No.:

In the Supreme Court of the United States

Alex Bugno
Petitioner,

v.

The State of Ohio
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Ohio

Petition for a Writ of Certiorari

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Question Presented for Review

(I)

Are Search warrants that fail to include command sections authorizing the seizure of particular items facially and fatally defective, requiring suppression of any evidence seized?

(II)

Does the good faith exception to the exclusionary rule does apply in a case where the search warrant for a computer is facially deficient based upon the lack of a command to seize property and is so lacking in particularity that, on its face, it violates the Fourth Amendment and Fourteenth Amendments?

Parties to the Proceeding and Rule 26.9 Statement

Petitioner and defendant-appellant below, Alex Bugno, is an individual person and United States domiciliary. The respondent, here, and the plaintiff-appellee below is the U.S. Pursuant to S.Ct.R. 26.9, both parties, the U.S. and Bugno are non-corporate entities, and have no corporate disclosures to make.

List of Related Proceedings

There are no proceedings that qualify as "related proceedings" under Rule 14 of this Court's rules of practice.

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Petition for a Writ of Certiorari

Alex Bugno petitions for a writ of certiorari to review the decision of the Supreme Court of The State of Ohio, effectively affirming and declining jurisdiction over the Court of Appeals for the Seventh District's order affirming his conviction and sentence.

Opinions Below

The Ohio Supreme Court's decision, which is the final dispositive decision in the State of Ohio, dated September 27, 2022, is unreported and reproduced in Appendix A.

Jurisdiction

This Court's jurisdiction rests on 28 U.S. Code § 1257, allowing a writ to issue relative to the final decision of a state's highest court. The Supreme Court of the State of Ohio is Ohio's court of highest jurisdiction, and it issued its decision in this case on September 27, 2022.

Constitutional and Statutory Provisions

This Cause turns on the Fourth Amendment to the U.S. Constitution and the Fourteenth Amendment, attaching same to the conduct of states.

Reasons for Granting the Writ of Certiorari

Procedural Posture and Factual Background

The defective search warrants in this cause originated in a sex crimes investigation. Complaining witnesses told the police that they had sexual encounters with Appellant, Alex Bugno, at his businesses' properties. The witnesses told the police that some of the encounters occurred with, inter alia, digital recording. Armed with that information, the police secured warrants.

The authorities executed the warrants at the businesses' locations on July 10, 2014. [Sup.Tr. 119 – 120.] At an E. Indianola address in Youngstown, officers seized a laptop computer. [Sup.Tr. 126 – 127.] During a preview of that computer during the execution of the warrant, a state agent, Agent Carlini ,testified that other agents had noticed at least one (1) image of suspected child pornography. [Sup.Tr. at 127.] But Agent Carlini later testified, at the suppression hearing, that agents did not discover an image of child pornography during the preview conducted on the date of the execution of the warrant, but, rather, by Agent Heather Carl, at some later point, while Carl was going through the computer and its contents at the B.C.I. lab. [Sup.Tr. at 182.] Based on the images found during a months long search of the computer, Agent Carlini, on February 26, 2015, sought an additional search warrant to search the contents of the computer. [Id.]

The secondary warrant issued. (Id. at 128 –

129). Ultimately, a search of the computer and/or hard drive led to the B.C.I. Agent Heather Karl finding the video (admitted at trial as State's Exhibit 1) which allegedly depicted the Appellant engaged in sexual activity with M.C. that formed the basis of Count 35. [Trial.Tr. 50-752.]

Appellant, Alex Bugno, sought to suppress the items seized during the searches based, primarily, on three (3) separate grounds: first, that the warrants were not based upon probable cause, second that the warrants were fatally defective based upon the failure to include a command authorizing officers to search and seize any items, and, third, that the warrants did not comply with the particularity requirements of the Ohio and United States Constitutions and represented general searches. [D. at 65 and 85.] The trial court overruled the motion finding that there was sufficient probable cause for the warrants. However, the trial court found that the subsequent search warrant for the computer was facially deficient, however, the trial court further found that the officers executing the computer search warrant acted in good faith and, therefore, the deficiency did not require suppression. [D. at 88.]

The matter proceeded to trial. The trial resulted in a guilty verdict. The trial court sentenced Alex Bugno to a total term of 17 years in prison. An appeal followed. The Seventh District overruled all assignments of error, and the Ohio Supreme Court declined jurisdiction. This matter comes timely urging review.

