purpose of citing him, the officers discovered that Taylor, by his own admission, had no driver's license. Taylor was removed from the car. It was at this moment that Jones entered the scene.

Florea testified that:

"I saw the Defendant walk out of Room 130 carrying a orange, like a multi-colored plastic – I believe it was Aldi shopping bag that was kind of rolled up and he was holding it in his hands.

" \* \* \*

"He was shocked, a look of shock on his face. It was his eyes opened up real wide like he wasn't expecting us to be sitting there. So, he looked like a deer in the headlights."

Florea, who testified that he wanted to see who they could release the car to, asked Jones if Jones had a driver's license. Florea testified that Jones responded: " \* \* \* he said, no, but my girl does and immediately turned around and walked back into the room." "A few seconds later," Jones came out of the room with a female, but Jones no longer had the Aldi shopping bag with him.

When Florea checked on the female's license status, he determined that there was an active capias warrant for her arrest. She was then put in the back of the cruiser, along with Taylor.

Olmsted then asked Jones if he had any identification. According to Florea, Jones "said that he had a fake ID that he used to get in clubs." Jones was asked to whom the car

belonged. Jones "said it was his girl's car," which Florea ultimately determined to be a reference not to the female who had been in the room with Jones and Taylor, but to Jones's girlfriend.

Meanwhile, efforts to verify Jones's identity were less than completely successful. Jones gave the officers his social security number, but it returned a description that included a height of 5' 11". Florea said that Jones was as tall as Florea, and that Florea is 6' 1", so Florea was not satisfied as to Jones's identity.

Likewise, efforts to discover who had rented the room were not successful. The female said she didn't know. Jones "said that it was not his room." Florea was not sure whether Taylor was ever asked about the renting of the room.

Florea decided to enter the motel room, the door to which had not closed completely, "because I didn't believe who he [Jones] was." Interestingly, in arguing the motion at the close of the hearing, the prosecutor argued for the State that: "When the officers went back into the room, they had a two-fold purpose clearly; one is looking for ID to determine who this individual, and the other was to determine what was inside their Aldi's bag that drew their attention."

Florea testified concerning his entry into the motel room as follows:

"Q. Okay. What happens next?

"A. At that point, we were asking who the room belonged to. We were talking to everybody about who was in possession of the room. The girl stated she did not know whose room it was. The Defendant said that it was not his room. He was coming from that room. And I remember specifically telling Officer Olmsted that he was carrying a bag –

"Q. Okay.

"A. – when he first came out, and he wasn't carrying a bag when he came out the second time.

"MR. BURSEY [representing Jones]: Objection; non-responsive. Move to strike the last statements.

"MR. BARRENTINE [representing the State]: The question was what happens next. So, that seems to be pretty responsive.

"THE COURT: Yeah. Overruled. Thank you.

"THE WITNESS: At that point, the door to the room was not closed completely. We then attempted to obtain any kind of identification for the individual, and we went inside the hotel room to check for it.

"Q. Okay. Where did you look for any sort of identification, physically inside?

"A. Well, I specifically wanted to – I mean, the bag he was carrying might have his ID in there. So, I was looking for the bag he was carrying when he came out of the room, and I found it. It was stuffed between the mattress and the night stand. I guess if you were facing the bed, it would be on the right side.

"Q. Okay. What happens next?

"A. I opened the bag and looked inside, and I saw a measuring cup that was full of a white rock-like substance, suspected to be crack cocaine. At that point, I also saw what appeared to be a compressed brick in the bottom of the bag as well. It appeared to be a brick of powdered cocaine. And I saw one or two scales inside the bag as well just from looking from the top down.

"Q. Was there any ID in that bag?

"A. No."

Jones was arrested and charged by indictment with one count of Possession of Cocaine in an amount exceeding 100 grams, but not exceeding 500 grams; one count of Possession of Crack Cocaine in an amount exceeding five grams, but not exceeding ten grams; and three counts of Possession of Criminal Tools. Jones moved to suppress the evidence obtained from the motel room, contending that it was obtained as the result of an unlawful search and seizure. Although Jones's original motion did not refer specifically to the search of the bag as being unlawful, in his post-hearing memorandum in support of his motion to suppress, Jones did argue specifically that he had an expectation of privacy in the bag, as well as in the motel room, generally.

At the conclusion of the suppression hearing, the trial court did not immediately rule upon the motion, but requested briefs by the parties. On July 18, 2007, the trial court overruled the motion "[a]s reported and in accordance with the decision stated in open Court on Monday, July 9, 2007," the suppression hearing having taken place on June 11, 2007. Unfortunately, we do not have a transcript of the proceeding on July 9, 2007, in which the trial court apparently expressed its reason for overruling the motion to suppress, so we do not have the benefit of the trial court's reasoning in resolving this appeal.

After Jones's motion to suppress was overruled, he entered into a plea bargain wherein he pled no contest to one count of Possession of Cocaine in an amount exceeding 100 grams, but not exceeding 500 grams, and the other counts were dismissed. The trial court entered a judgment of conviction, and Jones was sentenced accordingly. From his conviction and sentence, Jones appeals.

II

Jones's sole assignment of error is as follows:

"WHETHER THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS."

