

NO.

13-2023

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 99538

STATE OF OHIO
Plaintiff-Appellant

-vs-

LAUREN JONES
Defendant-Appellee

MEMORANDUM IN SUPPORT OF JURISDICTION

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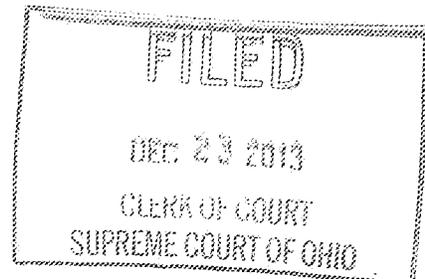


TABLE OF CONTENTS

Why this felony case involves a substantial constitutional question or an issue of public or great general interest..... 1

Statement of the Case and Facts..... 4

Law and Argument..... 7

Proposition of Law: A single trash pull conducted just prior to the issuance of the warrant corroborating tips and background information involving drug activity will be sufficient to establish probable cause.

Conclusion13

Certificate of Service..... 13

Appendix

State v. Jones, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915.....1

Trial Court Order Granting Motion to Suppress.....10
(Filed February 11, 2013 in Cuyahoga Common Pleas Case No. CR-12-561064-B)

Order Denying Motion to Certify a Conflict.....12
(Filed November 27, 2013 in Eighth District Case No. 99538)

I. Why this felony case involves a substantial constitutional question or an issue of public or great general interest.

Based on multiple tips that were developed and efforts to learn the identity and whereabouts of a suspected methamphetamine producer, Lauren Jones, the Cleveland Police Department Narcotic's Unit suspected that methamphetamines were been manufactured out of a house at 1116 Rowley Avenue. The house was located in the Tremont neighborhood of Cleveland, Ohio and located less than 300 feet from a local Christmas-themed tourist attraction. Police pulled the trash from 1116 Rowley Avenue and found several objects that tested positive for methamphetamine and other household objects that could be used to produce methamphetamine. Knowing that any methamphetamine lab was a ticking time bomb, police promptly consulted with a prosecutor, obtained a search warrant and executed it. Inside the home police found an active methamphetamine lab. Evidence was seized as a result. After being indicted, Jones moved to suppress the evidence seized as a result of the search warrant. Relying upon *State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983, *discretionary appeal not allowed by*, 124 Ohio St.3d 1493, 2010-Ohio-670, 922 N.E.2d 228, the trial court granted the suppression motion and provided the following reasoning:

The single trash pull must be reviewed in isolation. Without any averment of criminal activity being observed of Ms. Jones, or evidence connecting Chappell to 1116 Rowley, this Court does not believe that the search warrant passes Constitutional muster.

[**]

In the end, additional investigation including, multiple trash pulls over a period of time [**] controlled buys, observation of CRI from inside the house etc., was necessary for probable cause to be established – one trash pull is not necessarily sufficient. The detective should have taken additional steps, instead of cutting off the investigation prematurely.

State v. Lauren Jones, Cuyahoga County Common Pleas Case No. CR-12-561064-B, Order Denying Motion to Suppress, Filed on February 11, 2013.

The State appealed and the Eighth District in *State v. Jones*, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915 affirmed the suppression, and relied upon its own decisions in *State v. Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368, *discretionary appeal not allowed by*, 136 Ohio St.3d 1450, 2013-Ohio-3210, 991 N.E.2d 257 and *Weimer* and determined that the warrant was not supported by probable cause. In affirming the suppression, the Eighth District recognized the line of cases of upholding single trash pulls but determined that those cases involved more than one trash pull and suggested that police conduct a controlled purchase or observe pedestrian foot traffic in and out of the home on Rowley Avenue. *Jones*, at ¶21. See also *Weimer* at ¶25 and *Williams* at ¶18. Certainly such evidence would bolster support for probable cause; however, requiring such evidence demands law enforcement obtain unnecessary corroboration. Such unnecessary corroboration in methamphetamine production cases can place the public at risk. Unlike the cocaine, heroin or marijuana involved in *Williams* and *Weimer* methamphetamine production poses a public risk of explosion or fire. See generally R.C. 2933.33. A simple search of the term "methamphetamine explosion" on "news.google.com", "www.bing.com/news", or "news.yahoo.com" would reveal a litany of recent news stories across the country involving suspected methamphetamine lab explosions. Requiring unnecessary corroboration can perpetuate inaction because controlled purchases may never occur if occupants of a home are only manufacturing methamphetamine out of the home. Meanwhile, there is a known risk that the suspected methamphetamine lab can explode in a populated residential neighborhood.

