No.

In The Supreme Court of the United States

CHRISTOPHER GIES,

Petitioner,

v.

THE STATE OF OHIO,

Respondent.

On Petition For A Writ Of Certiorari to
the Ohio First Appellate District, Hamilton County Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has upheld probation searches pursuant to a state regulation under the "special needs doctrine." *Griffin v. Wisconsin*, 483 U.S. 868 (1987). The Court later reaffirmed that approval, holding that a warrantless search of a probationer's home that is supported by reasonable suspicion and authorized by a condition of probation is permissible under the Fourth Amendment. *United States v. Knights*, 534 U.S. 112 (2001). To determine the reasonableness of a probation search, in *Knights*, the Court established a balancing test weighing the intrusion upon individual privacy against the promotion of legitimate government interests. *Id*. at 119-121. In 1996, Ohio enacted a statute authorizing probation searches on the basis of reasonable suspicion. Ohio Rev. Code Ann. § 2951.02 (2017). It requires, however, that the trial court provide written notice to the probationer at the time of sentencing. *Id*. That notice requirement was not met in this case, nor was a search otherwise authorized by a condition of probation. A subsequent probation search of Mr. Christopher Gies's residence was conducted nonetheless.

The Fourth Circuit Court of Appeals declined to use the *Knights* balancing test for probation searches conducted without the benefit of an authorizing statute or probation condition, holding that an officer must have a warrant supported by probable cause. *United States v. Hill*, 776 F.3d 243, 249-250 (4th Cir.2015). The Fifth and Eleventh Circuits, on the other hand, applied the *Knights* balancing test, holding that the core reasoning of the Court in *Griffin* and *Knights* is directed at explaining why the needs of the probation system outweigh the privacy rights of the probationers generally. *United States v. Keith*, 375 F.3d 346, 350 (5th Cir.2004); *United States v. Carter*, 566 F.3d 970, 974-975 (11th Cir.2009).

This conflict must be resolved by a holding that the warrantless search, based only upon a reasonable suspicion, is per se unreasonable under the Warrants Clause of the Fourth Amendment, which requires that "absent certain exceptions, police obtain a warrant from a

neutral and disinterested magistrate before embarking upon a search." *Franks v. Delaware*, 438 U.S. 154, 164 (1978). Unless there are exigent circumstances, warrantless searches and seizures inside a home are presumptively unreasonable and, therefore, unconstitutional. *Payton v. New York*, 445 U.S. 573, 586 (1980). Further, to obtain a judicial warrant, a law enforcement officer must show probable cause. *Griffin v. Wisconsin*, 483 U.S. 868, 877 (1987). Probable cause requires more than a finding of reasonable suspicion.

Whether the probation search was constitutional was not answered by the court below, which simply found that the probation officers acted in good faith. Good faith cannot apply because the officers were aware of the facts constituting statutory noncompliance, even if they lacked knowledge of the statute itself. There is absolutely no ambiguity with respect to the notice requirement, and probation searches are an essential and often-used tool of Ohio probation officers. An officer, reasonably trained, would know of the notice requirement. *Herring v. United States*, 555 U.S. 135 (2009). The following questions are presented:

> Does a warrantless probation search conducted outside the scope of an authorizing state regulation and not authorized by a condition of probation, and in the absence of exigent circumstances, violate the Fourth Amendment?
>
> Does the good faith doctrine excuse a probation officer's decision to conduct a probation search due to his mistaken interpretation of Ohio Rev. Code Ann. § 2951.02, which authorizes probation searches when notice is provided?

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

There are no parties to the proceeding other than those listed in the caption. Pursuant to Rule 29.6, Petitioner Geis states that no parties are corporations.

DIRECTLY RELATED PROCEEDINGS

State v. Gies, No. 2019-1654, Supreme Court of Ohio. Judgment entered Feb. 4, 2020.

State v. Gies, No. C1800597, Court of Appeals of Ohio for the First Appellate District. Judgment entered Oct. 16, 2019.

State v. Gies, No. B18002799A, Court of Common Pleas for Hamilton County, Ohio. Judgment entered Oct. 18, 2018.

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No.

