ORIGINAL

THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case Nos. 2011-1504
		2011-1593
Appellee	:	
vs.	:	On Appeal from the Summit County Court of Appeals,
JILLIAN D. HOBBS	:	Ninth Judicial District
		Case No. 25379
Appellant	:	

REPLY BRIEF OF APPELLANT JILLIAN D. HOBBS

Mark H. Ludwig (#0017246) (Counsel of Record)
Law Office Of Mark H. Ludwig, LLC
344 Stouffer Road
Fairlawn OH 44333
330.472.1824 (cell) 888.893.4655 (fax)
attymarkludwig@yahoo.com
mludwig@neo.rr.com

COUNSEL FOR APPELLANT, JILLIAN D. HOBBS

Sherri Bevan Walsh
Prosecuting Attorney
Heaven DiMartino (#0073423) (Counsel of Record)
Assistant Prosecuting Attorney, Appellate Division
Summit County Safety Building
53 University Ave
Akron Ohio 44308
330- 643-7459 (office) 330-643-7459 (fax)
dimartino@prosecutor.summitoh.net

COUNSEL FOR APPELLEE, STATE OF OHIO

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SUPREME COURT OF OHIO

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LAW AND REPLY ARGUMENTS

REPLY IN SUPPORT OF PROPOSITION OF LAW NO. I

A law enforcement officer serving a dual-role as an officer and deputy clerk of a local municipal court may not act as a neutral and detached magistrate for purposes of Crim. R. 4(A)

The essence of the State's opposition --made here in an appeal for the first time [1]-- is that this entire case is based on a "false predicate". The State claims "[n]o arrest warrant issued in this case." *State's Merit Brief,* p.5. Throughout its Brief the State repeatedly claims "error in the *factual* background" arguing no warrant issued. *Id.,* pp. 3, 5, 6, 7, 9, 10. But the fact that a warrant issued was undisputed in the trial court before, during and after the suppression hearing closed. Only *after* the trial court ruled did the State claim the trial court must "correct" the record—a claim it did not revive in its Brief opposing the initial appeal to the Ninth District. (CA Dkt #29)

Record copies of the **issued warrant are attached** here in appendix A-1 and A-2.

The State concedes that the practice was to use a pre-printed form but carefully avoids admitting that this was a multipart "press through" type form. State's Merit Brief p.2. Copies of the last two of the five pre-printed blank pages are A-3 and A-4.

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[1] On Ms. Hobbs' initial appeal to the Ninth District the State made no claim that a warrant did not exist. The State's 9-24-2010 Brief to that court (CA Dkt # 29) noted the detective's testimony that he "obtained the arrest warrant" (p. 9) and argued that the State was "accepting the trial court's findings as true" (p.13). No cross assignment of error was ever made by the State on intermediate appeal. Ms. Hobbs' motion to certify a question to this Court was not opposed in the intermediate court on the ground that a warrant did not exist. Her motion for a discretionary appeal was not opposed.

All concerned all along recognized that a multi-part form was used and all recognized an arrest warrant had issued:

- The State's 12-1-2009 initial opposition to suppression (CP Dkt #32) filed just prior to hearing claimed that "[t]here was no error in the *issuing of the arrest warrant*" arguing only that the officer acting as a deputy clerk to determine probable cause was not "involved" in the investigation.
- The officer conceded at suppression hearing (Tr. pp24-25) that an arrest warrant issued. Despite the State's out of context reference here to his testimony (State's Merit Brief p10) the officer did *not* testify "no warrant issued". The officer disagreed on cross examination that **after** the complaint was filed an arrest warrant issued; but when directly asked if "no warrant issued" the detective stated the procedure **"[w]hen I type the complaint and it's clerked and it's sent to—it becomes the warrant—it becomes an arrest warrant once the Barberton Clerk receives it"** When asked if there was "probable cause *for the warrant to issue to confirm* her arrest, correct?"; the officer answered "**Correct**" (Tr. 26)
- The trial court found the **arrest warrant** was "not properly issued' and "invalid" (Order Denying Motions to Suppress); it held (in error) that 'no evidence was obtained as a direct result of the improperly **issued arrest warrant'** and (again in error) that the evidence supporting the prosecution's case was gleaned from sources independent of the **tainted warrant**. Hobbs' Merit Brief App A-21, 23, 24)