The primary focus of Jones's argument is that the police lacked probable cause to search the motel room, although he does also argue as a separate issue whether the police could properly search the Aldi shopping bag. The State's appellate brief is addressed exclusively to the motel room, and does not discuss the shopping bag.

The State's argument concerning the search of the motel room is that Jones lacks standing to complain about the search, since he abandoned any privacy interest he might otherwise have had in the motel room when he left it, with the door not fully closed, and told the officers it was not his. Taylor testified that Jones provided the money for the room, but that it was registered in Taylor's name because Taylor had identification. Taylor testified that their purpose in renting the room was to have consensual sex with the female, which Taylor testified was not the subject of a commercial transaction.

We agree with the State that upon this record, Jones has failed to establish that he had a sufficient privacy interest in the motel room to have standing to complain about the search of the room. But that does not resolve the separate issue of the search of the Aldi shopping bag.

Florea clearly believed that Jones had a possessory interest, at least, in the Aldi bag and its contents. He claimed he wanted to look in the bag to see if he could find any identification for Jones.

-8-

*California v. Acevedo* (1991), 500 U.S. 565, 579-580, 111 S.Ct. 1982, 114 L.Ed.2d 619, stands for the proposition that even the search of a brown paper bag has Fourth Amendment protection if the bag is opened by the police. Florea never claimed to have been able to see, or otherwise to ascertain the nature of, the contents of the Aldi shopping bag before opening it. The Aldi shopping bag appears to have been an opaque plastic bag. We presume that the opening of the Aldi shopping bag, like the opening of the brown paper bag in *California v. Acevedo*, supra, while not requiring the use of a lockpick, a hacksaw, or an explosive device, did require some manipulation of the bag to gain access to its contents.

In its trial memorandum in opposition to the motion to suppress, the State cited *State v. Freeman* (1980), 64 Ohio St.2d 291, in which a defendant was deemed to have abandoned luggage he was carrying when the defendant, upon being apprehended by police, dropped the luggage in a public bus station and ran from the police. In that case, the Supreme Court of Ohio cited *United States v. Colbert* (5<sup>th</sup> Cir., 1973), 474 F.2d 174, 176, for the proposition that:

" Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. *United States v. Cowan*, 2d Cir. 1968, 396 F. 2d 83, 87. All relevant circumstances existing at the time of the alleged abandonment should be considered. *United States v. Manning*, 5<sup>th</sup> Cir. 1971, 440 F. 2d 1105, 1111. \* \* \*. The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search. *United*

*States v. Edwards* [(5<sup>th</sup> Cir., 1971), 441 F. 2d 749] at 753; *cf. Katz v. United States*, 1967, 389 U.S. 347 \* \* \* .”

Although Jones may have disclaimed any reasonable expectation of privacy in the motel room by denying it was his and by leaving the room with the door not fully closed, the motel room was not a public place of the same character as the bus station in *State v. Freeman*, *supra*. Jones clearly had access to the room, and there is nothing in the record to suggest that, when he left the bag behind in the room to escort the female out of the room to respond to the police, he had reason to believe that he would be taken into custody or otherwise prevented from re-entering the room where he had left the bag. Under these circumstances, we conclude that Jones cannot be deemed to have abandoned the bag. Understandably, he did not want it on his person when he went back outside the room where the police were present.

Florea never claimed to have had, and the State does not claim that he had, probable cause to believe that the Aldi shopping bag contained contraband or evidence of criminal activity. Therefore, his search of the bag was unlawful, and the evidence obtained as a result should have been suppressed.

Jones's sole assignment of error is sustained.

### III

Jones's sole assignment of error having been sustained, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings consistent with this opinion.

.....  
BROGAN and WOLFF, JJ., concur.

Copies mailed to:

Mathias H. Heck, Jr.  
Johnna M. Shia  
Lucas W. Wilder  
Hon. A. J. Wagner



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BY A. ERUSH  
CLERK OF COURTS  
MONTGOMERY CO. OHIO



IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

CRIMINAL DIVISION

STATE OF OHIO,

Plaintiff,

v.

DARNELL JONES,

Defendant.

CASE NO. 2007 CR 0211

JUDGE A.J. WAGNER

DECISION, ORDER AND ENTRY  
OVERRULING DEFENDANT'S  
MOTION TO SUPPRESS

This cause comes before the Court on the Defendant's Motion to Suppress. As reported an accordance with the decision stated in open Court on Monday, July 9, 2007, the Defendant's Motion to Suppress is hereby **OVERRULED**.

SO ORDERED:

  
HONORABLE A.J. WAGNER

Copies of the above were sent to all parties listed below by ordinary mail on this date of fil

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GREGORY A. BRUSH  
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**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY OHIO  
(CRIMINAL DIVISION)**

STATE OF OHIO,

\* Case No. 2007 CR 0211

Plaintiff,

\* (Judge Wagner)

-vs-

\*

DARNELL JONES,

\*

Defendant.

\*

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**MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS**

---

Defendant Darnell Jones, by and through counsel, respectfully requests this Court to suppress from use at trial all evidence gained against him in violation of his rights pursuant to the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, as well as comparable portions of the Ohio Constitution.

