

ORIGINAL

NO. 2013-2023

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

MERIT BRIEF OF APPELLANT

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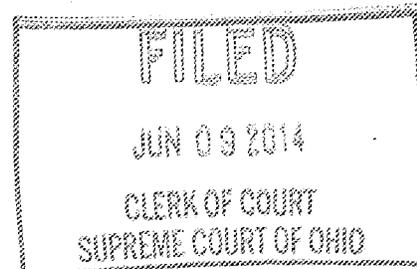


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STATEMENT OF THE CASE

Lauren Jones was 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 opined that, "[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 relied upon *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, 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" because while trash pulls were conducted, 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.

In affirming the decision of the trial court, the Eighth District held, "that the trial court's conclusion was supported by competent, credible evidence and that the trial court correctly applied the legal standard." *Jones*, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915, ¶18.

STATEMENT OF THE FACTS

The Eighth District recited the following facts:

Cleveland police narcotics detective Matthew Baepler 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 Baepler also learned that Jennifer Chappel, known as "Jen Jen," cooks methamphetamine and that she had moved her cooking operation to Rowley Avenue.

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.

Approximately three months after the burglary, Detective Baepler and other narcotics detectives were in the Cuyahoga County Justice Center on a matter unrelated to the Rowley Avenue burglary. While there, Detective Baepler 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 Baepler asked the prosecutor the identity of the woman with Chappel. The prosecutor informed Detective Baepler 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.

Armed with Jones' name, address and physical description, Detective Baepler 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.

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.

State v. Jones, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915, ¶3-6.

Additional facts, including averments in the search warrant affidavit, are discussed below in application of the appropriate legal principles.

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

I. THE APPLICABLE LEGAL STANDARDS REQUIRE A SEARCH WARRANT TO BE REVIEWED UNDER THE TOTALITY OF THE CIRCUMSTANCES.

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).

Normally, a motion to suppress presents a mixed question of law and fact. *State v. Codeluppi*, Slip Opinion No. 2014-Ohio-1574 citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8. Normally, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Codeluppi*, citing *State v. Fanning*, 1 Ohio St.3d 19, 1 OBR 57, 437 N.E.2d 583 (1982).

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, 238-239 (1983). Such a review only requires a magistrate or judge to make, "a 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." *State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), paragraph one of the syllabus.

As the Supreme Court of Kansas had put it, "'Probable cause' to issue a search warrant is like a jigsaw puzzle. Bits and pieces of information are fitted together until a picture is formed which leads a reasonably prudent person to believe a crime has been or is being committed and that evidence of the crime may be found on a particular person or in a place [...]" *State v. Morgan*, 222 Kan. 149 at 151, 563 P.2d 1056 at 1059 (Kan. 1977). The State would add that to obtain probable cause it is not necessary to complete the entire puzzle. Instead probable cause only requires enough of the puzzle to form a belief of the entire puzzle.

Under this definition of probable cause, "in conducting any after-the-fact scrutiny of an affidavit submitted in support of a search warrant, trial and appellate courts should

accord great deference to the magistrate's determination of probable cause, and doubtful or marginal cases in this area should be resolved in favor of upholding the warrant." *George*, 45 Ohio St.3d 325, paragraph two of the syllabus. And when reviewing the affidavit, the focus is the "totality of the circumstances" and not "each component standing alone." *State v. Baas*, 10th Dist. Franklin No. 13AP-644, 2014-Ohio-1191, ¶14 citing *State v. Edwards*, 10th Dist. No. 12AP-992, 2013-Ohio-4342 and *State v. Robinson*, 7th Dist. No. 10 CO 37, 2011-Ohio-6639, ¶23. As a consequence no individual piece of the puzzle should be viewed in isolation.

