No. 20-1784

In the
Supreme Court of the United States

STATE OF OHIO,
Petitioner,

v.

DANIEL DEUBLE,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals to the State of Ohio, Eighth Appellate District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW

I. Did law enforcement lack probable cause to arrest Respondent at the time of his detention, rendering inadmissible all evidence obtained as the fruit of the unlawful seizure?

II. Did law enforcement conduct a search of Respondent when viewing his phone's notification screen?

CONSTITUTIONAL PROVISIONS

The Fourth Amendment 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.

U.S. Const. amend. IV.

The Fourth Amendment to the United States Constitution is made applicable to the states through the Fourteenth Amendment to the United States Constitution, which states in part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the

> privileges or immunities of citizens of the United States; nor shall any state 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.

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

By the officers' own admission, law enforcement did not know when they arrested Respondent whether the individual they had in custody was the suspect they were seeking for attempting to meet an alleged minor for sexual purposes. At oral hearing, the lead detective confirmed that law enforcement did not have probable cause to arrest Respondent until after he was handcuffed and surrounded by armed officers who took possession of his phone and used it to confirm Respondent's identity. The lower appellate court correctly deemed this a violation of Respondent's constitutional rights and reversed the decision that denied Respondent's originally filed *Motion to Suppress Evidence*. The Supreme Court of Ohio subsequently declined to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4), finding that the appeal did not involve a substantial constitutional question, a question of great general or public interest, or otherwise warrant leave to appeal.

On August 30, 2018, special investigators with the Cuyahoga County Prosecutor's Office Internet Crimes Against Children Task Force ("ICAC") set up an undercover operation to identify individuals seeking to engage in sexual activity with minors. Investigator

Justin Rotili (hereinafter, "Investigator Rotili") posed as a 15-year-old girl using the social media application "Whisper." This app allows its users to remain anonymous but specifically targets persons within a similar geographic location. The information provided by an individual user need not be at all accurate and there is no available verification process.

Investigator Rotili used the avatar "bella_jane," listed as a fifteen-year-old female, to post a photograph of a girl with a caption reading, "Bored!!!" Using the avatar "EY," Respondent initiated a chat with "bella_jane." According to "EY's" profile, he was an 18- to 20-year-old male from Summit County. (Tr. Pg. 42). A series of messages and pictures were exchanged between the two, most of which were sexual in nature, none of which could be used to identify either party. The two eventually agreed to meet in person for purposes of sexual conduct.

"EY" and "bella_jane" agreed to meet at Kurtz Park in Parma, Ohio at 10:00 a.m. (Tr. Pg. 62). Based on the messages received up to this point, law enforcement were led to believe that "EY" was an eighteen (18) year old, thin, white male named "Gabe," who would be arriving at Kurtz Park at 10:00 a.m. in a green Honda. However, based on the officers' own testimony, none of this information was believed to be reliable.

> Question: So even when you get information, sometimes you can't trust it, right?
>
> Answer: In certain times, yes, sir… (Tr. Pg. 163-164).

On August 31, 2018 law enforcement began surveillance of Kurtz Park at approximately 9:00 a.m. At 10:04 a.m., "bella_jane" asked "EY" if he was close. (Tr. Pg. 68). Well after 11:00 a.m., "EY," sent a message to "bella_jane" indicating that he was there. (Tr. Pg. 72). Once indicating that he was at the park, "EY" sent only three more text messages prior to his unlawful arrest.

Having no physical description or identifiable photographs of "EY" and without observing a green Honda in the area, law enforcement had no idea who they were looking for or even if the suspect was actually at the park. Investigators turned their attention to the basketball court where the only two men in the park were playing basketball independent of each other. When questioned about this activity, Investigator Rotili testified:

> Question: …you were focused on the two people that you saw at Kurtz Park, right?
>
> Answer: Correct.
>
> Question: And both of them were white males, right?
>
> Answer: Correct.
>
> Question: Neither of them drove a green Honda, right?
>
> Answer: Correct.
>
> Question: So as far as suspects, they both could have been suspects, one of them could have been

> a suspect and not the other, or neither of them could have been suspects, right?
>
> Answer: The guy on the right was not an 18 year old male. He was in his fifties. But to answer your questions, I guess both of them could have been suspects. They were white males. That's all we were operating. (Tr. Pg. 167).

According to the police report, one of the observed white males would walk over to his phone every so often and appear to use his phone in some capacity which allegedly correlated to "EY" sending a text message over Whisper to "bella_jane."

