

ORIGINAL

IN THE SUPREME COURT OF OHIO  
2014

STATE OF OHIO,

Case No. 14-11

Plaintiff-Appellant

-vs-

On Appeal from the  
Fairfield County Court  
of Appeals, Fifth  
Appellate District

MONTIE E. SULLIVAN,

Court of Appeals  
Case No. 13-CA-10

Defendant-Appellee

**MEMORANDUM OF AMICUS CURIAE FRANKLIN COUNTY PROSECUTOR  
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## STATEMENT OF AMICUS INTEREST

Amicus curiae Franklin County Prosecutor Ron O'Brien has a keen interest in the outcomes of the present appeals arising out of Fairfield County involving defendants Montie Sullivan and David White. Sullivan faces several charges in Franklin County arising out of his violent home-invasion crime spree committed with accomplice White, who also faces several charges in Franklin County. The Franklin County cases have the same GPS "search" issues as those presented in the present Fairfield County cases lodged against Sullivan and White. The Franklin County Prosecutor's Office currently is pursuing a State's appeal in the Tenth District from an order of suppression entered by the Franklin County Common Pleas Court vis-à-vis Sullivan. There has been no suppression order vis-à-vis White in Franklin County, as the Franklin County Common Pleas Court concluded that White lacks standing vis-à-vis the GPS attached to Sullivan's vehicle.

Given the involvement of the same GPS "search" issues, amicus O'Brien wishes to present his views on why this Court should grant review of these issues related to the legality of the GPS "search" and related to the applicability of the good-faith exception.

### EXPLANATION OF WHY THIS COURT SHOULD ACCEPT JURISDICTION

The Fifth District's decisions in *Sullivan* (2013-Ohio-5276) and *White* (2013-Ohio-5221) justify review here. They present important questions arising in the aftermath of *United States v. Jones*, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012). The decision in *Jones* only addressed the issue of whether the installation/monitoring of the GPS device on a vehicle is a "search." *Jones* did not address the question of whether a warrant is required. Also, the *Jones* Court refused to address the government's contention therein that the

warrantless GPS installation and monitoring was a reasonable search, stating that the government had forfeited that argument by failing to raise it below. *Id.* at 954.

*Jones* did not settle the issue of whether a warrant was required, and that issue “remain[s] open” after *Jones*. *United States v. Sparks*, 711 F.3d 58, 62 (1st Cir. 2013). Accordingly, *Jones* is not dispositive of the prosecution’s arguments regarding the validity of the GPS “search” here. The instant amicus contends that the warrantless installation/monitoring of the GPS qualified as a reasonable search allowed by the Fourth Amendment and fell within the automobile exception to the warrant requirement, which allows warrantless vehicle searches for evidence of crime based on probable cause.

Even assuming a Fourth Amendment violation occurred, amicus contends that the actions in installing/monitoring the GPS without a warrant fell within the good-faith exception to the federal exclusionary rule. Corporal Minerd was not acting with a deliberate, reckless or grossly-negligent disregard of Fourth Amendment rights. There were strong reasons to think that no warrant was needed to attach and monitor a GPS device because no “search” was involved when the attachment occurred off the suspect’s property and the monitoring related to travel on public roadways.

The *Sullivan* and *White* cases point up, again, the folly that is the federal exclusionary rule. Compare *State v. Lindway*, 131 Ohio St. 166, 2 N.E.2d 490 (1936) (no exclusion at all under Ohio Constitution). Based on a purported error by the police, the exclusionary rule was invoked by the lower courts to suppress reliable evidence relevant to the guilt of Sullivan and White for several violent felonies committed as part of an armed home-invasion crime spree. It confounds justice and logic to let these violent

home invaders potentially “walk” based on an “error” that many reasonably believed before *Jones* was not an “error” at all in light of the pre-*Jones* case law holding that no “search” was involved in electronic tracking on public roadways. If the good-faith exception is to apply anywhere, it should apply here.