II. THE EIGHTH DISTRICT'S CASE LAW ON TRASH PULL CONFLICTS WITH DECISIONS FROM DECISIONS FROM OTHER OHIO APPELLATE DISTRICTS AND FROM DECISIONS OF OTHER STATES

A. EIGHTH DISTRICT PRECEDENT HAS BEEN INTERPRETED TO REQUIRE A TRASH PULL TO BE VIEWED IN ISOLATION WITHOUT REGARD TO BACKGROUND INFORMATION, I.E. THE REASONS WHY LAW ENFORCEMENT PULLED THE TRASH

The Eighth District's decision in *State v. Jones*, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915, is the culmination of cases that have established a bright line rule regarding single trash pulls in Cuyahoga County, Ohio. The trial court in *Jones* based its decision to suppress evidence in part on the Eighth District's decision in *State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983, *review denied*, 124 Ohio St.3d 1493, 2010-Ohio-670. Other decisions from the Eighth District have reached similar holdings. See *State v. Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368, *review denied*, 136 Ohio St.3d 1450, 2013-Ohio-3210.

In *State v. Jones*, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915, the Eighth District held that, "the discovery of the discarded contraband [in the trash] must be viewed in isolation." *Jones*, ¶15. The Eighth District also found a lack of probable cause because

there was not, as in other cases, continuous surveillance by police confirming heavy foot traffic to and from the target residence. The Eighth District agreed that "the trial court's conclusion was supported by competent, credible evidence and that the trial court correctly applied the legal standard." *Id.* at ¶18.

The trial court in granting the motion suppress applied the following legal analysis:

Pursuant to [*State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983], *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 Avenue, this Court does not believe the search warrant passes Constitutional muster.

Trial Court Opinion in Cuyahoga County Case No. CR-12-561064-B, Granting Motion to Suppress, Filed February 11, 2013.

The trial court also cited to *State v. Terrell*, 2nd Dist. Clark No. 2011-CA-57, 2013-Ohio-124 as a basis supporting suppression. But aside from the *Terrell* opinion referencing 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, the affidavit did not disclose a trash pull conducted at "239 East Grand Avenue." *Terrell*, at ¶4, 7. Therefore, *Terrell* cannot be said to hold that a "single trash pull" is insufficient because the claim in *Terrell* was that there was no trash pull associated with the pertinent residence.

Setting the trial court's reliance on *Terrell* aside, the trial court opinion resulted in two legal rules of law, which the Eighth District affirmed as correct applications of the law.

These rules are:

- (1) The trash pull must be viewed in isolation; and

(2) Without observations of the target engaging in criminal activity the trash pull that contains evidence of methamphetamine production is insufficient.

The trial court went on to suggest additional measures that law enforcement could have taken, i.e. surveillance, controlled buys and multiple trash pulls. The State would not dispute that in some cases law enforcement could bolster probable cause by taking some measures, but such additional measures should not be mandated as requirements in every case. By mandating such requirements, the trial court and the Eighth District would ignore the steps taken that lead law enforcement to make a decision to pull the trash at 1116 Rowley Avenue.

The rule of law in the Eighth District derives from the Eighth District's opinion in *State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983. The trial court's opinion would lead one to believe that *State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983 is on point for the proposition that a trash pull is to be viewed isolation. However, *Weimer* is not clearly on point.

In *Weimer*, the Eighth District held that Euclid Police lacked probable cause to search a home based upon contraband found in the a trash. The Eighth District in *Weimer* held that the trash had to be viewed in isolation after the Eighth District found that a "Franks" violation had occurred. Specifically, Euclid Police conducted a trash pull at 225 E. 216th Street (where defendant Weimer resided), three days before the warrant was executed. Police found, large plastic zip lock bags, two smaller sandwich-sized zip lock bags, and a metal spoon, all of which tested positive for cocaine. *Weimer*, ¶16. The trash pull had been conducted based upon a complaint of drug trafficking at 225 E. 216th Street.

