

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 APPELLEE

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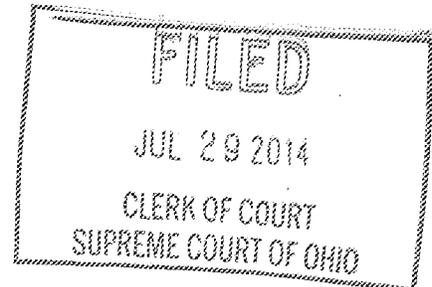


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STATEMENT OF THE CASE

Ms. Lauren Jones (hereinafter "Jones") was charged in a eight (8) count indictment by a Cuyahoga County Grand Jury on April 17, 2012. The indictment charged one count of Illegal Manufacture/Cultivation of Marijuana, a violation of Ohio Revised Code 2925.04(C)(1); one count of Illegal Assembly or Possession for Manufacture of Drugs, in violation of ORC 2925.041(A)(1); two counts of Drug Trafficking, in violation of ORC 2925.03(A)(2); three counts of Drug Possession, in violation of ORC 2925.11(A); and one count of Possession of Criminal Tools, in violation of ORC 2923.24.

On October 2, 2012, Jones filed several motions, including a Motion to Suppress that challenged the legality of the Search Warrant that was issued for the address of 1116 Rowley Ave., Cleveland, Ohio. This search warrant led to the discovery of evidence that was critical to the State's prosecution of the case. On October 9, 2013, the State of Ohio filed an omnibus response to Jones' Motions, including the Motion to Suppress. On January 24, 2013, a hearing was convened on the Motion to Suppress. On February 2, 2013, the trial court issued an order granting the Defendant's Motion to Suppress, noting:

"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 crime drug area or that numerous people were entering or leaving the house for short periods...

[A]dditional investigation including multiple trash pulls over a period 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."

At that time, the case was stayed pending the State's Appeal of the Court's ruling on the Motion to Suppress. The State appealed the Trial Court's ruling to the Eighth District Court of Appeals. On November 7, 2013, in a unanimous opinion, the Eighth District affirmed the Trial Court's ruling. The State then moved the Eighth District to certify a conflict, and on November 27, 2013, that request was denied. The State now appeals to this Honorable Court.

STATEMENT OF THE FACTS

A review of the record reveals that Cleveland Police Detectives from the Narcotics Unit first became aware of an individual named "Lauren" in October, 2011. (See, Exhibit "A", Departmental Information report; Transcript, p. 18-19) Police learned of "Lauren" based on a tip from a Confidential Reliable Informant (CRI) who stated that a black female by the name of "Lauren", in Cleveland, Ohio, was cooking and selling methamphetamine. (Tr., p. 23; Exhibit "B", Search Warrant Affidavit) No other specific information was gleaned from this resource.

These same detectives had also separately received information from six different people who had been arrested and charged with the production of methamphetamine, each independently naming Jennifer "Jen-Jen" Chappell as another person engaged in the production of methamphetamine. (Tr., p.23; Affidavit) The search warrant does not indicate that any of these six people provided information linking Chappell to Jones. Two of those same six informants provided information that Chappell had moved her methamphetamine operation to Rowley Avenue in Cleveland, Ohio. (Tr., p. 24; Affidavit)

On December 4, 2011, Jones, who resided at 1116 Rowley Avenue, Cleveland, Ohio, reported a burglary at her residence. (Affidavit) Police came to that address and arrested Ilya Shpilman, charging him with burglary and possession of drugs. (Affidavit) No evidence of an

ongoing drug operation within that residence was found at the time that Shpilman was arrested. On a date within a week prior to securing a search warrant in this matter, Narcotics Unit detectives, while present in the building on an unrelated case, claimed to observe Chappell on the 19th floor of the Justice Center sitting next to an individual who matched the extremely vague description of "Lauren". (Tr., p. 24; Affidavit) The individual believed to be "Lauren" was present in the Justice Center with regard to the case against Ilya Shpilman, and despite the detective's claim, was actually on the 22nd floor of the Justice Center. (Tr, p. 21-22) The detectives approached an Assistant County Prosecutor and were able to learn the identity of the unidentified female, who proved to be Jones, and who resided at 1116 Rowley Ave., Cleveland, Ohio. (Tr., -,24; Affidavit)

