

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellant, : Case No. 09-0364
 :
 v. : On Appeal from the
 : Second Appellate District,
 DARNELL JONES, : Montgomery County
 : Case No. 22558
 Defendant-Appellee. :

**BRIEF OF AMICUS CURIAE
OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF APPELLEE DARNELL JONES**

MATHIAS H. HECK (0014171)
Montgomery County Prosecuting Attorney
301 W. Third Street, 5th Floor
Dayton, Ohio 45422
(937) 225-4117

LUCAS WILDER (0074057)
Law Office of Lucas Wilder
120 W. Second Street, Suite 400
Dayton, Ohio 45402
(937) 232-6250

JOHNNA SHIA (0067685)
Assistant Prosecuting Attorney
Appellate Division
P.O. Box 972
301 W. Third Street, 5th Floor
Columbus, Ohio 45422
(937) 225-4117

**COUNSEL FOR APPELLEE,
DARNELL JONES**

**COUNSEL FOR APPELLANT,
STATE OF OHIO**

CLAIRE R. CAHOON (0082335)
Assistant State Public Defender
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-1573

**COUNSEL FOR AMICUS CURIAE,
OHIO PUBLIC DEFENDER**

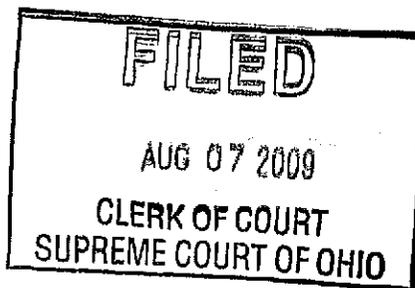


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STATEMENT OF THE CASE AND FACTS

Amicus adopts the statement of the case and facts set forth by Appellee Darnell Jones.

INTEREST OF AMICUS CURIAE

The Office of the Ohio Public Defender (“OPD”) is a state agency responsible for providing legal representation and other services to indigent criminal defendants convicted in state court. The primary focus of the OPD is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. The primary mission of the OPD is to protect and ensure the individual rights guaranteed by the state and federal constitutions through exemplary legal representation. In addition, the OPD seeks to promote the proper administration of criminal justice by enhancing the quality of criminal defense representation, educating legal practitioners and the public on important defense issues, and supporting study and research in the criminal justice system.

As *amicus curiae*, the OPD offers the Court the perspective of experienced practitioners who routinely handle significant criminal cases in the Ohio appellate courts. The OPD has an interest in this case insofar as suppression of illegally obtained evidence is crucial to the rights of criminal defendants. When evidence is taken in violation of constitutional protections that evidence must be suppressed. Moreover, this case addresses the application of well-established concepts of black letter law that protect criminal defendants and should not be overturned or disturbed by this Court’s review.

LAW AND ARGUMENT

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures of persons, houses, papers, and effects. See, also, Section 14, Article I of the Ohio Constitution. While abandoned property is subject to search by the police, property that is left to be retrieved later is not. Mr. Jones did not abandon his plastic bag by leaving it in a motel room, despite the fact that he told the police that the room was not his. Mr. Jones' motion to suppress the contents of the plastic bag should have been granted. The Second District Court of Appeals properly overturned the trial court's denial, holding that Mr. Jones did not abandon the bag by leaving it in the motel. *State v. Jones*, 2nd Dist. No. 22558, 2009-Ohio-61, at ¶42.

Mr. Jones had a reasonable expectation of privacy in the plastic bag. The State argues that Mr. Jones' expectation of privacy was not reasonable and that he abandoned the bag by leaving it in the motel. State's Brief 3. Generally, there is no expectation of privacy in abandoned property. *California v. Greenwood* (1988), 486 U.S. 35. But the State has the burden of proving intent to abandon. *United States v. Robinson* (6 C.A. 1970), 430 F.2d 1141, 1143. Intent to abandon is often not directly shown but can be inferred from the defendant's actions. *Id.*

A. Mr. Jones did not abandon the bag by leaving it in the motel room.

The Second District Court of Appeals held that because Mr. Jones had access to the motel room, and because nothing in the record showed that Mr. Jones believed he would not be able to return to the room, Mr. Jones did not abandon the bag in the room. *State v. Jones*, 2nd Dist. No. 22558, 2009-Ohio-61, at ¶42. The State argues that the court of appeals based its ruling on Mr. Jones' subjective belief instead of on societal understanding of what areas deserve privacy. State's Brief 4. The State cites to *Greenwood* and this Court's ruling in *State v.*

Freeman (1980), 64 Ohio St.2d 291, 297, for the contention that voluntarily abandoned property is subject to search. *Id.* at 4-5.

