

CASE NO. 2013-2023

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IN THE SUPREME COURT OF OHIO

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

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STATE OF OHIO  
Plaintiff-Appellant

-vs-

LAUREN JONES  
Defendant-Appellee

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MEMORANDUM IN RESPONSE TO APPELLANT'S  
MEMORANDUM IN SUPPORT OF JURISDICTION

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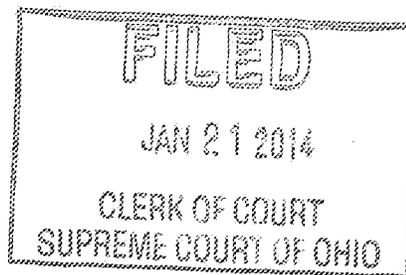
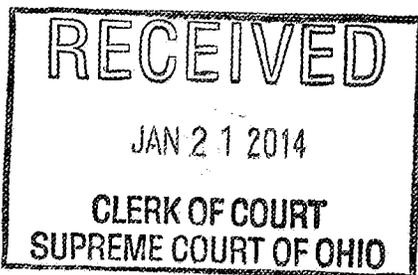
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**TABLE OF CONTENTS**

This felony case does not involve a substantial constitutional question or an issue of public or great general interest..... 1

Response to Appellant’s Proposition of Law: A single trash pull conducted just prior to the issuance of the warrant will not necessarily be sufficient to establish probable cause..... 5

Conclusion..... 8

Certificate of Service ..... 9

**I. This felony case does not involve a substantial constitutional question or an issue of public or great general interest.**

The State of Ohio has posited to this Honorable Court that the present case involves a substantial constitutional question requiring this Court to accept the case for review. The basis of this position seems to be that the ruling of the Eighth District Appellate Court has created uncertainty and conflict in the law concerning when police officers will be required to seek judicial review of a warrant to insure the presence of probable cause justifying its issuance. Further, the State appears to seek review to clarify whether the target of the investigation must be seen at the premise to be searched prior to the granting of the warrant. Finally, the State seems to be seeking clarity as to whether a single trash pull is sufficient to support the issuance of a search warrant. As the first issue has long been settled under the law, and the second issue is one of a purely factual, rather than constitutional, nature, neither of those issues raises a substantial constitutional question. The third issue also fails to rise to the requisite standard, as the State is seeking to have this Honorable Court resolve what it deems to be a conflict between courts that the Eighth District Appellate Court has already determined does not exist.

With regard to the first question raised by the State, the Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution provide that no warrant shall issue, but upon probable cause supported by oath or affirmation. In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, this Honorable Court has adopted the totality of the circumstances test established by the United States Supreme Court in *Illinois v. Gates* (1983), 462 U.S.213. Under that test, the requirement of the of the issuing magistrate or judge is “simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, 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.” *State v. George* (1989), 45 Ohio St.3d 325. This standard, as defined over thirty years ago by the United States Supreme Court, has provided ample clarity to police officers seeking search warrants since *Gates* was issued, and nothing about the facts of the present case give rise to a concern that this standard is no longer sufficient.

The State argues that the volatile nature of a methamphetamine lab requires quick action in order to protect the general public from the risk of explosion, and this concern creates a substantial constitutional question. There is no indication in jurisprudence that the protections provided under the Fourth Amendment are to be relaxed due to such circumstances. As the State notes, in consideration of this risk courts have carved out an exception to the warrant requirement allowing for a warrantless search where the State can show that exigent circumstances mandate that immediate action be taken to protect the public. Specifically, the United States Supreme Court held in *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), “warrants are generally required to search a person’s home or his person unless the ‘exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” As such an exception already exists under the law, there is no concern that police officers will be unable to act out of confusion or deference to the law when circumstances creating danger to the community arise. Accordingly, there is no substantial constitutional question not already contemplated under the law that is raised by the present case.

The State next argues that “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

premises to be searched.” This, according to the State, raises a substantial constitutional question. In fact, this point was one of many cited by the Trial Court, and repeated by the Eighth District Appellate Court, to illustrate the dearth of evidence supporting the issuance of this search warrant. The notation of this singular fact did not create a bright line rule requiring the target’s presence at the location of the search, as the State implies. Rather, it helps to define the type of support a magistrate or judge should consider when applying the totality of the circumstances test established by *Gates*. This instance of fact-specific analysis does not create a substantial constitutional question, and does not merit the granting of review by this Honorable Court.