> Question: And so in order to determine whether or not one of them was, you relied solely on this person's interaction with his phone, correct?
>
> Answer: Um-huh. And the fact that he told me he was at the park. (Tr. Pg. 167).

However, "EY's" statement that he was at the park did not mean he was actually at the park; it could have been a lie due to the capabilities of the app.

> Question: It's possible that "EY" could be saying, I'm at park, and he could still be 50 miles away?
>
> Answer: That is possible. (Tr. Pg. 169).

Though investigators admitted that they really had no idea whether or not "EY" was even at the park, much less whether he was one of the two men under surveillance, Investigator Rotili and uniformed officers of the Parma Heights Police Department arrested Respondent after witnessing him in possession of his

phone on only three occasions, which corresponded to messages received by Rotili's avatar. Put simply, they arrested the first white male they saw who checked his phone a couple of times without having any idea whether or not he might be "EY."

> Question: So based on the fact that Mr. Deuble was at the park, and based on that you witnessed him use his phone at least three times, that was what caused you to decide to have other units move in on Mr. Deuble, right?
>
> Answer: Yes. (Tr. Pg. 173).

However, even after Respondent was in handcuffs and being led away, Officer Rotili can be heard saying on his body cam, "Is that the guy." The audible response from the assisting officer, "I don't know." See Body Cam Footage at 00:04:53.

> Question: And in fact when you approached the scene after you were told to come to the park because they had a suspect in custody, the very first words uttered on your body cam, your question, is that him. Response, I don't know. Is that not correct?
>
> Answer: Yes
>
> Question: So, you had no idea whether or not the person you had in handcuffs was "EY"?
>
> Answer: Correct. (Tr. Pg. 93).

Investigator Rotili and Detective Frattare didn't know whether the person they had in custody was in fact "EY." Meanwhile, Respondent was in handcuffs,

sitting on the ground and surrounded by a half dozen armed and uniformed officers while his car and personal belongings were being searched. Investigator Rotili then picked up Respondent's phone and sent a text message from his avatar to "EY" to verify that Respondent was the individual with whom he had been corresponding. This "test text" confirmed that Respondent was "EY." Rotili admitted that he may have suspected Respondent, but had no reason to believe Respondent was, in fact, "EY" until the "test text" appeared on Respondent's notification screen. See Deuble, at 29.

> Question: And it is that test text that you sent to Mr. Deuble's phone which confirmed that it actually was his phone that was communicating with the undercover avatar, correct?
>
> Answer: I believe so.
>
> Question: So, it wasn't until that point that you believed you had probable cause to arrest him, correct?
>
> Answer: Correct. (Tr. Pg. 115-116).

There were no intervening circumstances between Mr. Deuble's unlawful arrest and his subsequent confession. Only after identifying Mr. Deuble as their suspect through the test text did law enforcement remove Mr. Deuble's handcuffs and walk him to the on-scene police van used for interviews. Inside, Respondent was read his Miranda rights and told he was free to leave. However, no reasonable person who was handcuffed and forced into a van by police would believe he/she was free to go. Certainly, Respondent

did not believe that he was free, regardless of what he was told at the time of his interrogation, during which he confessed to being "EY" and gave officers permission to search his phone. Respondent was released following the interview.

On or about September 12, 2018, Respondent was indicted on: Count One, Attempted Unlawful Sexual Conduct with a Minor in violation of O.R.C. §§2923.02 and 2907.04(A), a felony of the fifth degree; Count Two, Importuning in violation of O.R.C. §2907.07(D)(2), a felony of the fifth degree; Count Three, Disseminating Matter Harmful to Juveniles in violation of O.R.C. §2907.31(A)(1), a felony of the fifth degree; and Count Four, Possessing Criminal Tools in violation of O.R.C. §2923.24(A), a felony of the fifth degree.

Respondent pled not guilty to the charges and, on December 17, 2018, filed a motion to suppress, arguing ICAC officers lacked probable cause to arrest him. The State responded by arguing that Respondent's arrest was merely an investigatory detention for which reasonable suspicion existed. The trial court found that ICAC investigators did, in fact, arrest Respondent, but concluded further that they had probable cause to effectuate the arrest and denied Respondent's Motion. Respondent subsequently pled no contest to the charges in the indictment and was sentenced.