Law & Discussion

Standard of Review: This Court has not addressed the question this cause presents. Because the question concerns the plain text of a warrant, the petitioner suggests that this cause merits *de novo* review.

Issue and Summary of Argument: Is a warrant that contains no command to seize property facially and fatally defective? This cause invites review of this question of first impression.

Applying this Court's decision in *U.S. v. Leon* and the Ohio Supreme Court's decision in *State v. Dibble*, the defense proffers that the answer should be a resounding, "yes." The defense posits that a warrant and its supporting affidavit are two different things, and an affidavit's designation of places and things that might be part of an investigation do not give rise to a good-faith allowance to search those places and things if those places and things are not listed in a warrant's command section. *Leon* and *Dibble* both deal with good faith, but along different lines than this case, likely making this matter a cause of unique impression.

Given all that, this cause invites review of matters of great public interest. Further, this is a constitutional matter, as the Fourth Amendment applies to the States by way of the Fourteenth Amendment. This matter, too, is one of great public and/or general interest because law enforcement and those law enforcement search should have a uniform

understanding of what makes a valid warrant. The defense now asks this Court to take well of its propositions of law and to assume review on the merits.

Argument

(I)

Search warrants that fail to include command sections authorizing the seizure of particular items are facially and fatally defective, requiring suppression of any evidence seized. There were a total of four (4) search warrants issued in this matter. Two (2) of the search warrants are relevant to this appeal. However, all four (4) search warrants failed to include a command section specifically authorizing law enforcement officials to seize any items. Indeed, the trial court found that the search warrants failed to include a command to seize any items. [D. at 88.] Nevertheless, the trial court held that the failure to include a command to seize did not render the search warrants invalid and did not require suppression of the evidence seized. In doing so, the trial court erred. The failure to include a command to seize any items on any of the search warrants rendered the warrants fatally defective and suppression was required under the Ohio and United States Constitutions.

B.C.I. Agent Edward Carlini, after meeting with Det. Rowley, and watching the interviews of two complaining witnesses prepared affidavits and search warrants for Bugno's business locations and

his home located in Struthers, Ohio. [Sup.Tr. at 47.] The three (3) affidavits contained identical language, except for the different addresses and were signed by then Judge James C. Evans on July 9, 2014. [Sup.Tr. at 112, 117, 135, 150-151.] The search warrants did not contain a command to seize any evidence. [Tr. at 160.]

Each of the warrants includes a command to search, *i.e.*, "YOU ARE HEREBY COMMANDED TO SEARCH: on the premises/property known as 1101 East Indianola Avenue* * *," however, they contain no similar language stating, *i.e.*, "YOU ARE HEREBY COMMANDED TO SEIZE [description of property to be seized]." See, for example, Defendant's Exhibit A attached to *Motion to Suppress* [D. at 65]. The search warrants were executed, simultaneously, at the three (3) locations on July 10, 2014. [Sup.Tr. 19-120. At a business address, officers seized a laptop computer and various amounts of pharmaceutical pills.

Under U.S. and Ohio Law, a warrant and its supporting affidavit or testimony are two different things. Analysis begins with The Fourth Amendment to the United States Constitution. According to the Fourth Amendment, in relevant part for, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and provides further that "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." Ohio Constitution, Article I, Section 14, contains an

identical norm. Notably, the Constitutions of the U.S. and of the State of Ohio distinguish between the warrant and its precursor affirmation—usually a printed affidavit, though sworn testimony also suffices. To that end, Rule 41(C)(1), relevant to the issue here directs that: "[a] warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant." Thereafter, under Rule 41(C)(2), "[i]f the judge is satisfied that probable cause for the search exists, the judge shall issue a warrant identifying the property and naming or describing the person or place to be searched." Revised Code 2933.24 further outlines the nature of the warrant, stating "[t]he warrant shall command the officer or individual to search the place or person named or described for the property, and to bring them, together with the person, before the judge or magistrate." Ohio's reviewing courts recognize this approach.