IN THE SUPREME COURT OF THE UNITED STATES

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PETITION FOR A WRIT OF CERTIORARI

A warrantless probation search of a residence conducted in violation of Ohio's probation search statute, Ohio Rev. Code Ann. § 2951.02, and in the absence of a probation condition or exigent circumstances, violates the Warrants Clause of the Fourth Amendment. The violation cannot be excused under the good faith doctrine when probation officers knew of the factual premises of the statutory noncompliance, but believed probationers were subject to warrantless searches simply by virtue of being on probation. *Herring v. United States*, 555 U.S. 135 (2009). Christopher Gies respectfully petitions for a writ of certiorari to vacate his conviction and remand to the trial court for a new hearing on his motion to suppress.

OPINIONS BELOW

The First Appellate District, Hamilton County Court of Appeals' affirmance of the Petitioner's convictions, which is at issue in this petition, was entered in docket number C1800597 on October 16, 2019, and it is published. *State v. Gies*, 2019-Ohio-4249, ___ N.E.3d ___, 2019 WL 5208328. (Attached as Appendix A). The entry from the Supreme Court of Ohio declining to exercise its discretionary jurisdiction to hear Mr. Gies's appeal was entered in docket number 2019-1654, on February 4, 2020, and it is published. *State v. Gies*, 157 Ohio St.3d 1566, 2020-Ohio-313, 138 N.E.3d 1175. (Attached as Appendix B). The decision of the Court of Appeals failed to determine the constitutionality of the probation search, but excused the probation officers under the good faith doctrine, despite the fact that their mistaken interpretation of the statute would not have been made by a reasonably trained probation officer. *Herring v. United States*, 555 U.S. 135.

Prior history of the case is as follows:

The judgment entry of the Court of Common Pleas for Hamilton County, Ohio, upholding the probation search was entered August 28, 2018, and it is not published. (Attached as Appendix C). The judgment entry of conviction and sentence of the Court of Common Pleas for Hamilton County, Ohio, was entered October 18, 2018, and it is not published. (Attached as Appendix D). The First Appellate District, Hamilton County Court of Appeals' affirmance of the state trial court's judgment is reported as *State v. Gies*, 2019-Ohio-4249, ___ N.E.2d ___ , 2019 WL 5208328. (Attached as Appendix A). The Supreme Court of Ohio's entry declining to exercise its discretionary jurisdiction to hear Mr. Gies's appeal from the October 16, 2019 decision is reported as *State v. Gies*, 157 Ohio St.3d 1566, 2020-Ohio-313, 138 N.E.3d 1175, and is attached as Appendix B.

JURISDICTION

On February 4, 2020, the Supreme Court of Ohio declined to exercise its discretionary jurisdiction to hear Mr. Gies's appeal to that Court. *State v. Gies*, 157 Ohio St.3d 1566, 2020-Ohio-313, 138 N.E.3d 1175. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 4 to the United States Constitution provides: "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."

Amendment 14 to the United States Constitution provides, in pertinent part: "No state * * * shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Ohio statutory provision that is at issue in the petition, Ohio Rev. Code Ann. § 2951.02 (2017), is reprinted in Appendix E.

STATEMENT OF THE CASE

Ohio law authorizes warrantless probation searches based upon reasonable suspicion. Ohio Rev. Code Ann. § 2951.02. The statute expressly requires that Ohio sentencing courts provide written notice of warrantless probation searches at the time of sentencing, as follows:

> [P]robation officers * * * may search, with or without a warrant, * * * the place of residence of the offender * * * in which the offender has a right * * * if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the misdemeanor offender's community control sanction[.] * * * The court that places

> the misdemeanor offender under a community control sanction * * * shall provide the offender with a written notice that informs the offender that authorized probation officers * * * may conduct those types of searches during the period of community control sanction[.]

Ohio Rev. Code Ann. § 2951.02. Here, probation officers seized the evidence knowing that Mr. Gies had not been notified of the prospect of probation searches, and there was no condition of probation respecting probation searches or exigent circumstances. Probation Officer Schad, one of the two officers who conducted the probation search, testified he believed a probationer was subject to probation searches simply by virtue of being on probation.