On August 6, 2020, the Eighth District Court of Appeals, in State v. Deuble, 2020-Ohio-3970 (Ohio App. 8th Dist. 2020), reversed the trial court, agreeing that his detention was an arrest but holding that Respondent's arrest was not supported by probable cause. Because no probable cause for arrest existed,

the court further held that Respondent's phone was illegally searched when police sent a confirmatory "test text." The ruling, however, was predicated on the doctrine of the fruit of the poisonous tree. Once Respondent was unlawfully arrested, any and all evidence obtained subsequent to that arrest, which included the unlawful confiscation of Respondent's phone, was rendered inadmissible pursuant to the exclusionary rule. The appellate court made no independent ruling, contrary to the State's misrepresentation of the written opinion, as to the admissibility of evidence obtained from Respondent's notification screen. The State of Ohio submitted a Memorandum in Support of Jurisdiction to the Supreme Court of Ohio on November 5, 2020. The Court entered a judgment on January 22, 2021 declining to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4), finding that the appeal did not involve a substantial constitutional question, a question of great general or public interest, or otherwise warrant a leave of appeal. This timely Petition for Writ follows.

ARGUMENT

THE CASE PRESENTS NO IMPORTANT FEDERAL QUESTION OF UNSETTLED LAW AND THUS DOES NOT WARRANT A GRANT OF CERTIORARI.

The U.S. Supreme Court exercises its judicial discretion to review a case only where compelling circumstances require the Court's involvement to settle an important federal question. Sup.Ct.R. 10. The Court may grant certiorari to review an important question

of federal law that has not previously been addressed. Id. The Court may also review a case to address an important federal question that has been decided differently among different courts or in a way that conflicts with this Court's prior, relevant decisions. Id.

No such compelling circumstance exists in this case to warrant this Honorable Court's review. Appellant's first proposed question for review, whether law enforcement had probable cause to arrest Respondent, invokes issues of well-settled law concerning probable cause. There is no need for this Court to re-litigate these issues. Appellant's second proposed question for review, to wit, whether Respondent had a reasonable expectation of privacy in his phone's notification screen, is moot. Evidence obtained pursuant to Respondent's unlawful arrest is inadmissible as the fruit of his unlawful arrest; the question of whether law enforcement's actions constituted a search is irrelevant to the inadmissibility of the evidence in the within matter.

I. PROBABLE CAUSE IS A WELL-SETTLED STANDARD; ITS APPLICATION TO THIS CASE DOES NOT RAISE ANY NEW FEDERAL QUESTIONS AND THUS DOES NOT WARRANT THIS HONORABLE COURT'S REVIEW.

Law enforcement must have probable cause to make an arrest without a warrant. A warrantless arrest without probable cause violates the arrestee's Fourth Amendment safeguards, and any evidence obtained as the fruit of the unlawful arrest is inadmissible pursuant to the exclusionary rule.

Wong Sun v. United States, 371 U.S. 471, 479, 484-486 (1963). Furthermore, probable cause must exist "at the moment the arrest [is] made." Beck v. State of Ohio, 379 U.S. 89, 91 (1964).

Consequently, evidence obtained subsequent to an unlawful seizure cannot be used to establish probable cause and justify the seizure.

Probable cause exists where the facts and circumstances within the arresting officer's knowledge are "sufficient to warrant a prudent man in believing that the appellant had committed or was committing an offense." Beck v. State of Ohio, 379 U.S. 89, 91 (1964). Probable cause must be based on "reasonably trustworthy information." Id. Consequently, in cases where incriminating information comes from an anonymous source, a totality of the circumstances analysis is necessary to determine whether such information can form the basis of probable cause. Illinois v. Gates, 462 U.S. 213, 214 (1983). A totality of the circumstances analysis may consider whether the anonymously provided information can be corroborated by an independent and reliable source. Id.

A. The Eighth District Court of Appeals applied the correct standard–probable cause–to determine that officers unlawfully arrested Respondent.

First, Respondent was arrested, not merely detained, and thus the Eighth District appropriately applied the probable cause standard for an arrest rather than the lower standard, reasonable suspicion, required for a mere detention. Second, the challenging

nature of prosecuting online child enticement does not diminish a suspect's Fourth Amendment protections. This Court has already addressed situations similarly challenging for prosecutors and upheld probable cause requirements in these as in all other cases. Third, the Eighth District applied the existing probable cause standard; it did not heighten or otherwise alter the State's burden.