Looking at how Ohio applies these principles provides some guidance. In *State v. Strzesynski* , 6th Dist. Wood No. WD-85-68, 1986 WL 4660, *2 (Apr. 18, 1986), emphasis added, the Sixth District held that pursuant to Crim.R. 41(C), a valid search warrant must (1) be directed to a law enforcement officer; (2) **name the person or places to be searched and the items to be seized**; (3) state whether the search is to take place during daytime or nighttime; and (4) to be executed within three days and returned to the specific judge. The court further held that:

> Pursuant to Crim. R. 41(C), before an item can be seized, it must be described in some particularity. The threshold test establishing this particularity requirement is whether the officer can identify the item to be seized. Absent clear guidelines as to which property is to be seized, an officer is improperly vested with unbounded discretion in making his search.
>
> **Importantly, our review of the pertinent rule indicates that the description of the item to be seized must appear in the command section of the search warrant and not solely in the affidavit supporting the search warrant.**

Id. (emphasis added), internal citations omitted.

In *State v. Simpson,* 64 Ohio Misc. 42, 412 N.E.2d 956 (C.P. 1980), the police conducted a search of two (2) separate apartments pursuant to a search warrant. The defendant lived in Apt. 304 at the apartment address listed in the affidavit to the search warrant and the co-defendant lived in Apt. 204. *Id.* Although the affidavit set forth sufficient probable cause to obtain a search warrant for both apartments, the command section of the search warrant, itself, only commanded the search of Apt. 204. *Id.* Police officers searched both apartments and seized evidence from both apartments which led to the indictment against the defendant. *Id.*

The defendant sought to suppress the

evidence seized from Apt. 304 due to the failure of that address appearing in the Command section of the search warrant. The trial court granted the motion and found that the Command section stated, "[t]hese are therefore to command you in the name of the State of Ohio … to enter ... into apartment #204[.]" *Id.* at 43. The State argued that the affidavit clearly set forth probable cause to search each apartment and that the search warrant and affidavit should have been considered all inclusive, permitting the search of each apartment. *Id.*

The trial court rejected the State's argument and found that the search warrant must stand on it's own. *Id.* The court found that:

> Surprisingly, there are few cases in Ohio regarding this issue, but it has always been held that search warrants are creatures of statute, and the Constitutions of the United States and the State of Ohio. Therefore, the creation and application must be construed most strictly.
>
> From a reading of Criminal Rule 41, R. C. 2933.23 and 2933.24, **[the] court is of the opinion that the "command" portion of the warrant had not properly named Apt. 304 and, therefore, any search of the said apartment was unlawful and the evidence obtained thereby must be suppressed.**

Id. (emphasis added), internal case citation omitted.

The court found that reading the relevant statutes together, the intent of the law is clear; that is that the warrant is a specific document and it shall contain specific information. *Id.* The court found that "the command only appears in one place —in the warrant. It is, in fact, the order of the court, the authority by which it grants the power to the police to act." *Id.*

The court concluded that:

> The fact that the words referring to Apt. 304 are missing from the command can only be construed as meaning that the executing court considered the request to search Apt. 304 and rejected that request. **Thus, since the authority to search Apt. 304 was not contained in the words of the command, no authority to search is created. To allow the police to decide whether they will expand the terms of the court order to fit their convenience or purpose is to give them greater power than intended by statute and constitution. The court is the guardian of the rights of the people and they must be protected by specific orders.**

Id. at 43-44 (emphasis added).

In this matter, the trial court found that the search warrants of one business location and the computer failed to contain a command to seize any items. The trial court, however, found that the absence of such a command did not render the

warrants plainly invalid and further found that references to computers contained in the warrants permitted officers to seize the computer. The trial court relied on the decision of the this Court in *Groh v. Ramirez,* 540 U.S. 551, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004), to support its decision to deny Appellant's motion to suppress, however, a simple reading of *Groh* reveals that it required the trial court to grant Appellant's suppression motion.

Groh involved a civil suit filed against federal agents and state law enforcement officials following a search of respondent's home. *Id.* at 553. A federal agent prepared an affidavit, application for a search warrant and a proposed warrant for the magistrate to sign, which the magistrate ultimately signed. *Id.* at 554. Although the application particularly described the place to be searched and the contraband the officer expected to find, the warrant itself failed to identify any of the items that the agent intended to seize. *Id.* In the portion of the form that called for a description of the "person or property" to be seized, the agent typed a description of the two-story blue house (that agents were going to search) rather than the alleged stockpile of firearms. *Id.* This Court found that:

> The warrant was plainly invalid. The Fourth Amendment states unambiguously that 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. The warrant in this case

> complied with the first three of these requirements: It was based on probable cause and supported by a sworn affidavit, and it described particularly the place of the search[.]