While the risk of explosion provides exigent circumstances permitting a warrantless search, the State requires a rule of law clarifying what constitutes probable cause. The Eighth District's bright line rule conflicts with other Ohio appellate districts. In separate cases, the Twelfth District found that an affidavit provided necessary probable cause for the issuance of a warrant where police received a tip of drug activity occurring at a particular residence and a trash pull was conducted at that particular residence at evidence of drugs were found. See *State v. Quinn*, 12th Dist. Butler No. CA2011-06-116, 2012-Ohio-3123, ¶¶23-25 following *State v. Akers*, 12th Dist. Butler No. CA2007-07-163, 2008-Ohio-4164. Despite conflicting case law, the Eighth District declined to certify a conflict and trial courts in Cuyahoga County are now compelled to follow *Jones*, *Williams*, and *Weimer* in suppression hearings and in rejecting the issuance of search warrants under the rule that a single trash pull is not enough. The uncertainty and conflict in the law compels acceptance of this case to provide guidance for police officers because not all probable cause determinations require judicial review of a search warrant. Moreover, the Eighth District improperly requires courts to ask whether police have probable cause to show not only that there is evidence of a criminal offense but requires investigators to show whether the target of the investigation has been seen at the premise to be searched. From the undersigned's research, this case is a matter of first impression for this Court, as this Court has not addressed the issue of single trash pulls.

This felony case involves a substantial constitutional question and raises an issue of public or great general interest on a matter of first impression. The Court should accept this jurisdictional appeal given the need to resolve the conflicting case law; and to provide

uniform guidance to police officers who in some cases will conduct a single trash pull and confirm that they are sitting on a ticking time bomb.

II. Statement of the Case and Facts

Detective Matthew Baeppler received information from six people that Jennifer Chappell was cooking methamphetamines. He also received information from a CRI that a woman known as "Lauren" was cooking and selling methamphetamine in Cleveland and had a general description of "Lauren". Detective Baeppler received tips that Jennifer Chappell was now cooking methamphetamine on Rowley Avenue in the Tremont neighborhood of Cleveland, Ohio. One day Detective Baeppler was in court for an unrelated court appearance and recognized Jennifer Chappell sitting with a woman matching the general description of "Lauren" meeting with an assistant county prosecutor. Detective Baeppler later asked the assistant prosecutor who the woman was with Jennifer Chappell.¹ The prosecutor told Detective Baeppler that the woman was Lauren Jones, the defendant in this case. It was learned that Lauren Jones resided at 1116 Rowley Avenue in Cleveland, Ohio. Detective Baeppler would also learn that Lauren Jones was in court due to being a burglary victim in an unrelated case in which the culprit was arrested inside 1116 Rowley Avenue and found in possession of substances that tested positive for methamphetamine.

Police pulled the trash from the curb of 1116 Rowley Avenue and inside the trash bag found mail addressed to Lauren Jones at 1116 Rowley, Cleveland, Ohio and chemicals known to be used in the production of methamphetamine. A warrant was obtained the

¹ Jennifer Chappell was separately indicted in a different Cuyahoga County case, in which Chappell pled to Illegal Assembly or Possession of Chemicals for Manufacture of Drugs, in violation of R.C. 2925.041 as well as other related offenses relating to evidence seized at 1250 Riverbed Avenue, which was described in the "Rowley Avenue" search warrant affidavit as a known address for Chappell.

next day and that warrant was executed with the assistance of a SWAT team from the Ohio State Highway Patrol. Upon execution, police located a methamphetamine lab inside 1116 Rowley Avenue where methamphetamine was in the process of being cooked. The lab was dismantled by the bomb squad and evidence of methamphetamine production was seized.