1. Respondent was arrested, not merely detained.

Both the trial and appellate courts held that Mr. Deuble was arrested–not merely detained–when law enforcement placed him in handcuffs and surrounded him with half a dozen uniformed and armed officers. In support of its position, the Eighth District cited to Cleveland v. Morales, 8th Dist. Cuyahoga No. 81093, 2002-Ohio-5862, at ¶15 (Ohio App. 8th Dist. 2002), and concluded:

Upon review, we agree with the trial court that Deuble was arrested. Deuble was handcuffed, seated on the ground, and surrounded by four or more police officers. Rotili picked up Deuble's phone, which was on the ground, and searched it. The officers then walked Deuble, who was still handcuffed, to the van. A reasonable person would not feel free to leave under these circumstances. Therefore, this appeal is concerned with probable cause, and the standard of reasonable suspicion associated with a *Terry* stop is not applicable here. See United States v. Medenhall, 446 U.S. 544, 554 (1980) ("a person has been seized within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a

reasonable person would have believed that he was not free to leave"). Deuble, at ¶24.

Nevertheless, the State continues to erroneously refer to Mr. Deuble's arrest as a detention and an investigatory stop throughout its Petition. The State cites no fact or law to rebut the finding of not one, but two lower courts identifying Mr. Deuble's seizure as an arrest, not a detention. Consequently, the State has failed to show that Mr. Deuble's arrest was actually a detention, and the applicable standard remains probable cause, not reasonable suspicion.

2. The criminalization of online child enticement and the practice of "catfishing" do not implicate any new questions of when probable cause is required to make an arrest.

As the trial court articulated in its written opinion, this Court has already considered circumstances under which law enforcement receives incriminating information from an anonymous source, and has set boundaries on the use of such information to establish probable cause. See Illinois v. Gates, 462 U.S. 213 (1983); App. to Pet. Cert. 29. This Court held that an anonymous tip by itself is insufficient to support a finding of probable cause. Illinois v. Gates, 462 U.S. 213, 214 (1983). Rather, a totality of the circumstances analysis is necessary to determine whether such information can form the basis of probable cause. Id.

Here, as in cases involving an anonymous tip, the law is settled that the prosecution cannot rely solely on minimal, vague information from an anonymous, unreliable source to establish probable cause. The

lower courts accordingly applied this law to determine whether the facts and circumstances known to the officers at the time of Mr. Deuble's arrest were sufficient to establish probable cause.

The State's argument that the criminalization of online enticement creates new questions in applying probable cause because of catfishing is thus unfounded. This Court has already addressed the challenges of relying on anonymous information and established the totality of the circumstances analysis for assessing the information's reliability.

The State's argument that the criminalization of online enticement creates new questions concerning the application of probable cause because of the anonymous and inherently unreliable nature of leads is thus unfounded. As demonstrated through the lower courts' analysis using settled case law, this Court has already established a framework for assessing and relying on anonymous information to establish probable cause. The lower courts appropriately applied this law to assess the lawfulness of Mr. Deuble's arrest.

The State's second argument regarding catfishing – which in effect asks this Court to suspend probable cause requirements because they make enforcing child enticement laws more difficult–is wholly unsupported by case law and basic Fourth Amendment principles. See Illinois v. Gates, 462 U.S. 213 (1983). The State acknowledges in its Petition that the information it received from EY online was unreliable, uncorroborated, and in some cases outright false. Yet, the State maintains that Mr. Deuble's arrest was lawful. Case law provides that information must be

"reasonably trustworthy" to form a basis for probable cause, and thus the suspect's certifiably unreliable lead could not and did not establish probable cause. See Beck v. State of Ohio, 379 U.S. 89, 91 (1964). By asserting that Mr. Deuble's arrest was nonetheless lawful, the State effectively requests that this Court suspend probable cause requirements to make law enforcement easier. The State provides no support for its argument, which is wholly unsupported by case law and basic Fourth Amendment principles. Consequently, this argument does not warrant this Court's review.

3. The Eighth District did not alter the probable cause standard or create an unnecessary burden for enforcing online child enticement laws.

The State's position that the threshold for probable cause has been substantively raised by the decision in Deuble, *supra*, or that future ICAC investigations could be hindered due to a suspect's ability to disguise his identity is plainly unsupported. Probable cause "is a fluid concept revolving on the assessment of probabilities and particular factual contexts not readily or even usefully reduced to a neat set of legal rules." Ornelas v. United States, 517 U.S. 690, 698 (1996). The probable cause calculus will always depend upon the specific facts and circumstances surrounding a particular case. Probable cause for a warrantless arrest exists if all the facts and circumstances within the officer's knowledge were sufficient to cause a prudent person to believe that the individual has committed or was committing an offense. Beck v. State of Ohio, 379 U.S. 89, 91 (1964). The decision in this

case alters none of these well-settled principles, rendering it of insignificant public or general interest.