**I. FACTUAL BACKGROUND**

At approximately 2:00 or 3:00 a.m., on January 18, 2007, Terry Taylor and his friend, Defendant Darnell Jones, took a woman to the Royal Motel for lawful sexual activity. (Tr. 41). Darnell Jones gave Terry Taylor money for the room, which Terry rented in his own name, believing that Darnell had no identification to

provide to the desk clerk. (Tr. 45, 51). Terry and Darnell had an understanding that they would jointly occupy the room. (Tr. 37, 40, 43).

After awhile, Terry left the motel to check on his mother. (Tr. 19). He was driving a green Mercury Sable owned by Ashley Brooks, Darnell Jones' girlfriend. (Tr. 24, 38). Darnell possessed keys to the room and remained in control of it, free to come and go. (Tr. 52).

At approximately 11:00 a.m., after Defendant had spent the night at the motel room, but before the room rent expired, Officer Scott Florea alleged that he saw Terry Taylor turn into the lot of the Royal Motel without using his turn signal. (Tr. 6). Terry testified that he thought he had, indeed, signaled. (Tr. 36). Terry parked the Sable in front of room 130 of the motel. (Tr. 17). He did not have a valid driver's license. (Tr. 7).

Before Florea placed Terry in his cruiser, he spotted Defendant Darnell Jones walking out of room 130, carrying a bag. Officer Florea asked Darnell if he had a driver's license, and he replied that he had no license. but that his girl did. (Tr. 19). Darnell turned and re-entered the motel room. (Tr. 19). Shortly thereafter, both Darnell and a female exited the room without the bag. (Tr. 9).

Officer Florea asked for Darnell's identification. (Tr. 10). Darnell allegedly acknowledged that he had fake identification that he used to get into clubs. (Tr. 10). Florea then entered the motel room without the benefit of a warrant, searched the bag Darnell had been carrying, which was stuffed between a mattress and a nightstand, and found drugs. (Tr. 13-14). Darnell was transported to jail. (Tr. 17).

## II. LAW AND ARGUMENT

The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution, secure an individual's right to be free from unreasonable searches and seizures. Warrantless entry by law enforcement personnel into premises in which an individual has a reasonable expectation of privacy is per se unreasonable, unless it falls within a recognized exception to the warrant requirement. *Minnesota v. Olson* (1990), 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85; *State v. Miller* (1991), 77 Ohio App.3d 305, 602 N.E.2d 296.

"Pretextual searches and seizures are significant intrusions on an individual's liberty and violate the Fourth Amendment." *United States v. Lefkowitz* (1932), 285 U.S. 452, 467, 52 S.Ct. 420, 424, 76 L.Ed. 877, 883; *State v. Richardson* (1994), 94 Ohio App.3d 501, 506, 641 N.E.2d 216, 219. "A pretextual search refers to an exploratory search for evidence that is not related to the offense upon which the initial intrusion is supposedly based." *State v. Whitsell* (1990), 69 Ohio App.3d 512, 518, 591 N.E.2d 265, 269.

"[T]he pretext arises out of the fact that the evidence is found in a search which would not have occurred at all but for the manipulation of circumstances and events by the police because of their desire to conduct a search which could not otherwise be lawfully made." *Id.*, quoting 2 LaFare, *Search and Seizure* (2d Ed.1987) 141, Section 7.5(e).

Officer Florea offered a variety of reasons for his search of Darnell Jones' room. He noted that it was a high crime area, in which he had made numerous

drug arrests, and that he wanted to make sure that this was a legitimate situation. (Tr. 12, 22) However, the "mere character and reputation of an area are not sufficient, standing alone, under *Terry* to constitute a reasonable and articulable basis to suspect criminal activity. A stop in a high area without any other factors is insufficient to pass a *Terry* test." *State v. Mitchell*, 2007-Ohio-2545; *State v. Carter* (1994), 69 Ohio St.3d 59; *State v. Bobo* (1988), 37 Ohio St.3d 177.

In *State v. Miller* (1991), 77 Ohio App.3d 305, an individual had rented a hotel room. She had not stayed in a rented room on a particular night, but had intended to use the room the following night. A housekeeper apparently with a mistaken belief that the room was not occupied, opened a drawer, finding a large plastic garbage bag. Inside the bag, were containers with suspected drugs inside. As a result of this find, police were called.

The police conducted a warrantless search. Unlike Defendant's case, this was a case in which the police had concrete information that drugs would definitely be found inside the room. However, the appellate court reversed the trial court's decision upholding the warrantless search, finding that it constituted a violation of the Fourth Amendment to the United States Constitution.

In *State v. Peterson*, 166 Ohio App.3d 112, 2006-Ohio-1857, the defendant in that case stayed at a residence from time to time, but did not live there. He listed his mother's address on his 2004 tax returns. That address also appeared on his driver's license. That is also where he received his mail. The court noted that *Olson, supra*, "holds that a premises or dwelling need not be one's home in order for one to have a legitimate expectation of privacy in that

place. The expectation attaches to one's home or residence, but the fact that it does isn't a bar to a reasonable expectation of privacy in other places that a person uses for residential purposes." *Peterson, supra*. The *Peterson* defendant, as Defendant Jones, was an overnight guest who was entitled to Fourth Amendment protection.