Id. at ¶4. Police also had limited observations of a man named Locke, who was the target of the investigation, present at the residence. *Id.* at ¶5. Not included in the affidavit was information that Locke owned another home, had his driver's license listed at another address and had his last known address at different address. *Id.* at ¶8. The execution of the warrant yielded 16.3 grams of cocaine, a folded packet containing .07 grams of cocaine and a scale with cocaine residue. *Id.* at ¶9. The trial court granted Weimer's motion to suppress because Locke had been the target of the investigation and without any particulars regarding his presence on the property, there was no cause to justify the garbage pickup. *Id.* at ¶13. Much of the Eighth District's analysis turned to whether there was sufficient probable cause to believe that Locke resided at 225 E. 216th Street. *Id.* at ¶24. While the Eighth District held that the trash pull itself was legal, the Eighth District determined that it had to be viewed in isolation. *Id.* at ¶25. Based on what the Eighth District viewed as a *Franks* violation, the court excised three paragraphs from the affidavit, leaving only the paragraphs describing the trash pull. *Id.* ¶30-35.

The practice of viewing a trash pull in isolation did not end with *Weimer*. In *State v. Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368, the Eighth District determined that a trash pull that revealed, "various drug paraphernalia that tested positive for drug residue and a four-month-old letter, with only Williams's name on it and without an address," had to be viewed in isolation. *Williams*, ¶18. The conclusion that the trash pull was to be viewed in isolation was done without any mention of *Franks*. By viewing the trash pull in isolation the Eighth District ignored that the tip came from an informant who successfully engaged in a controlled purchase from the defendant ten days before the trash pull at another location. The informant told police he had also purchased drugs

from the defendant at the home that was ultimately searched at some time in the past. The informant also described a vehicle that was used by the defendant and investigation revealed that the vehicle was parked at the home and was registered to a person associated with the defendant. *Id.* at ¶¶4-6.

As the procedural history demonstrates in this case, the trial court inexplicably determined that the trash pull had to be viewed in isolation pursuant to *State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983. The Eighth District agreed with this assessment when it cited *Weimer* as requiring the contents of the trash pull to be viewed in isolation, without describing with the trash pull was viewed in isolation. See *State v. Jones*, 8th Dist. Cuyahoga No. 99538, 2013-Ohio-4915, ¶¶15.

The decisions from the Eighth District, in which the trash pulls were viewed 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). By requiring the trash pull be viewed in isolation, the Eighth District transformed this case from one with an investigative background to a case that involved just a single trash pull.

B. DECISIONS FROM OHIO'S SEVENTH, TENTH AND TWELFTH DISTRICT PROVIDE THE VIEW THAT A TRASH PULL THAT CORROBORATES BACKGROUND INFORMATION PROVIDES PROBABLE CAUSE FOR ISSUANCE OF A WARRANT

Ohio's 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, ¶21.¹ These cases are not mere single trash pull cases to the extent that the cases involved background information leading up to the trash pull.

In *State v. Quinn*, 12th Dist. Butler No. CA2011-06-116, 2012-Ohio-3123, 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 *State v. Akers*, 12th Dist. Butler No. CA2007-07-163, 2008-Ohio-4164, 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

¹ 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.

"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 where the trial court faulted police for not establishing that they observed Lauren Jones engaging in criminal activity.

In another case, the Twelfth District upheld the issuance of a search warrant based upon a tip of drug activity, evidence of unusual energy usage and based upon evidence found in a trash pull. See *State v. Swift*, 12th Dist. Butler No. CA2013-08-161, 2014-Ohio-2004. The Twelfth District also held that it was not inappropriate for a warrant affidavit to contain stale information, to the extent that such stale information could be refreshed. *Swift*, at ¶¶24-26.

Therefore, following the decisions of the Seventh, Tenth and/or Twelfth appellate districts, a trash pull should not be viewed in isolation but instead should be viewed in the context of background information. These decisions recognize that every piece of the puzzle must be viewed together in determining probable cause. The background information, i.e. tips from informants, are one piece of the puzzle while the trash pull is another piece of the puzzle. As a result, a 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.