In as far as hindering future investigations is concerned, nothing could be further from the truth. Here, officers had the opportunity to delay Respondent's arrest until further evidence of his identity could be confirmed. They could easily have asked via Whisper, "Are you the young guy on the basketball court wearing the white gym shorts?" After receiving a response in the affirmative, they would have known they had their man. Instead, they acted prematurely, and violated Respondent's constitutional rights in doing so. If anything, the decision by the Eighth District serves not to hinder future ICAC investigations, but to protect future citizens from unlawful arrests for otherwise innocent actions.

B. The Ohio Eighth District Court of Appeals appropriately applied the facts of Respondent's case to well-established probable cause standards, reasonably concluding that law enforcement did not have probable cause to arrest Respondent at the time of he was seized.

Probable cause exists where the facts and circumstances within the arresting officer's knowledge are "sufficient to warrant a prudent man in believing that the appellant had committed or was committing an offense." Beck v. State of Ohio, 379 U.S. 89, 91 (1964). Probable cause must be based on "reasonably trustworthy information." Id.

Here, Investigator Rotili-the investigator facilitating Mr. Deuble's arrest-testified at oral hearing that law enforcement did not have probable cause to arrest Mr. Deuble when he was taken into custody. He did not know whether or not "EY" was even at the park, much less whether he was one of the two men under surveillance. Investigator Rotili, along with uniformed officers of the Parma Heights Police Department, arrested Respondent after witnessing him in possession of his phone on only three occasions which corresponded to messages received by Rotili's avatar.

> Question: So based on the fact that Mr. Deuble was at the park, and based on that you witnessed him use his phone at least three times, that was what caused you to decide to have other units move in on Mr. Deuble, right?
>
> Answer: Yes. (Tr. Pg. 173).

Even after Respondent was in handcuffs and being led away, Officer Rotili can be heard saying on his body cam, "Is that the guy." The audible response from the assisting officer, "I don't know." See Body Cam Footage at 00:04:53.

> Question: And in fact when you approached the scene after you were told to come to the park because they had a suspect in custody, the very first words uttered on your body cam, your question, is that him. Response, I don't know. Is that not correct?
>
> Answer: Yes

> Question: So, you had no idea whether or not the person you had in handcuffs was "EY"?
>
> Answer: Correct. (Tr. Pg. 93).

This testimony confirms that Investigator Rotili and Detective Frattare did not know whether the person they had in custody was in fact "EY." Meanwhile, Respondent was in handcuffs, sitting on the ground and surrounded by a half dozen armed and uniformed officers while his car and personal belongings were being searched. Investigator Rotili then picked up Respondent's phone and sent a text message from his avatar to "EY" to verify that Respondent was the individual with whom he had been corresponding. This "test text" confirmed that Respondent was "EY." Rotili admitted that he may have suspected Respondent, but had no reason to believe Respondent was, in fact, "EY" until the "test text" appeared on Respondent's notification screen. See Deuble, at ¶29.

> Question: And it is that test text that you sent to Mr. Deuble's phone which confirmed that it actually was his phone that was communicating with the undercover avatar, correct?
>
> Answer: I believe so.
>
> Question: So, it wasn't until that point that you believed you had probable cause to arrest him, correct?
>
> Answer: Correct. (Tr. Pg. 115-116).

The State's assertion that law enforcement did have probable cause to arrest Mr. Deuble at the time of the

arrest directly contradicts the testimony of its own witness, the investigator on-scene during the arrest. There are two explanations for this gross contradiction: either the State knows that no probable cause existed yet continues nevertheless to assert that it did, or it does not believe Investigator Rotili is a prudent man. If a prudent man, according to the State, would have found probable cause, then Rotili's testimony to the contrary suggests that Investigator Rotili, a detective with years of experience in this specific field, fails to meet this standard.

