

**IN THE
SUPREME COURT OF OHIO**

STATE OF OHIO,	:	NO. 2011-1569
Plaintiff-Appellant,	:	On Appeal from Franklin County
vs.	:	Court of Appeals, Tenth Appellate
	:	District
LAWRENCE A. DIBBLE,	:	Court of Appeals
Defendant-Appellee.	:	Case Number 10AP-648

AMICUS CURIAE'S MERIT BRIEF IN SUPPORT OF THE STATE OF OHIO

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Interest of Amicus Curiae

The Ohio Prosecuting Attorneys Association is a private non-profit membership organization that was founded for the benefit of the 88 elected county prosecutors. The founding attorneys developed the original mission statement, which is still adhered to, and reads: "To increase the efficiency of its members in the pursuit of their profession; to broaden their interest in government; to provide cooperation and concerted action on policies which affect the office of Prosecuting Attorney, and to aid in the furtherance of justice. Further, the association promotes the study of law, the diffusion of knowledge, and the continuing education of its members." The OPAA has a great interest in how the affidavits that police officers draft to obtain search warrants are reviewed.

Statement of the Case and Facts

Amicus adopts the statement of the case and facts presented by the State of Ohio.

Argument

Proposition of Law No. 2: The issue of falsity in a search warrant affidavit must be judged in light of the non-technical language used by nonlawyers.

The United States Supreme Court recognizes that affidavits used to obtain search warrants “are normally drafted by nonlawyers in the midst and haste of a criminal investigation” and that the “[t]echnical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area.” *United States v. Ventresca*, 380 U.S. 102, 108-109, 86 S.Ct. 741, 13 L.Ed.2d 684 (1965). The Court has even cautioned that “[a] grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.” *Id.* This Court should adopt the United States Supreme Court’s reasoning in *Ventresca*.

The affidavit in question here reads as follows:

“On February 2, 2010 Victim #1 reported to the Upper Arlington Police Department that while a student at The Wellington School one of her teacher’s, Lawrence A Dibble touched her inappropriately. Victim #1 stated that she was rehearsing line for a play with Dibble in the school when he asked for a reward for getting his lines correct. He asked to touch Victim #1’s stocking on her leg. Upon touching the stocking Dibble then proceeded to run his hand up under Victim #1’s skirt brushing his fingers across her vaginal area. Victim #1 stated she was shocked and froze as Dibble then ran his hands over her buttocks, and lower abdomen area. Victim #2 was with Victim #1 while she made the report. Victim #2 stated that she also had inappropriate contact with Dibble. Victim #2 stated it was after she graduated high school where Dibble had also been her teacher. Victim #2 stated that Dibble had taken photo’s of her nude vaginal area during

one of their meetings where inappropriate touching was involved. Victim #2 told investigators that Dibble used a digital camera to take the photo's, and made her wear a pillow case over her head while he took them.

“On February 2, 2010 Victim #1 went to The Wellington School at the direction of the Upper Arlington Police wearing a recording device. She had a conversation with Dibble about the inappropriate touching where he stated ‘I just wasn’t thinking’.

“Investigators from Upper Arlington believe Dibble’s computers, camera’s, media storage devices, etc. may contain correspondence, and photos to substantiate Victim #1 and Victim #2’s claims.” (All grammatical and spelling errors, sic.)

The Tenth District found that the officer’s use of the terms “Victim #1” and “Victim #2” to label the young women he had been speaking with was improper and that it amounted to the officer lying to obtain the warrant. The Tenth District’s decision sets dangerous precedent for two reasons.

First, the validity of an affidavit should not turn on the pseudonym that an officer chooses to use when trying to protect a person’s identity. Here, the detective used the terms “Victim #1” and “Victim #2” instead of the names or initials of the young women that were involved in this case. Whether he choose to use E.S. and E.K. or Victim #1 and Victim #2 or Girl #1 and Girl #2 or any other term should not affect the validity of the affidavit. Yet that is what happened here.

Officers should not be forced to second guess how they label people whose identities they wish to protect. What should matter is if the facts set forth in the affidavit establish probable cause. If allowed to stand, the Tenth District’s decision will force

police to focus not only on reciting facts, but also in doing so in a way a later court will hopefully find sufficiently neutral enough to survive later judicial scrutiny.

Second, courts should apply common sense definitions of words used in affidavits, especially ones drafted by non-lawyers. Here, despite finding that Victim #2 was victimized to some degree, the lower courts improperly forced a definition of the word “victim” that required the person to be the victim of an actionable crime. As the Supreme Court held, words used in affidavits should be given their common everyday usage.

This is especially troubling since there is no question that Victim #2 was victimized. Yet despite that, the lower courts forced a rigid definition of the word “victim” that is not supported by the common meaning of the word. Even Black’s Law Dictionary recognizes that a person can be a victim without their being a crime and defines the word as “[a] person harmed by a crime, tort, or other wrong.” Black’s Law Dictionary, 9th Ed. (2009).

But despite all of that, the lower courts felt that the detective chose to use the word victim to trick the judge that initially reviewed the affidavit into issuing the warrant. But if the detective wanted to trick the reviewing judge into issuing a warrant, why would he have then set forth what his investigation about Victim #2 revealed, which plainly indicated that what happened between her and Dibble occurred after she graduated and was an adult?

As the recent jurisprudence regarding void versus voidable in regards to postrelease control shows, when strict legal definitions are placed on words things can get messy. See, for example, *State v. Simpkins*, 117 Ohio St. 3d 420, 2008-Ohio-1197, 884

N.E.2d 568; *State v. Harrison*, 122 Ohio St. 3d 512, 2009-Ohio-3547, 912 N.E.2d 1106; *State v. Singleton*, 124 Ohio St. 3d 173, 2009-Ohio-6434, 920 N.E.2d 958; and *State v. Fischer*, 128 Ohio St. 3d 92, 2010-Ohio-6238, 942 N.E.2d 332. All of that confusion involved experience attorneys, judges, and justices. What hope would a nonlawyer have in navigating that labyrinth? To start applying strict (and in this case new) definitions onto words used in affidavits drafted by non-lawyers would serve no purpose other to cause confusion and delay in a process that is often necessarily rushed.

And for what purpose? The detective in this case did nothing more than attempt to protect the identity of two people Dibble victimized. There was nothing wrong or dishonest about trying to protect the identities of the women involved in this case. If anything, such actions should be encouraged.

The lower courts, therefore, misapplied the law when they held otherwise. This Court should, therefore, reverse.

Conclusion

The lower courts wrongly held that the use of the word “victim” in a non-technical manner amounted to a detective lying to obtain a search warrant. This Court should reverse those findings and hold that affidavits used to obtain search warrants should be reviewed using common sense meanings of words.

Respectfully,

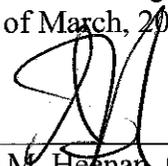
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Proof of Service

I hereby certify that I have sent a copy of the foregoing brief, by United States mail, addressed to David H. Thomas, 511 South High St., Columbus, Ohio 43215, and Steven L. Taylor, Franklin County Prosecutor’s Office, 373 South High St., 13th Floor, Columbus, Ohio 43215, counsel of record, this 8th day of March, 2012.



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