Finally, despite the denial of the request for Certification of a Conflict by the Eighth Appellate District, the State again argues that there is a conflict between the ruling of the Eighth District in the present case, and the Twelfth District Court of Appeals in *State v. Quinn*, 12<sup>th</sup> Dist. Butler No. CA2011-06-116, 2012-Ohio-3123 and *State v. Akers*, 12<sup>th</sup> Dist. Butler No. CA2007-07-163, 2008-Ohio-4164. Clearly this scenario fails to establish a conflict based upon a rule of law rather than fact. The question of whether the trash pull revealed evidence that corroborated other evidence that supported the warrant is clearly a factual question and not a function a bright line rule of law. As the trial court noted in it’s opinion:

“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.” (emphasis added)

*State v. Lauren Jones*, Cuyahoga County Common Pleas Court Case No. CR-12-561064-B, Order Denying Motion to Suppress, Filed on February 11, 2013. Based upon the use of the language “not necessarily” in defining the sufficiency of a single trash pull for granting a search

warrant, the trial court was indicating that its opinion was based on the totality of the circumstances existing in this case in determining the constitutional deficiency of the warrant. The trial court's indefinite language is an indication that while this warrant did not pass constitutional muster, the court could envision scenarios where a single trash could prove sufficient. This is not the creation of a rule of law, rather, it is a judgment of the support for the warrant that existed in the present case.

In *Akers* and *Quinn*, when the Court conducted their analysis of the warrant and the information underlying its issuance, a determination was made, based upon the totality of the facts and circumstances presented to the issuing magistrate, that there was a factual basis to support the issuance of the warrant. In both *Akers* and *Quinn*, prior to the trash pull and subsequent issuance of the warrant, there had been very specific allegations of drug activity by named individuals at a specific address engaged in drug activity. In particular, in *Akers*, the police had received specific information that Akers and his wife were involved in drug activity from a specific address that was then subjected to a trash pull. Thus, the information relied upon for issuing the warrant was in fact greater than a single trash pull, but also relied on specific instances of drug activity described by confidential sources based upon firsthand information and endorsed by the detective who had utilized these confidential sources in the past. In the present case, there was no such specific information. Here, a similar analysis of the underlying facts was undertaken by this Court, and based upon the insufficiency of those facts, the warrant was deemed unconstitutional. Accordingly, the trial court's decision to grant Appellee's Motion to Suppress was upheld. It is therefore clear that the rule of law that undergirds all of the relevant cases to this inquiry is that probable cause must exist to support the issuance of a search warrant, and both courts concur on this holding. It is only when applying that standard to the facts in the

specific cases that a different outcome is reached. Thus, as the question is one of fact as opposed to law, the State of Ohio fails to meet the standard required to establish a substantial constitutional question requiring this Honorable Court's.

It is clear that the State has failed to raise a substantial constitutional question with regard to this case. It is also clear that there is no new issue of public or great general interest on a matter of first impression. Accordingly, Appellee respectfully requests that this Court deny the State's request for jurisdiction in this matter.

**II. Response to Appellant's Proposition of Law: A single trash pull conducted just prior to the issuance of the warrant will not necessarily be sufficient to establish probable cause.**

In the State of Ohio's Memorandum of Law in Support of Jurisdiction, Appellant offers a single proposition of law, arguing that one trash pull, if it corroborates tips and background information involving drug activity, *will* be sufficient to establish probable cause. (emphasis added) While Appellee agrees that under certain fact-specific scenarios a single trash pull may provide the necessary corroboration for a search warrant to meet the standards of constitutionality, it is not axiomatic, as Appellant seems to suggest, that the single trash pull will be sufficient. Rather, the reviewing magistrate or judge when confronted with a warrant that relies upon a single trash pull will be required to apply the totality-of-the-circumstances test defined by the United States Supreme Court in *Gates*, and adopted by this Honorable Court in *George*, in evaluating the constitutional muster of the warrant. The magistrate or judge will be required to consider whether the facts and averments the trash pull portends to corroborate are sufficient in and of themselves, and sufficiently corroborated by evidence recovered in the trash pull, to justify issuance of a search warrant. It is imprudent to establish a rule that indicates that a

single factor, in this case, one trash pull, will always be sufficient to establish the constitutionality of a trash pull, when all jurisprudence has indicated that review of a search warrant requires a review of all of the factors in play under the specific scenario presented to the reviewing magistrate or judge.

