[Cite as *State v. Perez*, 2015-Ohio-1753.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellant	:	C.A. CASE NO. 26518
	:	
v.	:	T.C. NO. 14CR2304
	:	
TOMMY PEREZ, JR.	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the ___8th___ day of ____May____, 2015.

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FROELICH, P.J.

{¶ 1} The State of Ohio appeals from an order of the Montgomery County Court of Common Pleas, which granted, in part, the motion of Tommy Perez, Jr., to suppress evidence seized from a storage unit, pursuant to a search warrant. For the following reason, the trial court's judgment will be reversed, and the matter will be remanded for

further proceedings.

I. Factual and Procedural History

{¶ 2} The evidence relevant to the motion to suppress consisted of stipulated facts filed by the State, which were based on the police reports, the two search warrants at issue, and the completed inventory and receipt forms for the two searches. The trial court summarized the facts, as follows:

> On February 20, 2014, Detective Kevin McGuire of the Kettering Police Department received information from a confidential informant (hereinafter "CI") that indicated the Defendant was engaged in the buying and selling of marijuana and cocaine out of his residence at 719 Wiltshire Drive, Apt. 3, Kettering, Ohio. The CI also stated that the Defendant drove a red Dodge Ram truck, and it was later discovered that a truck matching this description was registered to the Defendant. On April 3, 2014, the Kettering Police Department used the CI to make an undercover purchase of cocaine from the Defendant for $400. The transaction took place as planned, and a laboratory analysis proved the substance was 7.08 grams of cocaine.
>
> In May 2014, the CI informed Det. McGuire that the Defendant had moved residences to 1220 E. Dorothy Lane, Apt. 13, Kettering, Ohio, and on three separate visits the CI had witnessed marijuana being present in the home. The CI also stated that the Defendant had possession of three hand guns, one being a revolver with a long barrel. Det. McGuire and Det. Stout performed surveillance at this new residence and confirmed that the

Defendant was residing [at] this location. On June 5, 2014, the CI in conjunction with detectives conducted another undercover purchase with the Defendant of one half pound of marijuana for $650. A phone call made to the Defendant revealed that he only had 7 ounces which could be purchased for $570, and the Defendant directed the CI to meet him in an Applebee's parking lot in Kettering, Ohio. (State's Exhibit 1, McGuire Affidavit, ¶ IV(E)). After the phone call concluded, detectives observed the Defendant leaving his apartment at 1220 E. Dorothy Lane in the registered red Dodge Ram truck. Detective Stout transported the CI to the Applebee's parking lot and witnessed the drug transaction, along with Detective McGuire from an observation vehicle. Upon returning to the transport vehicle, Detective Stout recovered from the CI a freezer bag of marijuana from the front of his shorts, in the amount of 223.73 grams.

On June 16, 2014, Detective Stout obtained a subpoena for the Dayton Power & Light records of the account holder for 1220 E Dorothy Lane, Kettering, Ohio. It listed the Defendant as the account holder for 1220 E Dorothy Lane, Apt. 13, Kettering, Ohio.

On June 25, 2014, Det. McGuire requested and obtained a search warrant for 1220 E Dorothy Lane, Apt. 13, Kettering Ohio, based on his affidavit, which permitted the seizure of: "Narcotics and any and all other illegally possessed substances; any and all paraphernalia connected with the illegal use and or sale of a controlled substance; any and all United States currency and all or real assets derived from the illegal sale of

controlled substances; any record, ledger, or document, either written or electronically stored, indicating the purchase of and or sale of controlled substances; any record indicating ownership of or rental of the property described in paragraph III, B of this search warrant. All firearms, firearm accessories and ammunition." (State's Exhibit 1, ¶ II, hereafter referred to as "June 25 warrant"). The June 25 warrant stated that these items were concealed in and/or found in 1220 E Dorothy Lane, Apt. 13, Kettering, Ohio 45429, in the residence itself, outbuildings, and/or the surrounding curtilage; and/or concealed in a red 2003 Dodger (sic) Ram truck, or a green 2003 Kawasaki motorcycle. (Id. at ¶ III). The warrant provide[d] for a "no knock" exception conducted during day time hours. (Id.)