C. DECISIONS FROM OTHER STATE COURTS, SUPPORT THE PROPOSITION THAT A SINGLE TRASH PULL, WHICH CORROBORATES BACKGROUND INFORMATION PROVIDES PROBABLE CAUSE. COURTS ALSO RECOGNIZE THAT PIECES OF INFORMATION IN AN AFFIDAVIT SHOULD NOT BE VIEWED IN ISOLATION.

Other state courts have tackled trash pull scenarios and have upheld the issuance of search warrants after taking in all circumstances. These decision provides guidance on the circumstances in which a trash pull would provide sufficient probable cause and more importantly instruct that individual portions of an affidavit are not to be viewed in isolation.

In *State v. Storey*, 8 A.3d 454 (R.I. 2010), the Supreme Court of Rhode Island found probable cause to support the issuance of a search warrant for the defendant's residence under the following factual circumstances: (1) the detective received a tip, two months prior to the warrant application, of the defendant's involvement in the sale and distribution of cocaine from his residence, (2) the tip was investigated by conducting a criminal-background check of the defendant and a "trash pull" at the defendant's home, (3) the trash pull yielded 12 plastic baggies, one of which had a white powdery substance that tested positive for cocaine residue and mail in the name of the defendant, (4) confirmation through other investigative techniques that defendant lived at the home where the trash was pulled. *Storey*, 457-458.

In *People v. Keller*, 479 Mich. 467, 739 N.W.2d 505 (Mich. 2007), the Michigan Supreme Court went as far as to find that a single roach of marijuana was sufficient to establish probable cause when viewed together with a tip.

Minnesota appellate courts properly recognized that, "contraband seized from a garbage search can provide an independent substantial basis for a probable-cause

determination." *State v. McGrath*, 706 N.W.2d 532 (Minn. App. 2005) citing *State v. Papadakis*, 643 N.W.2d at 356 (finding that spoon with burn marks and plastic bag containing cocaine residue were sufficient to establish probable cause for search) and *State v. Goebel*, 654 N.W.2d 700, 702 (Minn. App. 2002). Minnesota appellate courts are cautious not to review each component of the affidavit in isolation. *State v. Horbach*, No. A08-1898, 2009 WL 2926803 (Minn. App. 2009) citing *State v. Wiley*, 366 N.W.2d 265 at 268 (Minn. 1985).

One Texas appellate court agreed that a review of, "the four corners of the affidavit in reviewing the magistrate's determinate [...] should not read any parts in isolation from the rest," the same court also recognized that its focus should not be "on what other facts could or should have been included in the affidavit." *State v. Green*, No. 05-12-01618-CR, 2013 WL 6672450 (Tex. App. Dec. 17 2013).

The Massachusetts appellate court agreed with the view that courts should refrain from dividing separate parts of an affidavit into isolation. See *Commonwealth v. Fontaine*, 84 Mass. App. Ct. 699, 703-704, 3 N.E.3d 82 (Mass. App. Ct. 2014).

These cases illustrate that the trash pull is not to be viewed in isolation but to be viewed in the context of any tips and background information.

III. THE PUZZLE PIECES IN THIS CASE ARE SUFFICIENT TO PROVIDE ENOUGH OF A PICTURE TO ESTABLISH PROBABLE CAUSE BASED ON THE TOTALITY OF THE INFORMATION INCLUDING THE BACKGROUND INFORMATION, EVENTS LEADING UP TO THE TRASH PULL AND THE CONTENTS OF THE TRASH PULL ITSELF

In applying the legal principles discussed above, there was a substantial basis for the issuing judge to conclude the detectives had probable cause to search the home on Rowley Avenue. This case involved more than just the trash pull that yielded evidence

of methamphetamine production. In constructing the puzzle, Cleveland Police had the following pieces of information:

- Within the past month of the issuance of the warrant a Confidential Reliable Informant provided information about an overweight black female cooking and selling methamphetamine by the name of Lauren. Paragraph 6 of the search warrant affidavit.²
- Six separate arrested persons charged in the production of methamphetamine provided information about a woman named Jennifer Chappell who was producing methamphetamine. Chappell lived at an address on Riverbed Road in Cleveland, Ohio. Paragraphs 7-8 of the search warrant affidavit. Two of these six indicated that Chappell moved her operations to Rowley Avenue in Cleveland, Ohio. Paragraph 9 of the search warrant affidavit.
- A week prior to the issuance of the warrant, Detective Baepler and another detective were on the 19th floor for an unrelated court appearance. That day, Detective Daepler recognized Jennifer Chappell with an overweight black female. The black female was speaking with an assistant prosecutor. Detective Baepler learned from the prosecutor that the unknown woman was Lauren Jones and that she lived at 1116 Rowley Avenue. Paragraph 10 of the search warrant affidavit.

² See Defendant's Motion to Supplement Record filed in trial court on January 25, 2013 for affidavit.

- Lauren Jones had made a report regarding a burglary and a male who refused to leave her home at 1116 Rowley Avenue. When police arrived, a male had been arrested and that male was found in possession of a coffee filter and a baggy of unknown narcotics, both of which tested positive for methamphetamine. This male, identified as Ilya Shipman was a known buyer of pseudo-ephedrine (which is the main pre-cursor ingredient to make methamphetamine). Paragraphs 12-13 of the search warrant affidavit.
- Within 24 hours prior to obtaining the search warrant, trash was pulled from the tree lawn of 1116 Rowley Avenue, which yielded mail addressed to Lauren Jones at 1116 Rowley Avenue, 3 empty bottles of "HEET", one empty bottle of NAPTHA (both of which are chemicals known to be used in the production of methamphetamine, as well as used coffee filters, plastic tubing, an "Aquafina" bottle with suspected "meth oil". A NIK test indicated positive for methamphetamine. Paragraphs 16-19 of the search warrant affidavit.

The trial court and Eighth District's application of law severely undermines the probable cause analysis by limiting the determination of probable cause to the trash pull and is contradicted by decisions for other appellate courts, which do not view a trash pull in isolation.

Sound legal principles require that no one piece of the puzzle, including the trash pull, be viewed in isolation. Even though individual pieces of the puzzle do not provide probable cause to search on its own, they are to be viewed together. Here, Cleveland Police had a sufficient picture to establish probable cause to obtain a search warrant for

1116 Rowley Avenue. There is no requirement that police confirmed that Lauren Jones, specifically, was engaged in criminal activity at 1116 Rowley Avenue because the test is not whether Jones was observed engaging in criminal activity at 1116 Rowley Avenue but whether there is a fair probability that evidence of a criminal offense would be found at 1116 Rowley Avenue.

CONCLUSION

The trial court's interpretation of Eighth District precedence, and the Eighth District's affirmance of the trial court's decision reinforces what has become an applicable legal standard in Cuyahoga County, i.e. a single trash pull is viewed in isolation and does not provide sufficient probable cause for issuance of a search warrant.

The State would ask this Court to adopt the proposition of law in this case and to make clear in any holding that a trash pull is not to be viewed in isolation. In applying the appropriate legal principles, courts are not to ignore background information, i.e. in this case every step the detectives took to find the suspected home where methamphetamine was being produced. In this case, the background information coupled with the trash pull, yielding evidence of suspected methamphetamine production provided sufficient probable cause for the issuance of a search warrant.

Respectfully Submitted,

Timothy J. McGinty (#0024626)
Cuyahoga County Prosecutor

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CERTIFICATE OF SERVICE

A copy of the State's Merit Brief has been sent this 9th day of June, 2014 via U.S. Mail to counsel for Appellee-Lauren Jones: Reuben Sheperd (#0065615), 11510 Buckeye Road, Cleveland, Ohio 44104 and via electronic service to reubensheperd@hotmail.com.

Daniel T. Van Ciper (per e-mail authorization)
Daniel T. Van (#0084614) *MSH*
Assistant Prosecuting Attorney

ORIGINAL

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

FILED
DEC 23 2013
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

Counsel for Plaintiff-Appellant

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NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

Appellant State of Ohio hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District in *State of Ohio v. Lauren Jones*, entered in Court of Appeals case No. 99538 on November 7, 2013.

