

ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2013-2023
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
LAUREN JONES,	:	
	:	Court of Appeals
Defendant-Appellee.	:	Case No. 99538
	:	

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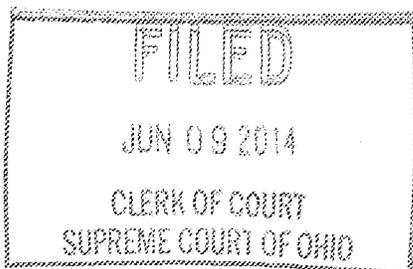


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INTRODUCTION

Acting on the basis of a tip from a reliable informant, Cleveland police collected the trash outside Lauren Jones's residence and discovered several items with methamphetamine residue and several items commonly used in the production of methamphetamine. That discovery corroborated other information about Jones that detectives learned in the course of their investigation. The police obtained a warrant to search Jones's residence, where they found additional evidence of drug manufacturing. This case concerns whether probable cause supported the warrant and, if not, whether the evidence was nevertheless admissible under the good-faith exception to the Fourth Amendment exclusionary rule.

The Fourth Amendment's exclusionary rule "exact[s] a heavy toll on both the judicial system and society" and "almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence." *Davis v. United States*, 131 S. Ct. 2419, 2427 (2011). Although "society must swallow this bitter pill when necessary," *id.*, the pill becomes poison when courts apply the exclusionary rule too broadly. The Eighth District applied the exclusionary rule well beyond its prescribed reach here. For the following reasons, this Court should reverse the judgment below.

First, probable cause is a common-sense standard. *Florida v. Harris*, 133 S. Ct. 1050, 1053 (2013). And common sense says that finding methamphetamine residue in residential trash means that methamphetamine or items for its manufacture may be found in the residence the next day. Here, the Eighth District eschewed common sense and concluded that finding "contraband" in the residential trash "does not necessarily render the continued presence" of the contraband in the house "probable." *State v. Jones*, 8th Dist. No. 99538, 2013-Ohio-4915 ¶ 17 (hereafter "App. Op.").

Second, the Fourth Amendment permits search warrants for “things,” U.S. Const. amend. IV, even if the thing is not linked to any particular person. The “critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific things to be searched for and seized are located on the property to which entry is sought.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978) (internal quotation marks omitted), *superseded on other grounds by* 42 U.S.C. 2000aa(a). Here, evidence of methamphetamine residue in the residential trash indicated that methamphetamine would be found in the residence. The Eighth District’s decision contradicted United States Supreme Court precedent when it demanded “evidence that *Jones* was involved in illegal drug activity.” App. Op. ¶ 17 (emphasis added).

Third, the good-faith exception to the exclusionary rule supports reversal even if the search of the residence violated the Fourth Amendment. Excluding evidence is not automatic for every Fourth Amendment violation and is not required when “the police act with an objectively reasonable good-faith belief that their conduct is lawful.” *Davis*, 131 S. Ct. at 2427 (internal quotation marks omitted). As relevant here, to suppress the fruits of the challenged search, Jones would have to show, despite the judge’s authorization, that the police could not have relied on the warrant in good faith. *See United States v. Leon*, 468 U.S. 897, 922 (1984). Jones cannot do so here: The police did not mislead the judge; the judge acted neutrally in determining probable cause; the affidavit contained substantial indicia of probable cause; and the warrant was not facially deficient. *See id.* at 923. Accordingly, the officers who searched Jones’s house acted in good faith when they executed a warrant from a neutral magistrate one day after discovering methamphetamine residue in Jones’s residential trash. That is not the kind of “culpable police conduct” that the exclusionary rule is designed to deter. At minimum, the judgment below

should be reversed on the basis of the good-faith actions of the officers who conducted the search. Although the courts below did not address the good-faith exception, it is appropriate to consider because the costs of excluding evidence, and the exclusionary rule itself, balance social interests, not the personal interests of the litigants. *Davis*, 131 S. Ct. at 2427.

The Eighth District's judgment contradicts binding precedent in several respects. It must be reversed.

STATEMENT OF AMICUS INTEREST

The Attorney General, Ohio's chief law officer, R.C. 109.02, has a deep interest in this case both (1) because he has launched statewide efforts to combat methamphetamine production and (2) because he oversees the Ohio Peace Officer Training Academy.