Executed on the same day, the Defendant was arrested for trafficking in marijuana, placed in handcuffs, and detained in the back of a squad car while the apartment was searched. Defendant immediately indicated he wanted to speak with an attorney, thus no interrogation was conducted at that time. A search of Defendant's person revealed no controlled substances. A search of the Defendant's apartment revealed 1.5 lbs of marijuana, approximately $1,600 in U.S. currency, digital scales, Suboxone, grinder and pipe, and other drug paraphernalia. (State's Exhibit 2).

In search of the two vehicles, a K-9 unit alerted to both the truck and the motorcycle. Nothing was found in or around the Defendant's Kawasaki motorcycle. (Id.) The Dodge Ram truck was seized and taken to City of

Kettering Vehicle Maintenance Center for a more thorough search, however, no illegal drugs, currency, or other paraphernalia was found in the vehicle. (Id.) The detectives did find a white envelope with "Stop-N-Lock Welcome Packet" printed on the front with a listed address as 3636 Linden Avenue, Dayton, Ohio 45410. Two small keys were located on a key ring right under the envelope in the center console that were metal, which were covered with a red plastic covering and imprinted with the word "Platinum" on the cover. Detective McGuire called "Stop-N-Lock", during which an employee confirmed that the Defendant was leasing a 10 foot by 10 foot storage locker labeled locker "C063" located at 3636 Linden Avenue. The locker was listed under 1941 Drake Drive, Xenia, Ohio 45385, which was also the address used to register the Defendant's red Dodge Ram truck, Kawasaki motorcycle, and Defendant's Ohio driver's license. The employee finally confirmed that Stop-N-Lock provides metal keys for their storage lockers that are covered with a red covering with the word "Platinum" printed on the cover.

On June 27, 2014, Detective McGuire requested a second search warrant, based on an affidavit submitted by him. (See State's Exhibit 3, referred to as "June 27 warrant"). Det. McGuire made the same averments as was [sic] contained in the June 25 warrant's affidavit, and also included the newly discovered evidence found as a result of the execution of the June 25 warrant. (State's Exhibit 3). The affidavit in support of the June 27 warrant also alleged that Det. McGuire investigated the origin of the

Stop-N-Lock keys, and confirmed that the Defendant had maintained a storage unit at Stop-N-Lock. (Id.) Pursuant to this investigation, Det. McGuire requested to search the Stop-N-Lock storage unit, #C063, assigned to the Defendant located at 3636 Linden Ave, Dayton, Ohio 45410, for additional drugs, currency, and other paraphernalia, as well as firearms. (State's Exhibit 3, ¶ 3).

The warrant was executed within the permitted three day period on June 27, 2014. Inside the unit, detectives found two storage bins, the first of which contained one gallon sized freezer bag of marijuana, the other contained a Smith and Wesson .38 caliber handgun and a Taurus .357 caliber handgun with a long barrel, with several additional rounds.

After detectives completed the execution of the June 27 warrant, Detective Stout returned to the jail to interview the Defendant. (State's Stipulations for Defendant's Motion to Suppress, ¶ r). Det. Stout informed the Defendant that he left copies of the June 25 warrant and inventory sheet in his apartment, and provided Defendant with a paper copy of the June 27 warrant and inventory sheet. (Id.) Det. Stout made no other statements nor asked any questions while Defendant was reviewing the June 27 warrant. (Id.) Defendant then made the following statements:

"So you came looking for guns? ... How did they get the guns?"