After *Jones* was decided, and as discussed under Proposition of Law No. 1, a substantial conflict has arisen regarding the applicability of the good-faith exception to pre-*Jones* warrantless GPS attachment/monitoring. In *State v. Johnson*, 12th Dist. No. CA2012-11-235, 2013-Ohio-4865, the Twelfth District embraced the conclusion that the good-faith exception applies, but other Ohio appellate courts have disagreed.

Two other appeals pending review in this Court have noted the existence of this conflict warranting review, including the defendant’s appeal in *Johnson*. See *State v. Allen*, No. 13-1776, State’s 11-12-13 Memo Supp. Juris., at pp. 1-3; *State v. Johnson*, No. 13-1973, Defendant’s 12-16-13 Memo Supp. Juris., at pp. 1-3.

If anything, the Fifth District’s decisions in *Sullivan* and *White* heighten the need for review of the good-faith exception. The Fifth District relied primarily on an extensive quotation from the pre-*Jones* District of Columbia Circuit decision in *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010) (the lower-court decision in *Jones*). But *Maynard* was decided over six months after the warrantless GPS attachment/monitoring had occurred in the present cases. It took another 17 months before the United States Supreme Court weighed in by announcing *Jones* in January 2012 and by finding a “search” based on a trespass-to-chattel theory that was, at a minimum, a surprising theory. Not even the *Maynard* decision had anticipated the trespass-to-chattel approach, as it

focused on an expectation-to-privacy theory that was *not* adopted by the *Jones* majority.

The decisions in *Maynard* and then *Jones*, both coming well after the police actions here, do not undercut the applicability of the good-faith exception here. Indeed, even after *Maynard*, two Ohio appellate courts (*Johnson* (12th Dist.) and *Winningham* (1st Dist.)) issued pre-*Jones* decisions in 2010 and 2011 concluding that no “search” was involved in warrantless GPS attachment/monitoring. Opining before *Jones*, these courts provide a helpful barometer of the existing law in the time frame before *Jones*, in which many courts were reasonably concluding that no “search” was involved by attaching a GPS device on a vehicle and by monitoring its public movements. Since it was reasonable for courts to arrive at this conclusion before *Jones*, it was equally reasonable for Corporal Minernd to do so as well. He was not acting in deliberate, reckless, or grossly-negligent disregard of Fourth Amendment rights.

Given the pre-*Jones* case law, defense attorneys were not even required before *Jones* to file motions to suppress challenging GPS attachment/monitoring. *State v. Miranda*, 10th Dist. No. 13AP-271, 2013-Ohio-5109. Such attorneys were not required to be clairvoyant in predicting *Jones*. *Id.* at ¶¶ 19-20. Under the good-faith exception, Corporal Minernd need not have been clairvoyant either.

The shifting views of Judge Hoffman in the *Sullivan* and *White* cases are perhaps the best indicator of why it was reasonable to think that no “search” was involved. Substantial litigation had taken place in the present cases before *Jones*, with the Fifth District deciding in 2-1 decisions in September 2011 that the warrantless GPS attachment/monitoring in the *Sullivan* and *White* cases had constituted a “search” because

it invaded a reasonable expectation of privacy. *State v. Sullivan*, 5th Dist. No. 2010-CA-52, 2011-Ohio-4967; *State v. White*, 5th Dist. No. 2010-CA-60, 2011-Ohio-4526. But Judge Hoffman dissented in both decisions. Like other judges in other courts, he reasonably concluded no “search” was involved. *Sullivan*, 2011-Ohio-4967, ¶¶ 74-85.

Fast forward 26 months later, after this Court had vacated the 2-1 decisions and remanded to the common pleas court for further proceedings in light of *Jones*. On review this time, Judge Hoffman authored the opinions finding not only that a “search” was involved but also that a warrant was required (a result not dictated by *Jones*).