Investigating Methamphetamine Production. The Attorney General has spearheaded statewide efforts to combat methamphetamine abuse in Ohio. See <http://www.ohioattorneygeneral.gov/Law-Enforcement/Local-Law-Enforcement/Drugs/Meth> (last visited May 30, 2014). Methamphetamine is a scourge and “methamphetamine laboratories pose a per se danger to occupants, officers, and the community.” *State v. Armbruster*, 9th Dist. No. 26645, 2013-Ohio-3119 ¶ 8 (citation and internal quotation marks omitted); see also R.C. 2933.33(A) (methamphetamine labs pose a “risk of explosion or fire” that endanger the “lives, or property, of . . . officer[s] and other individuals in the vicinity of the illegal manufacture.”).

The danger these labs pose to the public and law enforcement is increasing exponentially because it is expanding on two axes. On one axis, the number of meth labs in Ohio is increasing: According to statistics compiled by the Bureau of Criminal Investigation (BCI), meth labs in Ohio have nearly tripled over the last three years. On a second axis, the danger increases because meth labs have become more mobile. Again according to information compiled by BCI, criminals manufacturing methamphetamine can now make the drug in small, portable plastic containers, and frequently conduct intermediate steps of the process in different locations. That mobility makes the already dangerous manufacturing process even more volatile.

The increasing frequency and mobility of meth labs in Ohio means that the Eighth District's insistence that law enforcement conduct more investigation than the Fourth Amendment requires increases the risks to the public and law enforcement. The Eighth

District's opinion unnecessarily restricts law-enforcement activities, which in turn threatens officer and public safety and the fight against crime more generally.

Law-Enforcement Training. The Attorney General's oversight of the Ohio Peace Officer Training Academy means taking a special interest in cases that bear on common police practices like seeking warrants. The Ohio Peace Officer Training Academy "oversees training requirements" for peace officers and "provides instruction" to the law-enforcement community on all manner of police practices. See <http://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy> (last visited May 30, 2014). That includes extensive coursework related to probable cause. The Attorney General and the Academy thus have a strong interest in the standards for securing warrants and proving probable cause.

STATEMENT OF THE CASE AND FACTS

A search of Lauren Jones's residence turned up "several dishes with methamphetamine residue, white pills, coffee filters with methamphetamine residue, a scale with methamphetamine residue and methamphetamine." App. Op. ¶ 6. The grand jury indicted Jones for, among other things, possession of chemicals used to manufacture a controlled substance, two counts of trafficking, and three counts of possession. *Id.*

Police conducted the search of Jones's house only after a judge issued a warrant authorizing the search. The warrant rested on the following facts. A Cleveland narcotics detective learned from a reliable informant that a female named Lauren was manufacturing methamphetamine. *Id.* ¶ 2. The detective also learned that Jennifer Chappel manufactured methamphetamine, and had recently moved her operation to Rowley Avenue in Cleveland. *Id.* The detective further knew that a Rowley Avenue home had been burglarized, and that when the suspect was arrested at the house he was carrying methamphetamine. Warrant Affidavit ¶ 12. The detective later saw Chappel and a woman matching the informant's description of Lauren

sitting next to each other at the Cuyahoga County Justice Center. App. Op. ¶ 4. Lauren and the woman left the Center together. Warrant Affidavit ¶ 10. After learning that the woman was Lauren Jones, and that she lived at the burglarized Rowley Avenue house, police collected the curbside trash from the front of Jones’s house. In the trash, officers recovered “mail addressed to Jones” at the house’s address and “empty chemical bottles, plastic tubing, used coffee filters and a plastic bottle.” App. Op. ¶¶ 4-5. Field testing of the items “yielded positive results for methamphetamine.” *Id.* ¶ 5.

Using this information, the detective secured a warrant and searched Jones’s house the day after the trash collection. *Id.* ¶ 6.

In the trial court, Jones filed a motion to suppress. The trial court granted the motion. The court focused on what the police should have done, noting that they did not conduct “multiple trash pulls” or additional “surveillance . . . [showing] circumstances giving rise of drug activity.” Quoted at App. Op. ¶ 14. The trial court also noted that the warrant application disclosed no facts “associated with a drug house.” Quoted at *id.* ¶ 13.