Officer Florea further stated that he entered the room in an attempt to find identification for Defendant Darnell Jones. He stated that he wanted to ascertain whether or not he was a valid driver. (Tr. 10).

Witness Terry Taylor testified that he had advised officers that Ashley Brooks owned the automobile in question and offered them a telephone number to reach her. He further testified that the officers said they did not want the number. (Tr. 38-39). Even Florea acknowledged that he had been supplied with Ashley Brooks' name and that the vehicle was registered to her. (Tr. 24). The car hadn't been reported stolen. Florea didn't believe that any attempt had been made to contact Ms. Brooks. (Tr. 24).

These factors indicate that Florea's explanation that a valid driver needed to be found was mere subterfuge to permit him to conduct an illegal search of the motel room at issue.

When asked if there was an emergency occurring, Officer Florea testified, "We were just trying to ascertain identification. That's all." (Tr. 29). As for the issue of abandonment, Officer Florea did not check with the front desk to determine who had rented the room. (Tr. 26). He knew that the Defendant had

taken a bag into the room and left without it. For all he knew, Defendant had been on a shopping trip.

Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. *United States v. Cowan*, 2d Cir. 1968, 396 F. 2d 83, 87. All relevant circumstances existing at the time of the alleged abandonment should be considered. *United States v. Manning*, 5th Cir. 1971, 440 F. 2d 1105, 1111.

Relevant factors include whether the defendant has the right to exclude others from the place in question (Defendant Jones had a key and maintained that right); whether he had taken normal precautions to maintain his privacy (Defendant Jones had placed the bag inside the room); and whether he was legitimately on the premises (Defendant Jones was legitimately on the premises). See *Mancusi v. DeForte*, 392 U.S. 364 368 (1968); *United States v. Cassity*, 720 F.2d 451, 456 (6th Cir. 1983), vacated and remanded on other grounds, 468 U.S. 1212 (1984), rev'd on other grounds, 604 F. Supp. 1566 (E.D. Mich. 1985), aff'd, 807 F.2d 509 (1986); see also *Rawlings v. Kentucky*, 448 U.S. 98, 105 (1980); *United States v. Haydel*, 649 F.2d 1152 (5th Cir. 1981).

The position of the bag between the mattress and the nightstand further indicated that Defendant had a privacy interest that he was attempting to protect by closing and positioning the bag as he had. Receptacles that are closed and have been secured against intrusion, such as a closed purse, demonstrate that expectation of privacy. *State v. Lovett*, 2005-Ohio-4601; See *State v. Jackson* (Aug. 13, 1999), Montgomery App. No.17605, citing *United States v. Chadwick*

(1977), 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538. "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" under this rule. *State v. Jackson* (1999), 2<sup>nd</sup> Dist. No. 17605.

See *United States v. King*, 227 F.3d 732 (6<sup>th</sup> Cir. 2000) (Defendant exhibited an actual subjective expectation of privacy in the basement by hiding the cocaine there; *Bond v. United States*, 120 S. Ct. 1462, 1465 (2000), 120 S. Ct. at 1465 (finding that the defendant sought to preserve his privacy by placing the brick of cocaine in an opaque bag and placing it directly above his seat on the bus in which he was a passenger); *United States v. Bailey*, 628 F.2d 938, 943-44 (6<sup>th</sup> Cir. 1980) (finding that the defendants exhibited an expectation of privacy in a drum of chemicals by hiding it in a locked storage compartment of the basement of an apartment); *United States v. Taborda*, 635 F.2d 131, 137 (2<sup>d</sup> Cir. 1980).

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. Receptacles that are closed and have been secured against intrusion demonstrate that expectation. United States v. Chadwick (1977), 433 U.S. 1.

Officer Florea acknowledged that there were no exigent circumstances preventing him from securing a warrant. (Tr. 29). Officer Florea's testimony indicated that he did not fear the destruction of evidence. (Tr. 29).

(The exigent circumstances exception relies on the premise that the existence of an emergency situation, demanding urgent police action, may excuse the failure to procure a search warrant. *State v. Nazarian*, 2004-Ohio-5448; See *Welsh v. Wisconsin* (1984), 466 U.S. 740, 750, 80 L.Ed.2d 732.

Darnell Jones was not required to have an ownership or possessory interest in premises in order to complain of a Fourth Amendment violation with respect to a law enforcement officer's entry into those premises. *Minnesota v. Olson* (1990), 495 U.S. 91. Hotel room occupants have a reasonable expectation of privacy under the Fourth Amendment. *Stoner v. California* (1964), 376 U.S. 483.

A proper police inquiry arguably could have resulted Officer Florea's establishing surveillance pending further investigation and obtaining a search warrant. *Segura v. United States* (1984), 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (where police officers seized apartment and occupant for nineteen hours, while others obtained a search warrant).

Officer Florea further stated that Darnell Jones provided him with a legitimate social security number. (Tr. 12). Florea indicated that he was sitting in a cruiser. (Tr. 22). Florea believed that there was about a two-inch height discrepancy with respect to the description. (Tr. 23). Florea was wearing tennis shoes and didn't recall the type of shoes worn by Defendant Jones. (Tr. 23).

