ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

APPELLEE,

vs.

HOFFMAN,

APPELLANT.

Case No. 13-0688

On Appeal from the Lucas County Court of Appeals, Sixth Appellate District

Court of Appeals Case No. L-12-1262

MERIT BRIEF OF APPELLANT BRANDON HOFFMAN

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FILED
NOV 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
NOV 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

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Statement of Facts

On 11 November 2011, criminal complaints and requests for arrest warrants were filed in the Toledo Municipal Court charging Mr. Hoffman with the misdemeanor offenses of theft, criminal damaging, and house stripping prohibited (Transcript of 6/8/12 hearing, Defendant's Exhibits A, B, and C). The theft complaint alleged that on October 25, 2011, "the defendant did take, without the consent of the owner Lamarr Pitmon, take siding, downspouts and gutters from the victims rental property at 337 Chapin Toledo, Ohio 43609 City of Toledo, Lucas County." The criminal damaging complaint alleged that on October 25, 2011, "the defendant did remove, dismantled siding, gutters, downspouts to a house at 337 Chapin Toledo, Ohio 43609, this act caused substantial damage to the property, this was without the authorization of the owner/victim Lamarr Pitmon. City of Toledo Lucas County." The complaint for house stripping prohibited alleged that "the defendant did, without permission or authorization from victim/owner Lamarr Pitmon, take/remove siding downspouts and gutters from 337 Chapin Toledo, Ohio 43609 on or about 10/25/11 City of Toledo, Lucas County."

The complainant law enforcement officer was Detective Kim Violanti of the Toledo Police Department. The complaints were prepared by Detective Violanti. She had no personal knowledge of any of the allegations in the complaints (Transcript of 6/8/12 hearing, p. 24, 29). Although Detective Violanti spoke to the victim and two potential witnesses, she made no reference to the witnesses in her complaint; the alleged victim had no firsthand knowledge of the offenses (Transcript of 6/8/12 hearing, p. 23). Detective Violanti presented the three complaints to Nellie Mata, a Deputy Clerk of the Toledo Municipal Court. When presented with the complaints by Detective Violanti, Ms. Mata verified the RB number, the classification code, the

signature of the officer, and administered the following oath: "Do you swear that the statements made in this affidavit are true and is that your true and legal signature." (Transcript of 6/8/12 hearing, p. 94-95).

The procedure for processing criminal complaints and requests for arrest warrants is reflected in a general procedure document of the Toledo Municipal Court (Transcript of 6/8/12 hearing, Defendant's Exhibit D). Ms. Mata asked Detective Violanti no questions about how she came to make the allegations in any of the three complaints (Transcript of 6/8/12 hearing, p. 93). Detective Violanti indicated no deputy clerk ever asked her any questions about how she came to make accusations in any complaint (Transcript of 6/8/12 hearing, p.19, 32-33). Ms. Mata made no probable cause determination for Exhibits A, B, or C (Transcript of 6/8/12 hearing p. 95-98). Ms. Mata admitted that at the time she processed Detective Violanti's complaints, she had no idea if any of the allegations were true (Transcript of 6/8/12 hearing p. 95-98). Ms. Mata testified that making a probable cause determination was not her job (Transcript of 6/8/12 hearing, p. 101). She explained that she receives no training to make a probable cause determination, nor does she have any qualifications to make a probable cause determination (Transcript of 6/8/12, p. 94). Cindy Downs, a supervisor in the Toledo Municipal Court Clerk's Office, testified that in her 17 years, no Deputy Clerk ever made a probable cause determination before issuing an arrest warrant (Transcript of 8/24/12 hearing, p. 49).

Based solely on this interaction between Detective Violanti and Ms. Mata, arrest warrants were issued for Mr. Hoffman for each of the three charged misdemeanor offenses (Transcript of 6/8/12, p. 33-38, 92-98). All three cases were administered under Toledo Municipal Court Case No. CRB11-17858.

On 26 November 2011, the dead body of Scott Holzhauer was discovered at his residence at 842 Lorain, Toledo, Ohio. Responding officers noticed there was an open gun safe that did not appear to contain any guns (Transcript of 6/8/12 hearing, p. 43, 59, 60). Information gathered at the scene revealed that Mr. Hoffman may be source of further information (*Id.*). Specifically, investigating officers learned that a white male named Brandon who used to live across the street from Mr. Holzhauer had been seen at Mr. Holzhauer's home on November 25 or "real recently" (Transcript of 6/8/12 hearing, p. 45, 62). When seen at the residence of Mr. Holzhauer the day before the murder, Brandon was purportedly discussing purchasing one of Mr. Holzhauer's firearms and supposedly borrowed a crowbar from him (Transcript of 6/8/12 hearing, p. 45, 61). A description of Brandon was given to the police: white male, 5 '8" to 5' 9", 175lbs, brownish hair cut short, and tattoos on his arms and face (Transcript of 6/8/12 hearing, p. 46). With this information, Toledo Police believed Brandon to be Brandon Hoffman. A warrant check on Mr. Hoffman revealed the active arrest warrants for Toledo Municipal Court Case No. CRB 11-17858 (Transcript of 6/8/12 hearing, p. 63).

Mr. Hoffman was immediately located at 333 Chapin in Toledo, Ohio, the address listed on the warrants. The warrants were served, and Mr. Hoffman was arrested. Incident to his arrest on these warrants was a search which revealed numerous items of physical evidence (Transcript of 8/24/12 hearing, p. 11-13). Based on these items of physical evidence found during the search incident to Mr. Hoffman's arrest, a search warrant was obtained through the Toledo Municipal Court (Transcript of 8/24/12 hearing, State's Exhibit 2). While the search warrant was being processed, Mr. Hoffman was taken to the Safety Building and questioned by detectives about the death of Scott Holzhauer (Transcript of 8/24/12 hearing, p. 20-21).

On 6 December 2012, Mr. Hoffman was indicted for the aggravated murder and aggravated robbery of Scott Holzhauer (Trial Court Record Item No. 1). On 25 April 2012, Mr. Hoffman filed his motion to suppress (Trial Court Record Item No. 38). In his motion, Mr. Hoffman argued generally that the officers who arrested him at the Chapin Street address lacked valid arrest warrants. On 7 June 2012, Mr. Hoffman supplemented his motion to suppress with more specific assertions of the unconstitutionality of his arrest. Mr. Hoffman maintained that no probable cause determination was made by anyone before any of the warrants were issued; that the faces of the criminal complaints on which the warrants were based failed to reveal a basis for a finding of probable cause; no independent probable cause to arrest Mr. Hoffman for any other offense existed at the time the arrest warrants were served; and a letter sent to Mr. Hoffman by the Toledo Police Department precluded execution of the warrants until after 29 November 2011 (Trial Court Record Item No. 46). The State filed memoranda opposing the motion (Trial Court Record Item Nos. 39, 47).

On 8 June 2012, the motion was heard. The State elicited testimony from Kathryn Wiciak, a clerk in the Toledo Police Department Records Division; Toledo Police Officer Alexander Schaller; Toledo Police Detective Jeffery Clark; and Toledo Police Sergeant Ashley Nichols. Mr. Hoffman elicited testimony from Nellie Mata, the Deputy Clerk of the Toledo Municipal Court who issued the arrest warrants. At the conclusion of the testimony, each side was afforded the opportunity to submit final arguments in writing, and both parties filed briefs (Trial Court Record Item Nos. 50, 52, 53).

After all briefs were submitted, the Court ordered that Nellie Mata be recalled for additional testimony and set a date of 24 August 2012 (Trial Court Record Item Nos. 54, 55). On

22 August 2012, the Court informed the parties that the Court no longer needed additional testimony from Ms. Mata, but either sided could still supplement the record with additional testimony on August 24th (Transcript of 8/24/12 hearing, p. 3-4).

On August 24th, the State presented additional evidence and testimony from Detective Clark. Mr. Hoffman offered testimony from Cindy Downs, a supervisor in the Clerk's office of the Toledo Municipal Court. After the testimony on August 24th, all parties agreed the motion was decisional.

On 27 August 2012, the Trial Court denied Mr. Hoffman's motion to suppress (Trial Court Record Item No. 63). In a written opinion, the Trial Court reluctantly held that *State v. Overton*, 6th Dist. No. L-99-1317 (Sept. 1, 2000), 2000 WL 1232422, required the Court to deny the motion (Trial Court Record Item No. 63).

On 5 September 2012, Mr. Hoffman pleaded no contest to aggravated murder and aggravated robbery (Trial Court Record Item No. 73). The Court sentenced him to life in prison without parole (Trial Court Record Item No. 74).

On 14 September 2012, Mr. Hoffman filed his Notice of Appeal to the Court of Appeals for Lucas County, Ohio (Trial Court Record Item No. 79; Court of Appeals Record Item No. 1). In his sole assignment of error, he argued that the Trial Court committed reversible error when it denied his motion to suppress (Court of Appeals Record Item No. 8). The State filed an opposing brief (Court of Appeals Record Item No. 10).