Lauren Jones was subsequently indicted in an eight count indictment that included counts of Illegal Manufacture or Cultivation of Drugs, Assembly or Possession of Chemicals Used to Manufacture Controlled Substances, Trafficking, Drug Possession and Possession of Criminal Tools. The trial court granted Jones' motion to suppress. The trial court opined that the trash pull was to be reviewed in isolation and determined that there was no evidence of criminal activity observed of Jones or any evidence connecting Chappell to 1116 Rowley. The trial court believed, "[w]ithout any averment of criminal activity being observed of Ms. Jones, or evidence connecting Chappell to 1116 Rowley, this Court does not believe that the search warrant passes Constitutional muster." See *State v. Lauren Jones*, Cuyahoga County Common Pleas Case No. CR-12-561064-B, Order Denying Motion to Suppress, Filed on February 11, 2013. Moreover, the trial court cited *State v. Terrell*, 2nd Dist. Clark No. 2011-CA-57, 2013-Ohio-124 as a basis for suppression. But aside from the fact that *Terrell* mentions a trash pull, reliance upon it is misplaced. In *Terrell*, the Second District sustained the defendant's arguments that police lacked probable cause to obtain a search warrant for "239 East Grand Avenue". The facts indicate that while trash pulls were conducted at other locations there is no mention of a trash pull conducted at "239 East Grand Avenue." *Terrell*, at ¶4, 7.

The State appealed to the Eighth District pursuant to Crim. R. 12(K). The Eighth District affirmed the order suppressing evidence citing its opinions in *Weimer*, 8th Dist.

Cuyahoga No. 92094, 2009-Ohio-4983 and *Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368 and relied upon *United States v. Elliot*, 576 F. Supp. 1579 (S.D. Ohio 1984), a case with distinguishable facts and that the Eighth District relied upon in *Weimer*. The court in *Elliot* found that the single trash pull only yielded a small amount of marijuana suggesting only personal use that could have been stale, making it less likely that marijuana would still be in the premise and therefore the search warrant lacked probable cause. A different conclusion was reached by the Michigan Supreme Court in *People v. Keller*, 479 Mich. 467, 739 N.W.2d 505 (Mich. 2007) (holding that an anonymous tip and a single burnt marijuana cigarette established probable cause to search a home).

In short, *Elliot*, is a fact-specific case that does not stand for the proposition that a single trash pull in all cases fails to provide probable cause. Moreover, the Michigan Supreme Court The following points appeared to form the basis of the Eighth District's opinion: (1) that the trash pull, while indicating recent criminal activity, did not indicate continued activity, *Jones*, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915, ¶15 citing *Elliot*; (2) a suggestion that the trash pull be viewed in isolation, *Jones*, ¶15; and (3) lack of surveillance confirming pedestrian foot traffic at target residence consistent with drug transactions; *Id.* at ¶16. The Eighth District did not provide any guidance where controlled buys or surveillance is not possible.

III. Law and Argument

Proposition of Law: A single trash pull conducted just prior to the issuance of the warrant corroborating tips and background information involving drug activity will be sufficient to establish probable cause.

- A. The Fourth Amendment requires that search warrants are reviewed under the totality of the circumstances and does not require that certain evidence such as trash pulls be viewed in isolation.**

The Fourth Amendment of the United States Constitution states that:

The 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 places to be searched, and persons or things to be seized.

The language of Section 14, Article I of the Ohio Constitution which protects individuals from unreasonable search and seizures contains virtually identical language and has been deemed to provide coextensive protections as the United States Constitution. *State v. Robinette*, 80 Ohio St.3d 234, 245, 685 N.E.2d 762 (1997).

The United States Supreme Court has held that the Fourth Amendment does not protect garbage left at roadsides. *California v. Greenwood*, 486 U.S. 35, 40, 108 S.Ct. 1625 (1988). As a result conducting trash pulls have become a valuable tool in investigating drug activity and developing probable cause for issuance of a search warrant.