The Eighth District affirmed, adopting the trial court’s reasoning and citing its own prior cases to the effect that “discovery of the discarded contraband must be viewed in isolation” and cannot support probable cause. *Id.* ¶ 15. The Eighth District focused on two perceived faults of the warrant. One, that it did not contain evidence “indicative of drug transactions” at the “target residence of the suspected drug dealer.” *Id.* ¶ 16. Two, that the warrant contained only scant evidence that “Jones was involved in illegal drug activity.” *Id.* ¶ 17.

The State appealed, and this Court granted discretionary review.

ARGUMENT

Amicus Curiae's Proposition of Law No. I:

When examination of trash from a specific residence yields illegal drugs, or materials for manufacturing those illegal drugs, probable cause supports a warrant to search the residence.

The warrant to search here was fully supported by probable cause. A tip about methamphetamine manufacture plus the discovery in the curbside trash of items used for methamphetamine manufacture and actual methamphetamine residue support the “common-sense” conclusion that methamphetamine or items for its manufacture would be discovered in the house the days after the search of the trash. *Florida v. Harris*, 133 S. Ct. 1050, 1053 (2013).

The Eighth District departed from common sense, and binding precedent, when it affirmed suppression of the evidence discovered in the search of the house. A search warrant may issue to search a place so long as there is a fair probability that contraband or evidence of a crime will be found there. That is certainly true here. But the Eighth District departed from this straightforward analysis because it downplayed the significance of contraband in the trash the day before the police secured the warrant and wrongly focused on Jones, not the residence. Finally, the Eighth District excluded the evidence without considering the good-faith exception to the exclusionary rule. On each point, the Eighth District claimed to apply the federal, not the state, constitution. *See* App. Op. ¶¶ 10-11. On each point, the Eighth District misapplied federal law.

A. Probable cause is satisfied when drug residue in residential trash corroborates a tip that drugs are being manufactured at that residence.

Probable cause is a common-sense standard. *Harris*, 133 S. Ct. at 1053. Common sense draws on “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Brinegar v. United States*, 338 U.S. 160, 175 (1949). And common sense asks only whether the facts supporting a warrant request present a “fair probability” that the things listed in the warrant will be found during a search of the targeted place. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Common sense says that finding methamphetamine residue in residential trash creates a fair probability of finding methamphetamine or evidence of its manufacture in the associated residence the next day. That conclusion is especially unassailable when the discovery in the trash corroborates other evidence of drug activity because common sense looks to the “totality-of-the-circumstances.” *Id.*

Unsurprisingly, federal courts frequently hold that drug residue in the trash provides probable cause to search the residence. One Sixth Circuit case held that “plastic bags containing wrappers with cocaine residue” found in the trash “supplied sufficient probable cause for the search warrant.” *United States v. Lawrence*, 308 F.3d 623, 626-27 (6th Cir. 2002). Another concluded that an affidavit supporting a warrant was “clearly . . . sufficient” when it recited “substantive evidence” of “baggies containing traces of cocaine base in defendant’s curbside trash.” *United States v. Pressley*, No. 90-3190, 1991 WL 32362, at *4 (6th Cir. Mar. 11, 1991). Other circuits have reached similar conclusions. One Eighth Circuit decision held that “marijuana stems and seeds recovered from . . . garbage” established probable cause to search the residence. *United States v. Briscoe*, 317 F.3d 906, 909 (8th Cir. 2003). Another Eighth Circuit case expressed “little hesitancy in concluding a reasonable magistrate would conclude the materials found in the trash—two plastic bags with cocaine residue, two corners torn from plastic

bags, Brillo pads, a film canister with white residue—were sufficient to establish probable cause that cocaine was being possessed and consumed” in a residence. *United States v. Allebach*, 526 F.3d 385, 387 (8th Cir. 2008). And the Fourth Circuit recently held that evidence in trash including marijuana equaled a “fair probability that additional criminal evidence would be discovered upon execution of the warrant.” *United States v. Montieth*, 662 F.3d 660, 664-65 (4th Cir. 2011) (internal quotation marks omitted) (Wilkinson, J.); *see also United States v. Seidel*, 677 F.3d 334, 338 (8th Cir. 2012) (“[O]ur court appears close to a blanket exception holding that trash pulls, standing alone, provide probable cause for the issuance of a search warrant in all cases.”) (internal quotation marks omitted).