On 22 March 2013, the Lucas County Court of Appeals issued its Decision and Judgment (Court of Appeals Record Item No. 15). In its decision, the Court of Appeals concluded that the arrest warrants were invalid, overruled *State v. Overton*, 6th Dist. No. L-99-1317 (Sept. 1, 2000),

2000 WL 1232422, and applying *U.S. v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), found that the arresting officers reasonably relied in good faith on the arrest warrants.

On 3 May 2013, Mr. Hoffman filed his Notice of Appeal to this Court with an accompanying Jurisdictional Memorandum. On 16 September 2013, this Court accepted jurisdiction.

ARGUMENT

Proposition of Law No. 1

> There can be no good faith reliance on the validity of an arrest warrant issued without a magisterial finding of probable cause.

There can be no reasonable reliance by law enforcement officers on an arrest warrant issued without a magisterial finding of probable cause. It is impossible to overstate the constitutional importance of a probable cause determination made by a neutral magistrate before a citizen is subject to arrest. Police officers seeking arrest warrants are charged with the rudimentary knowledge of the requirement of a probable cause determination by a neutral magistrate and the need to provide that magistrate with sufficient information to make that determination. Neither requirement was satisfied here. This Court must sustain this proposition of law to preserve Mr. Hoffman's rights guaranteed by the 4th, 5th, and 14th Amendments to the United States Constitution and the corresponding portions of the Ohio Constitution.

The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution provide that no warrants shall issue but upon probable cause, supported by oath or affirmation. The protections afforded by the 4th Amendment and Article I, Section 14 are co-extensive. *State v. Kinney*, 83 Ohio St.3d 85, 87, 698 N.E.2d 49 (1998). These constitutional

dictates are embraced in Rule 4 of the Ohio Rules of Criminal Procedure.

> **Crim R 4 Warrant or Summons; Arrest**
>
> **(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 substantial basis for believing the source of the hearsay to be credible and for believing that there is 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.
>
> . . .

There is no doubting the elevated station the probable cause requirement occupies in our system of government. Expounding on the values of the Fourth and Fifth Amendments to the citizens, the United States Supreme Court held that the protections afforded by these two Amendments were "indispensable to the 'full enjoyment of personal security, personal liberty, and private property' and represented the very essence of constitutional liberty." *Gouled v. U.S.*, 255 U.S. 298, 303, 41 S.Ct. 261, 65 L.Ed. 647 (1921), *reversed on other grounds, Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967). What is at issue in this case is more fundamental than the isolated clerical errors of *Arizona v. Evans*, 514 U.S. 1,

115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), and *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009), relied on by the 6th District Court of Appeals to support its decision. Mr. Hoffman found no case from any jurisdiction which permitted officers to rely in good faith on a warrant issued without a neutral probable cause finding.

It is well established that a criminal defendant has a constitutional right to a finding of probable cause before a warrant or summons is issued for that defendant to answer. *Giordenello v. U.S.*, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958). An arrest warrant represents an independent assurance that an arrest will not proceed without probable cause to believe that a crime has been committed and that the person named in the warrant is involved in the crime. *Shadwick v. City of Tampa*, 407 U.S. 345, 350, 92 S.Ct. 2119, 32 L.Ed.2d 783 (1972). The validity of an arrest warrant is entirely dependent on a neutral determination by a judicial officer, not by a policeman or other law enforcement agent. *Johnson v. U.S.*, 333 U.S. 10, 14, 68 S.Ct. 367, 92 L.Ed. 436 (1948).

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.
>
> *Id.* at 13-14, 68 S.Ct. 367, 92 L.Ed. 436

The absolute necessity of a neutral probable cause determination was recognized by this Court in *State v. Hobbs*, 133 Ohio St.3d 43, 2012-Ohio-3886, 975 N.E.2d 965, and the Second District Court of Appeals in *State v. Mendell*, 2nd Dist. No. 24822, 2012-Ohio-3178. Nobody made a probable cause determination before issuing the arrest warrants here. That is indisputable.

Ms. Mata testified that she made no probable cause determination for any charge, did not know what probable cause was, was not trained to determine probable cause, had no idea where Detective Violanti got her information, and frankly admitted she did not consider it her job to determine probable cause (Transcript of 6/8/12 Hearing p. 92-96, 101). Defendant's Exhibit D (Transcript of 6/8/12 Hearing), is a copy of a written protocol of the Toledo Municipal Court for the issuance of arrest warrants. This is Ms. Mata's job description, and she followed it to the letter. The protocol does not include any mention or reference to a probable cause determination to be made by the issuing deputy clerk. The three misdemeanor arrest warrants issued for Mr. Hoffman are invalid regardless of what they allege.

The Court of Appeals based part of its decision on the assertion that the arresting officers had no reason to doubt the validity of the warrants. *State v. Hoffman*, 6th Dist. No. L-12-1262, 2013-Ohio-1082, ¶28. This premise can be immediately discarded. The subjective belief and good faith of the officers are meaningless. *Beck v. Ohio*, 379 U.S. 89, 97, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964). Constitutional deficiencies in an arrest warrant cannot be cured by having other officers serve them.

> Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.
>
> *Whiteley v. Warden, Wyoming State Penitentiary*, 401 U.S. 560, 568, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971).

An arrest warrant is either valid or not valid; its validity or lack thereof is not altered by changing

hands or subjective belief.

It is clear that the arrest warrants here were unconstitutional. Generally, evidence obtained unconstitutionally is excluded from use at trial by the government. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). The Exclusionary Rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights by the Rule's deterrent effect. *U.S. v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

> The deterrent purpose of the Exclusionary Rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the Courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused

> *Id.*, at 918, 104 S.Ct. 3405, 82 L.Ed.2d 677

Application of the Exclusionary Rule is restricted to those instances where its remedial objectives are most efficaciously served. *Id.* Those remedial objectives include deterring police misconduct and altering the behavior of individual law enforcement officers or the policies of their departments. The flagrancy of the misconduct plays an important part in the inquiry. *Id.* at 911, 104 S.Ct. 3405. Obtaining arrest warrants without probable cause and the systemic disregard of Fourth Amendment rights over the last 17 years falls squarely within these remedial objectives.

In *U.S. v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the United States Supreme Court modified the Exclusionary Rule in cases where officers in good faith reasonably relied on a warrant issued by a detached and neutral magistrate, and the warrant was subsequently found to be defective in some respect. The Court concluded that the remedial purpose of the

Exclusionary Rule is to deter police misconduct and should be applied only in cases where exclusion furthers that purpose. This purpose is not advanced by punishing the government for the errors of judges or magistrates. *Id.* at 915-918, 104 S.Ct. 3405.

There is no dispute that the warrants for Mr. Hoffman's arrest were invalid. The 6th District Court of Appeals held that the warrants were issued without a neutral finding of probable cause, and the complaints supporting the warrants did not provide a basis for finding probable cause. *State v. Hoffman*, 6th Dist. No. L-12-1262, 2013-Ohio-1082, ¶16, 17, 19. The Court of Appeals relied heavily on *Leon* in reaching their decision. However, it is clear that they were most selective in those portions on which they relied and chose to ignore the clear language of *Leon* that precludes its application here.

Initially, Mr. Hoffman asserts the absence of magisterial review before issuing the arrest warrants precludes application of the *Leon* good faith exception to exclusion. The absence of neutral magisterial review is a significant factor in this analysis. The concept of good faith reliance on a warrant first articulated in *Leon* is preconditioned on the existence of a warrant issued by a detached magistrate. The phrase "issued by a detached and neutral magistrate" appears twice in the *Leon* syllabus and five times in the majority opinion. *Leon,* at syllabus ¶1 and 1(b), 900, 907, 913, 913 n.9, 104 S.Ct. at 3405. In creating this exception, the Supreme Court made it clear that "in so limiting the suppression remedy, we leave untouched the probable-cause standard and the various requirements for a valid warrant." *Id.* at 923, 104 S.Ct. 3405.

Those valid warrant requirements left untouched by *Leon* are concededly absent here. There was no neutral review for probable cause and no information provided for engaging in the review should one have occurred. The Court of Appeals admits this but fails to recognize the

correct legal conclusion to be reached from these facts: there can be no reliance, reasonable or otherwise, on a warrant issued without a probable cause determination made by a neutral magistrate.

This analytical omission is not the only illustration of selective application of *Leon* by the Court of Appeals. The *Leon* Court provided concrete illustrations of when suppression remains the appropriate remedy. Several of the illustrations apply here.

The modification of the Exclusionary Rule pronounced in *Leon* applies to officers who rely in good faith on a warrant issued by a magistrate, provided that the reliance is objectively reasonable. *Leon* at 919, 104 S.Ct. 3405. The objective standard adopted by the Court presumes officers have a working knowledge of what the law permits and requires. *Id.* at 919 n.20; *U.S. v. Peltier*, 422 U.S. 531, 542, 95 S.Ct. 2313, 45 L.Ed.2d 374 (1975).

This standard applies directly here. As the *Leon* Court noted, no objectively reasonable officer who has a working knowledge of what the law requires is permitted to rely on a warrant based on a criminal complaint so lacking in indicia of probable cause that belief in the existence of probable cause is unreasonable. *Leon*, at 923, 104 S.Ct. 3405. Of course, this is exactly what happened here. The criminal complaints submitted in this case contain only statutory elements without any of the factual assertions required by 200 years of United States Supreme Court precedent. *Ex parte Burford,* 3 Cranch 448, 1806 WL 1218 (1806); *Giordenello v. U.S.*, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958); *Jaben v. U.S.*, 381 U.S. 214, 85 S.Ct. 1365, 14 L.Ed.2d 345 (1965).

