

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	*	CASE NO. 09-0364
	*	
Plaintiff-Appellant,	*	
	*	
-vs-	*	
	*	
DARNELL JONES	*	
	*	
Defendant-Appellee.	*	

APPELLEE DARNELL JONES' MEMORANDUM IN OPPOSITION TO
"APPELLANT'S MOTION FOR RECONSIDERATION"

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Now comes Appellee Darnell Jones, by and through counsel, and hereby submits his opposition to Appellant's "Motion for Reconsideration" and request that this Court deny reconsideration of this matter. The reasons supporting Appellee Darnell Jones' opposition are set for in the attached brief.

MEMORANDUM IN OPPOSITION

The facts of this case do not present a situation where new law has to be formulated. Application of pre-existing privacy and abandonment law demonstrates that Mr. Jones had a privacy interest in the plastic bag and he never abandoned the bag. Therefore, it was unnecessary for this Court to accept review on the merits.

Mr. Jones had no apparent privacy interest in the hotel room itself, but he did maintain a privacy interest in the plastic bag. He 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. Undeniably, privacy protection has been given to articles such as plastic bags. See e.g., Florida v. Royer (1983), 560 U.S. 491 (suitcases); U.S. v. Waller, (C.A.6, 2005), 426 F.3d 838 (zippered suitcase); Rawlings v. Kentucky (1980), 448 U.S. 98 (purse); Frazier v. Cupp (1969), 394 U.S. 731 (duffel bag); California v. Acevedo (1991), 500 U.S. 565 (brown paper bag); United States v. Most, 876 F.2d 191, 197-98 (D.C. Cir. 1989) (plastic grocery bag). Further, personal items have been granted privacy protection even when a person has no privacy protection in the place itself. See e.g., U.S. v. Most, *supra* (holding that customer still had a privacy interest in plastic grocery bag left with a clerk); see also U.S. v. Waller, *supra* (defendant retained privacy interest in closed, zippered suitcase left in bedroom closet of friend's residence; resident had no authority to grant consent to search suitcase).

Applying the facts of this case to pre-existing law, demonstrates that Mr. Jones had a privacy interest in the bag. Accordingly, acceptance of this appeal was unnecessary.

Furthermore, when the facts of this case are applied under the abandonment analysis of State v. Freeman (1980), 64 Ohio St.2d 291, Mr. Jones clearly did not abandon the bag. Freeman instructed:

Abandonment 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. 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. *Citations omitted.*

Here, the bag in Mr. Jones' hand was tightly wrapped and carried into the room and stuffed between a nightstand and bed. He was never asked if the bag was his and he never disavowed any interest in the bag. He also never threw the bag away; tried to run; or even 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.

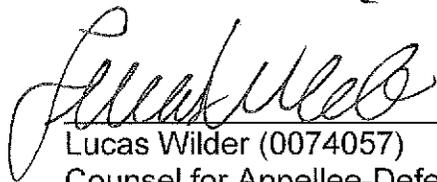
Denying review on the merits does not create new law or an inconsistency in 4th Amendment protections. With the long line of case law available, situations such as these requires a court to (1) determine if the property itself is entitled to protection, and if so, then (2) whether the defendant has abandoned that property. Here, applying the facts of this case to existing case law shows that Mr. Jones had a privacy interest in the bag and did not abandon the bag. A defendant does not always have a privacy protection in the place itself (i.e., a public library, a public street, a friend's house, a hotel room rented by another person, etc.). However, the purse, wallet, suitcase, or bag of that particular defendant is entitled to protection in a non-protected place when he has not abandoned the personal item. This is a clear example of such a situation.

The examples mentioned by the State would be truly tragic. However, the underlying questions for all those situations are was there was a privacy interest in the gun, needle, or drugs, and did the person claiming a privacy interest had abandoned the interest? The tragic and unthinkable situations referred to in the State's brief all assume that the property was abandoned (i.e., gun left on a playground; needles left in an abandoned warehouse; drugs left in a hotel room after check-out time). Therefore, the examples are not helpful.

CONCLUSION

Review of this case on the merit was unnecessary and this case was properly dismissed. Mr. Jones asks that this Court deny reconsideration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was mailed to the APA's office and to Darnell Jones (c/o Montgomery County Jail) on this 14th day of December 2009.



Lucas Wilder (0074057)