Florea did not indicate that any criminal activity had occurred to this point. He was not permitted to fish around for this apparent discrepancy and use it to justify a warrantless room search under the prevailing circumstances.

Florea also discussed the fact that Darnell was in possession of phony identification and that this was a felony offense. (Tr. 26). However, Florea did not arrest him for this offense. In order for the search to qualify as a search incident to arrest, the State was required to prove that there had been a lawful arrest and that the search must be incident to that arrest. *State v. Smith*, 73 Ohio App.3d 471. They did not satisfy this burden of proof.

The State cannot justify this search under the inevitable discovery doctrine as the State did not demonstrate that the police possessed leads apart from the illegal warrantless search, at the time they seized the drugs, that would have made discovery inevitable. *State v. Taylor* (2000), 138 Ohio App.3d 139. *State v. Wilson* (1994), 97 Ohio App.3d 333, 336, 646 N.E.2d 863, 865-866, citing *United States v. Buchanan* (C.A.6, 1990), 904 F.2d 349, and *United States v. Webb* (C.A.5, 1986), 796 F.2d 60. Significantly, proof of inevitable discovery "involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." *Nix*, supra at 444-445, 104 S.Ct. 2501, 81 L.Ed.2d 377, 387-388 fn. 5; *State v. Reddish* (Oct. 15, 1999), Montgomery App. No. 17323, unreported, 1999 WL 819575.

Courts must exclude evidence obtained in violation of these constitutional guarantees. See *Mapp v. Ohio* (1961), 367 U.S. 643, 655-56, 6 L.Ed.2d 1081.

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### **CONCLUSION**

Despite the fact that criminal conduct was eventually uncovered by illegal means in this case, the evidence should be suppressed to uphold the integrity of

the Constitution and to help insure that the rights of ordinary citizens are not destroyed or circumvented.

It is for these reasons, Defendant Darnell Jones respectfully requests this Court to suppress from use at trial all evidence gained against him in violation of his constitutional rights.

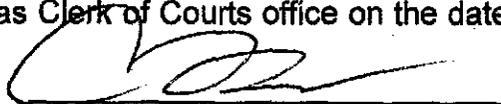
Respectfully submitted,



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**Certificate of Service**

This is to certify that an accurate copy of the foregoing was served upon the Prosecuting Attorney by depositing a copy of it in the Prosecutor's mailbox at the Montgomery County Common Pleas Clerk of Courts office on the date it was filed.



Charles Bursey II  
Attorney for Defendant

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jms

2007 MAY 22 PM 3:47  
MONTGOMERY CO. OHIO

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

**STATE OF OHIO**

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\*

**CASE NO. CA 22558**

**Appellee,**

07-02-211

**-vs-**

**DARNELL JONES**

**Appellant.**

---

**BRIEF OF APPELLANT**

---

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4<sup>th</sup> Amendment

## ASSIGNMENT OF ERROR

### I. WHETHER THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS

#### ISSUES PRESENTED FOR REVIEW

- A. Whether Appellant had standing to complain of a Fourth Amendment violation?
- B. Whether the warrantless search of the room and bag violated the Fourth Amendment?

#### STATEMENT OF FACTS

Between 2:00 a.m. and 3:00 a.m. on January 18, 2007, Appellant Darnell Jones (hereinafter "Appellant") and his friend accompanied a woman to a local motel. *Tr.*, pp. 35, 40-41, 48. Appellant provided money for the room and obtained a key to the room, but the room was registered to his friend because Appellant had no valid identification. *Tr.*, pp. 37, 40, 45-46, 51, 52. The two were both going to use the room to have sex with a girl. *Tr.*, pp. 37, 51.

At approximately 11:00 a.m. the next morning, an officer observed Appellant's friend enter the motel parking lot without using his turn signal. *Tr.*, pp. 6, 41. Appellant's friend parked his car in front of the motel room. *Tr.*, pp. 6, 37. Check-out time was 12:00 p.m. and Appellant's friend was returning to pick Appellant up. *Tr.*, p. 52.

At about the same time, the officer observed Appellant walking out of the motel room with an multi-colored plastic Aldi's bag. *Tr.*, pp. 8. The officer asked Appellant if he had a driver's license. *Tr.*, pp. 8-9. Appellant replied "no", but indicated that the woman in the motel room did. *Tr.* at 9. Appellant re-entered the room, and then exited with the woman but without the bag. *Tr.*, at 9.

The officer then, without a warrant, entered the motel room. *Tr.*, p. 13. He found the bag that Appellant had been carrying stuffed in between a mattress and a nightstand. *Tr.*, p. 14. Upon search of the bag, drugs were found. *Tr.*, 14.

On January 25, 2007, Appellant was indicted on two felony counts of possession of cocaine and three felony counts of possessing criminal tools. A motion to suppress was filed and a hearing was subsequently held. The trial court overruled the motion, opining that none of the factors of *Minnesota v. Olson* (1990) 495 U.S. 91 were present<sup>1</sup>, that Appellant was merely visiting the room, was not the registered guest, had no belongings and had not paid for the room. See *Tr.*, pp. 59-60.