A search warrant requires the magistrate or judge to make a common sense review of the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). Such a review only requires the magistrate or judge to make "a practical common-sense decision whether, given all the circumstances set forth in the affidavit before [the magistrate or judge], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay

information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *George*, 45 Ohio St.3d 325 (1989), paragraph 1 of the syllabus.

B. The Eighth District views single trash pulls in isolation and requires unnecessary corroboration; however, the Seventh, Tenth and Twelfth Districts views the trash pull in context of the investigation and does not mandate unnecessary corroboration.

Appellate courts have recognized that, "a single trash pull conducted just prior to the issuance of the warrant corroborating tips and background information involving drug activity will be sufficient to establish probable cause." *State v. Edwards*, 10th Dist. Franklin No. 12AP-992, 2013-Ohio-4342 and *State v. Robinson*, 7th Dist. Columbiana No. 10 CO 37, 2011-Ohio-6639, ¶21.² In this case, the single trash pull corroborated tips that the suspects that methamphetamine was being cooked on Rowley Avenue; and that the person who lived at 1116 Rowley Avenue matched the description of a suspected methamphetamine manufacturer and was associated with another suspected methamphetamine manufacturer.

The search warrant issued to search the home was based upon probable cause and supported by the evidence of methamphetamine production found in the trash. The recent trend in Cuyahoga County, under the Eighth District's decisions in *Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983 and *Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368, is that search warrants based upon a single trash pull do not possess the necessary probable cause for issuance of a search warrant. The State anticipates that Jones will argue, as was argued in the opposition to conflict certification, that there is no bright line rule in Ohio and this case is limited to the facts. But as one local legal

² While both *Edwards* and *Robinson* involved multiple trash pulls, both cases recognized that a single trash pull provides sufficient probable cause for issuance of a search warrant.

commentator put it the bright line rule in Cuyahoga County is that, “a single trash pull is not sufficient to provide probable cause for a warrant. There has to be something else: multiple trash pulls, surveillance and observation of heavy pedestrian traffic, or controlled buys.” Russ Bensing, *Briefcase Commentary and Analysis of Ohio law, What's Up in the 8th*, <http://www.briefcase8.com/2013/11/whats-up-in-the-8th-53.html> (accessed December 10, 2013).

In rebuttal to any claim made by Jones that no bright line rule exists in the Eighth District, the State submits that the Twelfth District’s decision in *Quinn*, 12th Dist. Butler No. CA2011-06-116, 2012-Ohio-3123 and *Akers*, 12th Dist. Butler No. CA2007-07-163, 2008-Ohio-4164 are a stark contrast to the Eighth District’s line of cases.

In *Quinn*, the Twelfth District Court of Appeals upheld the issuance of a search warrant that was based on two facts: (1) that complaints were received that an individual living at 804 Elwood, Allen Starks, was allowing others to store a large amount of marijuana and cocaine in his home; and (2) a “trash pull” was conducted at 804 Elwood, where police inspected three garbage bags, which contained evidence of crack cocaine and marijuana. *Quinn*, at ¶3. The Twelfth District found probable cause existed and did not demand more steps, as the Eighth District requires.

In *Akers*, the Twelfth District Court of Appeals upheld the issuance of a search warrant where a confidential source told police that Clifford Akers and his wife were selling drugs out of their residence at 1101 Noyes Avenue in Hamilton, Ohio, and a trash pull contained a substance that tested positive for marijuana and a piece of junk mail addressed to “occupant” or “resident” at 1101 Noyes Avenue. *Akers*, ¶2, 37. The Twelfth District determined that it was the trash that yielded evidence of drug trafficking

regardless of who lived there. Notably in *Akers*, there was indication from the opinion that police verified that Akers lived 1101 Noyes Avenue. Rather than finding mail addressed to either Clifford Akers or his wife, police simply found a piece of mail addressed to the “occupant” or “resident”. The evidence contained in the trash pull corroborated the tip and the Twelfth District did not demand more, such as controlled buys, verification that Akers lived at the house, or surveillance showing foot traffic consistent with drug trafficking. This is clearly in contradiction with this case.