Another limitation of *Leon* occurs when the magistrate issuing the warrant "wholly abandons his judicial role" and fails to perform his detached function resulting in his acting as a

rubber stamp for the police. These performance failures cannot provide valid authorization for an otherwise illegal warrant. *Leon* at 914, 922, 104 S.Ct. 3405 (internal citations omitted).

Once again, this deficiency is clearly borne out by the record in this case. The admitted absence of a probable cause determination by a magistrate constitutes abandonment by any definitional standard. The record testimony of seventeen years of this practice, with no rejected complaints, is certainly what the Court meant when it excluded rubber stamping from the scope of the good faith exception to the Exclusionary Rule.

These limitations on the scope of the good faith exception represent the Court's affirmation of the continued vitality of the probable cause requirement. A valid warrant requires the insulation of a neutral magistrate between the police and the citizen they wish to arrest, and there is no exception, exemption, or other justification for skipping this step in the warrant process.

Mr. Hoffman acknowledges that some subsequent United States Supreme Court cases have expanded the scope of the good faith exception to the Exclusionary Rule first pronounced in *Leon*, and some of these cases were relied on by the Court of Appeals. Mr. Hoffman contends that these cases embrace isolated clerical and record keeping errors without eliminating the foundation requirement of probable cause, and actually provide further justification for applying the Exclusionary Rule in this case.

In *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), the defendant moved to suppress marijuana found in his car because the misdemeanor arrest warrant which provided the basis for his detention was dismissed. While the Court acknowledged that the warrant had been dismissed, that information had not been entered into the court database.

Testimony at the trial court level revealed this omission occurred once every three or four years. Holding that exclusion of the marijuana would not further the remedial purposes of the Exclusionary Rule, the Court provided an illustration of when exclusion remained necessary. When there is evidence suggesting ignorance or subversion of the Fourth Amendment, the extreme sanction of exclusion is required. *Id.* at 11, 115 S.Ct. 1185. We have that here.

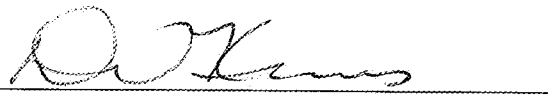
In *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009), the defendant moved to suppress drugs and a gun found in a search incident to an arrest. After the search, it was revealed that the arrest warrant had been recalled months earlier, though the information was not entered into the court database. Once again, the Court found that the remedial purpose of exclusion was not served in this case. However the Court did say that the deterrent purpose of the Exclusionary Rule is clearly served when the police conduct is "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Id.* at 144, 129 S.Ct. 695. We have deliberate, reckless, and grossly negligent conduct here, coupled with recurring and systemic negligence.

Conclusion

The arrest warrants in this case were invalid. That is a legal certainty, and exclusion is required. The unequivocal language of *Leon* precludes application of the good faith exception to exclusion. The warrants here were not issued by a detached and neutral magistrate. It necessarily follows that the issuing deputy clerk wholly abandoned her judicial role. Furthermore, the complaints provide no basis for a finding of probable cause, even if a finding had been attempted. All of these deficiencies are obvious to a reasonable law enforcement officer. The

record before this Court clearly supports Mr. Hoffman's proposition of law: there can be no good faith reliance on the validity of an arrest warrant issued without a magisterial finding of probable cause.

Respectfully Submitted,



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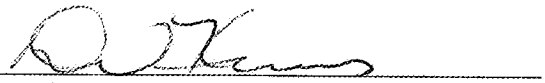
Certification

This shall certify that a copy of the forgoing was sent by regular U.S. mail addressed to 700 Adams Street, Toledo, Ohio 43604, and email transmission to Ejarrett@co.lucas.oh.us on this 23rd day of November 2013, to Ms. Evy Jarrett and Mr. Frank Spryzak, Assistant Lucas County Prosecuting Attorneys, PH: 1-419-213-4700, FX: 1-419-213-4595.



David Klucas

APPENDIX

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

APPELLEE,

13-0688

vs.

HOFFMAN,

APPELLANT.

On Appeal from the Lucas County Court of Appeals, Sixth Appellate District

Court of Appeals Case No. L-12-1262

NOTICE OF APPEAL OF APPELLANT BRANDON HOFFMAN

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FILED
MAY 03 2013
CLERK OF COURT
SUPREME COURT OF OHIO

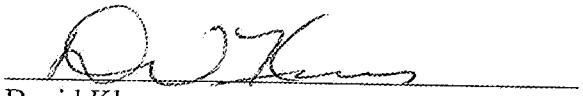
Notice of Appeal of Appellant Brandon Hoffman

Appellant Brandon Hoffman gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. L-12-1262 on 22 March 2013. A copy of the Decision and Judgment is attached to this Notice of Appeal.

This case involves a felony, raises a substantial constitutional question, and is one of public or great general interest.

Copies of prior judgment entries appointing counsel for Mr. Hoffman are attached.

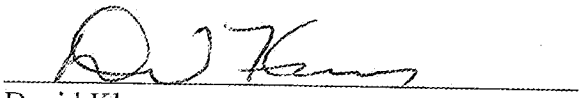
Respectfully Submitted,



David Klucas
Attorney for Appellant,
Brandon Hoffman

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by email transmission to counsel for the appellee, Ms. Evy M. Jarrett, Assistant Lucas County Prosecuting Attorneys, Ejarrett@co.lucas.oh.us, 700 Adams Street, Toledo, OH 43604 on May 28, 2013.



David Klucas
Counsel for Appellant,
Brandon Hoffman

FILED
COURT OF APPEALS
2013 MAR 22 A 8:04
COMMON PLEAS COURT
BERNIE QUINTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Appellee

v.

Brandon Lee Hoffman

Appellant

Court of Appeals No. L-12-1262

Trial Court No. CR0201102970

DECISION AND JUDGMENT

Decided: MAR 22 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, Frank H. Spryszak and Evy M. Jarrett, Assistant Prosecuting Attorneys, for appellee.

David Klucas, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which denied appellant, Brandon Hoffman's, motion to suppress. For the reasons set forth below, this court affirms the judgment of the trial court.

E-JOURNALIZED
MAR 22 2013

{¶ 2} Appellant presents one assignment of error:

The trial court committed reversible error when it denied Mr. Hoffman's motion to suppress. (R. 63)

{¶ 3} On December 6, 2011, appellant was indicted for aggravated murder and aggravated robbery. Appellant filed a motion to suppress arguing that his arrest was illegal. A suppression hearing commenced on June 8, 2012.

{¶ 4} Toledo police officer, Alexander Schaller, testified that he was on duty on November 26, 2011, when he was dispatched to a residence on Lorain Street in Toledo, Ohio. Specifically, a concerned neighbor had reported that a man was lying on the floor in his locked house. The fire department unlocked the house for Schaller and his fellow officers. Inside, they found the body of Scott Holzhauer, who appeared to have been beaten to death. A crow bar was impaled in his skull. Schaller testified that he interviewed two of Holzhauer's neighbors who indicated that a man named "Brandon" had recently visited Holzhauer at his home, and that "Brandon" had recently borrowed a crow bar from Holzhauer. One of the neighbors gave Schaller a description of "Brandon."

{¶ 5} Toledo police detective Jeffery Clark testified that upon entering Holzhauer's home, he noticed an empty gun safe. A friend of Holzhauer's told Clark that Holzhauer had recently considered selling a gun to someone named "Brandon." Clark learned that "Brandon" used to live across the street from Holzhauer. When investigators entered that address into their computer, they found that Brandon Hoffman used to live

across the street. The computer also indicated that Hoffman had three active warrants for misdemeanor offenses.

{¶ 6} Clark testified that Hoffman was now considered to be "a strong person of interest" in the death of Holzhauer. Police were sent to Hoffman's current address to arrest appellant for the active warrants. Though police obviously wanted to talk to Hoffman regarding Holzhauer's death, Clark testified that they were not yet ready to arrest him for aggravated murder.

{¶ 7} When police arrived at Hoffman's residence, they could see Hoffman inside, through a window. A man opened the door for the officers and they immediately arrested Hoffman for the outstanding warrants. During his arrest, Hoffman was found to be concealing a .45 caliber handgun, later determined to be Holzhauer's property, and Holzhauer's cell phone was found in close proximity to Hoffman. He was ultimately arrested for the aggravated murder of Holzhauer.

{¶ 8} Hoffman's sole assignment of error centers around the validity of the misdemeanor warrants which he claims led police to his location. Specifically, Hoffman contends that the warrants lacked probable cause, and thus, were invalid, thereby undermining the legitimacy of the evidence collected when he was arrested and all other evidence subsequently collected against him.

{¶ 9} An appellate review of a ruling on a motion to suppress evidence presents mixed questions of law and fact. *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir.1992); *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998).

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>
> 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.