- When the State moved to "correct" the trial record after the order denied suppression its own Exhibit F-2 to that motion proved that a warrant had issued. The State offered a certified copy of the municipal court docket which stated that on bind over the municipal court sent the trial court : "COPIES OF THE JOURNAL ENTRY, AFFIIDAVIT, **WARRANT,** AFFIDAVIT FOR ARREST, INCIDENT REPORT..." (Caps in original, bold underline added) State's Exhibit F-2 is attached as App. A-5.
- The appellate court found "the trial court determined and we agree that **the arrest warrant issued** pursuant to Sergeant Stott's probable cause determination was invalid" 2010-Ohio-3192 at ¶16. (Hobbs' Merit Brief, App. A-11)

Criminal Rule 4(A (1) provides for "issuance" of an arrest warrant *whenever* probable cause appears from a complaint and affidavit filed (this subsection of the rule does not address *arrest* with or without a warrant)

The General Assembly in R.C. 2935.08 also required that upon the prompt filing of an affidavit *after arrest without warrant under R.C. 2935.05* that a "judge, clerk, or magistrate" then issue a warrant:

> Upon the filing of an affidavit or complaint as provided in sections 2935.05 or 2935.06 of the Revised Code such judge, clerk, or magistrate *shall forthwith issue a warrant to the peace officer making the arrest,* or if made by a private person, to the most convenient peace officer who shall receive custody of the person arrested. *All further detention and further proceedings shall be pursuant to such affidavit or complaint and warrant.* (Italics added) (Italics added)

The basis of the State's opposition to the first proposition of law is the State's repeated claim that an arrest warrant did not issue. But, to use the word of accusation that the State so easily asserts, the "mischaracterizations" are the State's repeated claims that no warrant existed. An arrest warrant issued.

Proposition of Law I has merit.

REPLY IN SUPPORT OF PROPOSITION OF LAW No. II

> When a warrantless arrest occurred with no showing why a warrant could not first be obtained followed by a "bare bones" complaint for an arrest warrant for continued detention and the warrant issued when one officer acted in the dual role of officer and deputy clerk where that dual-role was part of a recurring, systemic practice denying prompt determinations of probable cause by a neutral and detached magistrate, the exclusionary rule must apply to all evidence obtained directly or indirectly due to such policy from the time the policy was implemented as well as apply to bar evidence directly or indirectly obtained after the particular warrant issued.

This Court requires that to justify a warrantless arrest the State must *show* why a warrant could not be first obtained. *State v. Heston*, 29 Ohio St.2d 152, 280 N.E.2d 376 (1972) [syllabus two]. The State did not do so here. **Nothing** was presented by the State at hearing as to why the detectives could not have first obtained a warrant before confronting Ms. Hobbs.

The State's Brief (p13) now argues for the first time that "It is clear from the transcript of the suppression hearing that the detective did not believe that he had

probable cause for an arrest warrant prior to speaking to Hobbs." But while claiming it is "clear" from the transcript, the State provides *no pinpoint reference* to any page or pages of that transcript which show it "clear".

On the contrary the transcript shows that prior to confronting Ms. Hobbs the officers interviewed two witnesses who had seen Ms. Hobbs enter the burgled home (Tr. 11). And it may be safely inferred that before confronting Ms. Hobbs experienced officers for their safety would have checked her prior record and known of her prior conviction for burglary. (CP Dkt # 19, 11-4-09 State's Notice of Intent to Use Evidence)

The State simply failed to meet *Heston* requirements.