The police proceeded to conduct surveillance of 1116 Rowley within the 72 hour period preceding the issuance of the warrant. (Affidavit, at ¶ 20) The search warrant affidavit does not suggest anything of note was learned through this surveillance, only that the police were able to confirm the address. Without any further information connecting the Jones to the production of methamphetamine, the detectives proceeded to conduct a single trash pull at the location of 1116 Rowley. (Tr., p. 33-35; Affidavit) Within the trash the police found mail addressed to Lauren Jones and a number of household items sometimes used in the manufacture of methamphetamine, that field tested positive for methamphetamine. (Affidavit) There is no indication of the amount of material found that field tested positively for methamphetamine. There is also no indication of other surveillance conducted at that location, nor any activity that would be considered consistent with the production and distribution of methamphetamine, or any other drug. On the basis of the information noted above, the detectives secured a search warrant for 1116 Rowley Ave., and executed the warrant on March 23, 2012. During the search police

discovered methamphetamine and the materials consistent with its production in the home.

(Affidavit and Return).

LAW AND ARGUMENT

PROPOSITION OF LAW: A SINGLE TRASH PULL DOES NOT NECESSARILY SUPPLY SUFFICIENT PROBABLE CAUSE TO SUPPORT THE ISSUANCE OF A SEARCH WARRANT.

- 1. LEGAL STANDARDS REQUIRE THAT SEARCH WARRANTS BE REVIEWED UNDER THE TOTALITY OF THE CIRCUMSTANCES, AND, IN APPLYING THIS STANDARD, THE LOWER COURTS PROPERLY DETERMINED THAT THE SEARCH WARRANT IN THE PRESENT CASE FAILS TO PASS CONSTITUTIONAL MUSTER.**

The Fourth Amendment to the United States Constitution, applied to the States via the Fourteenth Amendment, reads in part:

“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 searched.”

In determining whether a search warrant is valid a trial court is guided by *Illinois v. Gates* (1983), 462 U.S. 213 and *State v. George* (1989), 45 Ohio St.3d 325, wherein the United States Supreme Court and Ohio Supreme Court required the use of a totality of the circumstances analysis to determine whether probable cause supports the issuance of a search warrant. *Gates*, at 230. “In determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, ‘(t)he task of the issuing magistrate 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.” *George*,

supra, paragraph on of the syllabus, quoting *Gates*, supra. In the present case, the Trial Court, and, subsequently, the Appellate Court, clearly reviewed the facts underlying the search warrant by considering the totality of the circumstances. In so doing, each concluded that the totality of the circumstances did not justify the issuance of the warrant.

The opinion of the Eighth District Court of Appeals notes that the only evidence offered to support the notion 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.” *State v. Jones*, 2013-Ohio-4915. A review of the search warrant affidavit supports the Eighth District’s conclusion that no other facts were established within the four corners of the document that would give rise to a finding of a fair probability that an illegal methamphetamine operation was ongoing. The tip concerning “Lauren” only limits the alleged drug activity to “the area of Cleveland, Ohio” (Affidavit, at ¶ 6), a geographical area large enough to include several hundred thousand people, countless of whom meet the vague description offered of a black female who cooks and sells methamphetamine. Further, no description of Rowley Avenue is supplied, meaning, that it is a street of indeterminate length for purposes of establishing probable cause. These minimal facts without further surveillance, verification or specificity are insufficient to establish probable cause in support of the warrant.

Conspicuously, this affidavit that offers so few established facts is fraught with gaps that require filling in order to establish probable cause. While the affidavit does reference another alleged methamphetamine dealer by the name Jennifer “Jen-Jen” Chappell, the affidavit is bereft of any evidence directly tying Chappell to 1116 Rowley Avenue. There is no indication from the affidavit that Chappell had ever been present, much less resided in or run an operation from,

1116 Rowley. Instead of surveillance providing substantiation of Chappell's presence, the affidavit relies on statements of six informants, none of whom are credentialed as "reliable" and only two of whom place Chappell's activities on Rowley Avenue. Other than noting that Chappell and Jones are sitting in proximity to one another at the Justice Center there is nothing that connects them together. It strains credulity to suggest that fellow drug manufacturers and dealers would likely commiserate together by choice in the Justice Center, particularly in the areas frequented constantly by police, prosecutors and other law enforcement officials. These allegations alone, unsubstantiated in any way, do not properly confirm drug activity at this address.