{¶ 11} The authority issuing the warrant must judge for herself the persuasiveness of the facts relied upon by the officer-complainant to establish probable cause and should not accept without question the officer's mere conclusion that the person sought to be arrested committed the crime. *State v. Jones*, 7th Dist. No. 11 MA 60, 2012-Ohio-1301, ¶ 3. A neutral and detached judicial officer, such as a deputy clerk, but not a police officer, is the party with the final obligation to independently determine that there is probable cause to issue an arrest warrant. *Id.* "In other words, the issuing authority is not a rubber-stamp for the police. Thus, the document serving as the affidavit must disclose the complainant's grounds for believing the defendant committed the offense." *Id.*

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{¶ 13} The three warrants at issue in this case, for theft, criminal damaging and house stripping respectively, read as follows:

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>
> The defendant did remove, dismantle siding, gutters, downspouts to a house at 337 Chapin Toledo Ohio 43609, this act caused substantial damage to the property. This was without the authorization of the owner/victim Lamarr (sic) Pittmon, City of Toledo Lucas County.
>
> The defendant did, without permission or authorization from victim/owner Lamar Pittman, take/remove siding, downspouts and gutters from 337 Chapin Toledo, Ohio 43609 on or about 10/25 City of Toledo Lucas County.

{¶ 14} All three complaints fail to list the source of the information or otherwise state why the complainant thought Hoffman committed the violations. They were not accompanied by any affidavits. The complaints contain only the conclusion that Hoffman committed the violations. Also admitted into evidence was a procedural document Toledo Municipal Court deputy clerks use when issuing warrants. Nowhere in the document are the clerks instructed about making a finding of probable cause.

{¶ 15} At the suppression hearing, the deputy clerk of the Toledo Municipal Court who signed and issued the three arrest warrants testified that she never asks officers

seeking warrants why they believe that the subject of the warrant was the person who in fact committed the offense. She specifically testified, regarding the warrants in this case, that she made no probable cause determination. When asked by defense counsel whether or not she even knew what probable cause was, she replied, "no, I don't."

{¶ 16} By the deputy clerk's own admission, the misdemeanor warrants at issue in this case were issued without a probable cause determination and therefore, they are invalid.

{¶ 17} But beyond that, it has long been held, and we agree, that a mere recitation of the statutory elements of the crime is not sufficient to support a finding that probable cause exists. *Giordenello v. United States*, 357 U.S. 480, 485, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958); *see also State v. Sharp*, 109 Ohio App.3d 757, 760, 673 N.E.2d 163 (12th Dist.1996); *State v. Zinkiewicz*, 67 Ohio App.3d 99, 108, 585 N.E.2d 1007 (2d Dist.1990). Such "bare-bones" complaints are invalid. *City of Centerville v. Reno*, 2d Dist. No. 19687, 2003-Ohio-3779, ¶ 25, *State v. Rodriguez*, 64 Ohio App.3d 183, 187, 580 N.E.2d 1127 (6th Dist.1989).

{¶ 18} In reaching this conclusion, we are mindful of this court's decision in *State v. Overton,* 6th Dist. No. L-99-1317, 2000 WL 1232422 (Sept. 1, 2000). In *Overton*, an arrest warrant was found valid despite the fact that the complaint merely recited the statutory elements of a crime and contained no information indicating the officer saw the crime committed or that the officer was informed by someone else that the subject of the warrant committed the crime. The United States Supreme Court denied writ of certiorari.

Overton v. Ohio, 534 U.S. 982, 122 S.Ct. 389, 151 L.Ed.2d 317 (2001). Justice Breyer, joined with three other justices, issued a compelling statement respecting the denial of the petition for writ of certiorari.

> This "complaint" sets forth the relevant crime in general terms, it refers to Overton, and it says she committed the crime. But nowhere does it indicate how Detective Woodson knows, or why he believes, that Overton committed the crime. This Court has previously made clear that affidavits or complaints of this kind do not provide sufficient support for the issuance of an arrest warrant. * * * I consequently conclude that the city of Toledo clearly violated the Fourth Amendment warrant requirement. * * * I realize that we cannot act as a court of simple error correction and that the unpublished intermediate court decision below lacks significant value as precedent. Nonetheless, the matter has a general aspect. The highlighted print on the complaint * * * offers some support for Overton's claims that the "complaint" is a form that the police filled in with her name and address. And that fact, if true, helps to support her claim that her case is not unique. That possibility, along with the clarity of the constitutional error, convinces me that the appropriate disposition of this case is a summary reversal.

{¶ 19} To the extent that *Overton* is inconsistent with our decision announced today, we hereby overrule *Overton*.

{¶ 20} Our analysis, however, does not end there. "The exclusionary rule operates to exclude evidence obtained by the government in violation of the United States Constitution." *State v. Helton*, 160 Ohio App.3d 291, 2005-Ohio-1789, 826 N.E.2d 925, ¶ 14 (11th Dist.). "The purpose of this rule is to deter police misconduct." *Id.* "The exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, but also evidence that is subsequently discovered and derivative of that prior illegality." *State v. McLemore*, 197 Ohio App.3d 726, 2012-Ohio-521, 968 N.E.2d 612, ¶ 20 (2d Dist.). Thus: "[t]he derivative-evidence rule, or fruit-of-the-poisonous-tree doctrine as it is widely known, requires suppression of evidence that was seized in a seemingly lawful manner but about which police learned because of a prior constitutional violation such as an illegal search or seizure." *Id.*

{¶ 21} Appellant contends that police obtained Hoffman's current address from the active misdemeanor warrants. Once they arrived at the residence to execute the arrest warrants, warrants we have determined above were invalid; they found evidence incriminating Hoffman in the murder of Holzhauer. Therefore, because the evidence was obtained by an illegal arrest, the evidence against Hoffman in this case must be suppressed unless an exception to the exclusionary rule applies.

{¶ 22} The exclusionary rule does not apply to evidence police obtain in good faith in reliance on the validity of a warrant. *See State v. Palinkas*, 8th Dist. No. 86247, 2006-Ohio-2083, ¶ 9. Under the good faith exception, we are to uphold searches when police reasonably and in good faith relied upon a warrant subsequently declared to be

invalid, because excluding evidence under such circumstances would not deter police misconduct. *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); *State v. Wilmoth*, 22 Ohio St.3d 251, 490 N.E.2d 1236 (1986).

{¶ 23} The exclusionary rule is not a personal right or a means to redress constitutional injury; rather, it is used to deter future violations. *Davis v. United States*, __ U.S. __, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). Deterrence alone is insufficient to justify the exclusionary rule, because the benefits of deterrence must outweigh the costs of excluded evidence, such as "letting guilty and possibly dangerous defendants go free." *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009). In keeping with this principle, the exclusionary rule generally applies where police exhibit "'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights, * * *" but not "when the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful." *Davis*, 131 S.Ct. at 2427. Finally, if the police conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot "pay its way." *Id.* at 2427-2428, citing *United States v. Leon*, *supra*.

{¶ 24} Officer Schaller testified that a neighbor of Holzhauer's mentioned that someone named "Brandon" had recently been to Holzhauer's residence to purchase a gun. The neighbor gave Schaller a detailed description of "Brandon," including the fact that "Brandon" had facial tattoos. Soon after, Schaller testified he was called to meet a police sergeant at another location. It was there that he received Brandon Hoffman's

information, though he did not specify what kind of information he was given. He then pulled up Brandon Hoffman's picture from his vehicle computer. He testified that when he looked at the picture and saw that the person's first name was Brandon, he thought Brandon Hoffman was someone the police needed to talk to regarding the murder. He did acknowledge, however, he headed to Hoffman's address to serve the outstanding misdemeanor warrants.

{¶ 25} Detective Clark also was given the name "Brandon" by a second source at the crime scene. Clark learned from the neighbors that "Brandon" used to live across the street. Clark testified that he contacted the Police Investigative Services, back at the police station, and gave them "Brandon's" old address. He testified that someone at Investigative Services "did some computer work" and found a Brandon Hoffman linked to the address across the street. Investigative Services also told Clark that Brandon Hoffman had three active warrants. Investigative services gave Clark the address that also happened to appear on the warrants, the address where Hoffman was ultimately arrested. When asked, on redirect, whether or not the only way the police could have determined Hoffman's last known address was through the active warrant's, Clark responded "[N]o. * * * it could have been from other information."

{¶ 26} In addition to the officers who testified, there were approximately ten officers involved in this case. Much information was exchanged. The officers in this case were investigating a brutal murder and they were aware that some of the guns belonging to the victim appeared to be missing. Armed with some information they

received from the victim's neighbors, information exchange among the officers at the scene as well information from officers back at the police station, the police were led to Hoffman's residence. None of the officers testified that they read the warrants. They merely testified they knew of the active warrants and they knew Hoffman's current address. Minimal time elapsed between the discovery of the victim and Hoffman's arrest. Both Schaller and Clark testified they were concerned from a public safety standpoint as there was a recent murder and missing guns.