Here, the curbside trash yielded evidence indicating criminal activity in the house. The trash contained methamphetamine residue and materials used to manufacture methamphetamine. Both methamphetamine possession and methamphetamine manufacture are crimes in Ohio. *See* R.C. 2925.04(A), (C)(3); 2925.11(A), (C); 3719.41. To describe this evidence is to prove the warrant’s validity because there was a “fair probability,” *Gates*, 462 U.S. at 238, if not a strong likelihood, that contraband or evidence of a crime would be found by searching the house the day after finding these items in the trash.

But there is more here than *only* illegal substances found in the curbside trash. That discovery corroborated information that the police already knew: a “reliable informant,” App. Op. ¶ 2, told police that an African-American woman named Lauren was manufacturing methamphetamine; Jennifer Chappel had moved her meth-cooking operation to Rowley Avenue in Cleveland; a Rowley Avenue house had been burglarized by a suspect arrested while possessing methamphetamine; police had seen Chappel and Jones talking together at the Cuyahoga County Justice Center downtown; and Jones lived at the burglarized Rowley Avenue

house. *Id.* ¶¶ 3-4. The evidence found in the trash corroborated this earlier information suggesting that methamphetamine was being manufactured at the Rowley Avenue address that police searched.

That the trash pull corroborated other indicia of criminal activity in the house sealed the deal that officers had probable cause supporting the warrant to search the house. *See Gates*, 462 U.S. at 246 (corroborated anonymous tip provided probable cause). Federal courts routinely uphold search warrants when drug contraband in residential trash corroborates other information suggesting drug crimes in the residence. The Sixth Circuit affirmed the validity of a search warrant when a “trash pull yielded cocaine residue” that “bolstered” a confidential informant’s “minimal facts.” *United States v. Martin*, 526 F.3d 926, 937 (6th Cir. 2008). The Third Circuit has held that foot traffic to a residence plus cocaine residue in the trash supported probable cause. *United States v. Harris*, 118 F. App’x 592, 594 (3d Cir. 2004). The court acknowledged that, even though this evidence “could possibly” have innocent explanations, that did “not mean there was no probable cause to search [the] residence.” *Id.* And the Eighth Circuit upheld a warrant where items in the trash that “tested positive for methamphetamine” “sufficiently corroborated” an informant’s tip. *United States v. Hohn*, 8 F.3d 1301, 1302, 1306 (8th Cir. 1993).

The Fourth Amendment simply does not demand the kind of scrutiny that would invalidate a warrant (and exclude the evidence it yields) when evidence of drug use and manufacture is discovered in residential trash and corroborates earlier information indicating drug use at the searched residence. Indeed, the “central teaching” of U.S. Supreme Court cases interpreting the Fourth Amendment’s “probable cause standard is that it is a practical, nontechnical conception.” *Gates*, 462 U.S. at 231 (internal quotation marks omitted). That is,

“common sense” rules. *Harris*, 133 S. Ct. at 1053. And common sense tells us that the information available to police here justified issuance of a warrant.

Any more rigorous scrutiny, the Supreme Court has held, cannot “avoid seriously impeding the task of law enforcement,” and therefore is not required by the Fourth Amendment. *Gates*, 462 U.S. at 237. That is especially true when it comes to the “per se danger” that methamphetamine labs pose “to occupants, officers, and the community.” *Armbruster*, 2013-Ohio-3119 ¶ 8. That danger means that law enforcement will try to eradicate the risk by, for example, pursuing lawful warrantless consent searches when courts throw up roadblocks to search warrants. *Gates*, 462 U.S. at 236. Consent, of course, is less effective when the targeted property is housing illicit activity. And even a consented search is inferior to a search based on a judicially approved warrant because “the possession of a warrant by officers conducting an arrest or search greatly reduces the perception of unlawful or intrusive police conduct, by assuring the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.” *Id.* (internal quotation marks omitted). Again, common sense supports the warrant issued here.

B. A nexus between contraband found in the trash and a resident is not necessary to establish probable cause to search the associated residence.

A search warrant may designate a “place” to be searched and the “things” to be seized without naming a particular person. *See* U.S. Const. amend. IV. There is no requirement that a warrant link a particular person to the place to be searched. “The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which entry is sought.” *Wyoming v. Houghton*, 526 U.S. 295, 302 (1999) (quoting Fourth Amendment) (other internal quotation marks omitted).