The Indictment, Motion to Suppress, Jury Trial and Direct Appeal

The Indictment

The Hamilton County Grand Jury jointly indicted Mr. Gies and Eric Sester. Mr. Gies was named in nine counts: trafficking in cocaine (Count One) in violation of Ohio Rev. Code Ann. § 2925.03(A)(2) (2016); possession of cocaine (Count Two) in violation of Ohio Rev. Ann. Code § 2925.11(A) (2016); aggravated trafficking in drugs (Count Three) in violation of Ohio Rev. Code Ann. § 2925.03(A)(2); aggravated possession of drugs (Count Four) in violation of Ohio Rev. Code Ann. § 2925.11(A); aggravated trafficking in drugs (Count Five) in violation of Ohio Rev. Code Ann. § 2925.03(A)(2); aggravated possession of drugs (Count Six) in violation of Ohio Rev. Code Ann. § 2925.11(A); aggravated trafficking in drugs (Count Seven) in violation of Ohio Rev. Code Ann. § 2925.03(A)(2); aggravated possession of drugs (Count Eight) in violation of Ohio Rev. Code Ann. § 2925.03(A)(2); and having weapons while under disability (Count Nine) in violation of Ohio Rev. Code Ann. § 2923.13(A)(2) (2014). The indictment contained a major drug offender specification pursuant to Ohio Rev. Code Ann.§ 2941.1410 (2000) as to the fifth count of the indictment.

The Motion to Suppress

Mr. Gies filed a motion to suppress evidence seized from his room by virtue of a probation search. At the hearing on the motion, it was learned that in May 2007, Christopher Gies had been convicted of Possession of Illegal Drug Paraphernalia, a misdemeanor of the fourth degree, which is a relatively low-level misdemeanor, and sentenced to a term of community control for one year. Mr. Gies was to report to probation at 800 Broadway Street immediately after the hearing, but he did not.

Ohio has a statute that authorizes warrantless probation searches based upon reasonable suspicion. Ohio Rev. Code Ann. § 2951.02. The statute mandates that the sentencing court provide a written advisement to probationers of their being subject to warrantless searches. *Id*. It was undisputed that trial courts in Hamilton County delegate the duty to provide the notice to the probation department. Probationers are told to report to probation immediately after the sentencing hearing. As a result of not reporting to the probation department, Mr. Gies was never notified that he was subject to warrantless probation searches. Within one month of Mr. Gies's failure to report, authorities issued an arrest warrant, which remained unexecuted for the next 11 years.

Not long before the search in question, an anonymous complaint was made to the Hamilton County Probation Department that Mr. Gies was selling drugs from the home in question on Kenwood Avenue in Cincinnati, Ohio. Officers were also made aware of photographs from social media depicting firearms at the address. Probation Officer Schad testified when he first became aware of Mr. Gies, he learned of the arrest warrant and the failure to appear at probation upon which it was based. The officer testified that a "consent to search" form was never signed as a consequence.

Officer Schad testified he believed his ability to conduct probation searches was

unconditional, as follows:

> [DEFENSE COUNSEL]: So, I want to make sure I understand your understanding of the law. As a probation officer, even though a person who is put on probation by a judge has not signed the rules consenting to a less than probable cause search and a warrantless search, you can still search wherever you want?
>
> [OFFICER SCHAD]: Yes.

On May 14, 2018, Officers Schad and Justin Miyagawa visited the home on Kenwood Avenue in Cincinnati to execute the arrest warrant for Mr. Gies and investigate the anonymous firearms complaint. When the officers arrived, they encountered Eric Sester in the driveway working on a motorcycle. Mr. Sester told the officers he was there on a visit with his friend, Mr. Gies, who, Mr. Sester said, lived at the house and was present there.

Officer Schad testified he and Officer Miyagawa approached the kitchen door at the side of the house, and, through a screen door, identified themselves as "probation, police" and called for Mr. Gies. Mr. Gies was climbing up basement stairs, which also led to the kitchen, and they arrested him in the kitchen when he reached the top of the stairs.

The officers intended to perform a probation search, and asked Mr. Gies if anyone else was in the house. Generally speaking, a search is performed only after a house is cleared of occupants. According to the officers, Mr. Gies gestured toward a front bedroom on that floor, the first floor, and told them his girlfriend, Allison Vilas, was in "our bedroom." Officers testified Mr. Gies also indicated there was a gun in a safe in a second-floor bedroom. While arresting Mr. Gies, police noticed machetes and caps from syringes in the kitchen. After securing Mr. Gies, the officers walked through a living room "up to" the first-floor bedroom door which Mr. Gies had indicated. When they passed through the living room on the way to the first-floor bedroom, they saw on a coffee table credit cards, straws and powder residue. They also found a backpack containing guns and drugs belonging to Mr. Sester.