The State's Merit Brief does not oppose the claim that this case presented exactly the kind of "bare bones" complaint that standing alone cannot constitutionally support a determination of probable cause for a warrant. Hobbs' Merit Brief 18-19, 23-24

Likewise the State does not oppose the claim that upon warrantless arrest Ms. Hobbs was denied any reasonably *prompt* determination of probable cause for arrest. Id. citing *County of Riverside v McLaughlin* 500 U.S.44, 111 S.Ct.1661 (1991) [2]

Ms. Hobbs argued that the exclusionary rule applied at earlier point than that set by the lower courts; the State notes (p.13) that the appellate court called that an "unsupported" contention. *But see* Hobbs' Merit Brief at 27 citing this Court, as she had

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[2] *State v Berry* 80 Ohio St.3d 371, 385 at n. 9, 1997-Ohio-336 " it is far from clear that the exclusionary rule will be applied to *freestanding* McLaughlin claims" (Italics added). The *McLaughlin* denial here however was not "freestanding" but is connected to the use of "bare bones" complaints and failure of any neutral and detached magistrate.

the appellate court, to *Herring v United States* 555 US 135, 129 S. Ct. 695 (2009) among other cases.

Ms. Hobbs has consistently sought *meaningful* application of the exclusionary rule a standard since *Wong Sun* most recently emphasized in *Herring* case.

But the State claims (p.14) that the record is "devoid of any finding" that there was a systemic pattern and practice; now for the first time in this appeal it "vehemently denies" any such pattern. *Id.* But that denial is not supported by the record. It was proven at the suppression hearing that the officers used a standardized pre-printed multi-part form, that they did what they "normally do" and that they were following established practices that they had done at least "couple hundred" times. Tr. 29, 35. The officer who took the oath believed he was acting as a neutral and detached clerk. Tr. 39

Finally even if the exclusionary rule was only applied strictly *after* the warrant issued there *was* evidence seized as a result of the invalid warrant; to wit, the grand jury testimony, the officer's trial identification, the prior conviction and the jail tape recordings were all developed for use at trial after the arrest warrant issued; all and any of those items were least an indirect result of the systemic pattern and practice of violations. The officers testimony (and the lower courts' conclusions based thereon) that there was no "evidence gathered" after the arrest warrant issued was simply wrong.

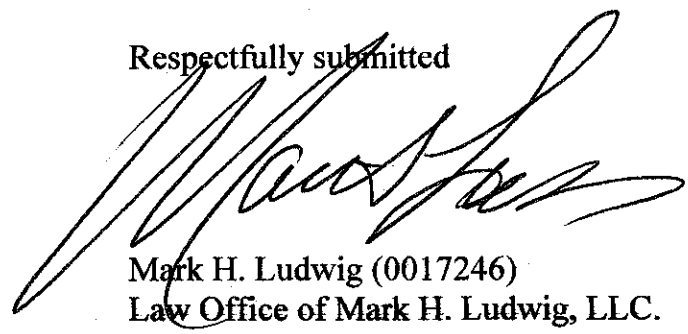
Proposition of Law II has merit.

CONCLUSION

The State's Merit Brief fails to oppose Ms. Hobbs' proposed Propositions of Law. They should be accepted and applied by this Court.

The rulings of the trial and appellate court should be affirmed in part and reversed in part. Because Ms. Hobbs has completed the sentence imposed, she should be ordered discharged by this Court and any conviction expunged.

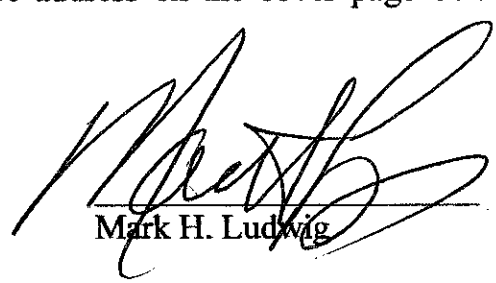
Respectfully submitted



Mark H. Ludwig (0017246)
Law Office of Mark H. Ludwig, LLC.
344 Stouffer Rd
Fairlawn OH 44333
330-472 1824 Cell
888-893-4655 Fax
attymarkludwig@ yahoo.com

PROOF OF SERVICE

I certify that a copy of the foregoing was sent by regular mail to Summit County Prosecuting Attorney Sheri Bevan Walsh to the attention of Assistant Prosecuting Attorney Heaven DiMartino at her office address on the cover page of this Brief on March 29, 2012.