Searches of places are distinct from arrests of suspects. “In the case of arrest, the conclusion concerns the guilt of the arrestee, whereas in the case of search warrants, the conclusions go to the connection of the items sought with crime and to their present location.” 2 Wayne R. LaFave, *Search & Seizure* § 3.1(b), 9-11 (5th ed. 2012). “Because the complaint for a search warrant is not filed as the basis of a criminal prosecution, it need not identify the person in charge of the premises or name the person in possession or any other person as the offender.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 n.6 (1978) (internal quotation marks omitted). And “as a constitutional matter, [warrants] . . . need not even name the person from whom the things will be seized.” *Id.* at 555.

Confusing probable cause to search a place and probable cause to arrest a suspect is an “erroneous understanding of the law.” *Mays v. City of Dayton*, 134 F.3d 809, 814 (6th Cir. 1998). “[T]here is no requirement that an officer applying for a search warrant link his targets to the searched premises; probable cause need attach only to the location to be searched, not to any individual target of the investigation.” *United States v. Brown*, 413 F. App’x 385, 386-87 (2d Cir. 2011) (internal quotation marks omitted); *see also United States v. Ellison*, 632 F.3d 347, 349 (6th Cir. 2011) (“warrant affidavit established a nexus between the place to be searched and the evidence sought”). A defendant’s relationship to a place to be searched is therefore “neither here nor there for purposes of establishing probable cause to search” that place. *United States v. Rodrigue*, 560 F.3d 29, 34 (1st Cir. 2009). To be sure, the Fourth Amendment demands specificity in a warrant, but that specificity “is *not* as to the person against whom the evidence is to be used but rather as to the place to be searched and the thing to be seized.” *Mays*, 134 F.3d at 814. Thus, the magistrate reviewing a search-warrant application need only ask whether, “at the

time of the affidavit” there was reason to believe that “the law was being violated on the premises to be searched.” *Id.*

As to searches of places, probable cause exists if there is “a fair probability that contraband or evidence of a crime will be found in a particular place.” *Gates*, 462 U.S. at 238. Put another way, the question is “whether the information . . . conveyed to the magistrate makes it fairly probable that there will be additional contraband or evidence of a crime *in the place* to be searched.” *United States v. Brooks*, 594 F.3d 488, 494 (6th Cir. 2010) (emphasis added). When a warrant seeks to search a specific location, the affidavit must establish “a nexus between the place to be searched and the evidence to be sought.” *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004) (en banc) (internal quotation marks omitted).

The Eighth District departed from these bedrock principles when it focused on the “target residence of the suspected drug dealer,” App. Op. ¶ 16, and demanded “evidence that Jones was involved in illegal drug activity,” *id.* ¶ 17. This focus is a sweeping error because it confuses probable cause to arrest with probable cause to search. Those are distinct categories, and federal courts reverse when lower courts commit this type of error. The Sixth Circuit recently did just that when it criticized a district court that “misse[d] the point when it focuse[d] on whether the officers could have arrested” the defendant because “[p]robable cause to search a location is not dependent upon whether the officers already have probable cause or legal justification to make an arrest. The question is whether the information known by the affiant and conveyed to the magistrate makes it fairly probable that there will be additional contraband or evidence of a crime in the place to be searched.” *Brooks*, 594 F.3d at 494 (reversing trial court’s suppression order); *see also Mays*, 134 F.3d at 814 (reversing trial court).

Whether Jones was a “drug dealer” or was personally “involved in illegal drug activity,” App. Op. ¶¶ 16-17, should have been irrelevant to assessing probable cause to search the residence. All that should have mattered was the discovery that the trash contained methamphetamine residue and items used to manufacture methamphetamine. “The owner of the property to be searched need not be suspected of having committed a crime.” *Mays*, 134 F.3d at 814. Indeed, “[p]roperty owned by a person absolutely innocent of any wrongdoing may nevertheless be searched under a valid warrant.” *Id.* More colorfully, Jones “could be as innocent of the [drug dealing] as Snow White and there still [would] be probable cause to believe that the house . . . contained evidence of those crimes.” *United States v. Lopez*, 649 F.3d 1222, 1245 (11th Cir. 2011). The Eighth District’s insistence to the contrary is a categorical error that means setting the guilty free despite bountiful precedent that a search warrant need not link a person to a crime in order to search a place.