Id. at 557, internal quotations and emphasis omitted.

This Court found that the fact that the application adequately described the "things to be seized" did not save the warrant from its facial invalidity as the Fourth Amendment requires particularity in the warrant, not in the supporting documents. *Id.* A warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional. *Id.* The presence of a search warrant serves a high function and that high function is not necessarily vindicated when some other document, somewhere, says something about the objects of the search. *Id.* While the Fourth Amendment can permit a warrant to cross-reference other documents, in this case the warrant did not incorporate other documents by reference. *Id.* at 557-558.

This Court held that:

> This warrant did not simply omit a few items from a list of many to be seized, or misdescribe a few of several items. Nor did it make what fairly could be characterized as a mere technical mistake or typographical error. Rather, in the space set aside for a description of the items to be seized, the warrant

> stated that the items consisted of a single dwelling residence . . . blue in color. **In other words, the warrant did not describe the items to be seized at all. In this respect the warrant was so obviously deficient that we must regard the search as warrantless within the meaning of our case law.**

Id. at 558, internal quotations omitted, emphasis added. The Court found that it was not dealing with mere formalities because the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion' stands at the very core of the Fourth Amendment. *Id.* at 558-559. The Court found that its cases firmly establish the basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. *Id.* at 559.

This Court found that it is incumbent on the officer executing a search warrant to ensure the search is lawfully authorized and lawfully conducted and because the federal agent did not have in his possession a warrant particularly describing the things he intended to seize, proceeding with the search was clearly unreasonable under the Fourth Amendment. *Id.* at 563. The warrant in *Groh* violated the Particularity requirement of the Fourth Amendment and the same is true in this case. The search warrants at issue in this matter failed to provide legal authority to seize any items and were so facially deficient that the searches and seizures can only be described as warrantless. Moreover, the

fault lies solely at the feet of the agent in this matter, as he prepared the search warrants. As such, the searches were unreasonable and the trial court erred in denying the motion to suppress. Although not addressed in the trial court, the search and seizure of items at 1101 E. Indianola, based on a facially defective warrant, cannot be excused under a good faith exception (see discussion, *infra*).

As the agents seized the material on the authority of defective search warrants, any seized material, the trial court should have suppressed. And being an issue of constitutionality and public interest, the defense posits that review is appropriate before this Court.

(II)

The good faith exception to the exclusionary rule does not apply in a case where the search warrant for a computer is facially deficient based upon the lack of a command to seize property and is so lacking in particularity that, on its face, it violates the Fourth Amendment? The search warrant of the HP Pavillion Laptop Computer failed to contain a command to seize any items (as did the warrant of the 1101 E. Indianola business address). Further, the search warrant of the Laptop Computer was found by the trial court to be so utterly lacking in particularity that, on its face, it violated the Fourth Amendment. Nevertheless, the trial court found that the officers executing the search warrant acted in good faith in reliance upon the warrant and, as a result, the exclusionary rule was inapplicable and

denied Appellant's motion to suppress. In so finding, the trial court erred.

The February 26, 2015 search warrant for the laptop identified the make and model of the computer but there was no limitation on what records, documents or folders could be searched on the computer. As the trial court noted, the Court in *State v. Castagnola,* 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, ¶81, found that because computers can store a large amount of information, there is a greater potential for the intermingling of documents and a consequent invasion of privacy when police execute a search for evidence on a computer. The Ohio Court held that officers must be clear as to what it is they are seeking on the computer and conduct the search in a way that avoids searching files of types not identified in the warrant. *Id.*

The Ohio Court found that the search warrant did not contain any description or qualifiers of the records and documents stored on the computer that the searcher was permitted to look for. *Id.* at ¶82. The Court found that there was no language in the warrant that attempted to narrow the search. *Id.* As a result, the Ohio Court found that the search warrant failed to address both concerns that courts consider when determining whether a warrant satisfies the particularity requirement of the Fourth Amendment. *Id.*

The Ohio Court found that courts addressing the particularity requirement of the Fourth Amendment are concerned with two issues. First, whether the warrant provides sufficient information

to "guide and control" the judgment of the executing officer in what to seize. *Id.* at ¶79. Second, whether the category as specified is too broad in that it includes items that should not be seized. *Id.*

In this matter, the trial court correctly held that there was no limitation on what records and documents that were to be searched on the laptop. [D. at 88.] Further, the trial court correctly found that Agent Carlini, in writing the laptop search warrant and the accompanying affidavit, had enough information gathered from the interviews of R.O. and M.W. that Carlini could specify or narrow down exactly what type of files or documents that agents were looking for. *Id.* Thus, the trial court correctly found that the laptop search warrant failed to satisfy the particularity requirement and violated the Fourth Amendment.