Judge Hoffman’s shifting positions perfectly capture in microcosm why the good-faith exception should apply. Judge Hoffman was not acting in deliberate, reckless, or grossly-negligent disregard of Fourth Amendment rights in concluding before *Jones* that no “search” was involved and thus no warrant was required. Like Corporal Miner, Judge Hoffman reasonably reached that conclusion. Yet now, after the fact, the reasonable pre-*Jones* “no search” conclusion has been found to be incorrect, and these defendants are being granted the windfall of suppression.

Adding to the need for review is the second proposition of law regarding the validity of the warrantless GPS attachment/monitoring. Not every “search” requires a warrant, and the GPS “search” here can be found to be a reasonable warrantless search because no invasion of privacy is involved in monitoring a vehicle’s travels on public roadways. The “search” would also fall within the automobile exception allowing a warrantless vehicle search based on probable cause. An assessment of these questions should be part of the assessment of the good-faith exception anyway.

Amicus hereby respectfully requests that this Court accept review of the State's appeals in the *Sullivan* and *White* cases.

### STATEMENT OF FACTS

Amicus incorporates by reference the factual and procedural summary set forth in the State's memorandum supporting jurisdiction.

### ARGUMENT

Proposition of Law No. 1. When the warrantless attachment and monitoring of a GPS device on a vehicle occurred before *United States v. Jones*, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012), the exclusionary rule will not be applied to suppress evidence arising therefrom unless such attachment and monitoring involved the deliberate, reckless, or grossly-negligent disregard of Fourth Amendment rights or involved circumstances of recurring or systemic negligence. (*Herring v. United States*, 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496; *Davis v. United States*, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011), followed and applied).

The Fifth District conceded that the prosecution was raising the good-faith exception, but the Fifth District failed to engage the issue.

#### A.

Before *Jones*, a number of Ohio and federal appellate courts had concluded that the installation/monitoring of a GPS did not require a warrant because no reasonable expectation of privacy was invaded and therefore no "search" was involved. See *State v. Winningham*, 1st Dist. No. C-110134, 2011-Ohio-6229, vacated, 132 Ohio St.3d 77, 969 N.E.2d 251, 2012-Ohio-1998; *State v. Johnson*, 190 Ohio App.3d 750, 2010-Ohio-5808, vacated, 131 Ohio St.3d 301, 964 N.E.2d 426, 2012-Ohio-975; *United States v. Pineda-Moreno*, 591 F.3d 1212, 1216-17 (9th Cir. 2010), vacated, 132 S.Ct. 1533, 182 L.Ed.2d 151 (2012); *United States v. Marquez*, 605 F.3d 604 (8th Cir. 2010); *United States v.*

*Garcia*, 474 F.3d 994 (7th Cir. 2007). These conclusions were based in major part on the logic underlying the electronic-tracking cases from the 1980's involving beepers, in which the Supreme Court had concluded that the monitoring of a tracking device like a beeper, so as to reveal locations and travel routes on public highways, did not constitute a "search" because a person "traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *United States v. Knotts*, 460 U.S. 276, 281, 103 S.Ct. 1081, 75 L.Ed.2d 55 (1983).

The Court also concluded that the surreptitious transfer of a tracking device to the recipient without his knowledge at most was a "technical trespass," that a physical trespass was only marginally relevant to the Fourth Amendment issue, and that "an actual trespass is neither necessary nor sufficient to establish a constitutional violation." *United States v. Karo*, 468 U.S. 705, 712-13, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984). Both of these tracking-device cases defined a "search" exclusively in terms of whether a reasonable expectation of privacy was invaded. *Id.* at 712; *Knotts*, 460 U.S. at 280-81.

*Jones* was announced two years after the GPS installation and monitoring in the present cases. The police could not be expected to foresee how that case would turn out and especially could not be expected to foresee the resurrection of a trespass-to-chattel theory that prior cases had eschewed in favor of an "expectation of privacy" approach.