Further, there is no indication that Jones was in fact manufacturing or selling methamphetamine from that location. According to the search warrant affidavit, surveillance was conducted within the 72 hour period directly preceding the issuance of the warrant, yet there is no indication that any drug activity was observed. (Affidavit, at ¶ 20). There is no indication of heavy foot traffic at the address, or multiple visitors staying within the house for only a short period of time, or any other activity consistent with the drug trade. There are no additional trash pulls conducted that showed an ongoing pattern of drug activity. There is no indication within the affidavit of prior arrests or investigations of either Jones or Chappell for methamphetamine production or distribution, be it on Rowley Avenue or elsewhere. There is no information provided to suggest this address is located within a high-drug area.

Additionally, there is no statement of who placed the trash at the curb that became the subject of the trash pull, nor is there an averment establishing that the trash was undisturbed by others once it had been dropped. Given the indeterminate length and unknown number of homes on that street, innumerable others in the neighborhood had the same access to the trash as the

police. It is not uncommon for neighbors to take or leave items of their own in trash dropped on the street, and not at all unlikely that a neighbor running a drug operation within their own home would choose to discard their trash in front of someone else's home in order to avoid exactly the scenario that exists here.

Given this dearth of information presented to the magistrate to secure the warrant, the Trial Court was clearly justified in noting that "the detective should have taken additional steps, instead of cutting off the investigation prematurely." Trial Court Opinion in Cuyahoga County Case No. CR-12-561064-B, Granting Motion to Suppress, Filed February 11, 2013. Without the fruits of additional surveillance and investigation to buttress the limited information included in the affidavit in support of the warrant, this affidavit is fatally deficient. Accordingly, the Trial Court's granting of the Motion to Suppress must be upheld.

In *United States v. Elliott*, 576 F.Supp. 1579 (1984), the United States District Court for the Southern District of Ohio was presented with a factual scenario directly analogous to that presented here. In *Elliott*, on the basis of anonymous citizen complaints, the police conducted a trash pull that uncovered the presence of partially smoked marijuana cigarettes and stems from marijuana stalks, as well as mail linking the defendant to the trash and the address. The search warrant further described surveillance activity conducted at that address that showed several vehicles "visit(ing) the described premises and stay(ing) for only a short period of time which is to affiant, the normal pattern for drug related activity." The only surveillance noted in the present case provided no information that was averred in support of granting a search warrant.

In reviewing the sufficiency of the evidence supporting the search warrant in *Elliott*, despite the timely response to citizen complaints and the continuing surveillance of the premises,

the Court held that the discovery of the discarded contraband, standing alone, was insufficient to support a determination of probable cause. In so holding, the Court wrote:

“The waste products of marijuana use do not, of themselves, indicate any continuing presence of contraband in the home. As for the complaints and surveillance, it is difficult to perceive how information which was pertinent perhaps weeks or months before can permit the inference of a current continued presence of contraband, even assuming that such information may have indicated a continued presence at that earlier time. Such conjecture is more appropriate in the discussion of possibilities than it is in the discussion of probabilities.”

Elliott, at 1581. The Court further compares the facts of *Elliott* to other cases where trash pulls were found sufficient as the primary basis for probable cause, and distinguishes those cases because there the trash pulls were further corroborated, either by additional investigation and surveillance or by additional trash pulls. See, *United States v. Sumpter*, 669 F.2d 1215 (8th Cir.1982); *United States v. Reichert*, 647 F.2d 397 (3rd Cir. 1981).

Elliott clearly establishes that all circumstances must be considered when evaluating the sufficiency of the evidence supporting probable cause for a search warrant. The *Elliott* court noted the possibility that a single trash pull, properly corroborative of relevant information, *may* be sufficient to establish probable cause. There, as here, however, the court held that a single trash pull is *not necessarily* sufficient for the establishment of probable cause. The *Elliott* court reviewed the totality of the circumstances, and despite follow-up investigation far more involved than in this matter, concluded that the particular factual scenario the court confronted did not meet the appropriate standard to justify the issuance of the warrant. The court ruled accordingly that the motion to suppress must be granted. This Honorable Court must similarly rule that probable cause here was lacking, and uphold the rulings of the Trial and Appellate Courts.