{¶ 27} In determining whether the exclusionary rule applies to exclude evidence obtained through an invalid warrant, the court first must determine the deterrent value of excluding evidence toward the achievement of Fourth Amendment aims and secondly, the court must weigh the social costs of exclusion. *Id.*

{¶ 28} As discussed above, it was not shown with any degree of certainty that the officers obtained Hoffman's current address from the warrants. What was shown was that the officers knew Hoffman's current address and they knew he had outstanding warrants. This information was relayed to them through sources in their own department, the type of information relied upon daily by police officers. They had no reason to doubt the validity of the warrants and thus, they acted in good faith based on the information available to them at the time. Suppressing evidence under the facts in this case would not serve to deter deliberate, reckless or illegal conduct on the part of police officers.

{¶ 29} Accordingly, the arrest of Hoffman in this case was lawful. Because the arrest of Hoffman was lawful, the items recovered from Hoffman's person and his residence are admissible. Appellant's sole assignment of error is found not well-taken.

{¶ 30} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. JUDGE

Arlene Singer, P.J. JUDGE

Thomas J. Osowik, J. JUDGE
CONCUR.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.

SCANNED

FILED
LUCAS COUNTY
2011 DEC 14 P 3: 05
COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO Plaintiff.	*	CASE NO: G-4801-CR-0201102970-000
v.	*	ORDER
BRANDON LEE HOFFMAN Defendant.	*	JUDGE JAMES D. JENSEN

* * * * * * *

December 14, 2011. Court Reporter Mays, Assistant Prosecutor Bruce Sorg, and Defendant, BRANDON LEE HOFFMAN present in court.

Indigency hearing held. Defendant notified of application fee for appointment of counsel. DAVID L. KLUCAS appointed as counsel. Counsel present and arraignment held.

Defendant acknowledged receipt of a copy of the indictment, waived any defects as to time, place or manner of service, and waived its reading in open Court. Defendant entered a plea of Not Guilty

Matter set for pre-trial on January 18, 2012 at 8:30a.m. Motion for Investigative Assistance (motion 1) is granted. See Order.

Bond hearing held. Bond ordered set at 1 million. Defendant waived time constraints in writing and in open court.

JUDGE JAMES D. JENSEN

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LUCAS COUNTY

2012 SEP -6 P 1:22

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

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v.	*	JUDGMENT ENTRY
BRANDON LEE HOFFMAN Defendant.	*	JUDGE JAMES D. JENSEN

* * * * * * *

September 05, 2012. Court Reporter JANET TERRY, Assistant Prosecutor BRUCE SORG, DAVID L. KLUCAS on behalf of the Defendant, and Defendant BRANDON LEE HOFFMAN present in court.

Defendant, in open Court, withdrew previous plea of not guilty, orally and in writing, waived all constitutional rights, and entered plea of No Contest to offense of Aggravated Murder in violation of R.C. 2903.01(B)&(F) an unclassified felony as to count 1, as well as No Contest to the offense of Aggravated Robbery in violation of R.C. 2911.01(A)(3) a felony of the 1st degree as to count 2.

Plea accepted. Defendant found guilty. Written plea and journal entry ordered filed.

Exhibits submitted by the State of Ohio admitted into evidence with objection by the defendant.

Defendant and State waived any rights to a presentence investigation and report. Matter proceeded to sentence.

Pursuant to Crim. R. 32, all individuals afforded opportunity to be heard. Sentencing hearing held pursuant to R.C. 2929.19. Court considered the record, oral statements, any victim impact statement, as well as principles and purposes of sentencing under R.C. 2929.11 balancing seriousness and recidivism factors under R.C. 2929.12.

Defendant ordered to serve Life without parole in the Ohio Department of Rehabilitation and Corrections as to count 1of which is a mandatory prison term pursuant to R.C. 2929.03(A)(1)(a) and 2929.13(F); 11 years in the Ohio Department of Rehabilitations and

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SEP SSN 2012

Corrections as to count 2 to be served concurrently with count 1.

Defendant notified that under federal law 18 USC 922(g) and state law, as a result of a felony conviction or a misdemeanor offense of violence conviction against a family or household member, defendant shall never be able to ship, use, receive, purchase, own, transport, or otherwise possess a firearm or ammunition and violation is punishable as a felony offense.

It is further ORDERED the defendant is subject to 5 years mandatory post-release control as to count 2 after the defendant's release from imprisonment pursuant to R.C. 2967.28 and 2929.14.

Defendant given notice of appellate rights under R.C. 2953.08. Defendant notified of 5 years mandatory post-release control as to count 2.

Defendant notified that if post release control conditions are violated the adult parole authority or parole board may impose a more restrictive or longer control sanction or return a defendant to prison for up to nine months for each violation, up to a maximum of 50% of the stated term originally imposed. Defendant further notified that if the violation of post release control conditions is a new felony, a defendant may be both returned to prison for the greater of one year or the time remaining on post release control, plus receive a prison term for the new felony.

Defendant granted credit for 274 days up to and including this sentencing date and granted credit for all additional in-custody days while awaiting transportation to the appropriate institution.

Defendant found to have, or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, assigned counsel, and prosecution as authorized by law. Defendant ordered to reimburse the State of Ohio and Lucas County for such costs. This order of reimbursement is a judgment enforceable pursuant to law by the parties in whose favor it is entered. Defendant further ordered to pay the cost assessed pursuant to R.C. 9.92(C), 2929.18 and 2951.021. Notification pursuant to R.C. 2947.23 given.

David Klucas appointed as counsel for appeal purposes.

Defendant ordered remanded into custody of Lucas County Sheriff for immediate transportation to appropriate state institution.

JUDGE JAMES D. JENSEN

FILED
COURT OF APPEALS
2013 MAR 22 A 8:04
COMMON PLEAS COURT
BERNIE QUINTER
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Appellant

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Trial Court No. CR0201102970

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>
> The defendant did remove, dismantle siding, gutters, downspouts to a house at 337 Chapin Toledo Ohio 43609, this act caused substantial damage to the property. This was without the authorization of the owner/victim Lamarr (sic) Pittmon, City of Toledo Lucas County.
>
> The defendant did, without permission or authorization from victim/owner Lamar Pittman, take/remove siding, downspouts and gutters from 337 Chapin Toledo, Ohio 43609 on or about 10/25 City of Toledo Lucas County.

{¶ 14} All three complaints fail to list the source of the information or otherwise state why the complainant thought Hoffman committed the violations. They were not accompanied by any affidavits. The complaints contain only the conclusion that Hoffman committed the violations. Also admitted into evidence was a procedural document Toledo Municipal Court deputy clerks use when issuing warrants. Nowhere in the document are the clerks instructed about making a finding of probable cause.

{¶ 15} At the suppression hearing, the deputy clerk of the Toledo Municipal Court who signed and issued the three arrest warrants testified that she never asks officers

seeking warrants why they believe that the subject of the warrant was the person who in fact committed the offense. She specifically testified, regarding the warrants in this case, that she made no probable cause determination. When asked by defense counsel whether or not she even knew what probable cause was, she replied, "no, I don't."

{¶ 16} By the deputy clerk's own admission, the misdemeanor warrants at issue in this case were issued without a probable cause determination and therefore, they are invalid.

{¶ 17} But beyond that, it has long been held, and we agree, that a mere recitation of the statutory elements of the crime is not sufficient to support a finding that probable cause exists. *Giordenello v. United States*, 357 U.S. 480, 485, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958); *see also State v. Sharp*, 109 Ohio App.3d 757, 760, 673 N.E.2d 163 (12th Dist.1996); *State v. Zinkiewicz*, 67 Ohio App.3d 99, 108, 585 N.E.2d 1007 (2d Dist.1990). Such "bare-bones" complaints are invalid. *City of Centerville v. Reno*, 2d Dist. No. 19687, 2003-Ohio-3779, ¶ 25, *State v. Rodriguez*, 64 Ohio App.3d 183, 187, 580 N.E.2d 1127 (6th Dist.1989).

{¶ 18} In reaching this conclusion, we are mindful of this court's decision in *State v. Overton,* 6th Dist. No. L-99-1317, 2000 WL 1232422 (Sept. 1, 2000). In *Overton*, an arrest warrant was found valid despite the fact that the complaint merely recited the statutory elements of a crime and contained no information indicating the officer saw the crime committed or that the officer was informed by someone else that the subject of the warrant committed the crime. The United States Supreme Court denied writ of certiorari.

Overton v. Ohio, 534 U.S. 982, 122 S.Ct. 389, 151 L.Ed.2d 317 (2001). Justice Breyer, joined with three other justices, issued a compelling statement respecting the denial of the petition for writ of certiorari.

> This "complaint" sets forth the relevant crime in general terms, it refers to Overton, and it says she committed the crime. But nowhere does it indicate how Detective Woodson knows, or why he believes, that Overton committed the crime. This Court has previously made clear that affidavits or complaints of this kind do not provide sufficient support for the issuance of an arrest warrant. * * * I consequently conclude that the city of Toledo clearly violated the Fourth Amendment warrant requirement. * * * I realize that we cannot act as a court of simple error correction and that the unpublished intermediate court decision below lacks significant value as precedent. Nonetheless, the matter has a general aspect. The highlighted print on the complaint * * * offers some support for Overton's claims that the "complaint" is a form that the police filled in with her name and address. And that fact, if true, helps to support her claim that her case is not unique. That possibility, along with the clarity of the constitutional error, convinces me that the appropriate disposition of this case is a summary reversal.

{¶ 19} To the extent that *Overton* is inconsistent with our decision announced today, we hereby overrule *Overton*.