#### B.

The existence of a Fourth Amendment violation "does not necessarily mean that the exclusionary rule applies." *Herring*, 555 U.S. at 140. "[E]xclusion 'has always been our last resort, not our first impulse' \* \* \*." *Id.* (quoting another case). "[T]he

exclusionary rule is not an individual right and applies only where it results in appreciable deterrence.” Id. at 141 (quote marks & brackets omitted). “The extent to which the exclusionary rule is justified by these deterrence principles varies with the culpability of the law enforcement conduct.” Id. at 143.

To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.

Id. at 144.

No deliberate, reckless, or grossly negligent disregard of Fourth Amendment rights was involved here. At the time Corporal Miner installed and monitored the device in January 2010, there was substantial reason to believe that a warrant was not required because the installation and monitoring of a tracking device had been found in the 1980’s not to involve a “search” when used to monitor travels on public roads. Suppression is unwarranted under the good-faith exception.

### C.

Some have contended that the good-faith exception does not apply to warrantless searches unless the officers believed there was a warrant. But this is a flawed reading of *Herring*, since the *Herring* Court itself noted that the good-faith exception already applied to warrantless searches that were based on a statute later found unconstitutional. *Herring*, 555 U.S. at 142 (discussing *Illinois v. Krull*, 480 U.S. 340, 352-353, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987)). Moreover, under *Davis v. United States*, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011), the good-faith exception clearly can apply to avowedly

warrantless searches. *Davis* repeated *Herring*'s test:

The basic insight of the *Leon* line of cases is that the deterrence benefits of exclusion “var[y] with the culpability of the law enforcement conduct” at issue. 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*, 131 S.Ct. at 2427-28 (citations omitted). “The [exclusionary] rule’s sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations.” *Id.* at 2426. “Where suppression fails to yield appreciable deterrence, exclusion is clearly unwarranted.” *Id.* at 2426-27 (quotation marks and ellipses omitted). “For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs.” *Id.* at 2427. *Davis* plainly applies the good-faith exception to warrantless searches. The principles animating the holdings in *Herring* and *Davis* readily apply in all search cases.

Corporal Minerd was not acting in a grossly-negligent disregard of Fourth Amendment rights when he installed and monitored the GPS device. Indeed, even after the *Jones* conclusion that a “search” was involved, there is *still* a substantial question whether a search warrant is even required.

#### D.

The defense will contend that the *Herring-Davis* test is limited to cases in which the officers were acting in compliance with “binding precedent.” *Davis* did involve a particular application of the good-faith exception to an instance involving compliance

with then-existing precedent. But its language is broader, as is the *Herring* language. *Davis* recognizes “[t]he Court has over time applied this ‘good-faith’ exception across a range of cases.” *Davis*, 131 S.Ct. at 2428. “The good-faith exception \* \* \* is no less an established limit on the *remedy* of exclusion than is inevitable discovery.” *Id.* at 2431. Inevitable discovery potentially applies in every case, as would the good-faith exception.

Even if a “binding precedent” standard applied, however, Corporal Minerd here met it. The earlier electronic-tracking cases provided the substantial “binding precedent” for believing that the installation/monitoring of a GPS device would not be a “search” because no reasonable expectation of privacy was invaded. In *Sparks*, the federal First Circuit recognized that officers could objectively rely directly on *Knotts* itself as allowing the warrantless monitoring of an electronic tracking device like a GPS to track movements on public highways. *Sparks*, 711 F.3d at 65-68. Indeed, the facts of *Sparks* are remarkably similar, with the GPS attachment in that case occurring just three weeks before the attachment here and the FBI investigating suspected serial armed robbers.

The First Circuit concluded that there were no material distinctions between the warrantless beeper monitoring allowed by *Knotts* and the warrantless GPS monitoring for 11 days that occurred in *Sparks*. “[T]he fact that the device was a GPS tracker rather than a beeper does not render *Knotts* inapplicable.” *Sparks*, 711 F.3d at 66. “Certainly, a GPS tracker is more capable than a beeper, but nothing inheres in the technology to take it out of *Knotts*’s holding.” *Id.* at 66 (quotation marks omitted). “*Knotts* clearly authorized the agents to use a GPS-based tracking device in the place of a beeper.” *Id.* at 66.