2. THE EIGHTH DISTRICT'S CASE LAW ON TRASH PULLS DOES NOT CONFLICT WITH DECISIONS FROM OTHER OHIO APPELLATE DISTRICTS.

In holding that the evidence presented to the reviewing judge was insufficient to support the issuance of the search warrant, the Trial Court wrote:

“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. Further, in its opinion, the Eighth District Appellate Court specifically acknowledged the line of cases upholding warrants based upon evidence garnered from single trash pulls. *Id.*, citing, *State v. Weimer*, 8th Dist. Cuyahoga No. 92094, 2009-Ohio-4983; *State v. Williams*, 8th Dist. Cuyahoga No. 98100, 2013-Ohio-368. Each of the lower courts, either through the indefinite language suggesting that one trash pull was “not necessarily sufficient” to support probable cause, or through acknowledgement of cases where a single trash pull was deemed sufficient, envisioned scenarios where the single trash pull would provide ample basis for a search warrant. The lower courts here, after conducting their analysis of the evidence that allegedly gave rise to probable cause to support the warrant, concluded that the particular facts set forth were insufficient for this warrant to pass constitutional muster. In effect, it was not a differing standard of law that led to the suppression of the fruits of this warrant, rather, it was the application of that same standard to the paucity of facts corroborated by the trash pull that caused this warrant's demise.

In *Weimer*, a search warrant was issued based upon what the police themselves described as “limited” surveillance months prior to the issuance of the warrant, and the findings of a single

trash pull that included several items that tested positively for the presence of cocaine. In citing *Gates* the Eighth District noted that they were required to conduct a “common sense review” of the totality of the circumstances surrounding the affidavit and evidence in the case. *Weimer*, at ¶ 29. The Court also noted that it “was aware of the line of cases upholding warrants based upon evidence garnered from single trash pulls.” *Weimer*, at ¶ 25. In determining that there was no substantial basis to support upholding the warrant, the Eighth District wrote of the cases where the warrant survived on the basis of a single trash pull:

“(I)n those cases, the facts underlying probable cause were much stronger, and includ(ed), for example, extensive and continuous surveillance by police, heavy foot traffic to and from the target residence that is indicative of drug transactions, controlled buys by police informants, and even observations of these transactions by the police. No such facts are present here.”

Id. Thus, in *Weimer*, the Eighth District accepted their burden to review the evidence utilizing a common sense approach to reviewing the totality of the circumstances, and contemplated scenarios where a single trash pull could stand as the primary basis to substantiate the warrant. The Court simply found there, as here, that such a substantial basis was not portrayed by the affidavit and the evidence. This fact-based ruling does not define a new or onerous responsibility placed upon police in seeking search warrants. It simply mandates that the evidence presented be sufficient to establish the probability that ongoing criminal activity is occurring at a particular address, and a search is justified to end it.

The State argues that the Eighth District has defined a bright line rule of law that differs from the holdings of the Seventh, Tenth and Twelfth District Courts, where search warrants were deemed sufficient with a single trash pull as the primary basis for establishing probable cause. In fact, there is no conflict between the standards set forth by the Eighth District and the other Districts noted by the State. All of the relevant districts have held that in reviewing the

sufficiency of the evidence underlying the search warrant, the reviewing court must consider the totality of the circumstances. This requires an analysis of the facts that led to the trash pull, as well as consideration of how the evidence discovered within the trash supported the information the trash pull was intended to corroborate. Each of the Appellate Districts highlighted by the State, including the Eighth District, did apply that standard to the facts of the specific case at hand. Although the warrants from the three Eighth District cases were found to be constitutionally insufficient, this was due to the factual scenarios presented as opposed to a different, more stringent standard being applied.

In the present case, as noted above, the only facts that had been known prior to the trash pull, and pertaining to Jones, was that her name was Lauren, and that she matched the description of an overweight, African-American female. There were no specific instances of her producing or distributing methamphetamines. There was no surveillance showing that the tell-tale signs of a drug operation – i.e., heavy traffic, people visiting for short periods of time, etc. – were in existence. There were no drug buys conducted by police or informant. There was no information regarding the time the trash was placed on the lawn prior to the trash pull. There was no indication that Jen-Jen was ever seen at the location. These failings are what distinguishes this case from those that are cited by the State in an attempt to establish a conflict.