When they arrived at the bedroom, according to Officer Schad, "We went up to the room. [Allison Vilas] ended up coming out[.]" When she did, they could see additional drugs in the room. They called police, and Cincinnati Police Officer Clinton Butler assisted in the search of the entire house.

The officers conducted a warrantless probation search of the bedroom and seized the evidence that became the basis of the indictment. It was established Mr. Gies had not been notified of the probation search, both because he failed to appear at the probation department, and because the trial court did not follow the notice requirement in the statute. Even so, the trial court denied the motion to suppress.

The Jury Trial

The testimony at the hearing was ornamented by witnesses at the trial. Other police arrived to assist in the search. A recording from the body camera of one officer, Cincinnati Police Officer Kevin Butler, was shown to the jury and admitted into evidence. According to the body camera, Officer Butler was present at the time the probation officers first arrived at the house on Kenwood Avenue. Probation Officer Justin Miyagawa testified after Mr. Gies indicated that his girlfriend was in "our bedroom," he and Officer Schad entered the first-floor bedroom pursuant to the sweep of the house in preparation for the probation search. When inside the room, they asked Ms. Vilas to step out. In the room, the officers saw weapons and what appeared to be a bag of narcotics on the dresser. Mr. Gies was charged only on the basis of what was found in the first-floor bedroom.

The jury found Mr. Gies guilty of all the counts and the specification contained in the indictment, save and except Counts One and Seven. The case proceeded to sentencing, at which the trial court merged the findings as to Counts Four and Six, and announced the following prison terms with respect to the other counts: eight years as to Count Two; 18 months as to Count

Three; 11 years as to Count Five; one year as to Count Eight; and three years as to Count 9. All but Counts Three and Eight were ordered to be served consecutively to each other, for an aggregate prison term of 22 years.

The Direct Appeal

Mr. Gies appealed first to the First District Court of Appeals, which affirmed his convictions and sentences on October 16, 2019. The Court of Appeals observed Ohio Rev. Code Ann. § 2951.02 required notice of probation searches, but held the statute itself was not clear whether a lack of notice rendered a probation search invalid, and noted Ohio case law provided no guidance. *State v. Gies*, 2019-Ohio-4249, ___ N.E.2d ___, 2019 WL 5208328. The court declined to determine the validity of the search, but instead held that the officers acted in good faith. *Id*. Mr. Gies then appealed to the Supreme Court of Ohio, which, on February 4, 2020, declined to exercise its discretionary jurisdiction to hear his appeal to that Court. *State v. Gies*, 157 Ohio St.3d 1566, 2020-Ohio-313, 138 N.E.3d 1175.

REASONS FOR GRANTING THE WRIT

Petitioner Gies now seeks further review in this Court and offers the following reasons why a writ of certiorari is warranted.

I. INTRODUCTION

The Fourth Amendment to the United States Constitution protects people in our country from "unreasonable searches and seizures." Generally, searches and seizures are reasonable when authorized by a search warrant, which requires a showing of probable cause. This Court has upheld warrantless probation searches based upon a reasonable suspicion. In those cases, there was a state regulation authorizing a probation search or a specific probation condition, both

of which serve to provide notice to the probationer that he would be subject to warrantless probation searches. What was not determined was whether a probation search in the absence of these conditions are necessarily in violation of the Warrants Clause of the Fourth Amendment, or whether a balancing test involving the totality of the circumstances should apply.

II. THE PROTECTION OF THE WARRANTS CLAUSE OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION WITH RESPECT TO SEARCHES OF RESIDENCES.

The protection afforded by the Fourth Amendment with respect to the requirement of a warrant for a search of a residence originates in the Fourth Amendment to the United States Constitution, which reads as follows:

> 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.

This Court has held that absent exigent circumstances or an exception to the warrant requirement, a warrantless search of a residence is presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980). The warrant requirement of the Fourth Amendment is found in the Warrant Clause, which requires that "absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search." *Id*.