Therefore, following the decisions of the Seventh, Tenth or Twelfth appellate districts, a single trash pull conducted just prior to the issuance of the warrant corroborating tips and background information involving drug activity will be sufficient to establish probable cause. Under those decisions, the search warrant in those cases would have been upheld where police received tips of methamphetamine being cooked on “Rowley Avenue”, the resident of “1116 Rowley Avenue”, Lauren matched the description of a suspected person cooking methamphetamine and was associated with another person, Jennifer, suspected of cooking methamphetamine and the single trash pull confirmed what police had suspected, that 1116 Rowley Avenue was being used to cook methamphetamine regardless of who lived there.

- C. By requiring additional steps such as controlled purchases in the home to be searched and observations of foot traffic to and from the home, the Eighth District requires requisite acts, in some circumstances, that will never occur.**

The Eighth District repeated its dictates that police cannot rely upon a single trash pull and are instead to attempt controlled purchases or conduct surveillance that confirms people are buying drugs from inside a particular residence. *Jones*, ¶16; see also *Williams*, ¶24 and *Weimer*, ¶25.

These dictates creates a no-win scenario for police officers seeking a search warrant and ignores that there will be cases in which police will not be able to conduct controlled buys inside the premise or observe others buy drugs from inside the premise. It does not take any stretch of the imagination to know that not everyone involved in trafficking will sell out of residences where drugs are packaged or stored. This is particularly true in this case where police had information that methamphetamine was being manufactured within 1116 Rowley Avenue. Requiring additional steps, some of which may never occur, places the public at risk in a methamphetamine production case. Therefore, despite what the trial court and Eighth District held, additional steps such as controlled purchases and observations of foot traffic should not be a requirement to obtain a search warrant. To the extent that the Eighth District also requires police to link the target of the investigation to the premise searched, *Akers*, 12th Dist. Butler No. CA2007-07-163, 2008-Ohio-4164 for conflicts on that point.

D. A single trash pull is not to be viewed in isolation when determining whether probable cause supports the affidavit.

In *Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983, the Eighth District viewed evidence of a single trash pull due to what the court believed was arguably a “*Franks*” issue. The Eighth District in *Jones* and *Williams* dangerously suggests that in all cases, a single trash pull is to be viewed in isolation. One need only look at the trial court’s determination in this case that it viewed the trash pull in isolation. (See supra. *State v. Lauren Jones*, CR-12-561064-B, Order Denying Motion to Suppress Filed on February 11, 2013).

Indeed, the trial court relied on *Weimer*, and viewed the “trash pull” in isolation in this case. Viewing the “single trash pull” in isolation is illogical given that the issuance of a

search warrant requires the magistrate or judge to make a common sense review of the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). Such a review only requires the magistrate or judge to make "a practical common-sense decision whether, given all the circumstances set forth in the affidavit before [the magistrate or judge], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *George*, 45 Ohio St.3d 325 (1989), paragraph 1 of the syllabus. The Eighth District's decisions mandate courts ignore pertinent background information that establishes why police officers pulled the trash from a particular home and strongly suggest that trash pulls are to be viewed in isolation, much like the trial court did in this case.. Therefore, the background information is very much relevant to the decision to pull the trash and the ultimate contraband that was found. Therefore, a single trash pull is not to be viewed in isolation when determining whether probable cause supports the affidavit.

IV. Conclusion

The State would ask this Court to accept jurisdiction in this case to determine whether a trash pull that corroborates a tip of drug activity provides the necessary probable cause to obtain and execute a search warrant. A conflict of law exists on this legal issue and this Court should accept jurisdiction to resolve it, so that all police officers across Ohio have a uniform understanding of when a trash pull provides necessary probable cause to obtain a search warrant and to otherwise clarify that police officers need not sit idle on a ticking time bomb.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing memorandum in support of jurisdiction has been sent via U.S. mail this 20th day of December, 2013 to Reuben J. Sheperd, 11510 Buckeye Road, Cleveland, Ohio 44104.