Freeman and *Greenwood* are factually distinct from the instant case. In *Freeman*, the act of discarding a container while fleeing from the police was abandonment because there was no intent to retrieve the container later. *Freeman*, 64 Ohio St.2d at 296. Therefore, the container could be validly searched. *Id.* Likewise, the *Greenwood* court held that a person does not have a reasonable expectation of privacy in trash left at the curb, as putting it on the curb is for the express purpose of having it taken away. *Greenwood*, 486 U.S. at 40. For that reason, trash is considered to be abandoned. *Id.*

Here, the record shows that Mr. Jones did not abandon the plastic bag, but intended to reenter the motel room after he talked to the police and retrieve the bag. First of all, Mr. Jones made contact with the police when they arrested his friend for driving without a license. At that time, Mr. Jones was holding the plastic bag. The police spoke to Mr. Jones, not because he was in trouble himself, but because they wanted to secure his friend's car before leaving the scene. Mr. Jones did not have a driver's license, which likely would have been the end of the inquiry. But Mr. Jones offered to get his female companion from inside the motel room, as he believed that she had a valid driver's license. At that point, Mr. Jones went into the room with the plastic bag, left the bag in the room, and returned with his female companion to speak with the police.

At that point, there was no reason for Mr. Jones to believe that he would not be able to reenter the motel room later and retrieve his bag. Based on the circumstances at that moment – Mr. Jones was not in trouble himself and was bringing a person to the police who could potentially take control of the car – Mr. Jones' intent was not to abandon the plastic bag. The circumstances demonstrate that Mr. Jones intended to finish his contact with the police and then

go back into the motel room. Despite his comment to the police that it was not his motel room, the fact that he was staying there and that he left his bag there before reemerging indicate intent to retrieve the bag at a later point. As Mr. Jones did not intend to abandon the plastic bag, he had a reasonable expectation of privacy in its contents. Therefore, the bag was subjected to an illegal search and its contents should be suppressed.

B. The plastic bag supported a reasonable expectation of privacy.

The Second District Court of Appeals held that the motel room search was valid. *Jones*, 2009-Ohio-61, at ¶37. The plastic bag was inside of the motel room. The State argues that because the bag was left in the motel room, and because the motel room search was valid, the bag could reasonably be searched. State's Brief 3. However, the contents of a container, even in plain view, generally cannot be inspected by the police. *Arizona v. Hicks* (1987), 480 U.S. 321; *United States v. Chadwick* (1977), 433 U.S.1. "A container which can support a reasonable expectation of privacy may not be searched, even on probable cause, without a warrant." *United States v. Jacobsen* (1984), 466 U.S. 109. This rule applies unless the reasonable expectation of privacy is undermined because the contents can be easily inferred from the container's outward appearance. *United States v. Johns* (1985), 469 U.S. 478, citing *Arkansas v. Sanders* (1979), 442 U.S. 753, 764-65.

Here, Mr. Jones' plastic bag was opaque and its outward appearance did not create an inference about its contents. The bag raised suspicion only because Mr. Jones was carrying it and he left it in the motel room after making contact with the police. There was no warrant to search the motel room. Rather, the officers conducted the search to look for identification for Mr. Jones. Regardless of why the officers subsequently searched the motel room, Mr. Jones had a reasonable expectation of privacy in the bag's contents. As the contents were not in plain

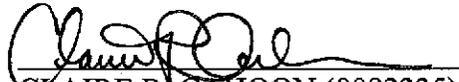
view, and as the container did not indicate what was inside, it was illegal for the police to search inside the bag. Therefore, the police violated Mr. Jones' Fourth Amendment protection from unreasonable search and seizure and the contents of the bag should be suppressed.

CONCLUSION

Based upon the foregoing, this Court should affirm the court of appeals ruling reversing and remanding Mr. Jones' case to the trial court.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



CLAIRE R. CAHOON (0082335)
Assistant State Public Defender

250 East Broad Street – Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
claire.cahoon@opd.ohio.gov

**COUNSEL FOR AMICUS CURIAE,
OHIO PUBLIC DEFENDER**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this **BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLEE DARNELL JONES** has been served upon Johnna Shia, Assistant Montgomery County Prosecutor, 301 W. Third Street, Fifth Floor, Dayton, Ohio 45422, on this 7th day of August, 2009.



CLAIRE R. CAHOON (0082335)

Assistant State Public Defender

**COUNSEL FOR AMICUS CURIAE,
OHIO PUBLIC DEFENDER**