Mark H. Ludwig

C

THE BARBERTON MUNICIPAL COURT
BARBERTON, OHIO 44203

STATE OF OHIO/CITY OF Twp Coventry

vs

Jillian D. Hobbs
name
959 Portage Lakes Dr.
address
Akron, Ohio 44319
city state zip code
SS# [redacted]-7549

D.O.B. 8/9/1987

CASE NO. 09CRA02702 F2
WARRANT ON COMPLAINT

To Sheriff - Any Police Officer having Jurisdiction.
A complaint, a copy of which is attached hereto, has been filed in this court charging Jillian D. Hobbs defendant on or about the 15 th. day of September, 20 09 / in the City of _____ Township of Coventry, Summit County, Ohio did violate / O.R.C. / or Codified Ordinance # 2911.12, constituting a charge of Burglary.

☐ NOTE -
Prosecutors office hereby requests for issuance of Summons.

☐ You are ordered to arrest aforementioned Defendant and bring him/her before this Court without unnecessary delay. You may/may not issue summons in lieu of arrest under Rule 4a(2) or issue summons after arrest under Rule 4(F) because _____

[signature] 2003
/Judge/Officer designated by Judge(s)/Clerk/Deputy Clerk/
The Barberton Municipal Court

THE BARBERTON MUNICIPAL COURT
BARBERTON, OHIO 44203

STATE OF OHIO/CITY OF Twp Coventry

vs

Jillian D. Hobbs
name
959 Portage Lakes Dr.
address
Akron, Ohio 44319
city state / zip code
SS# [redacted]-7549
D.O.B. 8/9/1987

CASE NO. 09CR802702
WARRANT ON COMPLAINT
(Rule 4)

To Sheriff - Any Police Officer having Jurisdiction.
A complaint, a copy of which is attached hereto, has been filed in this court charging Jillian D. Hobbs defendant on or about the 15 th. day of September, 20 09 / in the City of Township of Coventry, Summit County, Ohio did violate / O.R.C. / or Codified Ordinance # 2911.12, constituting a charge of Burglary.

NOTE -
You are ordered to arrest aforementioned Defendant and bring him/her before this court without unnecessary delay.

/Judge/Officer designated by Judge(s)/Clerk/Deputy Clerk/
The Barberton Municipal Court

COPY.

THE BARBERTON MUNICIPAL COURT
BARBERTON, OHIO 44203

STATE OF OHIO/CITY OF_____/

vs

_____ name

_____ address

_____ city state zip code

SS#_____

D.O.B._____

CASE NO._____

WARRANT ON COMPLAINT
(Rule 4)

To Sheriff - Any Police Officer having Jurisdiction.
A complaint, a copy of which is attached hereto, has been filed in this court charging

_____ defendant

on or about the _____ day of _____,20 _____ / in the City of _____ Township of _____, Summit County, Ohio did violate / O.R.C. / or Codified Ordinance # _____, constituting a charge of_____.

NOTE -
You are ordered to arrest aforementioned Defendant and bring him/her before this court without unnecessary delay.

_____
/Judge/Officer designated by Judge(s)/Clerk/Deputy Clerk/
The Barberton Municipal Court

COPY

THE BARBERTON MUNICIPAL COURT
BARBERTON, OHIO 44203

STATE OF OHIO/CITY OF _____ /

vs

_____
name

_____
address

_____
city state zip code

SS# _____

D.O.B. _____

CASE NO. _____

WARRANT ON COMPLAINT

To Sheriff - Any Police Officer having Jurisdiction.
A complaint, a copy of which is attached hereto, has been filed in this court charging

_____ defendant

on or about the _____ day of _____ ,20 _____ / in the City of _____ Township of _____ , Summit County, Ohio did violate / O.R.C. / or Codified Ordinance # _____ , constituting a charge of _____.

☐ NOTE -
Prosecutors office hereby requests for issuance of Summons.

☐ You are ordered to arrest aforementioned Defendant and bring him/her before this Court without unnecessary delay. You may/may not issue summons in lieu of arrest under Rule 4a(2) or issue summons after arrest under Rule 4(F) because _____

_____

_____

_____
/Judge/Officer designated by Judge(s)/Clerk/Deputy Clerk/
The Barberton Municipal Court

COPY

09/18/2009 DEFENDANT IN COURT (VIDEO) BOND SET AT $10,000.00 - 10%, BY JUDGE MACKO. ATTORNEY MARK LUDWIG APPOINTED AS COUNSEL ( ). SET FOR INITIAL APPEARANCE WITH COUNSEL ON 9/23/2009 AT 1:00 P.M.. BOND MITTIMUS TO SUMMIT COUNTY

09/18/2009 JAIL (FAXED).