Appellant pled "no contest" and was sentenced to an agreed term of four years. A timely notice of appeal was then filed.

## **ARGUMENT**

### **I. THE TRIAL COURT ERRED IN OVERRULING DARNELL'S MOTION TO SUPPRESS**

#### **A. STANDARD OF REVIEW ON APPEAL**

In reviewing a trial court's decision on a motion to suppress, an appellate court accepts the trial court's factual findings, relies on the trial court's ability to assess the credibility of witnesses, and independently determines whether the trial court applied the proper legal standard to the facts as found. *State v. Silverman* (Ohio App. 2<sup>nd</sup> District), 2008-Ohio-618. An appellate court is bound to accept the trial court's factual findings as long as they are supported by

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<sup>1</sup> These "factors" are not determinative here because the factors were used by the court in *Olson* to "...determine whether a dwelling was a 'home'". *Olson* 495 U.S. 96. Further *Olson* involved an alleged overnight guest at a residence whereas this case is about an overnight guest at a motel.

competent, credible evidence. *Id.*

## B. STANDING

While the Fourth Amendment prohibits unreasonable searches and seizures, it is fundamental that a defendant must have standing to challenge the legality of a search or seizure. *Rakas v. Illinois* (1978), 439 U.S. 128, 133; *State v. Coleman* (1989), 45 Ohio St.3d 298, 306, certiorari denied (1989), 493 U.S. 1051. Indeed, "[t]he Fourth Amendment right to be free from unreasonable searches and seizures cannot be vicariously asserted." *State v. Steele* (1981), 2 Ohio App.3d 105, 107. Thus, the threshold inquiry is whether appellant possessed standing to challenge the officers' conduct.

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. *State v. Moore* (Ohio App. 2<sup>nd</sup> District), 2004 Ohio 3783 citing to *Minnesota v. Olson* (1990), 495 U.S. 91, 95.

A subjective expectation of privacy is insufficient; in order to have standing to challenge the legality of a search, a person must have an expectation of privacy that society is prepared to recognize as reasonable. *State v. Williams* (1995), 73 Ohio St.3d 153, 166.

Overnight guests have standing to challenge the legality of a search of that place. *Minnesota v. Olson* (1990), 495 U.S. 91; *State v. Peterson*, 166 Ohio App.3d 112. Hotel room occupants have a reasonable expectation of privacy

under the Fourth Amendment. Stoner v. California (1964), 376 U.S. 483; State v. Smith (1991), 73 Ohio App.3d 471, 475; State v. Day (1976), 50 Ohio App.2d 315, 319. It is beyond argument that a hotel or motel room is, like a home, an auto, or an office, an enclosure within the Fourth Amendment protection against unreasonable searches and seizures. Stoner, supra; Hoffa v. United States (1966), 385 U.S. 293.

The pivotal inquiry is "whether [the defendant] had an expectation of privacy in the area searched." United States v. Salvucci (1980), 448 U.S. 83, 93. In order to resolve this issue, courts have typically employed a totality-of-the-circumstances approach. State v. Coleman (1997), 118 Ohio App.3d 522.

In considering hotel room occupant's standing, this Court has considered the following facts about the occupant: whether he was a registered guest of the hotel; whether he stayed overnight; whether he had brought any personal belongings to the room; whether he had paid for the room; and whether he had access to the room with a key. See e.g., Moore supra; Coleman supra.

In Moore, this Court noted the following:

...Moore was not sleeping in the room, and there was no indication from his activities that he intended to do so. The bed was made. Other people were in the room with him, and there was so much noise coming from the room that a hotel employee had called law enforcement personnel to remove the occupants. Moore had no personal effects with him, and the girlfriend with whom he allegedly intended to spend the night was not present. He had not paid for the room and did not have a key to the room. The person who had rented the room was not even present. Under these circumstances, the trial court reasonably concluded that Moore "did not have an expectation of privacy that society is prepared to recognize as reasonable."

Similarly, when determining whether an individual has a reasonable expectation of privacy in a hotel room, federal courts have found several factors mitigate against such a finding, including if the individual did not pay or register the room in his name, if the individual was not an overnight guest in the room, and if the individual was in the hotel room for a purely commercial purpose. U.S. v. Harris, 2007 WL 3046431 at \*2 citing to United States v. Gordon, 168 F.3d 1222, 1226 (10th Cir.1999); United States v. Cooper, 203 F.3d 1279, 1284 (11th Cir.2000); United States v. Sturgis, 238 F.3d 956, 958-959 (8<sup>th</sup> Cir. 2001).

In this case, Terry Taylor testified that Appellant had provided money for the motel room, but was not the registered guest. *Tr.*, pp. 37, 45-46. Nevertheless, he had access to the room with a key, had at least one personal belonging in the room (i.e., the bag) and had spent at least 8 hours (3:00 a.m. to 11:00 a.m.) at the motel room prior to officer's warrantless entry. *Tr.*, pp. 14, 37, 40, 41, 48, 52.

The testimony of Terry Taylor was undisputed at the hearing. Accordingly, the evidence presented at the suppression hearing was clearly sufficient to establish that Appellant was a hotel room occupant and, as such, had a legitimate expectation of privacy in that hotel. Therefore, Defendant had standing to challenge the legality of the warrantless search of that residence.