{¶ 20} Our analysis, however, does not end there. "The exclusionary rule operates to exclude evidence obtained by the government in violation of the United States Constitution." *State v. Helton*, 160 Ohio App.3d 291, 2005-Ohio-1789, 826 N.E.2d 925, ¶ 14 (11th Dist.). "The purpose of this rule is to deter police misconduct." *Id.* "The exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, but also evidence that is subsequently discovered and derivative of that prior illegality." *State v. McLemore*, 197 Ohio App.3d 726, 2012-Ohio-521, 968 N.E.2d 612, ¶ 20 (2d Dist.). Thus: "[t]he derivative-evidence rule, or fruit-of-the-poisonous-tree doctrine as it is widely known, requires suppression of evidence that was seized in a seemingly lawful manner but about which police learned because of a prior constitutional violation such as an illegal search or seizure." *Id.*

{¶ 21} Appellant contends that police obtained Hoffman's current address from the active misdemeanor warrants. Once they arrived at the residence to execute the arrest warrants, warrants we have determined above were invalid; they found evidence incriminating Hoffman in the murder of Holzhauer. Therefore, because the evidence was obtained by an illegal arrest, the evidence against Hoffman in this case must be suppressed unless an exception to the exclusionary rule applies.

{¶ 22} The exclusionary rule does not apply to evidence police obtain in good faith in reliance on the validity of a warrant. *See State v. Palinkas*, 8th Dist. No. 86247, 2006-Ohio-2083, ¶ 9. Under the good faith exception, we are to uphold searches when police reasonably and in good faith relied upon a warrant subsequently declared to be

invalid, because excluding evidence under such circumstances would not deter police misconduct. *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); *State v. Wilmoth*, 22 Ohio St.3d 251, 490 N.E.2d 1236 (1986).

{¶ 23} The exclusionary rule is not a personal right or a means to redress constitutional injury; rather, it is used to deter future violations. *Davis v. United States*, __ U.S. __, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). Deterrence alone is insufficient to justify the exclusionary rule, because the benefits of deterrence must outweigh the costs of excluded evidence, such as "letting guilty and possibly dangerous defendants go free." *Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009). In keeping with this principle, the exclusionary rule generally applies where police exhibit "'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights, * * *" but not "when the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful." *Davis*, 131 S.Ct. at 2427. Finally, if the police conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot "pay its way." *Id.* at 2427-2428, citing *United States v. Leon*, *supra*.

{¶ 24} Officer Schaller testified that a neighbor of Holzhauer's mentioned that someone named "Brandon" had recently been to Holzhauer's residence to purchase a gun. The neighbor gave Schaller a detailed description of "Brandon," including the fact that "Brandon" had facial tattoos. Soon after, Schaller testified he was called to meet a police sergeant at another location. It was there that he received Brandon Hoffman's

information, though he did not specify what kind of information he was given. He then pulled up Brandon Hoffman's picture from his vehicle computer. He testified that when he looked at the picture and saw that the person's first name was Brandon, he thought Brandon Hoffman was someone the police needed to talk to regarding the murder. He did acknowledge, however, he headed to Hoffman's address to serve the outstanding misdemeanor warrants.

{¶ 25} Detective Clark also was given the name "Brandon" by a second source at the crime scene. Clark learned from the neighbors that "Brandon" used to live across the street. Clark testified that he contacted the Police Investigative Services, back at the police station, and gave them "Brandon's" old address. He testified that someone at Investigative Services "did some computer work" and found a Brandon Hoffman linked to the address across the street. Investigative Services also told Clark that Brandon Hoffman had three active warrants. Investigative services gave Clark the address that also happened to appear on the warrants, the address where Hoffman was ultimately arrested. When asked, on redirect, whether or not the only way the police could have determined Hoffman's last known address was through the active warrant's, Clark responded "[N]o. * * * it could have been from other information."

{¶ 26} In addition to the officers who testified, there were approximately ten officers involved in this case. Much information was exchanged. The officers in this case were investigating a brutal murder and they were aware that some of the guns belonging to the victim appeared to be missing. Armed with some information they

received from the victim's neighbors, information exchange among the officers at the scene as well information from officers back at the police station, the police were led to Hoffman's residence. None of the officers testified that they read the warrants. They merely testified they knew of the active warrants and they knew Hoffman's current address. Minimal time elapsed between the discovery of the victim and Hoffman's arrest. Both Schaller and Clark testified they were concerned from a public safety standpoint as there was a recent murder and missing guns.

{¶ 27} In determining whether the exclusionary rule applies to exclude evidence obtained through an invalid warrant, the court first must determine the deterrent value of excluding evidence toward the achievement of Fourth Amendment aims and secondly, the court must weigh the social costs of exclusion. *Id.*

{¶ 28} As discussed above, it was not shown with any degree of certainty that the officers obtained Hoffman's current address from the warrants. What was shown was that the officers knew Hoffman's current address and they knew he had outstanding warrants. This information was relayed to them through sources in their own department, the type of information relied upon daily by police officers. They had no reason to doubt the validity of the warrants and thus, they acted in good faith based on the information available to them at the time. Suppressing evidence under the facts in this case would not serve to deter deliberate, reckless or illegal conduct on the part of police officers.

{¶ 29} Accordingly, the arrest of Hoffman in this case was lawful. Because the arrest of Hoffman was lawful, the items recovered from Hoffman's person and his residence are admissible. Appellant's sole assignment of error is found not well-taken.

{¶ 30} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. JUDGE

Arlene Singer, P.J. JUDGE

Thomas J. Osowik, J. JUDGE
CONCUR.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.

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LUCAS COUNTY

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COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

State of Ohio,	*	Case No. CR 11-2970
Plaintiff,	*	Judge James D. Jensen
-vs-	*	OPINION AND JUDGMENT ENTRY
Brandon L. Hoffman,	*	
Defendant.	*	

This matter comes before the Court upon a motion to suppress evidence filed by Defendant Brandon L. Hoffman pursuant to Crim.R. 12(B)(3). Upon consideration of the memoranda of counsel and applicable law, this Court finds Defendant's motion not well-taken and it is denied.

I. Finding of Facts

In October of 2011, Police Detective Kim Violanti was ordered to investigate a report of breaking and entering at a vacant house on Chapin Street in Toledo, Lucas County, Ohio. After interviewing the owner of the house and two eye witnesses, Detective Violanti suspected a Chapin Street resident, Brandon Hoffman, of committing several misdemeanor offences.

Detective Violanti prepared criminal complaints for the misdemeanor offences. The complaints contained the suspect's name, address, date of birth, physical description, RID

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number,[1] partial social security number, charges, classifications, and the Detective's name and address. The complaints contained no reference to the evidence collected and contained no suggestion that the information came from personal knowledge or knowledge gained from an informant or citizen. In her complaint for house stripping the detective stated:

> The defendant did, without permission or authorization from victim/Owner Lamar Pittmon, take/remove siding, downspouts and gutters from 337 Chapin Toledo, Ohio 43609 on or about 10/25/11 City of Toledo Lucas County.[2]

In her complaint for criminal damaging the detective stated:

> The defendant did remove, dismantled siding, gutters, downspouts to a house at 337 Chapin Toledo Ohio 43609, this act caused substantial damage to the property. This was without the authorization of the owner/victim Lamarr Pitmon. City of Toledo Lucas County.[3]

In her complaint for theft the detective stated:

> The defendant did take, without the consent of the owner Lamarr Pitmon, take siding, downspouts and gutters from the victims rental property at 377 Chapin Toledo, Ohio 43609 City of Toledo, Lucas County.[4]

In the top, right corner of the theft and house stripping complaints are the words "WARRANT TO ISSUE." The word "WARRANT" is printed on the top, right corner of the criminal damaging complaint.

Detective Violanti presented the three complaints to a Deputy Clerk of the Toledo Municipal Court. Upon presentment, the Deputy Clerk followed the "General Procedure" for

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[1] A RID number is a number assigned to a suspect when they "get into the court system." Hrg. Tr. 23:21-25 (June 8, 2012).

[2] Hrg. Tr. Exhibit C.

[3] Hrg. Tr. Exhibit B.

[4] Hrg. Tr. Exhibit A.

"Swearing in Affidavits."[5] Thereafter, the Deputy Clerk administered the following oath: "Do you swear that the statements made in this affidavit are true and is that your true and legal signature." The Deputy Clerk asked no questions of the Detective about the source or basis of her information[6] and made no finding of probable cause.[7]

Once the Deputy Clerk signed the complaint, the warrants were entered into the system as "active warrants."[8]

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[5] See Hrg. Tr. Exhibit D, is dated March 3, 2009, and is entitled "General Procedure." The "RE:" line is entitled "Swearing in Affidavits." Paragraph one provides:

> When an officer or complainant brings an affidavit to the counter, you should quickly look over the affidavit for the following items:
>
> • type of affidavit (In Custody, Open Warrant or Summons to Issue)
> • Name and address of defendant
> • Code source is checked (TMC or ORC)
> • RB No. (mostly used by TPD)
> • Code No. (the violation number such as 537.19A, etc.)
> • Charge (violation description such as Domestic Violence)
> • Classification (such as M-2)
> • Offense Date
> • Description of the incident
> • Signature of the officer or complainant * * *.
>
> If the officer or complainant is filing the affidavit at the counter, you may let him or her know if something is missing as a courtesy. Once the affidavit is clerked in, it cannot be altered. This means you cannot call an officer to come back if something is missing. You also must accept all affidavits even if they are not complete.