Dan T. Van (by Mr. [Signature] per authority)
Daniel T. Van (#0084614)

[Cite as *State v. Jones*, 2013-Ohio-4915.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99538

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

LAUREN JONES

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-561064

BEFORE: E.A. Gallagher, J., Rocco, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: November 7, 2013

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EILEEN A. GALLAGHER, J.:

{¶1} The state of Ohio appeals the decision of the trial court granting the defendant-appellant's motion to suppress. The state argues that the trial court erred when it concluded that a single trash pull did not supply sufficient probable cause to support the issuance of a search warrant. For the following reasons, we affirm the decision of the trial court.

{¶2} Cleveland police narcotics detective Matthew Baeppler learned from a confidential reliable informant that a female named Lauren, whom the informant described as African American and overweight, was manufacturing methamphetamine in the Cleveland area. Detective Baeppler also learned that Jennifer Chappel, known as "Jen Jen," cooks methamphetamine and that she had moved her cooking operation to Rowley Avenue.

{¶3} On December 4, 2011, a burglary was reported at 1116 Rowley Avenue. Officers responded and arrested Ilya Shpilman, a person known to have involvement with methamphetamine, in connection with the burglary.

{¶4} Approximately three months after the burglary, Detective Baeppler and other narcotics detectives were in the Cuyahoga County Justice Center on a matter unrelated to the Rowley Avenue burglary. While there, Detective Baeppler observed Jennifer Chappel, who was known to him, sitting next to an overweight, black female who had been speaking with an assistant county prosecutor. Believing that this unidentified female could be the "Lauren," Detective Baeppler asked the prosecutor the

identity of the woman with Chappel. The prosecutor informed Detective Baeppler that the female sitting with Jennifer Chappel was Lauren Jones and that Jones lived at 1116 Rowley Avenue. Jones was present at the Justice Center that day because she was the victim of the December 4, 2011 burglary at her home.

{¶5} Armed with Jones' name, address and physical description, Detective Baeppler and investigators decided to conduct a trash pull from the tree lawn at 1116 Rowley. On March 22, 2012, the detectives collected the trash and recovered the following: mail addressed to Jones at 1116 Rowley, empty chemical bottles, plastic tubing, used coffee filters and a plastic bottle containing methamphetamine oil. Field tests conducted on the items yielded positive results for methamphetamine. Immediately after conducting the trash pull, Detective Baeppler drafted a search warrant which was signed by a judge.

{¶6} On March 23, 2012, the officers executed the search warrant and recovered several dishes with methamphetamine residue, white pills, coffee filters with methamphetamine residue, a scale with methamphetamine residue and methamphetamine. The Cuyahoga County Grand Jury indicted Jones with illegal manufacture of drugs, assembly or possession of chemicals used to manufacture a controlled substance, two counts of trafficking, three counts of drug possession and possessing criminal tools. Jones filed a motion to suppress the evidence in which she challenged the validity of the search warrant. The trial court conducted a hearing on the motion and, on February 11, 2013, the court granted the suppression concluding that the

search warrant was not supported by probable cause.

{¶7} The state appeals, raising the following assignment of error:

The trial court committed reversible error in granting defendant's motion to suppress.

{¶8} In *State v. Preztak*, 181 Ohio App.3d 106, 2009-Ohio-621, 907 N.E.2d 1254 (8th Dist.), this court outlined the standard of review on a motion to suppress.

Our standard of review with respect to motions to suppress is whether the trial court's findings are supported by competent, credible evidence. *See State v. Winand*, 116 Ohio App.3d 286, 688 N.E.2d 9 (7th Dist. 1996), citing *City of Tallmadge v. McCoy*, 96 Ohio App.3d 604, 645 N.E.2d 802 (9th Dist. 1994). * * * This is the appropriate standard because "in a hearing on a motion to suppress evidence, the trial court assumes the role of trier of facts and is in the best position to resolve questions of fact and evaluate the credibility of witnesses." *State v. Hopfer*, 112 Ohio App.3d 521, 679 N.E.2d 321 (2d Dist.1996).