(Id.) Defendant was then transferred to the Montgomery County jail. On June 27, 2014, at approximately 4:41 p.m., Defendant made a telephone call from the jail to an unknown female. (Id. at ¶ s, t). The area in which

> Defendant made his phone calls, there are signs posted that warn users that the area may be video and audio recorded, as well as a voice message plays at the beginning of every call that the call will be recorded and subject to monitoring. Defendant made two other phone calls to what appears to be the same female later that night.

{¶ 3} On July 2, 2014, Perez was charged by complaint in Kettering Municipal Court with two counts of having weapons while under disability. He was subsequently indicted on charges of possession of marijuana (200g but <1,000g), possession of marijuana (1,000g, but <5,000g), possession of drugs (Schedule III, IV, or V; with a prior drug abuse offense), and two counts of having weapons while under disability.

{¶ 4} On September 25, 2014, Perez moved to suppress the evidence against him. In branch one of his motion, Perez sought to suppress the items that were seized from his apartment, his truck, and the storage unit. He argued that the affidavits in support of the warrants did not establish probable cause, that the police's confidential informant was unreliable, that the June 25 warrant lacked particularity regarding the items sought, that the facts underlying both warrants were stale, and that the police improperly executed the June 25 warrant by violating the knock and announce rule. In branch two, Perez sought to suppress any statements that he made to the police, claiming that his statements were made in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and were involuntary.

{¶ 5} On October 9, 2014, the trial court and counsel met to discuss the motion. Although not memorialized in a written entry, the parties apparently agreed to submit the motion on stipulated facts. The two search warrants and the accompanying inventory

pages were admitted into evidence. On November 12, the State filed stipulated facts, stating that the facts were obtained from the police reports provided in discovery. Perez did not object to the State's filing or file his own proposed stipulated facts.

{¶ 6} On December 16, 2014, the trial court overruled in part and sustained in part Perez's motion to suppress. With respect to the June 25 warrant, the trial court concluded that that warrant was "based on sufficient probable cause, that the confidential informant is reliable, the information contained within the affidavit was not stale, and the officers did not violate the knock and announce rule." The court further found, however, that "the June 27 warrant is not based on sufficient probable cause, as the affidavit in support fails to provide additional evidence, other than the Defendant's lease of the storage locker, which would indicate that it would contain evidence of drug trafficking. Additionally, the evidence obtained as a result of the June 27 warrant is not admissible pursuant to a good faith reliance exception." The court thus overruled the motion to suppress as it related to the June 25 warrant and granted the motion as to the June 27 motion. The trial court further rejected Perez's arguments regarding his statements to the police, and it overruled branch two of the motion.

{¶ 7} The State appeals from the trial court's suppression of the evidence from the storage unit, which was seized pursuant to the June 27 warrant. The State raises two assignments of error.

II. Probable Cause for Issuance of Warrant to Search Storage Unit

{¶ 8} The State's first assignment of error states:

> The trial court erred in failing to give proper deference to the issuing magistrate's determination of probable cause to support the issuance of the

search warrant for Perez's storage locker, and erred further in concluding for itself that there was insufficient probable cause presented in support of the warrant.

{¶ 9} The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution provide that search warrants may only be issued upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and/or things to be seized. *See also State v. Jones*, __ Ohio St.3d __, 2015-Ohio-483, __ N.E.3d __, ¶ 11.

{¶ 10} In authorizing a search warrant, the issuing magistrate's duty is to determine whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place * * *." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); *Jones* at ¶ 13. "[T]he duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for * * * conclud[ing]' that probable cause existed." *Gates* at 238-239, quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960); *State v. Castagnola*, __ Ohio St.3d __, 2015-Ohio-1565, __ N.E.3d. __, ¶ 35. In reviewing whether a search warrant has been issued upon probable cause, courts must examine the totality of the circumstances. *Jones*, 2015-Ohio-483, ¶ 15.