The trial court, however, erred when it came to application of the exclusionary rule. In *United States v. Leon*, 468 U.S. 897, 913, 104 S.Ct. 3405, 82 L.Ed.2d 677(1984), this Court held that the exclusionary rule should not be applied to suppress evidence obtained by police officers acting in objectively reasonable, good faith reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid. The Ohio Supreme Court has adopted the *Leon* analysis. *State v. Dibble,* 159 Ohio St. 3d 322, 2020-Ohio-546, 150 N.E.3d 912, ¶ 9 and *State v. Wilmeth,* 22 Ohio St.3d 251, 254, 490 N.E.2d 1236 (1986).

The trial court found that although the laptop search warrant was facially deficient, it applied the *Leon* good faith exception because the warrant was

based upon probable cause. First, the Appellant points out that the trial court misapplied the good faith exception analysis and, second, the warrant was not based upon probable cause.

As to the first issue, the trial court found that the good faith exception applies unless the warrant is not supported by probable cause *and* is facially deficient. Thus, the trial court reasoned that while the laptop warrant was facially deficient, it, nevertheless, was supported by probable cause and, therefore, suppression was not required. The trial court misread and/or misapplied the law. What *Leon* and subsequent cases have found is that the good faith exception applies unless the warrant is not supported by probable cause *or* is facially deficient. The *Leon* court held that:

> **Finally, depending on the circumstances of the particular case, a warrant may be so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.**

Leon, supra, at 923, emphasis added, internal citation omitted.

In *Dibble, supra,* the Ohio Court held that:

> The *Leon* court explained, however, that suppression would still be appropriate in circumstances when (1) the supporting affidavit contained information the affiant knew to be false or would have known to be false but for

> reckless disregard of the truth, (2) the issuing magistrate wholly abandoned his judicial role, (3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, **or (4) the warrant is so facially deficient in terms of particularity that the executing officers could not reasonably presume it to be valid.**

Dibble, supra, at ¶ 9, internal quotations omitted. The Ohio Supreme Court has long recognized that the proper analysis requires suppression if any of the four (4) *Leon* exceptions apply. *State v. George,* 45 Ohio St. 3d 325, 331, 544 N.E.2d 640 (1989).

A good faith analysis is an objective one and does not depend on the subjective knowledge of any individual police officer. *Castagnola, supra,* at ¶ 95. An officer's reliance on the warrant must be objectively reasonable and suppression is required when a warrant is "so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid. *Id.* at ¶ 98.

Here, the laptop search warrant was found by the trial court to be so lacking in particularity that it violated, on its face, the Fourth Amendment. [D. at 88.] This finding was supported by the testimony at the suppression hearing, by a review of the affidavit and laptop warrant and the evidence presented in

this matter. Further, the trial court's determination that the warrant failed to comply with the particularity requirement is supported by ample case law. See *Castagnola*. In reviewing a motion to suppress, appellate courts give great deference to the factual findings of the trier of facts. *State v. Hallam,* 2nd Dist. No. 2012 CA 19, 2012-Ohio-5793 at ¶ 18. At a suppression hearing, the trial court serves as the trier of fact, and must judge the credibility of witnesses and the weight of the evidence and is in the best position to resolve questions of fact and evaluate witness credibility. *Id.* In reviewing a trial court's decision on a motion to suppress, an appellate court accepts the trial court's factual findings, relies on the trial court's ability to assess the credibility of witnesses, and independently determines whether the trial court applied the proper legal standard to the facts as found. *Id.* An appellate court is bound to accept the trial court's factual findings as long as they are supported by competent, credible evidence. *Id.*

Where the trial court went astray was in misapplying the good faith exception. The trial court simply failed to understand that suppression is required if any of the above-mentioned four (4) *Leon* exceptions apply to a search warrant. Proper application of the law required suppression because, at a minimum, no objective officer could have believed the search warrant was valid based upon the warrant's failure to particularize the place to be searched or the things to be seized.