Appellant argues that the Eighth District Appellate Court has established a rule dictating that police cannot rely upon a single trash pull in seeking a search warrant, and in so doing, the Court ignores the holdings of cases from other jurisdictions that allow such support to justify issuance of a search warrant. This clearly misstates the position staked out by the Eighth District. Rather, the Eighth District Appellate Court wrote in *Jones*:

“This court, in reaching its decision, acknowledged the line of cases upholding warrants based upon evidence garnered from single trash pulls. *State v. Weimer*, 8<sup>th</sup> Dist. Cuyahoga No. 92094, 2009-Ohio-4983. 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*, 8<sup>th</sup> Dist. Cuyahoga No. 98100, 2013-Ohio-368.

This language clearly shows a proper application of the totality-of-the-circumstances test in evaluating the constitutionality of a search warrant. The Eighth District Appellate Court, properly reviewed all of the facts averred in this case, and, unlike in other cases referenced by the State of Ohio, determined the paucity of underlying evidence considered alongside the evidence secured in the trash pull, doomed this search warrant.

In reaching this decision, both the trial court and the Eighth District Appellate Court wrote that the underlying suppositions that led to the trash pull were vague generalities offered by questionable sources with no independent verification confirmed by police. The initial suspicion of the police was aroused by an indication only that someone named “ Further, police

saw the person they believed matched that description at an unrelated court proceeding alongside “Jen-Jen”, someone they knew to be a methamphetamine producer. The Appellate Court did not view these facts in and of themselves, even with supporting evidence from the trash pull, as justification for a search warrant. The trial court suggested that even a modicum of further investigation could have saved this warrant. Here, however, there was no verification that Appellant was in fact aligned with “Jen-Jen” in a new enterprise on Rowley. There was no independent indication that Jen-Jen had any tie to that residence. Further, the evidence uncovered in the trash pull, although indicative of recent criminal activity, did not necessary render the continued presence of methamphetamine in her home probable. *Jones, citing Weimer, Williams*. The Court determined that these facts, viewing the totality of the circumstances, were insufficient to support this search warrant, but in doing so, did not indicate that a single trash pull would never meet such a standard. This is a proper application of the law as defined in *Gates*.

Appellant further argues that the ruling of the Eighth District Court of Appeals “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.” While this may in fact prove to be inconvenient to the investigating officers, such inconveniences do not allow for a relaxation of the requirements of the Fourth Amendment to the United States Constitution. As the Second District Appellate Court noted in *State v. Terrell*, 2<sup>nd</sup> District Court of Appeals, #2011CA57, 2013-Ohio-124:

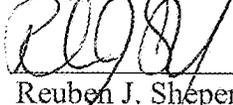
“...there is some allure to preserving the conviction of a major drug offender, but our role is not to search for an exception to salvage a deficient affidavit. ...efforts to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.” *Terrell*, citing *Weeks v. United States*, 232 U.S. 383, 393, 34 S.Ct. 341, 58 L.Ed. 652, T.D. 1964 (1914).

It is incumbent upon the police to devise ways to investigate the broad and generalized tips they receive from sources. This must be done within the constrictions created by the Constitutions of the United States and the State of Ohio, further defined by the codified ordinances of the nation, state and municipality, and interpreted by the courts. It is not the role of the court to carve out exceptions to these mandates in order to assist the police in these efforts. Appellant's fear that this will in some way limit the police in their attempts to develop an investigation does not justify exceptions to the rights to privacy requirements that are the bedrock of our society.

### III. Conclusion

Appellee respectfully requests this Honorable Court to deny the State's request to accept jurisdiction in this case. There has been no substantial constitutional question presented nor any issue of great public or general interest. All issues presented by the State are either well-established under the law or questions of facts that are resolved by an application of the law. The existing jurisprudence sufficiently provides guidance to the police as to how investigations of this nature should proceed. Accordingly, acceptance of jurisdiction is unnecessary.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum in Response to Appellant's Memorandum in Support of Jurisdiction has been sent via U.S. mail this 21<sup>st</sup> day of January, 2014, to Timothy J. McGinty, Cuyahoga County Prosecutor, at 1200 Ontario Street, Justice Center – 8<sup>th</sup> Floor, Cleveland, Ohio, 44113.



Reuben J. Sheperd