C. Even if the warrant here lacked probable cause, the evidence should have been admitted under the good-faith exception to the exclusionary rule.

A Fourth Amendment violation, of course, “does not necessarily mean that the exclusionary rule applies.” *Herring v. United States*, 555 U.S. 135, 140 (2009). And exclusion “has always been our last resort, not our first impulse.” *Id.* (internal quotation marks omitted). Exclusion is not the remedy when “the police act with an objectively reasonable good-faith belief that their conduct is lawful.” *Davis*, 131 S. Ct. at 2427 (internal quotation marks omitted); *Leon*, 468 U.S. at 922. When a defendant seeks to exclude evidence on the basis of an invalid warrant, she must show that the executing officers could not have relied on the warrant in good faith, notwithstanding the magistrate’s authorization. *See Leon*, 468 U.S. at 922. The good-faith exception forgives reliance on a warrant later found invalid, except in unusual circumstances—

police deception, magistrate bias, barebones affidavits, or facially deficient warrants. *See id.* at 923.

As the discussion so far shows, the officers who searched Jones’s home had the right to rely on the warrant issued for the search, and acted in good faith in so relying. Any later second-guessing, even if somehow invalidating the warrant, would not mandate excluding the evidence discovered in the home. *See, e.g., United States v. Mitchell*, 503 F. App’x 751, 756 (11th Cir. 2013) (evidence including tip and drugs found in trash supported, at minimum, good-faith exception to exclusionary rule).

Society should not bear the costs of the exclusionary rule here. The search of Jones’s residence came after officers secured a warrant the day after discovering contraband in her trash. “[S]earches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.” *Leon*, 468 U.S. at 922 (citation and internal quotation marks omitted). That is because the exclusionary rule exists to deter the misconduct of police, not to “punish the errors of judges and magistrates.” *Id.* at 916. Moreover, in “the ordinary case, an officer cannot be expected to question the magistrate’s probable-cause determination.” *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1245 (2012) (internal quotation marks omitted). The good-faith exception applies where it is not “*entirely unreasonable*” for an officer to believe that what she wrote in the affidavit is “sufficient to support a finding of probable cause.” *Mitchell*, 503 F. App’x at 756 (internal quotation marks omitted).

The discussion above about drug evidence found in trash pulls, and especially evidence in trash pulls that corroborates other indicia of illegal activity at the house, shows that the officers here had a good-faith basis to rely on the warrant issued by a neutral magistrate. Federal circuit

authority confirms that evidence found in residential trash, even if it cannot support probable cause, still provides a foundation for good-faith reliance that avoids the exclusionary rule. For example, the Eleventh Circuit applied the good-faith rule when drug evidence found in the trash may not have supported probable cause because the trash receptacle served multiple dwellings. *United States v. Robinson*, 336 F.3d 1293, 1296 (11th Cir. 2003) (affirming denial of motion to suppress). The Tenth Circuit has similarly noted that trash-pull evidence of drug manufacture “satisfied” *Leon* because officer misconduct had “not been shown and the issuing judge found probable cause,” even though the delay in securing the warrant made the evidence stale. *United States v. Welch*, 291 F. App’x 193, 202 (10th Cir. 2008). Thus, while it may not have been “probable that evidence of drug manufacturing” would be found in the residence at time of the warrant application, “it was not illogical to suspect it might be.” *Id.*

No different result is required here, even if the Court concludes that probable cause was lacking. Officers found methamphetamine residue in the trash, which corroborated earlier tips about Jones manufacturing methamphetamine, and a neutral magistrate issued a warrant. Exclusion of the evidence is inappropriate.

