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**EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC OR
GREAT GENERAL INTEREST AND DOES NOT INVOLVE
A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This Court should not accept jurisdiction in this case because it does not involve a substantial constitutional question, and is not of public or great general interest. The State's first and second propositions of law address matters that this Court has recently dismissed as improvidently accepted, and its third and fourth propositions of law ask this Court to engage in error correction.

The State's first and second propositions of law ask this Court to revisit whether, and under what circumstances, the exclusionary rule applies in Ohio's search-and-seizure jurisprudence. (September 7, 2010 Memorandum in Support of Jurisdiction, pp. 6-11). Those propositions of law mirror those raised by the State in *State v. Johnson*, 126 Ohio St.3d 1211, 2010-Ohio-3214, and recently dismissed by this Court as improvidently accepted. And the State has presented no issues of law or fact to differentiate the present case from *Johnson*. As such, the State's first and second propositions of law are not worthy of this Court's limited time and resources.

The State's third and fourth propositions of law take issue with the Sixth District Court of Appeals' conclusion that the record in the present case does not contain competent, credible evidence sufficient to conclude that Mr. Gould's hard drive had been abandoned in the context of a search-and-seizure analysis. (September 7, 2010 Memorandum in Support of Jurisdiction, pp. 11-15). Because the court of appeals applied the correct law and analysis, the State's third and fourth propositions of law merely ask this Court to engage in error correction, and are not befitting of this Court's consideration.

STATEMENT OF THE CASE AND OF THE FACTS

Dennis Gould was charged with several sexually oriented offenses. *State v. Gould*, 6th Dist. No. L-08-1383, 2010-Ohio-3437, ¶4. Before trial, he moved to suppress evidence obtained from a computer hard drive. The motion to suppress was premised upon grounds that the hard drive was searched unlawfully. After an evidentiary hearing, the trial court held that the hard drive was abandoned property and, as such, the police had a reasonable basis to believe that appellant had relinquished any expectation of privacy pertaining to it. *Gould*, at ¶3.

Two witnesses testified during the suppression hearing, Sharon Easterwood, who is Mr. Gould's mother, and Detective Gina Lester. *Gould*, at ¶7.

Detective Lester.

Detective Lester testified that on September 6, 2006, Ms. Easterwood came to the police station to turn over a computer hard drive that belonged to Mr. Gould. Ms. Easterwood expressed her suspicion that the hard drive contained child pornography. *Gould*, at ¶8. When asked how the hard drive came into her possession, Ms. Easterwood indicated to Detective Lester that Mr. Gould had given it to her in December 2005, and instructed her not to allow anyone else to have it. She also stated that the hard drive had been abandoned by appellant, and that she no longer felt comfortable keeping it in her home. *Gould*, at ¶9. Ms. Easterwood also stated that she did not know of Mr. Gould's whereabouts and that Mr. Gould had gone absent some months earlier. Detective Lester took possession of the hard drive and booked it into the department's property room. *Gould*, at ¶10.

After attempting to contact Mr. Gould over the course of three months, Detective Lester asked Ms. Easterwood to return to the police station on December 2, 2006, to complete a consent form to search the hard drive. Ms. Easterwood completed the form. Detective Lester forwarded

the hard drive to another detective at the police division and requested that he conduct a forensic analysis of its contents. *Gould*, at ¶12. Mr. Gould was arrested in June 2007, in connection with the material found on the hard drive. *Gould*, at ¶13.

Ms. Easterwood.

Ms. Easterwood's testimony at the suppression hearing conflicted with the representations that she had made to Detective Lester. Ms. Easterwood indicated that appellant initially gave her the hard drive in December 2005, when he temporarily moved into her home. But Mr. Gould then took back the hard drive when he was able to move into his own apartment in June 2006. *Gould*, at ¶14.

Ms. Easterwood conceded that in late August, while Mr. Gould had gone absent, she asked the girlfriend of her other son, Gregory, who had also moved into Mr. Gould's apartment, to go through Mr. Gould's belongings and retrieve the hard drive for her. The meeting with Detective Lester took place only a few weeks later, and the hard drive was turned over. *Gould*, at ¶15.

The State filed a memorandum in support of jurisdiction with this Court on September 7, 2010. Mr. Gould now asks this court to decline to accept jurisdiction in the present case.

RESPONSE TO THE STATE'S PROPOSITIONS OF LAW

STATE'S PROPOSITION OF LAW I: The exclusionary rule applies only when a violation of Fourth Amendment rights is the result of deliberate, reckless, or grossly negligent disregard of Fourth Amendment rights or involves circumstances of recurring or systematic negligence. Evidence may not be excluded unless the conduct is "sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system."

STATE'S PROPOSITION OF LAW II: No exclusionary rule exists for a violation of the search-and-seizure provisions of Section 14, Article I of the Ohio Constitution.

The State's first and second propositions of law mirror those raised by the State in *State v. Johnson*, 126 Ohio St.3d 1211, 2010-Ohio-3214. In *Johnson*, the State's first proposition of law stated that, "[t]he federal Exclusionary Rule will only be applied to suppress evidence when the Fourth Amendment violation is the result of deliberate, reckless, or grossly-negligent disregard of Fourth Amendment rights or involves circumstances of recurring or systematic negligence." And the State's second proposition of law stated, "[t]here is no Exclusionary Rule for a violation of the search-and-seizure provisions of Article I, Section 14, of the Ohio Constitution."