[6] Hrg. Tr. 33:10-20, 35:11-19, 36:12-38:1, 93:22-25.

[7] The Deputy Clerk testified that she did not know what the phrase "probable cause" means and that while she does go thru training for her job at Toledo Municipal Court, she was never trained to make a probable cause determination. Hrg. Tr. 94:7-25. See also Hrg. Tr. 95:14-97:25.

[8] Hrg. Tr. 98:3-11.

On November 26, 2011, the body of Scott Holzhauer was found in his living room at 842 Lorain Street, Toledo, Lucas County, Ohio. A crowbar was embedded in Mr. Holzhauer's head. Holzhauer's gun safe was ajar and empty. Toledo Police initiated a homicide investigation. Preliminary information suggested Brandon Hoffman as a "strong person of interest."[9]

Police did not have probable cause to arrest Hoffman for Holzhauer's death, but they were interested in speaking with him. A search on NORIS revealed the three misdemeanor warrants out of Toledo Municipal Court and identified Hoffman's last known residential address as 333 Chapin Street.

During the early morning hours of November 27, 2011, several police units were dispatched to the Chapin Street residence. Through a window, police were able to see an individual fitting Hoffman's description lying on the floor watching television. After knocking on the door, police were granted access to the home by one of its occupants. The warrants were served and Hoffman was arrested. Incident to his arrest, a search revealed a gun linking Hoffman to the crime on Lorain Street. Hoffman was taken to the Safety Building and questioned by detectives about the death of Scott Holzhauer.

On December 6, 2011, Brandon Hoffman was indicted on one count of aggravated murder in violation of R.C. 2903.01(B) and (F), and one count of aggravated robbery in violation of R.C. 2911.01(A)(3). On April 25, 2012, Hoffman filed a motion to suppress the physical evidence obtained in the search incident to his arrest on the misdemeanor warrants. The State filed a memorandum in opposition to Defendant's motion on May 2, 2012. Hoffman filed a

[9] Hrg. Tr. 55:11-13.

supplement to his motion on June 7, 2012. One day later, the State filed a response. A hearing was held on June 8, 2012. Hoffman filed supplemental briefs on June 21, 2012, and July 10, 2012. The State filed a supplement response on July 3, 2012. A second, supplemental hearing was held on Friday, August 24, 2012.

II. Discussion and Conclusions of Law

In his motion, Defendant Hoffman contends that the Toledo Municipal Court's misdemeanor arrest warrants were invalid because they did not comply with Crim.R. 4(A)(1). Defendant further contends that evidence seized incident to his arrest on the invalid warrants must be suppressed. Defendant maintains the requested relief is necessary to preserve his rights under the Fourth[10] and Fourteenth[11] Amendments to the United States Constitution and Section 14, Article I of the Ohio Constitution.[12]

Criminal Rule 4(A)(1) states, in part, as follows:

> 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

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[10] The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[11] Sec. 1 of the Fourteenth Amendment to the United States Constitution provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due proc[redacted] nor deny to any person within its jurisdiction the equal protection of the laws."

[12] The Ohio Supreme Court has noted that the language of Section 14, Article I of the Ohio Constitution is virtually identical to the language of the Fourth Amendment and has held that in felony cases, the protection afforded defendants under those provisions is identical. *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, at footnote one.

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.

It has long been held that "[a] defendant has a constitutional right to a finding of probable cause before a warrant or summons is issued for him to answer." *City of Centerville v. Reno*, Case No. 19687, 2003-Ohio-3779, at ¶16 (2d Dist.), citing *Giordenello v. United States*, 357 U.S. 480, 78 S.Ct. 1245(1958). "Probable cause" is defined as "[a] reasonable ground to suspect that a person has committed or is committing a crime." *State ex rel. Portage Lakes Edn. Assn., OEA/NEA v. State Emp. Relations Bd.*, 95 Ohio St.3d 533, 2002-Ohio-2839, 769 N.E.2d 853, ¶37, quoting Black's Law Dictionary (7th Ed.1999) 1219.

The State, in response to Defendant's motion, asserts this Court is bound by the precedent established by the Sixth District Court of Appeals in *State v. Overton*, 6th Dist. No. L-99-1317 (Sept. 1, 2000), wherein the majority held that a general affidavit was sufficient to meet the requirements of Crim.R. 4(A)(1) and the Fourth Amendment. The complaint presented to the issuing authority in *Overton* was identical in form and substance to the complaint presented here. The *Overton* complaint reads:

Complainant being duly sworn states that Desarie Overton defendant at Toledo, Lucas County, Ohio on or about July 10, 1998 did violate ORC#2925.13 constituting a charge of permitting drug abuse in that the defendant, being the owner , lessee, or occupant of certain premises, did knowingly permit such premises to be used for the commission of a

felony drug abuse offense, to wit: Desarie Overton being the lessee, owner, or occupant of 620 Belmont, Toledo, Ohio 43607 knowlingly permitted Cocaine, a schedule two controlled substance to be sold and possessed by the occupants, there, both being in violation of the Ohio Revised code, a felony drug abuse offense. This offense occurred in Toledo, Lucas County, Ohio.

As pointed out by Judge Sherck in his *Overton* dissent:

> [T]he only document before the deputy clerk who issued the arrest warrant was a complaint which does nothing more than recite the statutory elements of R.C. 2925.13(B). The officer making the complaint does not aver that he observed the illegal activity or by whom he was informed of such illegal activity.

Id. This Court respectfully disagrees with the majority decision in *Overton* and agrees with Judge Sherck's conclusion that the arrest warrant was issued in violation of the Fourteenth Amendment. Id.

Overton appealed the Sixth District's Decision to the Ohio Supreme Court. The appeal was dismissed, sua sponte, with a notation that "no substantial constitutional question and discretionary appeal, if applicable, not allowed." *State v. Overton*, 91 Ohio St.3d 1415, 741 N.E.2d 142 (2001). Overton appealed to the United States Supreme Court, but the high court declined to hear the appeal. See *Overton v. Ohio*, 534 U.S. 982, 122 S.Ct. 389, 151 L.Ed.2d 317 (2001).

This Court agrees with Justice Breyer's dissent wherein Justice Breyer (with Stevens, O'Connor and Souter concurring) concludes that "the city of Toledo clearly violated the Fourth Amendment warrant requirement." Id. at 985. In his dissent, Justice Breyer asserts:

> This Court has previously made clear that affidavits or complaints of this kind do not provide sufficient support for the issuance of an arrest warrant. In *Giordenello v. United States*, 357 U.S. 480, 486, 2 L.Ed. 2d 1503, 78 S. Ct. 1245 (1958), which involved a federal prosecution, the Court found that a complaint identical in all material respects to the one before us failed to meet the "probable cause" requirement contained in Rule 4 of the Federal Rules of Criminal Procedure because it contained "no affirmative allegation

> that the affiant spoke with personal knowledge of the matters contained there," failed to "indicate any sources for the complainant's belief," and neglected to "set forth any other sufficient basis upon which a finding of probable cause could be made." For those reasons, the Magistrate could not "assess independently the probability that the petitioner committed the crime charged," 357 U.S. 480, at 487, 78 S.Ct. 1245, 2 L.Ed.2d 1503.

Id. at 384. Breyer mentions the general aspect of the case, pointing to the fact the "'complaint' is a form that the police filled in with [Overton's] name and address." Evidence, he suggests, that Overton's case "is not unique." Id. at 985. In the end, Justice Breyer acknowledges that the Supreme Court "cannot act as a court of simple error correction" and asserts the minority's opinion that the appropriate disposition of the case is summary reversal. Id. at 985.

In this case, the Deputy Clerk, a seventeen year employee of the court, testified that she does not know what probable cause is, she has never been trained to make a probable cause determination[13] and that as a Deputy Clerk it is not her job to make a finding of probable cause.[14] Rather, the Deputy Clerk's only responsibility when accepting the complaints on behalf of the court is to follow the General Procedure for Swearing in Affidavits.

The Deputy Clerk was asked to describe the procedure during the Court's first hearing on Defendant's motion to suppress:

> Q. And could you share with the Court what that procedure is?
>
> A. When an officer comes in or a complaint comes in, we verify if they are in custody, open warrants, and then we make sure we have all of their correct information, their name, address, the [RID] numbers, the violation codes, the charge, the classifications, the date of offense and a description and the signature of the officers.
>
> Q. Okay. Do you ask the officers any questions about how they know that -- why the

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[13] Hrg. Tr. 94:7-15 (June 8, 2012).

[14] Hrg. Tr. 101:8-14 (June 8, 2012).

accusation is being made?

A. No.[15]

In the supplemental hearing on Defendant's motion to suppress, a current employee of the court and former supervisor responsible for creating the General Procedure for Swearing in Affidavits testified that prior to Hoffman's motion she too did not know what the term "probable cause" meant. She testified that during her seventeen year employ she was responsible for issuing thousands of warrants. Not once during that period did she ever make a probable cause determination. Prior to the instant motion, she believed that the sole responsibility of a deputy clerk was to accept the paperwork filed by the complainant officers.