09/23/2009 DEFENDANT IN COURT (VIDEO) CASE CONTINUED FOR NOTICE OF DIRECT INDICTMENT. ALONG WITH CASE 09 CRB 2741. BOND MITTIMUS TO SUMMIT COUNTY JAIL (FAXED).

10/07/2009 CASE DISMISSED, AS PER JUDGE FISH. RECEIVED NOTICE OF DIRECT INDICTMENT. COMMON PLEAS COURT #09-09-2902. COPIES OF THE JOURNAL ENTRY, AFFIDAVIT, WARRANT, AFFIDAVIT FOR ARREST, INCIDENT REPORT, BOND MITTIMUS, NOTICE OF

FILED
OFFICE OF THE CLERK
MAR - 3 AM 10:50
BARBERTON, OHIO
CHRISTINE CLERK

10/07/2009 INDICTMENT AND TRANSCRIPT MAILED BY CERTIFIED MAIL TO THE COMMON PLEAS COURT. ACCOMPANYING MISDEMEANOR CASE 09 CRB 02741.

10/15/2009 CRIMINAL MM COSTS $108.00

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF transcript FILED IN THE BARBERTON MUNICIPAL COURT OF BARBERTON, OHIO ON 3/4, 20 10.
CLERK OF THE BARBERTON MUNICIPAL COURT, BARBERTON, OH

Deputy Clerk

A-5

Exhibit F-2

Ohio Statutes

§ 2935.05. Filing affidavit where arrest without warrant

When a person named in section 2935.03 of the Revised Code has arrested a person without a warrant, he shall, without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and shall file or cause to be filed an affidavit describing the offense for which the person was arrested. Such affidavit shall be filed either with the court or magistrate, or with the prosecuting attorney or other attorney charged by law with prosecution of crimes before such court or magistrate and if filed with such attorney he shall forthwith file with such court or magistrate a complaint, based on such affidavit.

History. Effective Date: 01-01-1960

§ 2935.08. Issuance of warrant

Upon the filing of an affidavit or complaint as provided in sections 2935.05 or 2935.06 of the Revised Code such judge, clerk, or magistrate shall forthwith issue a warrant to the peace officer making the arrest, or if made by a private person, to the most convenient peace officer who shall receive custody of the person arrested. All further detention and further proceedings shall be pursuant to such affidavit or complaint and warrant.

History. Effective Date: 01-10-1961

OHIO RULES OF CRIMINAL PROCEDURE

As amended through July 1, 2011

Rule 4. Warrant or Summons; Arrest (in part)

(A) Issuance.

(1) Upon complaint. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the issuing authority may require the complainant to appear personally and may examine under oath the complainant and any witnesses. The testimony shall be admissible at a hearing on a motion to suppress, if it was taken down by a court reporter or recording equipment.

The issuing authority shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or when issuance of a summons appears reasonably calculated to ensure the defendant's appearance.

****

(C) Warrant and summons: form.

(1) Warrant. The warrant shall contain the name of the defendant or, if that is unknown, any name or description by which the defendant can be identified with reasonable certainty, a description of the offense charged in the complaint, whether the warrant is being issued before the defendant has appeared or was scheduled to appear, and the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant.

****

(E) Arrest.

(1) Arrest upon warrant.

(a) Where a person is arrested upon a warrant that states it was issued before a scheduled initial appearance, or the warrant is silent as to when it was issued, the judicial officer before whom the person is brought shall apply Crim.R. 46.

(2) Arrest without warrant . Where a person is arrested without a warrant the arresting officer shall, except as provided in division (F), bring the arrested person without unnecessary delay before a court having jurisdiction of the offense, and shall file or cause to be filed a complaint describing the offense for which the person was arrested. Thereafter the court shall proceed in accordance with Crim. R.5.

History. Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1990; July 1, 1998.