{¶ 11} Trial courts and appellate courts "should accord great deference to the magistrate's determination of probable cause, and doubtful or marginal cases in this area should be resolved in favor of upholding the warrant." *State v. George,* 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), paragraph two of the syllabus; *Jones*, 2015-Ohio-483, ¶ 14.

{¶ 12} Detective McGuire's affidavit in support of the June 27 warrant contains several paragraphs describing the events leading up to the request for the June 25 search warrant; these paragraphs are identical to those in the affidavit in support of the June 25 search warrant. The June 27 affidavit includes additional information about the items located during the execution of the June 25 warrant, including the discovery of the Stop-N-Lock Self Storage welcome packet and keys. It further stated that marijuana, currency, and other drug-related items were found in the apartment, but no guns were there. McGuire indicated that he had contacted a Stop-N-Lock associate and obtained information that Perez was currently renting a specific storage locker and that the keys located in Perez's truck were consistent with keys for the storage locker. The final paragraph stated:

> The affiant believes further evidence of Drug Trafficking is located in the storage unit currently being rented by Tommy Perez Jr. at "Stop-N-Lock" at 3636 Linden Ave., Dayton Ohio 45410 in storage unit C063. The affiant further believes that the guns listed in paragraph D of this affidavit [which the CI had reportedly seen in Perez's apartment] are located in the storage unit assigned to Tommy Perez Jr.

{¶ 13} In concluding that the June 27 warrant was not supported by probable cause, the trial court explained:

> In consideration of the June 27 warrant, the probable cause was lacking. The determination of probable cause under the Fourth Amendment is a fluid, common-sense, and non-technical process. *Brinegar v. U.S.*, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 [(]1949).

These determinations are based upon the totality of circumstances, based upon the decision whether there is a fair probability contraband or other evidence of a crime will be discovered in the place to be searched. *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). Probable cause to search does not arise simply upon evidence of the individual's possession of a significant quantity of drugs or other evidence of drug trafficking. *State v. Cole*, 2nd Dist. No. 23058, 2009 Ohio 6131, 2009 Ohio App. LEXIS 5148. Rather, there must be some additional evidentiary link between the suspected drug activity and the place to be searched before the probable cause determination may be made. *Id*.

Thus, this Court is left to decide whether, based on the totality of circumstances presented, there was a fair probability evidence of the crimes of drug trafficking and/or possession would, on June 27, 2014, be found within the Stop-N-Lock storage unit. Detective McGuire's affidavit in support of the June 27 warrant is simply lacking. Other than finding the keys to a storage facility inside the vehicle of the Defendant, and the detectives' assumptions as to how drug traffickers "usually operate", there was no link between the Defendant's illegal activities within his home and a fair probability that the storage locker would contain illegal narcotics and/or paraphernalia. The detectives did not attempt to investigate the public space surrounding the locker using a drug sniffing dog, nor did they attempt to use other investigatory methods which would provide additional evidence of drug trafficking. Therefore, the Court finds that the June 27 warrant was

not issued on sufficient probable cause.

{¶ 14} In its appellate brief, the State argues that the facts of *Cole* are distinguishable and that the trial court erred in relying on it.

{¶ 15} In *Cole*, the police stopped a vehicle driven by someone who lived with Cole. Drug paraphernalia and substantial quantities of marijuana were found in the vehicle. The vehicle also contained utility bills for a particular Miamisburg apartment, a furniture receipt made out to the vehicle's driver with that address as the delivery address, and Montgomery County Assistance paperwork in Cole's name, indicating that Cole resided at that address. The same day, a detective prepared an affidavit for a warrant to search the Miamisburg address for evidence of illegal drugs, and it was approved and executed. The search resulted in the seizure of a handgun, digital scales, marijuana, and cash. Cole was arrested. The apartment was later determined to be in Cole's name. She sought to suppress the evidence obtained from the apartment. The trial court found that the search warrant was not supported by probable cause, but that the good faith exception to the exclusionary rule applied. Cole appealed.