In this Court's opinion, Detective Violanti failed to submit any information from which the Deputy Clerk could have found the existence of probable cause. The complaints, unaccompanied by separate affidavits or testimony, merely contain the Detective's conclusion that the offenses were committed by Brandon Hoffman. They contain no information about the Detective's source of knowledge or why the Detective believed Hoffman committed the offenses.[16] Clearly, the complaints are nothing more than "bare-bones" statements.[17] "[T]he authority issuing the warrant must judge for herself the persuasiveness of the facts relied upon by

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[15] Hrg. Tr. 93:13-25 (June 8, 2012).

[16] This Court firmly believes that a determination of probable cause could have been found by the issuing authority had the Detective included in her affidavit or sworn statement the source of her conclusion to which she testified that Brandon Hoffman committed the offenses charged. Hrg. Tr. 20:12-21:2; 22:23-24:9.

[17] "An affidavit that states suspicions, beliefs, or conclusions, without providing some underlying factual circumstances regarding veracity, reliability, and basis of knowledge, is a 'bare bones' affidavit." *United States v. Weaver*, 99 F.3d 1372, 1378 (6th Cir. 1996), citing *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S. Ct. 1509 (1964).

the officer-complainant to establish probable cause and should not accept without question the officer's mere conclusion that the person sought to be arrested committed the crime." *State v. Jones*, 7th Dist. No. 11MA60, 2012-Ohio-1301, at ¶3. See also *Aguilar v. Texas*, 378 U.S. 108, 111, 84 S.Ct. 1509 (1964) ("the court must * * * insist that the magistrate perform his 'neutral and detached' function and not serve merely as a rubber stamp for police"). Whether or not the Deputy Clerk intended to do so, her signature was nothing more that a rubber stamp for the police.[18]

This Court believes that the Toledo Municipal Court's General Procedure for Swearing in Affidavits violates the United States and Ohio Constitutions as well as the Rules of Criminal Procedure.[19] Nevertheless, the Sixth District Court of Appeals, has squarely addressed this issue and determined that complaints identical in form and content to the arrest warrants described herein are sufficient to meet the requirements of the Fourteenth Amendment and Crim.R. 4(A)(1). See *State v. Overton*, 6th Dist. No. L-99-1317 (Sept. 1, 2000).

While this Court respectfully disagrees with the *Overton* decision, it finds the instant case

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[18] During the supplemental hearing, the State argued that in order to exclude evidence obtained pursuant to an arrest warrant rubber-stamped by the issuing authority, the issuing authority must have had the subjective intent to act as a rubber-stamp. This Court does not dismiss the State's argument, but finds that it is not determinative of the ultimate issue pending before the Court on this matter.

[19] A review of Ohio law reveals that the Second and Seventh District Courts of Appeal have come to the same conclusion. See *State v. Jones*, 7th Dist. No. 11MA60, 2012-Ohio-1301 See also *City of Centerville v. Reno*, 2d Dist. No 19687, 2003-Ohio-3779 at ¶19 ("[A] complaint that consists of no more than a sheriff's conclusion that the defendants committed the offense listed in the complaint without the basis for the conclusion or other information, cannot support a finding of probable cause."); *City of Dayton v. Perkins*, 2d Dist. Nos. 183, 187 (2d Dist. 1983).

indistinguishable.[20] This Court is bound by the precedent of the Sixth District Court of Appeals.

The next issue the Court must determine is how the instant obvious Fourth Amendment violation effects the evidence obtained incident to Hoffman's arrest.

A consequence for violating the Fourth Amendment is the so-called exclusionary rule, "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect." *United States v. Leon*, 468 U.S.897, 906, 104 S.Ct. 3405, 3414 (1984), quoting *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613 (1974). "[T]he exclusionary rule is neither intended nor able to cure the invasion of the defendant's rights which he has already suffered." Id. (internal quotations omitted). Generally, for the exclusionary rule to apply, the police must have engaged in "willful, or at the very least negligent, conduct". Id. at 919 (quoting *United States v. Peltier*, 422 U.S. 531, 539, 95 S.Ct. 2313 (1975)).

In *Leon*, the United States Supreme Court held that evidence obtained in objectionably reasonable good-faith reliance on a search warrant is admissible, even if probable cause does not support the warrant. *United States v. Laury*, 985 F.2d 1293, 1311 (5th Cir. 1993) (citing Leon, 468 U.S. at 922-23). The Supreme Court has subsequently applied the *Leon* "good-faith" exception to searches that occurred following the execution of an invalid arrest warrant. *Herring v. United States*, 129 S.Ct. 695, 704, 172 L.Ed.2d 496 (2009); *Arizona v. Evans*, 514 U.S. 1, 15-16, 115 S.Ct. 1185 (1995).

In *Herring*, the Supreme Court took *Leon* one step further. It held: "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully

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[20] This Court notes that at the supplemental hearing on the Motion to Suppress, Defendant argues that *Overton* is distinguishable because there is no discussion in that case about the issuing authority's failure to make a probable cause determination. This Court finds Defendant's argument a distinction without a difference.

deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." Id. at 702. "[T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." Id.

The Defendant asserts that the facts of this case trigger application of a "systemic negligence" analysis contemplated by Justice Roberts in *Herring*. 555 U.S. at 704. This Court concedes that evidence suggesting that potentially thousands of arrest warrants have issued out of Toledo Municipal Court without the fundamental constitutional requirement of probable cause should warrant exclusion. However, the issue in this case is complicated by the binding judicial precedent established in *Overton*. A case that neither the Supreme Court of Ohio nor the Supreme Court of the United States deemed worthy of review upon writ of certiorari.

In *Davis v. United States*, 131 S.Ct. 2419, 180 L.Ed.2d 285, the high Court explained that "the deterrence benefits of exclusion 'var[y] with the culpability of the law enforcement conduct' at issue." Id. at 2427 , quoting Herring, 555 U.S., at 143. The Court further explained:

> When the police exhibit "deliberate," "reckless," or "grossly negligent" disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs. * * * But when the police act with an objectively "reasonable good-faith belief" that their conduct is lawful * * *, or when their conduct involves only simple, "isolated" negligence, * * * the "'deterrence rationale loses much of its force,'" and exclusion cannot "pay its way."

Davis, at 2427-2428 (citations omitted). Here, there is strong evidence that the Toledo Municipal Court has been acting as a rubber stamp to the Toledo Police for seventeen years. Nonetheless, the Toledo Police Department was acting under the impression that such practice was constitutional.

In *Davis*, the Court examined "whether to apply the exclusionary rule when the police

conduct a search in objectively reasonable reliance on binding judicial precedent." Id at 2428. It specifically held that the search incident to Davis's arrest followed circuit court precedent to the letter and that the officers' conduct was in "strict compliance with then-binding circuit law and not culpable in any way." Id.

Here, Detective Violenti's complaint was identical in form and content to the complaint found constitutionally valid by the Sixth District Court of Appeals in *Overton*. The question, therefore, is whether the police in the instant action are culpable in any way. It has long been held that "an officer cannot be expected to question the [issuing authority's] probable cause determination or his judgment that the form of the warrant is technically sufficient." *Leon*, 468 U.S at paragraph 1(d) of the Syllabus. Here, the officers who conducted the search incident to arrest did not violate Hoffman's rights deliberately, recklessly or with gross negligence. See *Davis*, 131 S.Ct. at 2428. And while this case does highlight a systemic deficiency in the General Procedure implemented by the Clerk of the Toledo Municipal Court in Swearing in Affidavits for the issuance of arrest warrants, the officers' conduct was not wrongful in that the police acted in strict compliance with binding precedent. See ibid.

In *Davis*, the high Court drew upon precedent to declare that penalizing an officer for the appellate judges' error "cannot logically contribute to the deterrence of *Fourth Amendment* violations." 131 S.Ct. at 2429, citing *Illinois v. Krull*, 480 U.S. 340, 350, 107 S.Ct. 1160, 94 L.Ed.2d 364. "[W]hen binding appellate precedent specifically *authorizes* a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities." Id. "An officer who conducts a search in reliance on binding

appellate precedent does no more than 'ac[t] as a reasonable officer would and should act' under the circumstances." Id. citing Leon, 468 U.S., at 940, 104 S.Ct. 3405. "The deterrent effect of exclusion in such a case can only be to discourage the officer from 'do[ing] his duty.'" Id.

As noted in *Leon*, "A warrant is a judicial mandate to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions." Id., 486 U.S. 921, at footnote 21. With this in mind, the Court firmly believes that penalizing the officers responsible for Brandon Hoffman's arrest would serve no deterrent effect in this instance.

For the foregoing reasons, Defendant's Motion to Suppress is not well-taken.

JUDGMENT ENTRY

It is ORDERED that Defendant's motion to suppress is DENIED.

It is ORDERED that the Clerk of Courts shall serve a copy of this Judgment Entry upon all parties by regular U.S. Mail.

Date: August 27, 2012

Judge James D. Jensen

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