### C. ENTRY AND SEARCH OF THE MOTEL ROOM

The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution secure an individual's right to be free from unreasonable searches and seizures. State v. Moore (Ohio App. 2<sup>nd</sup> District),

2004 Ohio 3783. Warrantless entry by law enforcement personnel into premises in which an individual has a reasonable expectation of privacy is *per se* unreasonable, unless it falls within a recognized exception to the warrant requirement. *Id.*, citing to Minnesota v. Olson (1990), 495 U.S. 91; State v. Miller (1991), 77 Ohio App.3d 305.

Here, there is no question that the officer entered the room without a warrant. *Tr.*, pp. 29, 30-31. Further, there is no indication from the record that the search of the room or the bag was pursuant to any recognized exception to the warrant requirement of the Fourth Amendment. In fact, Officer Florea testified that his purpose of entering the room was to find identification. *Tr.*, p. 29.

Accordingly, the warrantless search of the room was illegal and the contents obtained from the search should have been suppressed.

#### D. SEARCH OF THE BAG

Even assuming *arguendo* that the officer's entry was not in violation of the Appellant's Fourth Amendment right to privacy, the position of the bag between the mattress and nightstand created a privacy interest. *Tr.*, pp. 13-14.

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. 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.

Here, even if it assumed that the officer was allowed to enter the motel room, the search of the bag was illegal. 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. Tr. 13-14. 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.

#### **CONCLUSION**

Based upon the foregoing the decision to overrule Mr. Jones' "Motion to Suppress" was error and must be reversed.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing brief was hand-delivered to the APA and mailed to Mr. Jones on the date filed.

A handwritten signature in cursive script, appearing to read "Lucas W. Wilder", written over a horizontal line.

Lucas W. Wilder

Slip Copy, 2007 WL 3046431 (S.D. Ohio)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,  
S.D. Ohio,  
Western Division.  
UNITED STATES of America,  
v.  
John M. HARRIS, II.  
No. 1:06-CR-00132.  
Oct. 17, 2007.

C. Ransom Hudson, Federal Public Defender, Cincinnati, OH, for Defendant.

Deborah Diane Grimes, United States Attorney's Office, Cincinnati, OH, for Plaintiff.

## OPINION AND ORDER

S. ARTHUR SPIEGEL, United States Senior District Judge.

\*1 This matter is before the Court on Defendant's Motion to Suppress (doc. 28), and the government's Response (doc. 31). The Court held a hearing on this motion on October 10, 2007. For the reasons stated herein, the Court DENIES Defendant's motion.

### I. Background

The relevant facts, as represented by the parties in their briefs and presented as evidence at the hearing in this matter, are as follows. On November 7, 2006, law enforcement officers were engaged in surveillance of Defendant, based on information that Defendant was printing counterfeit Federal Reserve notes (doc. 31). Officers observed Defendant and another man drive to Wal-Mart in Wilmington, Ohio, and purchase items commonly used to manufacture counterfeit currency (*Id.*). The men then took these items to Room 204 at the Wilmington Inn, a room Officers later discovered was leased and paid for by a woman named Lisa Shelton (*Id.*).

Around 12:40 a.m., after observing what appeared to be a drug transaction and other foot-traffic around the hotel room, Officers approached Room 204 and knocked. Eventually, a man opened the door, allowing Officers to observe in plain view stacks of uncut paper currency and Defendant sitting at a table with a printer in front of him (*Id.*). Officers then asked for permission to enter the room, but were denied by Defendant (*Id.*). Officers then advised Defendant that they were coming inside to secure the evidence and placed Defendant in investigative custody (*Id.*). The man who opened the door was found to have a crack pipe and crack cocaine in his hand. After Defendant was advised of his *Miranda* rights, he gave verbal consent to search the hotel room. In their search of the room, Officers found items consistent with counterfeiting currency, a pile of crack cocaine, but no luggage or personal effects belonging to Defendant (*Id.*).

On November 15, 2006, a jury indicted Defendant for falsely making counterfeit Federal Reserve Notes with the intent to defraud, in violation of 18 U.S.C. § 471 (doc. 8). Defendant is now moving to suppress the evidence seized incident to the search of the hotel room (doc. 28).

## II. Discussion

Defendant argues that the search of the hotel room, in which he was a guest, was conducted without a warrant and without any recognized exception to the warrant requirement (*Id.*) Defendant contends that no consent was given to the search (*Id.*, citing, among others, *Mincey v. Arizona*, 434 U.S. 1423 (1977)).

In response, the government argues that Defendant's Fourth Amendment rights were not violated by the search because Defendant had no reasonable expectation of privacy in the hotel room (doc. 31). Further, the government avers that because evidence of items typically used in counterfeiting were plainly viewed by Officers when the door to Room 204 was opened, the Officers were justified in entering the room to secure the evidence. Once inside the room, the government contends that Defendant gave verbal consent to a search of the room (*Id.*).

