

NOTICE OF APPEAL OF APPELLANT JEFFREY TINCHER

Appellant Jeffrey Tinchler hereby gives notice of appeal to the Supreme court of Ohio from the judgment of the Clermont County Court of Appeals, Twelfth Appellate District, entered in the Court of Appeals case no. CA2009-12-079 on June 7, 2010. A copy of said entry is attached hereto.

This cases raises a substantial constitutional question and is one of public or great general interest.

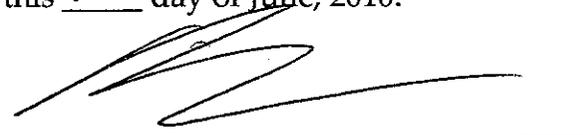
Respectfully submitted,



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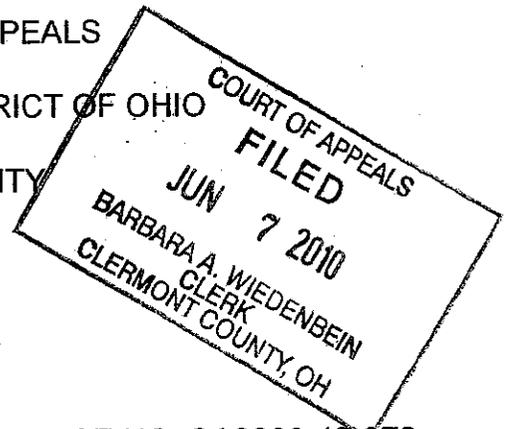
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice upon the office of the Clermont County Prosecuting Attorney, this 18th day of June, 2010.



Brian T. Goldberg
Attorney for Appellant

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY



STATE OF OHIO,

Plaintiff-Appellee,

- vs -

JEFFREY ALAN TINCHER,

Defendant-Appellant.

CASE NO. CA2009-12-079

JUDGMENT ENTRY
(Accelerated Calendar)



2009 CA 12
079
00048539741
JEOP

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2009 CR 00463

{¶1} This is an accelerated appeal in which appellant, Jeffrey Tincher, appeals his conviction in the Clermont County Court of Common Pleas for one count of possession of heroin.

{¶2} Tincher's assignment of error is overruled because the warrant that permitted the search of his home was valid and properly executed according to *State v. Akers*, Butler App. No. CA2007-07-163, 2008-Ohio-4164. According to the record, the warrant was supported by probable cause because officers found evidence in Tincher's trash to demonstrate the existence of marijuana remains. The marijuana discovery therefore provided corroboration of the information that the police received indicating that Tincher was involved in drug activity and the affidavit otherwise provided a basis of knowledge from which probable cause would issue.

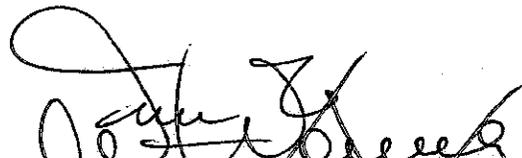
{¶3} The facts of Tincher's case are most similar to those found in *Akers* rather

than *United States v. Elliot* (S.D. Ohio 1984), 576 F.Supp. 1579, 1581 (granting motion to suppress because "discovery of the discarded contraband, *standing alone*, is insufficient to support a determination of probable cause"); *State v. Weimer*, Cuyahoga App. No. 92094, 2009-Ohio-4983, ¶28 (upholding trial court's grant of motion to suppress where affidavit listed "*no basis of knowledge from which probable cause would issue*"); or *United States v. Brooks* (N.D. Ohio 2008), 2008 WL 4059766, which was overturned by the Sixth Circuit in *United States v. Brooks* (C.A.6, 2010), 594 F.3d 488, because the district court improperly granted the motion to suppress where the warrant was supported by probable cause. (Emphasis added.)

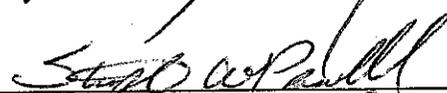
{¶4} Judgment affirmed.

{¶5} Pursuant to App.R. 11.1(E), this entry shall not be relied upon as authority and will not be published in any form. A certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

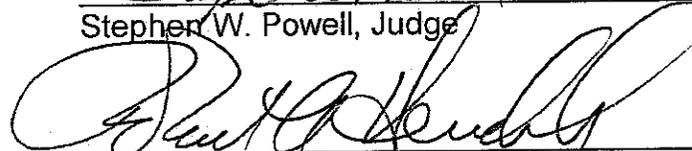
{¶6} Costs to be taxed in compliance with App.R. 24.



William W. Young, Presiding Judge



Stephen W. Powell, Judge



Robert A. Hendrickson, Judge