As the Court noted with respect to the officer's knowledge:

> The inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization. In making this determination, a court should consider the total circumstances and assume that the executing officers have a reasonable knowledge of what the law prohibits. When considering a facially invalid warrant, the trial court must also review the text of the warrant and the circumstances of the search to ascertain whether the agents might have reasonably presume[d] it to be valid.

Castagnola, supra, at ¶ 93, examining *U.S. v. Leon*, internal quotations and citations omitted.

The laptop warrant failed to specify which files, documents or folders on the computer could be searched. Neither the affidavit nor the warrant narrowed the search or narrowed what agents could seize. The agents believed that the search warrant allowed them to search every document, file and folder on the laptop. The Fourth Amendment prohibits a "sweeping comprehensive search of a computer's hard drive." *Id.* at ¶ 88. Worse, the search warrant of the laptop, as well as the search warrant of 1101 E. Indianola, failed to include a command to seize any evidence. The warrants gave the officers authority to seize nothing, nevertheless,

they seized evidence.

In sum, the initial search warrant on 1101 E. Indianola failed to include a command to seize anything, yet, on July 10, 2014, agents searched and seized numerous electronic devices, including the HP Pavillion Laptop. [Sup.Tr. 183.] BCI Agent Carl then spent an unknown amount of time searching the entirety of the laptop at her lab until January 7, 2015 when she discovered files that appeared to contain child pornography [Id. 181-182 and Paragraph 10 of the affidavit to the February 26, 2015 laptop search warrant). Even then, agents waited more than a month to apply for a search warrant of the laptop. Thus, more than seven (7) months had passed between the initial search of E. Indianola, the seizure of the laptop, and the application for a search warrant for the laptop. As noted, even the February 26, 2015 warrant failed to contain a command to seize anything and contained no delineation of what may and may not be searched on computer. Ultimately, State's Exhibit 1 was seized form the computer. The video formed basis of Count 35 at trial and was improperly used by the State throughout trial as evidence to bolster it's case.

Briefly, the Appellant notes that the February 26, 2015 warrant was not supported by probable cause. In *George, supra,* at 329, the Court found that the 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. In the initial search warrant affidavit for 1101 E. Indianola, there is but one (1) sentence in Paragraph 4 of the affidavit that mentions the possibility that Appellant was streaming or recording sex acts on a computer. There is no further circumstance set forth that would substantiate that a computer might contain evidence of a crime or which computer, exactly, was allegedly used. The laptop search warrant contains the same information along with a reference to the January 7, 2015 discovery of alleged child pornography (which factually was completely dissimilar to the crimes allegedly committed by the Appellant). The single sentence is, essentially, a conclusory statement that is based on no discernible event or any indication of when or where the alleged recording or streaming took place.

Thus, there was no indication that information relating to any computer was timely. It is a basic, fundamental principle of law that an affidavit for a search warrant must present timely information. *State v. McNamee,* 139 Ohio App.3d 875, 880, 745 N.E.2d 1147 (2000) and *State v. Hollis,* 98 Ohio App.3d 549, 554, 649 N.E.2d 11 (1994)[it is fundamental that an affidavit must contain something affirmatively indicating that there is probable cause at or about the time the search warrant is applied for]. Essentially, given the lack of information and facts in the affidavits and no indication of the timeliness of the information, the affidavits were nothing more than "bare bones" affidavits.

The February 26, 2015 search warrant was facially and constitutionally defective. The trial court so found and should have further ordered the suppression of the evidence seized as a result of the laptop warrant. By overruling the motion to suppress, the trial court clearly erred.

As a matter of good policy, the defense posits that a warrant and its supporting affidavit are two different things, and an affidavit's designation of places and things that might be part of an investigation do not give rise to a good-faith allowance to search those places and things if those places and things are not listed in a warrant's command section. To hold otherwise would allow law enforcement to assert "good faith" such to seize any number of things that one might claim to discern from a warrant's affidavit.

Conclusion

The Petitioner urges this Court to assume jurisdiction over this cause and to hear it on its merits.

Respectfully Submitted,

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