\*2 Having reviewed this motion, the Court finds the government's position well-taken. The Court agrees that Defendant has not demonstrated that he had a reasonable expectation of privacy. "The [Fourth] Amendment protects persons against unreasonable searches of 'their persons [and] houses' and thus indicates that the Fourth Amendment is a personal right that must be invoked by an individual ... [b]ut the extent to which the Fourth Amendment protects people may depend upon where those people are." *Minnesota v. Carter*, 525 U.S. 83, 88 (1998). It is well settled that "in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable." *Id.*

In *Carter*, the Supreme Court considered how an individual could establish an expectation of privacy in another's home. *Id.* The defendants in *Carter* were in the home of another, solely for the purpose of packaging cocaine. *Id.* The Supreme Court considered an overnight guest to be one typifying "those who may claim the protection of the Fourth Amendment in the home of another, and one merely 'legitimately on the premises' as typifying those who may not do so." *Id.* at 92. The Court held that unlike one who is an overnight guest, a person in the home of another strictly for business purposes, there for a short period of time, with no personal connection to the householder was more like one merely "legitimately on the premises" and therefore, had no reasonable expectation of privacy. *Id.* at 93.

Similarly, when determining whether an individual has a reasonable expectation of privacy in a hotel room, courts have found several factors mitigate against such a finding, including if the individual did not pay or register the room in his name, if the individual was not an overnight guest in the room, and if the individual was in the hotel room for a purely commercial purpose. See *United States v. Gordon*, 168 F.3d 1222, 1226 (10th Cir.1999); *United States v. Cooper*, 203 F.3d 1279, 1284 (11th Cir.2000); *United States v. Sturgis*, 238 F.3d 956, 958-959 (8th Cir.2001). Here, Defendant neither registered nor paid for the hotel room, there is no evidence that he planned to stay as an overnight guest in the room, and he appeared to be in the hotel solely for a business purpose (doc. 31). Therefore, given the above cited precedent, the Court finds Defendant has not established that he had a legitimate expectation of privacy in Room 204 at the time of the search.

Because the Court concludes that Defendant had no legitimate expectation of privacy in the hotel room, the Court need not decide whether the Officers' search violated Defendant's Fourth Amendment rights.

### **III. Conclusion**

For the foregoing reasons, the Court DENIES Defendant's Motion to Suppress (doc. 28).

SO ORDERED.

S.D.Ohio,2007.

U.S. v. Harris

Slip Copy, 2007 WL 3046431 (S.D.Ohio)

# Amendments to the Constitution

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ARTICLES IN ADDITION TO, AND AMENDMENTS OF, THE

## Amendments to the Constitution

CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION (*See Note 12*)

### Article [I.] (*See Note 13*)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### Article [II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### Article [III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

### Article [IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Article [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Article [VI.]

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**ARTICLE I: BILL OF RIGHTS**


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conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the State of Ohio.

(1851, am. 1997)

*TRIAL FOR CRIMES; WITNESS.*

§10 Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(1851, am. 1912)

*RIGHTS OF VICTIMS OF CRIME.*

§10a Victims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process, and, as the General Assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process. This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this constitution, and does not create any cause of action for compensation or damages against the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(1994)

*FREEDOM OF SPEECH; OF THE PRESS; OF LIBELS.*

§11 Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

(1851)

*TRANSPORTATION, ETC. FOR CRIME.*

§12 No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

(1851)

*QUARTERING TROOPS.*

§13 No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

(1851)

*SEARCH WARRANTS AND GENERAL WARRANTS.*

§14 The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describ-

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ARTICLE I: BILL OF RIGHTS

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ing the place to be searched and the person and things to be seized.

(1851)

*NO IMPRISONMENT FOR DEBT.*

§15 No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

(1851)

*REDRESS FOR INJURY; DUE PROCESS.*

§16 All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

(1851, am. 1912)

*NO HEREDITARY PRIVILEGES.*

§17 No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.

(1851)

*SUSPENSION OF LAWS.*

§18 No power of suspending laws shall ever be exercised, except by the General Assembly.

(1851)

*EMINENT DOMAIN.*

§19 Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

(1851)

*DAMAGES FOR WRONGFUL DEATH.*

§19a The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

(1912)

*PROTECT PRIVATE PROPERTY RIGHTS IN GROUND WATER, LAKES AND OTHER WATERCOURSES.*

§19b. (A) The protection of the rights of Ohio's property owners, the protection of Ohio's natural resources, and the maintenance of the stability of Ohio's economy require the recognition and protection of property interests in ground water, lakes, and watercourses.

(B) The preservation of private property interests recognized under divisions (C) and (D) of this section shall be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Constitution.

(C) A property owner has a property interest in the reasonable use of the ground water underlying the property owner's land.

(D) An owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land.

(E) Ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land shall not be held in trust by any governmental body. The state, and a political subdivision to the extent authorized by state law, may provide for the regulation of such waters. An owner of land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.

(F) Nothing in this section affects the application of the public trust doctrine as it applies to Lake Erie or the navigable waters of the state.

(G) Nothing in Section 1e of Article II, Section 36 of Article II, Article VIII, Section 1 of Article X, Section 3 of Article XVIII, or Section 7 of Article XVIII of the Constitution shall impair or limit the rights established in this section.

(2008)

*POWERS RESERVED TO THE PEOPLE.*

§20 This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers, not herein delegated, remain with the people.

(1851)