This felony case did not originate in the Court of Appeals, raises a substantial constitutional question and is one of public or great general interest.

Respectfully Submitted,

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Daniel T. Van (by M. A. per authority)
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SERVICE

A copy of the foregoing has been sent this 20th day of December, 2013 to Reuben J. Sheperd, 11510 Buckeye Road, Cleveland, Ohio and to the Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 by ordinary U.S. Mail. An electronic copy has also been sent electronically to Jim Foley (Office of the Ohio Public Defender) at Jim.Foley@opd.ohio.gov

Daniel T. Van (by M. A. per authority)
Daniel T. Van (#0084614)



77979906

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

2013 FEB 11 A 9:07

Case No: CR-12-561064-B

Judge: JOHN D SUTULA

LAUREN JONES
Defendant

CLERK OF COURTS
CUYAHOGA COUNTY

INDICT: 2925.04 ILLEGAL MANUFACTURE/CULTIVATION
OF MARIJUANA /FORS
2925.041 ASSEMBLY/POSSESS CHEMICAL
MANUFACT DRUG W/INTENT MANUFACT /FORS
2925.03 TRAFFICKING OFFENSE /FORS
ADDITIONAL COUNTS...

JOURNAL ENTRY

DEFENDANT IN COURT. COUNSEL JOSEPH C PATITUCE & JENNIFER SCOTT PRESENT.
PROSECUTOR(S) MARY C. WESTON PRESENT.
DEFENDANT'S MOTION TO SUPPRESS IS GRANTED. DEFENDANT AND PROSECUTOR REVIEWED.
SEE ATTACHED OPINION, OSJ.

02/06/2013
CPEDB 02/07/2013 09:23:44

Judge Signature

Date

HEAR
02/06/2013



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 #2011CA57003, Ohio App. Lexis 88, 1-18-2013.

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.

[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

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

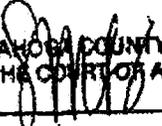
Journal Entry

Motion by Appellant to certify a conflict is denied.

COPIES MAILED TO COUNSEL FOR
ALL PARTIES.-COSTS TAXED

RECEIVED FOR FILING

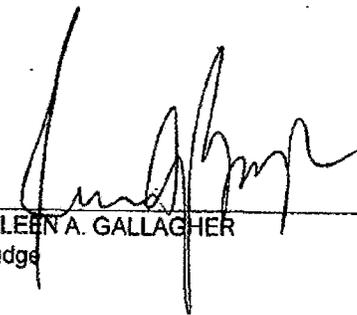
NOV 27 2013

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

U.S.C.A. Const. Amend. IV-Search and Seizure

United States Code Annotated Currentness

Constitution of the United States

☑ Annotated

☑ Amendment IV. Searches and Seizures (Refs & Annos)

→ **Amendment IV. Search and Seizure**

<Notes of Decisions for this amendment are displayed in four separate documents. Notes of Decisions for subdivisions I to XI are contained in this document. For Notes of Decisions for subdivisions XII to XXIV, see the second document for Amend. IV-Search and Seizure. For Notes of Decisions for subdivisions XXV to XXXIV see the third document for Amend. IV-Search and Seizure. For Notes of Decisions for subdivisions XXXV to end, see the fourth document for Amend IV-Search and Seizure.>

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 place to be searched, and the persons or things to be seized.

U.S.C.A. Const. Amend. IV-Search and Seizure, USCA CONST Amend. IV-Search and Seizure

Current through P.L. 113-93 (excluding P.L. 113-79)
approved 4-1-14

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END OF DOCUMENT

OH Const. Art. I, § 14

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

▣ Article I. Bill of Rights (Refs & Annos)

→ **O Const I Sec. 14 Search and seizure**

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

Const. Art. I, § 14, OH CONST Art. I, § 14

Current through Files 1 to 95 and Statewide Issue 1 of the
130th GA (2013-2014).

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