It is true that the State did not raise the good-faith exception in the lower courts. But this Court may still consider the point. Exclusion is “not a personal constitutional right.” *Stone v. Powell*, 428 U.S. 465, 486 (1976). Instead, its “sole purpose” is to deter future Fourth Amendment violations. *Davis*, 131 S. Ct. at 2426. In light of the “substantial social costs” of the rule, *Leon*, 468 U.S. at 907, and the “accommodation of public and private interests” that the Fourth Amendment itself “requires,” *Gates*, 462 U.S. at 239, litigation decisions by the State should not automatically block judicial consideration of the good-faith rule. Society should not “swallow this bitter pill,” *Davis*, 131 S. Ct. at 2427, merely because the State did not raise the

argument. *Cf. United States v. Fugate*, 499 F. App'x 514, 518 (6th Cir. 2012) (acknowledging that district court raised good-faith issue “sua sponte” and considering argument on appeal); *United States v. Lopez*, 453 F. App'x 602, 605 (6th Cir. 2011) (considering good-faith argument that was not “ripe” during lower-court proceedings).

To be sure, prior Eighth District cases give the appearance of a rule that a single trash pull cannot support probable cause. But even if those cases establish such a rule, the rule would not apply here, for two reasons. First, the officers who obtained the warrant did not rely solely on evidence from the trash they collected. Instead, the evidence of drug manufacturing that they discovered in Jones’s trash corroborated other incriminating information about Jones that detectives learned in the course of their investigation. The totality of that evidence sufficed to establish probable cause. Second, each of the Eighth District’s prior cases is distinguishable. In each, a fact arguably severed the connection between contraband in the trash and the targeted residence. In the earliest case, “the garbage was found in a public area where others had access to it.” *State v. Weimer*, 8th Dist. No. 92094, 2009-Ohio-4983 ¶ 35. In another case, the trash did contain mail with the suspect’s name, but no address. *State v. Williams*, 8th Dist. No. 98100, 2013-Ohio-368 ¶ 18, *review denied* 136 Ohio St. 3d 1450, 2013-Ohio-3210. And in the third case, “the suspected marijuana residue” was not tested before the officers sought a warrant. *State v. Kelly*, 8th Dist. No. 91137, 2009-Ohio-957 ¶ 20.

This case is different. The trash was associated with the target residence and contained mail “addressed” to Jones. Also, the items tested “positive” for methamphetamine before the police sought a warrant. App. Op. ¶ 5. Two of those opinions are also arguably distinguishable because they expressed doubt about the link between the suspect and the residence. *See Weimer*, 2009-Ohio-4983 ¶ 24; *Williams*, 2013-Ohio-368 ¶ 18. As explained above, the requirement of

these earlier cases that the warrant link a person to the place to be searched is erroneous. But the point here is that, in this case, the police had a link to the person and therefore had yet another reason to believe they had a valid warrant when a magistrate issued one for Jones's house.

D. The Eighth District's reasons for excluding the evidence do not withstand scrutiny.

Despite binding federal precedent that a search warrant targets a place, not a person, and abundant precedent that evidence of drug contraband in residential trash satisfies probable cause, the Eighth District affirmed suppression, thereby setting Jones free despite the evidence of her guilt. To justify that result, the Eighth District cites only its own (erroneous) precedent and one federal district court decision from 1984. That 1984 case reasoned that a "single instance" of past drug use evidenced by discarded marijuana cigarettes and stems did not equal probable cause. *United States v. Elliott*, 576 F. Supp. 1579, 1582 (S.D. Ohio 1984). That case is not persuasive. For starters, federal district-court decisions do not create binding precedent, even upon the same judge in later cases. *See Camreta v. Greene*, 131 S. Ct. 2020, 2033 n.7 (2011). In any event, the Sixth Circuit recently commented on *Elliott*, noting its very narrow holding and reminding that it "should not be read to stand for the proposition that evidence of minor past drug consumption is, in all cases, insufficient to establish probable cause to search a location." *Brooks*, 594 F.3d at 494 n.5. Yet the Eighth District treated *Elliott* expansively and excluded the evidence discovered after the search of Jones's house despite significant evidence of methamphetamine manufacture discovered in the trash the day before. *Elliott* is shaky (and non-binding) precedent, but even taken at face value it provides no grounding for the Eighth District holding here. Worse, the Eighth District never squares *Elliott* with Sixth Circuit cases like *Brooks* and *Pressley*.

Elliott is all the Eighth District offered as precedent, but the court did advance two arguments that it believed justified suppression. Neither holds water.