III. THE OPINION OF THE OHIO COURT OF APPEALS FOR THE FIRST JUDICIAL DISTRICT PRESENTS AN IMPORTANT FEDERAL QUESTION ON WHICH DECISIONS OF UNITED STATES COURTS OF APPEALS ARE IN CONFLICT WITH EACH OTHER

This Court has repeatedly emphasized that "reasonableness" is the touchstone of the Fourth Amendment. *United States v. Knights*, 534 U.S. 112, 118-19 (2001). Reasonableness of a search is generally determined by "assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Id.*

This Court has upheld warrantless probation searches as reasonable when authorized by a state regulation, *Griffin v. Wisconsin*, 483 U.S. 868 (1987), or an express condition of probation. *United States v. Knights*, 534 U.S. 112, 119-121 (2001). By statute, Ohio authorizes warrantless probation searches on the basis of reasonable suspicion. Ohio Rev. Code Ann. § 2951.02. The statute contains a notice requirement, however. When a probation search in Ohio is conducted without notice to the probationer, the search is outside the scope of the statute, and is no better than a probation search with no authorizing statute at all. Further, the sentence imposed in this case did not contain probation searches as a condition of probation. Thus, the probation search of the residence in this case was not conducted pursuant to a state statute or a probation condition.

There is a circuit split over whether an officer's warrantless search of a probationer's home violates the Fourth Amendment when the terms of probation do not explicitly authorize warrantless searches and there is no authorizing statute. The Fifth and Eleventh Circuits applied the *Knights* balancing test to hold that reasonable suspicion of criminal conduct was a constitutionally sufficient basis for the warrantless search of the probationer's home. *United States v. Keith*, 375 F.3d 346, 350 (5th Cir.2004); *United States v. Carter*, 566 F.3d 970, 974-975 (11th Cir.2009). The Fourth Circuit has taken a different approach. In *United States v. Hill*, 776 F.3d 243, 249-250 (4th Cir.2015), that court declined to use the *Knights* balancing test, holding that reasonable suspicion that a probationer is violating conditions of probation is insufficient to

justify a warrantless search; rather, an officer must have a warrant supported by probable cause. In contrast to the viewpoint of the Fifth and Eleventh Circuits, the Fourth Circuit pointed out, properly, that the probationer's knowledge of the warrantless search conditions in the respective probation agreements in *Griffin* and *Knights* was "critical" to the Supreme Court's determination that the probationers had diminished expectations of privacy. *Id*.

IV. THIS DISPUTE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

This circuit split impacts an important area of criminal law. In Ohio, approximately 236,375 adults were on probation at the end of 2016. Danielle Kaeble, Probation and Parole in the United States, 2016, United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (April 26, 2018), http://www.bjs.gov/index.cfm?ty=pbdetail&iid=6188. The population of adults on probation in the United States in that year was 3.6 million. *Id*.

A probationer's constitutional protection against warrantless searches is of the utmost importance, especially because proposed initiatives to curtail mass incarceration could increase the total number of probationers even more. Rothman, Taylor S. (2016) "Fourth Amendment Rights of Probationers: The Lack of Explicit Probation Conditions and Warrantless Searches," University of Chicago Legal Forum: Vol. 2016 , Article 22. Available at: http://chicagounbound.uchicago.edu/uclf/vol2016/iss1/22 Probationers' Fourth Amendment rights would be preserved by the resolution of this circuit split in favor of the Fourth Circuit. The split is unlikely to be addressed by Congress, as probationers are too small of a political group and are profoundly disenfranchised. *Id*. This Court must grant certiorari to resolve it.

V. THIS DISPUTE PRESENTS A LIVE CASE AND CONTROVERSY

At the hearing on the motion to suppress, in the instant case, the prosecutor conceded Mr. Gies did not receive notice he would be subject to warrantless probation searches because Officer Schad testified that no notice was given. The state's position was that Ohio law permitted probation searches simply by virtue of the status of the probationer. The notification requirement was not met, however, and the statute therefore did not apply to permit the search. Therefore, the probation officers could not rely upon Ohio Rev. Code Ann. § 2951.02(A) at all. They could not claim good faith because there is no ambiguity to the notice requirement. Furthermore, Ohio probation officers should know the requirements of a probation search, which is a part of their duties.