{¶ 16} On appeal, we adopted the trial court's reasoning, which focused on two cases from other states. First, discussing *Washington v. Thein*, 139 Wash.2d 133, 977 P.2d 582 (1999), we noted that generalizations contained in a search warrant affidavit are not sufficient to allow a magistrate to conclude there is a fair probability that evidence of drug trafficking would be discovered in a defendant's home; instead, the supporting affidavit must establish a specific factual basis (as opposed to generalities) from which the magistrate is able to conclude there is a fair probability that evidence of the suspected illegal activity will be discovered. *Cole* at ¶ 18. Second, discussing *Yancey v.*

Arkansas, 345 Ark. 103, 44 S.W.3d 315 (2001), we agreed with the Arkansas Supreme Court that the test for probable cause "is not whether it is reasonable to believe items to be seized might be found in the place to be searched, but rather whether there is evidence presented to support reasonable cause to believe the items to be seized would likely be found in the place to be searched." *Cole* at 23, quoting *Yancey* at 116.

{¶ 17} Upon considering *Thein* and *Yancey*, we concluded that "probable cause to search an individual's home for evidence of drug trafficking is not present based solely upon evidence of the individual's possession of a significant quantity of drugs or other evidence of drug trafficking. Instead, in order to conclude there is a fair probability that drugs or other evidence of drug trafficking is located in the individual's home, there must exist some additional *evidentiary* link between the suspected drug activity and the suspect's home before the probable cause determination may be made." (Emphasis added.) *Cole* at ¶ 26. Applying this reasoning, we agreed with the trial court's analysis that the warrant to search Cole's apartment was not supported by probable cause. However, because other courts had reached a contrary decision regarding whether probable cause existed under similar facts, we agreed with the trial court that the good faith exception to the exclusionary rule applied.

{¶ 18} The State attempts to distinguish *Cole* by emphasizing that the June 27 search warrant was for a storage unit, not Perez's residence, that the storage unit was rented shortly before the search, that Perez conducted some of his drug transactions away from his home, and that Perez was known to possess weapons, yet no weapons were found at his home during the execution of the June 25 warrant. The State asserts that these facts provide the "additional evidentiary link" that was required.

{¶ 19} We disagree. The affidavit in support of the June 27 warrant indicates that Perez was involved in drug trafficking and that evidence of that trafficking was located in his home. He also used his truck to conduct drug transactions away from his home. Upon the search of Perez's truck and subsequent investigation, police discovered that Perez recently rented a storage unit at the Stop-N-Lock on Linden Avenue. Based on this information, a reasonable police officer might suspect that the previously-seen, but not yet located, weapons and additional evidence of drug trafficking might be found in the storage unit. However, a reasonable belief, without some evidentiary support linking the storage unit to Perez's drug activities, is not enough for a search warrant.

{¶ 20} Here, the affidavit contained no information indicating that Perez used the storage unit to store weapons and items related to his selling of marijuana and/or other drugs. In the absence of a nexus between Perez's drug activity and the storage unit, the trial court properly concluded that the affidavit in support of the June 27 search warrant failed to establish that there was a fair probability that evidence of drug possession, drug trafficking, and weapons would be found at the storage unit.

{¶ 21} The State's first assignment of error is overruled.

III. Good Faith Exception to Exclusionary Rule

{¶ 22} The State's second assignment of error states:

> The trial court erred in concluding that the good-faith exception to the exclusionary rule was inapplicable under the facts of this case.