The State's Petition itself resolves this contradiction by conceding that law enforcement relied solely on inherently unreliable information as its basis for arresting Mr. Deuble. In so doing, the State effectively admits that law enforcement did not have sufficiently trustworthy information on which to establish probable cause. The State itself asserts that information from an anonymous source online is inherently unreliable given the prevalence of catfishing. Consequently, it concedes, "Rotili and the other investigators had no reason to know whether anything said by EY in the chat was true." Pet. Cert. 21. However, the State cites this unreliable information to argue that officers had probable cause to arrest Mr. Deuble. The State justifies the officers' actions by asserting that EY had to be one of the two men in the park solely due to the fact that EY told them he would be there. The State further relied on unreliable facts when justifying the officers' choice of Mr. Deuble over the other man in the park, based solely on EY's self-description as a young thin white man. The State's concession that it relied on information known to be unreliable refutes the State's

own argument, confirming that officers lacked probable cause to arrest Mr. Deuble when he was taken into custody.

II. THIS CASE DOES NOT PROVIDE THE COURT THE OPPORTUNITY TO DETERMINE WHETHER A SUSPECT EXERCISES AN EXPECTATION OF PRIVACY OVER HIS PHONE'S NOTIFICATION SCREEN; THIS QUESTION IS MOOT BECAUSE THE EVIDENCE IS INADMISSIBLE AS THE FRUIT OF RESPONDENT'S UNLAWFUL ARREST.

A. The basis for inadmissibility lies in the unlawful nature of Respondent's arrest, not in any expectation of privacy in his phone's notification screen.

Law enforcement had access to Mr. Deuble's phone and its notifications screen because they had arrested him illegally. They unlawfully separated him from his belongings and left them available for viewing and/or searching. After handcuffing Mr. Deuble and leading him away from his belongings, and as he sat on the ground surrounded by half a dozen armed and uniformed officers, Investigator Rotili had the opportunity to pick up Mr. Deuble's phone and look at its notification screen. The Eighth District accordingly found the evidence from Mr. Deuble's notification screen inadmissible as the fruit of the unlawful arrest. App. to Pet. Cert. 17. Whether or not Respondent had an expectation of privacy in his phone's notification screen is therefore irrelevant; the unlawful arrest renders the evidence inadmissible regardless of

whether viewing the notification screen constituted a search.

The State erroneously claims that the Eighth District found the evidence inadmissible, holding that viewing a phone notification screen constitutes an unlawful search. The Court did not find the evidence inadmissible as the fruit of an unlawful search due to Mr. Deuble's expectation of privacy of his phone's notification screen, nor did it address the question of whether viewing a notification screen constitutes a search. The sole question the Eighth District reviewed was "whether the trial court erred in denying appellant's motion to suppress when it found that appellant's arrest was predicated on probable cause." App. to Pet. Cert. 17. The opinion answers only this question, holding that "police did not have probable cause to arrest Deuble without a warrant, and evidence obtained following his arrest, including information on his cell phone and his confession, should have been suppressed. Accordingly, we reverse the trial court's judgment." Id.

The Eighth District did not address whether an individual has an expectation of privacy in his phone's notification screen, this question is irrelevant to Mr. Deuble's case, and therefore Mr. Deuble's case does not provide this Court the opportunity to review this question.

B. The Eighth District did not address the federal questions at issue in Brixen or in Riley concerning mobile phone searches, much less contradict or inappropriately extend these holdings.

This Court has held that an individual has a heightened privacy interest in his phone. This heightened privacy interest prohibits law enforcement from searching a phone without a warrant, even on the grounds of officer safety and/or preservation of evidence. Riley v. California, 573 U.S. 373, 387-388 (2014). The Seventh Circuit narrowed the application of this holding, finding that an individual does not have a reasonable expectation of privacy in his phone's notification screen, and thus a warrant is not needed to view the notification screen. United States v. Brixen, 908 F.3d 276, 280-281 (7th Cir. 2018).

Contrary to the State's assertion, the Eighth District did not address the questions at issue in Riley or Brixen, much less extend or contradict these holdings. As discussed *supra*, whether or not a heightened privacy interest extends to a phone's notification screen is irrelevant to Mr. Deuble's case and formed no basis for the Eighth District's holding. App. to Pet. Cert. 17. Thus, this case does not provide the Court the opportunity to review the question of whether an individual has an expectation of privacy in his phone's notification screen.

CONCLUSION

Because Mr. Deuble's case presents no important federal question of unsettled law, this Court's review is

unwarranted. First, probable cause is a well-settled legal principle to which the Eighth District appropriately applied the facts of this case. The State's second proposition of law is moot. The violation of Respondent's Fourth Amendment rights occurred prior to the search of his mobile phone. Thus, the question of whether the observance of a notification screen on a phone constitutes a search was not an issue decided upon by the lower courts herein. The State's Petition for a Writ of Certiorari should therefore be denied.

Respectfully Submitted,

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