Unauthorized by the statute, the search in this case was unreasonable under the Fourth Amendment because it was warrantless, and the Fourth Amendment protects even probationers against unreasonable searches. *Griffin v. Wisconsin*, 483 U.S. 868, 873. If the Ohio statute applied, or if there had been a probation condition, the reasonableness determination would have required a consideration of the totality of the circumstances, and a weighing of the degree of intrusion against the government interest. *United States v. Knights*, 534 U.S. 112, 118, citing *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). Here, in the absence of these, the search, based only upon a reasonable suspicion, is unreasonable and unconstitutonal. Nevertheless, but for Mr. Gies's minor conviction 11 years before, his expectation of privacy was relatively undiminished. The lack of notice of the possibility of a probation search maintained his expectation of privacy. At the time of the May 14, 2018 probation search, Mr. Gies was only aware he had been placed on a one-year term of probation 11 years before. He would not necessarily know he was still on probation 11 years later, or that the arrest warrant for the Hamilton County probation violation was open. He certainly would not know of the statutory tolling of his one-year term of probation

imposed in 2007. Ohio Rev. Code Ann. § 2951.07 (2002). Probation Officer Schad even testified Mr. Gies required some convincing that he and Officer Miyagawa were probation officers. Mr. Gies thought at first it was a joke being played on him by his friends. There was no evidence Mr. Gies knew or should even suspect he was subject to a warrantless search. The conditions of his probation on the judge's entry from his May 2007 conviction did not mention a probation search, as the probation-search statute expressly requires, and the general conditions set forth by statute did not provide for a probation search either. Ohio Rev. Code Ann. § 2929.25(C)(2) (2016). Mr. Gies's home had never been searched by probation officials before. Thus, even under the *Knights* balancing test, simply being on probation, without any notice, cannot render a probation search reasonable for Fourth Amendment purposes.

The Court of Appeals avoided the Fourth Amendment issue by holding the officers acted in good faith. But their mistaken interpretation of the probation search statute in this case was not reasonable for two reasons: namely, the Ohio statute is not ambiguous, and probation searches are a commonly-used tool of probation officers, with probation searches being a part of their duties. Because of this, the seizure of the evidence in this case cannot be considered reasonable. *Heien v. North Carolina*, 574 U.S. 54 (2014). Alternatively, if the search were to be considered unreasonable, application of the exclusionary rule would not be barred by the good faith doctrine. *Herring v. United States*, 555 U.S. 135 (2009).

In 1984, this Court held that the fruits of a search that violates the Fourth Amendment need not be suppressed unless the searching officers either "were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." *United States v. Leon*, 468 U.S. 897, 926 (1984). The Court later applied this rule to administrative searches conducted under statutes subsequently found unconstitutional. *Illinois v. Krull*, 480 U.S. 340, 349 (1987). This Court held that if the officer's

reliance on the statute was "objectively reasonable," the fruits of the search would not be suppressed. *Id*. A probation officer's warrantless probation search conducted in violation of the clear and unambiguous notice requirement in Ohio Rev. Code Ann. § 2951.02 cannot be excused as "reasonable" for purposes of Fourth Amendment compliance, or under the good faith doctrine as a reasonable mistake of law. *Heien v. North Carolina*, 574 U.S. 54, 66-67.

Part of a probation officer's job is to conduct probation searches and to supervise probationers for their rehabilitation and oversight. Any job performance evaluation would note the officer's training and ability to conduct these searches. As an employee, a lack of awareness of the practices of the officer's own probation department, and of the requirements of the authorizing statute, would earn a failing job evaluation. This consideration should be taken into account because the objectively reasonable competence of any employee would be determined by comparing the employee's competence and skill against the job requirements, point by point.

The state took the unsupportable position that probation searches were available to probation officers for anyone on probation by operation of law, irrespective of notice. But Ohio Rev. Code Ann. § 2951.02(A) on its face expressly requires that the sentencing court notify a probationer in writing of the fact of warrantless probation searches at the time he is placed on probation. The officers' reliance upon the statute in conducting the search in this case was not objectively reasonable. The lack of notice was both due to the court system's delegation of the notice duties to the probation department, and Mr. Gies's non-appearance at the probation department following his sentencing hearing. Nevertheless, the probation officers were the relevant actors with respect to the decision to conduct the warrantless search outside the scope of the Ohio statute under facts known to them. *Illinois v. Krull*, 480 U.S. 340 at fn. 17.

Because a probation search in Ohio must be implemented constitutionally, as a widely used tool in corrections and law enforcement, the petition for certiorari should be granted.

CONCLUSION

For the foregoing reasons, Petitioner submits that he has raised an issue deserving of review by this Court. Therefore, the petition for writ of certiorari should be granted.

Respectfully submitted,
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