In *State v. Robinson*, 2011-Ohio-6639, the Seventh District upheld the denial of Appellant's Motion to Suppress after conducting a totality of the circumstances review of the evidence supporting the warrant. In *Robinson*, however, the police were acting on specific tips from two named informants, each of whom described specific instances of drug transactions involving the Appellant's address. Further, the police conducted four separate trash pulls to establish a pattern of ongoing activity that rendered it more probable that a search warrant would

reveal a drug operation. The standard of law applied by the court was the same as that applied by the Eighth District; the warrant stood simply on the basis of a more effective and thorough investigation that revealed a pattern of activity, rather than a single instance of the presence of contraband.

Similarly, the State suggests that in *State v. Edwards*, 10th Dist. Franklin No. 12AP-992, 2013-Ohio-4342, the Tenth District Court of Appeals applied a different standard when reviewing the sufficiency of the evidence purporting to establish probable cause for a search warrant. Again, it was not the standard of law that differed, it was the quality of the evidence. There, two cities had been separately investigating Appellant, and the investigating officer in the case at hand was armed with knowledge of prior drug sales in the other city. The officer had direct knowledge of four drug transactions, involving over ten pounds of marijuana that had been conducted by Appellant. The officer conducted two separate trash pulls, each of which produced evidence of marijuana stems and seeds, and that corroborated the specific transactions noted above. The direct link between known drug transactions and two trash pulls establish probable cause to a level that is absent in the present case. Accordingly, application of the same legal standard to a different factual scenario is what led to the different outcome in the case.

Finally, the State posits that there is a conflict between the Eighth District and the Twelfth District on this issue. In the most recent case cited out of the Twelfth District, *State v. Swift*, 2014-Ohio-2004, again, the Court applies a totality of the circumstances standard in reviewing the sufficiency of the evidence purporting to establish probable cause. The *Swift* court notes that “evidence obtained as a result of the trash pull is strong evidence, in itself, to the determination of probable cause.” *Id.* at ¶ 19. The court, however, relies upon information the investigating officer gleaned from examining electricity usage records to further buttress the

information gathered in the trash as corroboration for anonymous tips that led to the initial investigation. No such additional investigation was done here. As in all other districts, it is a fact sensitive analysis, reviewing all potentially relevant circumstances, that allows the court to uphold the search warrant. Although the result in the present case is different on the basis of a fact specific analysis, the legal standard has been consistent, and accordingly, no conflict exists between the different Appellate Districts.

3. THE TRIAL COURT AND THE APPELLATE COURT APPROPRIATELY CONSIDERED THE TOTALITY OF THE CIRCUMSTANCES AND CORRECTLY FOUND THERE TO BE NO SUBSTANTIAL BASIS TO SUPPORT THE ISSUANCE OF THE SEARCH WARRANT.

In the present case, the Eighth District Court of appeals has addressed the question of how a trial court should review a search warrant that is undergirded primarily by evidence discovered during trash pulls. In each case, consistent with all other jurisdictions within the State, the Court has borne the responsibility of conducting a common sense review of the totality of the circumstances to determine whether the particular evidence creates a substantial basis for issuing a search warrant. Here, after applying that review, the trial court properly concluded that the evidence did not create such a substantial basis in support of the search warrant, and that view was upheld by the Appellate Court.

The State argues that “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”. The State offers five such “puzzle pieces” in support of this contention. Two of the five pieces pertain to anonymous tips concerning the production of methamphetamine. The averments contained in the affidavit regarding the tips provide only extremely vague information. One of the tips merely suggests that an overweight, African-American female named “Lauren” was cooking methamphetamine.

The other group of tips suggest that Jennifer Chappell is producing methamphetamine and may have moved her operation to Rowley Avenue. Chappell's presence on Rowley Avenue is never corroborated. These vague and unsubstantiated bits of information standing alone do not provide the required substantial basis for probable cause.

The additional "puzzle pieces" include a sighting of Jones in proximity with Chappell in the Justice Center. Beyond their presence in the same location, there is no indication that the two are engaged in any form of joint criminal enterprise. There is also an incident where Jones is a victim of crime, where the assailant who is arrested for burglary in Jones' home is found to be carrying materials that test positive for methamphetamine. Although the police effectuate that arrest inside Jones' home, there is no indication of the presence of a methamphetamine production operation on the premises. If anything, this point suggests that it was only an outsider who introduced methamphetamine to the residence, and this "puzzle piece" therefore provides no support for the idea that an ongoing enterprise would be discovered when a search warrant is issued some time later. The final "puzzle piece" is the trash pull which produced unknown quantities of methamphetamine on the surfaces of various objects.