In the present case, the State's has failed to factually or legally distinguish its first and second propositions of law from the virtually identical propositions presented to this Court in *Johnson*. (September 7, 2010 Memorandum in Support of Jurisdiction, pp. 6-11). This Court dismissed *Johnson* as having been improvidently accepted. As a result, this Court should not expend its limited time and resources reconsidering the State's first and second propositions of law in the present case.

STATE'S PROPOSITION OF LAW III: A trial court's factual findings incident to the denial of a motion to suppress are reviewed for "competent, credible evidence" to support those findings. When the trial court specifically recognizes a disparity between the testimony of two witnesses, and rendered its findings in consideration of that disparity, a reviewing court may not substitute its judgment for the trial court by giving more credence to the testimony of one witness than the other.

Initially, the State's third proposition of law merely repeats the standard of deference afforded to a trial court's factual findings when reviewing a trial court's suppression decision. A reviewing court is to accept the trial court's factual findings if the record indicates competent, credible evidence in support of those findings. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665. The court of appeals applied that standard in the present case. And the court of appeals concluded that the record did not, in fact, contain competent, credible evidence sufficient to conclude that Mr. Gould's hard drive was abandoned property in the context of a search-and-seizure analysis. *Gould*, ¶29-31. The court of appeals recognized that Ms. Easterwood, by her own admission, had taken the hard drive from Mr. Gould's apartment, without his permission, only a few weeks before turning the hard drive over to Detective Lester, and therefore, it was not abandoned property. *Gould*, ¶23-29.

The State's third proposition of law also claims that the court of appeals usurped the trial court's role of assessing the credibility of witnesses in light of disparate testimony given by those witnesses. (September 7, 2010 Memorandum in Support of Jurisdiction, p. 13). In addition to being a request for this Court to engage in error correction, the State's interpretation of the witnesses' testimony, and the court of appeals' analysis, is misguided. The trial court and the court of appeals were not tasked with assessing the credibility of two witnesses providing disparate versions of the facts. Detective Lester testified regarding the information provided to her by Ms. Easterwood. In turn, Ms. Easterwood conceded that she had misinformed Detective

Lester regarding the history of her possession of the hard drive. Ms. Easterwood then testified regarding the actual manner in which the hard drive had come into her possession before turning it over to Detective Lester. *Gould*, ¶8-27.

The trial court and the court of appeals were not faced with a decision between two versions of the facts that were both alleged to be true. Rather, those courts were faced with a decision between admitted falsehoods, and the truth. Contrary to the State's assertions, the court of appeals' analysis did not turn upon *witness* credibility, but whether the record contained competent, credible *evidence* to support the trial courts' finding of abandonment. The court of appeals properly found that Ms. Easterwood's admitted misinformation did not constitute competent, credible evidence to support such a conclusion, in light of the actual facts revealed during the motion-to-suppress hearing. The State's third proposition of law does not provide a rule of law for this Court to adopt, reject, or explain. The State has only asked for error correction.

STATE'S PROPOSITION OF LAW IV: A trial court's finding that personal property is abandoned, or that a detective could reasonably believe that the property was abandoned, is supported by competent, credible evidence when there is testimony that the owner left the state for an undisclosed destination, stole his roommate's vehicle, left his personal property behind, and failed to contact his roommate or family for several months, until his roommate sold his possessions at a garage sale and his mail began going to a different address.

Much like its third proposition, the State's fourth proposition of law is so specifically tailored to the present case, and the present case only, that it is more accurately described as an assignment of error for a court of appeals' consideration, rather than a proposition of law for this Court to consider. A decision by this Court regarding either the State's third or fourth propositions of law will only apply to the present case. As such, the State has not set forth issues

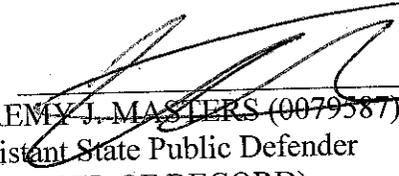
that will be broadly applicable through Ohio courts, nor issues that those courts require guidance in addressing. The State has only asked that this Court engage in error correction.

CONCLUSION

For the foregoing reasons, Dennis Gould respectfully asks that this Court decline to accept jurisdiction, and dismiss the State's appeal.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

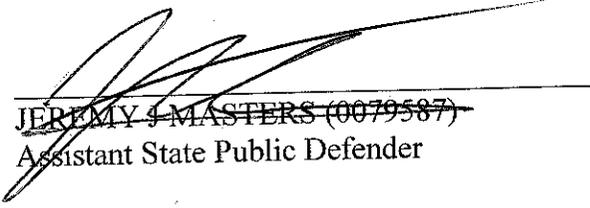
BY: 
JEREMY J. MASTERS (0079587)
Assistant State Public Defender
(COUNSEL OF RECORD)

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
E-mail: jeremy.masters@opd.ohio.gov

COUNSEL FOR DENNIS GOULD

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MEMORANDUM IN OPPOSITION OF JURISDICTION OF APPELLEE DENNIS GOULD was sent by regular U.S. Mail, postage prepaid, to Evy M. Jerrett, Lucas County Prosecutor's Office, Lucas County Courthouse, 700 Adams Street, Toledo, Ohio 43624, this 4 day of October, 2010.


~~JEREMY J. MASTERS (0079587)~~
Assistant State Public Defender
COUNSEL FOR APPELLEE
DENNIS GOULD

#328594