{¶ 23} "The exclusionary rule is a judicially created sanction designed to protect Fourth Amendment rights through its deterrent effect. Under the rule, the state is precluded from using evidence obtained in violation of the Fourth Amendment." (Citation

omitted.) *State v. Brown*, 142 Ohio St.3d 92, 2015-Ohio-486, 28 N.E.3d 81, ¶ 12; *see also Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

{¶ 24} Under the good faith exception to the exclusionary rule, the exclusionary rule should not be applied to bar the use of evidence obtained by police officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate, but ultimately found to be unsupported by probable cause. *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); *State v. Wilmoth*, 22 Ohio St.3d 251, 490 N.E.2d 1236 (1986). "The rationale for the good faith exception to suppression is that the exclusionary rule is designed to deter unlawful police behavior, and the deterrence goal is not advanced when the police objectively and in good faith rely upon a judge's probable cause determination." *Cole*, 2d Dist. Montgomery No. 23058, 2009-Ohio-6131, at ¶ 30, citing *Leon*.

{¶ 25} "[T]he existence of a warrant normally signifies that a law-enforcement officer has acted in good faith." *State v. Hoffman*, 141 Ohio St.3d 438, 2014-Ohio-4795, 25 N.E.3d 993, ¶ 32. However, the good faith exception does not apply where (1) the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his 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, and (4) the warrant was so facially deficient that the executing officers cannot reasonably presume it to be valid. *Leon*, 468 U.S. at 923; *Hoffman* at ¶ 32.

{¶ 26} In granting the motion to suppress, the trial court rejected the State's

good-faith argument, stating:

> With the burden shifting to the State, the Court turns now to the four corners of the affidavit and the State's memorandum. The State argues that there is no evidence that any of the information in the affidavits was misleading, nor has the issuing magistrate abandoned her judicial role in issuing the search warrant. The Court agrees. The State also argues that the affidavit is further supported by evidence of an odor of marijuana emanating from the storage unit, however, this information is wholly outside the four corners of the affidavit. Here, [t]he Court is more concerned with whether Det. McGuire, being a reasonably well-trained officer, would have known that post-*Cole*, the possession of a significant quantity of drugs in one property does not, without additional evidentiary links, amount to sufficient probable cause for a search warrant for a second property. See *State v. Cole*, 2nd Dist. No. 23058, 2009 Ohio 6131, 2009 Ohio App. LEXIS 5148. In this Court's judgment, a minimum level of knowledge of the law's requirements would include education regarding the outcome of *Cole*. Thus, a well-trained officer executing this search warrant would have known, applying *Cole*, that it did not establish probable cause and that officer could not have formed an objectively reasonable believe [sic] that it did. Therefore, the Court cannot conclude that the a [sic] reasonably, well-trained officer could objectively rely upon the June 27 warrant in good faith. As a result, the evidence obtained from the June 27 warrant is not admissible pursuant to the good faith exception to the exclusionary rule.

{¶ 27} We agree with the trial court that there is no evidence that any of the information in the affidavits was false or misleading, or that the issuing magistrate abandoned her judicial role in issuing the June 27 search warrant. Nor was the June 27 warrant so facially deficient that the Kettering officers could not reasonably presume it to be valid.

{¶ 28} We conclude, however, that *Cole* did not preclude Detective McGuire from relying on the June 27 search warrant in good faith. The trial court noted that *Cole* was decided in 2009 and found that a reasonably well-trained officer would be aware of the case, but *Cole* (an intermediate appellate court case) has not been cited by this appellate district since it was decided, and it has been cited only once by any other court. *See State v. Wilson*, 8th Dist. Cuyahoga No. 94691, 2011-Ohio-707, ¶ 29 (distinguishing *Cole*). And, we noted in *Cole* that other jurisdictions had reached contrary conclusions.

{¶ 29} Significantly, the factual circumstances of *Cole* are distinct from the circumstances before us. As discussed above, *Cole* involved the search of Cole's apartment based on drugs found in a vehicle during a traffic stop of a person who lived with her. The officers obtained the search warrant on the same day as the traffic stop; there was no ongoing investigation of Cole or the driver's criminal activity. In contrast, Perez was the subject of an ongoing investigation. The police had obtained substantial information about Perez, his apartment, and his drug trafficking activities from a confidential informant, and the information had been substantiated through police investigation and controlled drug purchases by the CI. A search warrant of Perez's apartment had already been executed, and it revealed the presence of marijuana, currency, scales, and other items.