In total, these points do not provide a substantial basis to justify the issuance of the warrant. Vague references from sources, themselves under indictment, are at best questionable. The police presence within the residence a short time prior to the trash pull, with no indication of the existence of a methamphetamine operation is counter-suggestive of an ongoing criminal enterprise. While the trash pull does show signs that methamphetamine was present, there is no indication of when the bags were placed on the street, or by whom, or if the materials found within were placed there by people other than the residents of 1116 Rowley. The single trash pull does not give rise to the probability of an ongoing methamphetamine production operation, it

only suggests that methamphetamine had been present at the address on one prior occasion. The trash pull provides some evidence that could have easily been developed further through surveillance or deeper investigation, but no such investigation commenced. The only surveillance conducted, in the 72 hour period preceding the issuance provided no indication of ongoing drug activity. In acting too hastily to secure the warrant, without the type of corroborative information that was introduced into all of the cases cited above where a substantial basis was found to exist, this warrant cannot be justified. Accordingly, this Honorable Court must uphold the decisions of the Trial and Appellate Courts.

4. APPELLANT WAIVED THE ARGUMENT THAT THE POLICE ACTED IN GOOD FAITH, AND THE EVIDENCE RECOVERED DURING THE SEARCH SHOULD THEREFORE NOT BE SUPPRESSED, WHEN APPELLANT FAILED TO RAISE THE ARGUMENT AT HEARING, IN THE APPELLATE COURT OR IN THEIR BRIEF BEFORE THIS HONORABLE COURT.

This Honorable Court has consistently held that an Appellate Court need not consider an error which a party complaining of the trial court's judgment could have called, but did not call, to the trial court's attention at a time when such error could have been avoided or corrected by the trial court. *State v. Williams*, 51 Ohio St.2d 112, 364 N.E.2d 1364, 5 O.O.3d 98 (Ohio, 1977); *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959. The argument that the police acted in good faith in the present case despite the clear lack of evidence in support of probable cause for the search warrant has not been raised at any point in these proceedings, up to and including, The State's Merit Brief filed with this Honorable Court. This issue has only been raised in the Brief of Amicus Curiae, and even there, Amicus Curiae clearly acknowledged that the State has failed to preserve this issue for this Court's consideration. As this issue is no longer ripe for this Court's consideration it must be disregarded.

CONCLUSION

The Trial Court and the Eighth District Court of Appeals clearly reviewed all of the relevant circumstances pertaining to the search warrant issued in this case, and considered those circumstances together in determining whether there was a substantial basis for a finding of probable cause. When weighing the flimsy evidence that was offered, both lower courts determined that no such substantial basis existed. The Courts considered the single trash pull in light of the investigation that preceded it, and tried to determine if the information learned from the trash pull was significantly enough corroborative of meaningful evidence to establish the existence of an ongoing criminal enterprise. In reviewing the entirety of the search warrant affidavit presented to the issuing magistrate, the lower courts determined that this question was answered negatively, and were therefore duty bound to deem that the evidence was insufficient to uphold the issuance of the warrant. Thus the Motion to Suppress was properly granted and that ruling was appropriately upheld on appeal.

Both courts agreed that the evidence required further action by the police to justify a belief that there was a probability of ongoing criminal activity. Rather than take the steps of continued surveillance and investigation, the police sought the search warrant with a dearth of substantive and corroborated evidence to sustain it. Accordingly, after applying the totality of the circumstances analysis, the fruits of the search warrant were appropriately suppressed. As no new standard was created for evaluating the evidence supporting a search warrant, and no true conflict was indicated between the Eighth District and others across the State, the State's request for this Honorable Court to adopt its proposition of law must be denied.

Respectfully submitted,

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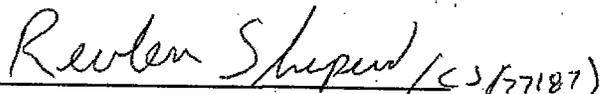
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CERTIFICATE OF SERVICE

A copy of foregoing Merit Brief of Appellee has been sent this 29th day of July, 2014 via U.S. Mail to counsel for Appellant Timothy J. McGinty, Cuyahoga County Prosecutor, and Daniel T. Van, Assistant County Prosecutor, at 1200 Ontario Rd., Justice Center -- 9th Floor, Cleveland, Ohio, 44113, and via electronic service to dvan@prosecutor.cuyahogacounty.us.


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