{¶9} Once we accept those facts as true, however, we must independently determine, as a matter of law and without deference to the trial court's conclusion, whether the trial court met the applicable legal standard. *See also State v. Lloyd*, 126 Ohio App.3d 95, 709 N.E.2d 913 (7th Dist.1998); *State v. Cruz*, 8th Dist. Cuyahoga No. 98264, 2013-Ohio-1889.

{¶10} The Fourth Amendment to the United States Constitution, applied to the states via the Fourteenth Amendment, reads in part:

[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} In applying this amendment to the issues of the case, we are guided by

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and *State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), in determining whether the search warrant is valid. As such, we have held that:

Although the United States Constitution requires search warrants to issue only upon probable cause, *Gates* requires a reviewing court to defer to an issuing judge's discretion when deciding whether a warrant was validly issued. Thus, even though the existence of probable cause is a legal question to be determined on the historical facts presented, we will uphold the warrant if the issuing judge had a substantial basis for believing that probable cause existed.

State v. Reniff, 146 Ohio App.3d 749, 2001-Ohio-4353, 768 N.E.2d 667 (8th Dist.).

{¶12} A reviewing court affords great deference to a judge's determination of the existence of probable cause to support the issuance of a search warrant. *State v. Garner*, 74 Ohio St.3d 49, 1995-Ohio-168, 656 N.E.2d 623. Such a determination should not be set aside unless it was arbitrarily exercised. *See United States v. Spikes*, 158 F.3d 913 (4th Cir.1999), *certiorari denied*.

{¶13} In this case, the trial court ruled that the single trash pull that immediately preceded the issuance of the search warrant was insufficient to establish probable cause.

The court noted the following:

There was no evidence that [Jennifer] Chappell was ever seen at the 1116 Rowley address, that any controlled buys were made, that any sustained surveillance resulted in any unusual activity associated with a drug house, that the house was in a high drug crime area or that numerous people were entering and leaving the house for short periods.

{¶14} Further, the court stated that

[A]dditional investigation including, multiple trash pulls over a period of time; surveillance, the details of which are set forth in an affidavit that

gives facts of usage, trafficking and other circumstances giving rise of drug activity, controlled buys, observation of CRI from inside the house etc., was necessary for probable cause to be established — one trash pull is not necessarily sufficient. The detective should have taken additional steps, instead of cutting off the investigation prematurely.

{¶15} We see no reason to conclude otherwise. In *State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983, this court analyzed a single trash pull of a Euclid residence that revealed evidence of recent drug activity. The court, while acknowledging the legality of the trash pull, noted that the discovery of the discarded contraband must be viewed in isolation. Specifically, the court stated that when viewed in isolation, “it [did] not necessarily render the continued presence of suspected cocaine in her home probable, and [did] not, of itself, give rise to probable cause to issue a search warrant.” See also *United States v. Elliot*, 576 F.Supp. 1579 (S.D. Ohio 1984).

{¶16} This court, in reaching its decision, acknowledged the line of cases upholding warrants based upon evidence garnered from single trash pulls. *Weimer*. This court noted that in those cases, the facts underlying probable cause were much stronger and included extensive and continuous surveillance by police and heavy foot traffic to and from the known target residence of the suspected drug dealer that is indicative of drug transactions. *Id.*; see also *State v. Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368.

{¶17} In the present case, the only evidence that Jones was involved in illegal drug activity were reports of a woman named Lauren “cooking meth on Rowley,” that Jones matched the vague description of an overweight African American female and the

evidence seized from a single trash pull. The contraband recovered from the trash, while indicative of recent criminal activity, does not necessarily render the continued presence of methamphetamine in her home probable. *See Weimer, Williams.* We agree with the trial court's conclusion that this, without more, is insufficient to support the issuance of a warrant.

{¶18} In the present case, the trial court granted Jones' motion to suppress because it concluded the single trash pull failed to provide sufficient probable cause to support the issuance of a search warrant. Based on the facts and case law outlined above, we hold that the trial court's conclusion was supported by competent, credible evidence and that the trial court correctly applied the legal standard. Thus, we overrule the state's sole assignment of error and affirm the decision of the trial court.