{¶ 30} Even if a reasonably-trained police officer should have been aware of *Cole*, our holding in *Cole* does not clearly reflect that it would apply to this case. On its face, the holding in *Cole* addressed probable cause to search an individual's *home* for evidence of drug trafficking, based on evidence found in a vehicle during a traffic stop. This case does not involve the search of Perez's home. And, *Cole* does not expound on what additional information might have satisfied the requirement for an additional evidentiary link. Moreover, there is no case law addressing whether *Cole* was limited to its factual circumstances or should be applied more broadly. Accordingly, we do not agree with the trial court that a reasonably well-trained police officer would know that *Cole* applied to the facts of this case and would render the warrant invalid.

{¶ 31} The State's second assignment of error is sustained.

IV. Conclusion

{¶ 32} The trial court's judgment will be reversed, and the matter will be remanded for further proceedings.

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FAIN, J., concurs.

WELBAUM, J., concurring in judgment:

{¶ 33} I agree with the majority that the trial court erred in declining to apply the good faith exception to the exclusionary rule. However, I very respectfully disagree with the majority regarding the validity of the June 27, 2014 search warrant.

{¶ 34} Whether the facts considered by the magistrate constituted probable cause is clearly a close call. Nonetheless, the question is not whether we believe probable cause existed under a de novo review. Rather, as a reviewing court, our standard of

review is limited, "simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." *State v. George*, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), paragraph two of the syllabus. In *George*, the Supreme Court of Ohio explained that:

> In conducting any after-the-fact scrutiny of an affidavit submitted in support of a search warrant, trial and appellate courts should accord great deference to the magistrate's determination of probable cause, and doubtful or marginal cases in this area should be resolved in favor of upholding the warrant.

Id.

{¶ 35} In reviewing this issue, we must answer the question whether the affidavit provided a substantial basis for the magistrate's conclusion that there was a fair probability that drugs or weapons would be found in Perez's storage locker. Granted, Perez's mere possession of drugs in his home is not sufficient. Instead, there must be "some additional evidentiary link between the suspected drug activity" taking place in Perez's home and truck, and the storage locker that was eventually searched. *State v. Cole*, 2d Dist. Montgomery No. 23058, 2009-Ohio-6131, ¶ 27.

{¶ 36} However, in my view, this case can be distinguished from *Cole*. Here, the affidavit indicated more facts than that drugs had been found in Perez's home. Pre-search intelligence confirmed that: (1) Perez was engaging in a large-scale drug operation involving both marijuana and cocaine; (2) Perez had conducted some of his drug transactions at locations away from his home; (3) Perez was known to possess weapons, yet during the execution of the search warrant at his home, no weapons were

found; and (4) Perez not only rented a storage locker, but had just recently rented the locker, and gave an incorrect home address when doing so. Doc. #19, Search Warrant Affidavit.

{¶ 37} Again, the question is not whether the facts in the affidavit constituted probable cause under a de novo review. If that were the question, I may have concluded that they did not. However, I do find a substantial basis for the magistrate's conclusion regarding the fair probability that drugs or weapons would be found in the storage locker. We are required to accord great deference to the magistrate's determination of probable cause, and are required to follow the mandate that doubtful or marginal cases in this area should be resolved in favor of upholding the warrant. *George*, 45 Ohio St.3d at 325, 544 N.E.2d 640, paragraph two of the syllabus. For these reasons, I would find that the warrant was valid. Accordingly, I very respectfully disagree with the majority's decision regarding the first assignment of error, and would reverse the trial court on this issue.

{¶ 38} On the other hand, I agree with the majority opinion in all other respects. Therefore, I join the majority in reversing the trial court on the second assignment of error concerning the good faith exception to the exclusionary rule.

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