In addition, the 11-day duration of the GPS in *Sparks* did not materially

distinguish the *Knotts* case, since “*Knotts* gave scant reason to think that the duration of the tracking in that case was material to the Court’s reasoning.” *Id.* at 67. “*Knotts* was widely and reasonably understood to stand for the proposition that the Fourth Amendment simply was not implicated by electronic surveillance of public automotive movements \* \* \*.” *Id.* at 67.

The First Circuit had also noted that its own circuit precedent had found it immaterial under the Fourth Amendment that there was a “trespass” in attaching an electronic device like a beeper to the undercarriage of a car. *Id.* at 67. But there was no need to rely on circuit precedent, as *Karo* itself established that a “technical trespass” was insufficient to invalidate the surreptitious transfer of the device to the recipient in that case. *Knotts* and *Karo* both demonstrate that an expectation-of-privacy analysis applied and that “trespass” was only “marginally relevant” and insufficient” by itself.

Other federal circuits have applied the good-faith exception to warrantless GPS attachments, concluding that the precedents allowed such warrantless actions. *United States v. Andres*, 703 F.3d 828, 834-35 (5th Cir.2013) (“In December 2009, it was objectively reasonable for agents operating within the Fifth Circuit to believe that warrantless GPS tracking was permissible under circuit precedent.”); *United States v. Pineda–Moreno*, 688 F.3d 1087, 1090 (9th Cir. 2012).

No officer can be blamed for not having predicted that the *Jones* Court would resort to a trespass-to-chattel theory that the earlier electronic-tracking cases had expressly eschewed. Under those precedents, an officer reasonably could believe that there was no reasonable expectation of privacy implicated by monitoring public

automotive movements and a “technical trespass” would not create a need for a warrant.

E.

The Second, Eighth, and Eleventh Districts have concluded that there is a “binding precedent” requirement that precludes reliance on the good-faith exception unless there is “binding precedent” already in existence and directly on point at the time of the police action. *State v. Henry*, 2nd Dist. No. 25007, 2012-Ohio-4748; *State v. Allen*, 11th Dist. No. 2011-L-157, 2013-Ohio-434 (jurisdiction later declined by this Court in 4-3 vote); *State v. Allen*, 8th Dist. No. 99289, 2013-Ohio-4188. Amicus respectfully disagrees. The *Herring-Davis* principle extends beyond instances of narrowly-construed “binding precedent,” as shown by the Twelfth District decision in *Johnson*, 2013-Ohio-4865, which applied the good-faith exception to warrantless GPS attachment/monitoring without regard to whether there was directly on-point “binding precedent.”

The strict “binding precedent” approach is based on a flawed reading of *Davis*. The Second District in *Henry* focused on a statement in *Davis* that defendants would have an undiminished incentive to litigate the merits of Fourth Amendment claims in jurisdictions where the Fourth Amendment issue remains “open.” *Henry*, ¶¶ 17-18. From this isolated statement, the *Henry* court asserted that the good-faith exception cannot apply where the merits question remained open in the pertinent jurisdiction at the time of the police action. But this “undiminished incentives” statement was merely a makeweight observation as to why the *Davis* majority was rejecting the defendant’s “incentives” argument against the good-faith exception; the defense argument stood rejected for at least two other reasons. Moreover, the “incentives” argument was already

rejected in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), which concluded that any diminishment of incentives to litigate would be insubstantial and was no ground for rejecting application of a good-faith exception. *Id.* at 924-25 & n.

25. In any event, there *was* supportive binding precedent here: *Knotts* and *Karo*.

Proposition of Law No. 2. The warrantless attachment and monitoring of a GPS device on a vehicle so as to follow the vehicle's movements on public roadways does not violate the Fourth Amendment when there is reasonable suspicion or probable cause justifying such attachment/monitoring.