First, the Eighth District demanded that the warrant connect Jones to the suspected crimes (drug possession, manufacture, or sale). That theme shows up in the opinion repeatedly when the court demands “evidence that Jones was involved in illegal drug activity,” App. Op. ¶ 17, and describes the Rowley Avenue house as the “target residence of the suspected drug dealer,” *id.* ¶ 16. But as shown above, a search warrant is about a place, not a person. What matters is that “the place searched” is “connected to” the suspected crime. *Rodrigue*, 560 F.3d at 34. And to demand otherwise is reversible error. *See Brooks*, 594 F.3d at 494; *Mays*, 134 F.3d at 814.

Second, the Eighth District impugns the warrant because the police “cut[] off the investigation prematurely.” App. Op. ¶ 14 (quoting trial court). According to the Eighth District, the police should have “taken additional steps” such as “multiple trash pulls,” “surveillance,” “controlled buys,” and “observation” by an informant “from inside the house.” *Id.* (quoting trial court). The Eighth District deemed these additional steps “necessary for probable cause to be established.” *Id.* (quoting trial court).

To the extent the Eighth District means that the officers had a duty to look into innocent explanations for the evidence in Jones’s trash, on the off-chance that further investigation would exculpate Jones, it is wrong: “Once probable cause is established, an officer is under no duty to investigate further.” *Ahlers v. Schebil*, 188 F.3d 365, 371 (6th Cir. 1999). And to the extent the Eighth District means to dictate how officers should have investigated Jones, the Fourth Amendment does not prescribe specific investigatory techniques that must preface a valid warrant request. Instead, the probable-cause protection in the Amendment is “not readily, or even usefully, reduced to a neat set of legal rules.” *Gates*, 462 U.S. at 232. It is a “fluid” concept that draws “substantive content from the particular” context in which it is invoked. *Ornelas v. United States*, 517 U.S. 690, 696 (1996). The Eighth District disregarded this

precedent as well when it demanded, as a precondition for the warrant, “[a]dditional investigation” involving specific “steps” before “cutting off the investigation prematurely.” App. Op. ¶ 14 (quoting trial court).

The Eighth District’s detailed critique of the pre-warrant investigation offends still other Fourth Amendment principles. The Fourth Amendment does not demand that police use certain investigatory practices that a court may think wise, because the “logic” of requiring “elaborate less-restrictive-alternative[s]” would “raise insuperable barriers to the exercise of virtually all search-and-seizure powers.” *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 n.12 (1976). Accordingly, the Supreme Court “has repeatedly stated that reasonableness under the Fourth Amendment does not require employing the least intrusive means.” *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 837 (2002). So, instead of evaluating a warrant as the Eighth District did, the supporting “affidavit is judged on the adequacy of what it does contain, not on what it lacks, or on what a critic might say should have been added.” *Martin*, 526 F.3d 926, 936 (internal quotation marks omitted). Indeed, “to require that the affiant amass every piece of conceivable evidence before seeking a warrant is to misunderstand the burden of probable cause.” *Montieth*, 662 F.3d at 665.

* * * *

We end where we began, with “common sense.” *Harris*, 133 S. Ct. at 1053. The Eighth District’s holding inappropriately limits law-enforcement efforts to combat a serious public problem—methamphetamine production. Both the General Assembly and the courts recognize that methamphetamine production poses a grave danger to officers and citizens. *See* R.C. 2933.33(A) (the “risk of explosion or fire” from methamphetamine labs “constitutes [an] exigent circumstance[.]”); *Armbruster*, 2013-Ohio-3119 ¶ 8 (methamphetamine laboratories pose a “per

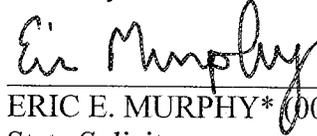
se danger to occupants, officers, and the community”). Even so, the Eighth District demands that law enforcement must do more than they did here before securing a warrant to search a probable methamphetamine manufacturing location. That rule poses an unacceptable real-world risk to officers and the public that the Fourth Amendment, and common sense, simply does not demand.

CONCLUSION

This Court should reverse the Eighth District’s judgment.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney

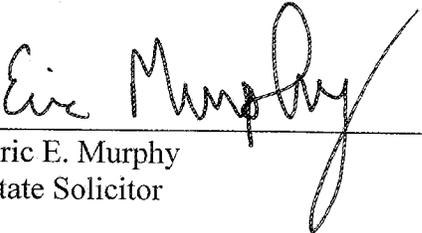
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