{¶19} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said lower court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

KENNETH A. ROCCO, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR



State v. Lauren Jones
CR 561064

FILED

The Trial court grants the Motion to Suppress, based on State v. Weiner, 8th District Court of Appeals #92094, 9-24-2009 and State v. Terrell, 2nd District Court of Appeals #2011CA57199, 11-18-2011, Lexis 88, 1-18-2013. 9:07

This case basically hinges on the granting of a search warrant, based on a single trash pull that resulted in several objects that field tested positive for methamphetamine and that other household objects were also found discarded that could be used in meth production. The original target of the investigation was a Jennifer Chappell. A CRI told the detective/affiant that Chappell had moved her meth cooking to Rowley Avenue. After the start of the investigation into Ms. Chappell, the detectives were in the Justice Center and observed Ms. Chappell with a heavy set African American woman who was there as a victim of a crime.

The detective/affiant averred that he had reports of a similar described woman "cooking meth on Rowley" by the name of Lauren. The detective/affiant asked the Assistant County Prosecutor for the name of the victim and learned that it was Lauren Jones and she resides at 1116 Rowley in Cleveland. It is not mentioned in the affidavit that any of the CRI's gave an exact address on Rowley where the Meth was being allegedly manufactured. After the single trash pull at 1116 Rowley the search warrant was issued.

There was no evidence that Chappell was ever seen at the 1116 Rowley address, that any controlled buys were made, that any sustained surveillance resulted in any unusual activity associated with a drug house, that the house was in a high drug crime area or that numerous people were entering and leaving the house for short periods.

Pursuant to Weiner, supra the single trash pull must be reviewed in isolation. Without any averment of criminal activity being observed of Ms. Jones, or evidence connecting Chappell to 1116 Rowley, this Court does not believe that the search warrant passes Constitutional muster. Same result reached in State vs. Terrell, supra, ¶ 11, 12, 13 and 14.

As the Terrell court stated:

We recognize that there is some allure to preserving the conviction of a major drug offender, but our role is not to search for an exception to salvage a deficient affidavit. As the Ohio Supreme Court very recently state:

But efforts to "bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." Weeks v. United States, 232 U.S. 383, 393, 34 s. Ct. 341, 58 L. Ed. 652, T.D. 1964 (1914). There is always a temptation in criminal cases to let the end justify the means, but as guardians of the Constitution, we must resist that temptation. See United States v. Mesa, 62 F. 3d 159, 163 (6th Cir. 1995). After all, Fourth Amendment freedoms are not second-class right; they are indispensable to all members of a free society. See Brinegar v. United States, 338 U.S. 160, 180-181, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949) (Jackson, J., dissenting).

State v. Gardner, ___ Ohio St. 3d ___, 2012 Ohio 5683, ___ N.E. 2d ___, ¶ 24.

In the end, additional investigation including, multiple trash pulls over a period of time; surveillance, the details of which are set forth in an affidavit that gives facts of usage, trafficking and other circumstances giving rise of drug activity, controlled buys, observation of CRI from inside the house etc., was necessary for probable cause to be established – one trash pull is not necessarily sufficient. The detective should have taken additional steps, instead of cutting off the investigation prematurely.

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

STATE OF OHIO

Appellant

COA NO.
99538

LOWER COURT NO.
CP CR-561064

COMMON PLEAS COURT

-vs-

LAUREN JONES

Appellee

MOTION NO. 469769

Date 11/27/13

Journal Entry

Motion by Appellant to certify a conflict is denied.

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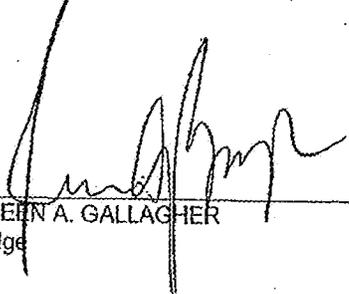
CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS

By  Deputy



Presiding Judge KENNETH A. ROCCO,
Concurs

Judge PATRICIA A. BLACKMON, Concurs


EILEEN A. GALLAGHER
Judge