Not every Fourth Amendment intrusion requires a warrant or probable cause. The United States Supreme Court has stated that under its "general Fourth Amendment approach," it "examine[s] the totality of the circumstances" to determine whether a search or seizure is reasonable under the Fourth Amendment." *Samson v. California*, 547 U.S. 843, 848, 126 S.Ct. 2193, 165 L.Ed.2d 250 (2006) (internal quotation marks and citation omitted). Under that analysis, the reasonableness of a search or seizure is determined "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Id.*

Since *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Court has identified various law enforcement actions that qualify as Fourth Amendment searches or seizures, but that may nevertheless be conducted without a warrant or probable cause. Because "the central inquiry under the Fourth Amendment [is] the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security," *id.* at 19, the Court concluded that a stop and frisk, which is

considerably less intrusive than a full-blown arrest and search of a person, may be undertaken based on a showing of reasonable suspicion.

Subsequent cases have continued to recognize various types of police activities that amount to searches or seizures, but need not be justified by a warrant or probable cause. See, e.g., *Samson*, 547 U.S. at 847 (individualized suspicion not required for search of parolee's home or person); *United States v. Knights*, 534 U.S. 112, 118-121, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001) (upholding search of probationer's home based on reasonable suspicion); *New Jersey v. T.L.O.*, 469 U.S. 325, 341-342, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) (upholding search of student based on reasonable suspicion); *United States v. Place*, 462 U.S. 696, 706, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (upholding seizure of traveler's luggage on reasonable suspicion of narcotics); *United States v. Martinez-Fuerte*, 428 U.S. 543, 554-555, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (upholding suspicionless vehicle stops at fixed border patrol checkpoints).

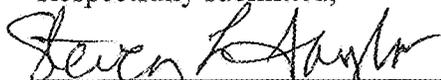
The Court recently reaffirmed this approach in *Maryland v. King*, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013), which upheld the warrantless and suspicionless search of an arrestee's mouth for DNA evidence through the use of an oral buccal swab. The Court recognized that the issue was governed by the "well established" standard of reasonableness. Although the warrantless buccal swabbing was an undoubted "search" intruding on the cherished personal security of the human body, the Court emphasized that the "negligible" nature of the intrusion occupied "central relevance to determining reasonableness \* \* \*." *Id.* at 1968-69. "Reasonableness" is the "ultimate measure of constitutionality," and that standard does not always require a warrant, especially when

the intrusion to privacy is “minimal” or the search involves “diminished expectations of privacy.” *Id.* at 1969-70.

The warrantless attachment and monitoring of a GPS device on an automobile fits comfortably within this reasonableness standard. The legitimate governmental interest of investigating an ongoing series of violent criminal acts and possibly preventing further violent criminal acts based at least on the existence of reasonable suspicion substantially outweighed the minimal, and really non-existent, privacy interests revealed through the GPS monitoring of the vehicle on public roadways. The attachment of the GPS device to Sullivan’s car amounted at most to a “technical trespass,” see *Karo*, 468 U.S. at 712, and no expectation of privacy existed because a car “travels public thoroughfares where both its occupants and its contents are in plain view.” *Knotts*, 460 U.S. at 281.

In fact, because probable cause existed, the automobile exception allowing a warrantless search would apply. *Maryland v. Dyson*, 527 U.S. 465, 119 S.Ct. 2013, 144 L.Ed.2d 442 (1999); *United States v. Ross*, 456 U.S. 798, 809, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) (“in cases where there was probable cause to search a vehicle ‘a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained.’”). “Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize” in a warrant. *Id.* at 823.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was sent by regular U.S. Mail on this 3<sup>rd</sup> day of Jan., 2014, to the following counsel: Mark P. Ort, 13297 Rustic Drive, NW, Pickerington, Ohio 43147; Jocelyn Kelly, 239 W. Main Street, Suite 101, Lancaster, Ohio 43130.

  
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