

June 3, 2024

Lorain County Sheriff Concludes Administrative Review of Parmely Ave Incident

On January 10th, 2024, the Elyria Police Department (EPD) executed a search warrant at a residence on Parmely Avenue. Following this, serious allegations of police misconduct arose. I instructed City officials to gather footage from cameras worn by officers on the scene. That footage was released on January 16th, 2024.

While that footage clearly illustrated what did and did not occur when the search warrant was executed, it did not answer the allegations regarding how the warrant itself was obtained for that property. To answer those questions, I requested that the Lorain County Sheriff's Office (LCSO) conduct an independent administrative review regarding the search warrant itself. That review is now complete.

According to the LCSO summary report, "....probable cause existed to believe the juvenile lived at 331 Parmely Avenue at the time the search warrant was obtained and at the time the search warrant was executed." Additionally, "[t]he address was confirmed by detectives through three different sources prior to the application for the warrant and was confirmed by the juvenile [at the center of the burglary and firearms investigation], as reported by detectives and an independent witness, prior to the service of the search warrant."

Throughout the investigation, reports, body camera footage, photographs, and case law were examined. Several interviews were conducted. The report and referenced information are several hundred pages long and will be available on the City of Elyria's website following the legally-required redaction process. Attached you will find a summary of the report's key findings.

The questions raised by the general public regarding our Police Department were extremely disturbing, and I shared Elyrians' concerns. I pledged full transparency from my Administration and I thank all residents for your patience as we identified and disclosed the facts of this situation. This report confirms the Elyria Police Department properly followed their policies and procedures, as well as the law.

I would like to express my gratitude for the LCSO for their hard work and diligence throughout this process. I also thank everyone who participated in the fact-finding and disclosure of this information to respond to our questions.

Kevin A. Brubaker

K. A. Bel

Mayor, City of Elyria



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Sheriff Phil R. Stammitti

May 28, 2024

Honorable Mayor Kevin Brubaker Elyria City Hall 131 Court Street, Elyria, Ohio 44035

Mayor Brubaker,

On January 15th, 2024, Sheriff Phil R. Stammitti received a request from Safety Director Christopher Pyanowski to conduct an administrative review of the search warrant and search warrant execution at 331 Parmely Avenue on January 10th, 2024. While speaking to Director Pyanowski on the 15th, via telephone, it was learned that the review was being requested by your office and by Chief William Pelko for transparency. The scope of the review was discussed. It was determined the Lorain County Sheriff's Office would review the facts and circumstances leading up to and the obtainment of the search warrant for 331 Parmely Avenue. It was determined this would be an administrative review in nature. At the conclusion of the call, Sheriff Stammitti agreed that his Office would conduct a review and Sheriff Stammitti assigned me to lead up the review with whatever resources are needed to complete the investigation.

The examination would investigate how the search warrant was obtained. Was there probable cause for the search warrant, particularly as it relates to the location to be searched (331 Parmely) and for the items to be searched (evidence relating to a burglary and stolen firearms)? To conduct this review, I decided to break apart each section of the Ohio Revised Code, Ohio Criminal Rules and Local Criminal Rules relevant to the search warrant and determine if the Elyria Police Department followed the law and were their assumptions based upon probable cause.

During this investigation, reports, body camera videos, photographs, laws, and case law were reviewed as well as conducting several interviews. During my review I attempted to speak to the residents at 331 Parmely Avenue. I explained to them the reason for my inquiry and left them my business card but never heard back from them.

When conducting this type of review, it is often difficult. As a reviewer you must attempt to block out what you know was the result of the search warrant. You must look at the facts as they present themselves and look at the evidence presented from the prism of what the law is, what are established guidelines, and what you believe a reasonable officer would believe under those same conditions.

As you read in the report; was the search warrant lawfully obtained and did it meet the standards required by the law? You will see that I believe the search warrant was obtained through the establishment of probable cause. When the search warrant discusses items based upon the training and experience of the detective (affiant), I gave deference to the approval of the judicial branch. To the question as to if probable cause existed to believe the juvenile lived at 331 Parmely Avenue at the time the search warrant was obtained and at the time the search warrant was executed, I believe it did. The address was confirmed by detectives through three different sources prior to the application for the warrant and was confirmed by the juvenile, as reported by detectives and an independent witness, prior to the service of the search warrant.

Respectfully Submitted,

Major Richard A. Bosley

Richard A. Bosley

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Review of the Search Warrant at 331 Parmely Avenue

Request for Review:

On January 15th, 2024, Sheriff Phil R. Stammitti received a request from Safety Director Christopher Pyanowski to conduct an administrative review of the search warrant and search warrant execution at 331 Parmely Avenue on January 10th, 2024. While speaking to Director Pyanowski on the 15th, via telephone, it was learned that the review was being requested by your office and by Chief William Pelko for transparency. The scope of the review was discussed. It was determined the Lorain County Sheriff's Office would review the facts and circumstances leading up to and the obtainment of the search warrant for 331 Parmely Avenue, and the execution of the search warrant. It was determined this would be an administrative review in nature. At the conclusion of the call, Sheriff Stammitti agreed that his Office would conduct a review and Sheriff Stammitti assigned me to lead up the review with whatever resources are needed to complete the investigation.

Approach:

The investigation will review the obtainment of the search warrant. Was the search warrant obtained based upon information contained in the affidavit which led officers to believe that the items to be searched for in the warrant were located at 331 Parmely Avenue, Elyria Ohio 44035 conform with the statutes and criminal rules of the State of Ohio and Lorain County? As a basis for this inquiry, applicable sections of 2933 of the Ohio Revised Code (ORC) [See Attached Appendix 1, ORC 2933], Ohio Supreme Court Rule 41, Search and Seizure [See Attached Appendix 2, Criminal Rule 41], and relevant case law which can be found will be reviewed and attached to the end of this report.

Synopsis of Information from Reports, Interviews, and Documents Relating to the Investigation Leading to the Search Warrant at 331 Parmely Avenue:

On January 2, 2024, the Elyria Police Department responded to a reported burglary at 175 Bell Avenue. It was reported that 14 firearms were taken in the burglary between 7:00PM January 1st and 8:20AM on January 2nd.

According to Lt. Lantz this investigation was immediately assigned to Detective Loesch over concerns that the stolen weapons would be used in a gun related crime and was in line with the agencies 2023 operational goals to reduce violent crime by 10% [See Appendix 3, 2023 Organizational Goals & Objectives].

On January 3rd, Detective Larson received a seemingly unrelated email from a Lorain County Juvenile Probation Officer advising that detectives should put 316 Brace Avenue on their "radar". The email states numerous juveniles are hanging out, sleeping on the floors and the

home always smells of marijuana. The probation officer names Juvenile Suspect E.D. and Juvenile Suspect Y.P. along with several other juveniles. [See Appendix 4, Christina Brigg Email] This home is near the home where the guns were stolen from, and E.D. is the nephew of the victim of the burglary.

On January 9th, Detective Loesch received information from the victim that his nephew, E.D., was one of the subjects involved in the burglary. E.D. was familiar to detectives through prior information.

Sgt. Wise checked with Juvenile Probation to see if E.D. was still wearing a monitoring device. E.D. was not but through a check of other juveniles it was learned that Y.P. was wearing a monitor through probation. It was learned that Y.P. left 316 Brace Avenue at 2:20AM on January 2nd, went directly to 175 Bell Avenue, and twenty minutes later returned to 316 Brace Avenue. This information matched video footage officers had discovered of two males running eastbound on Bell Avenue at 2:24 AM on January 2nd.

Sgt. Wise obtained the GPS monitoring information on Y.P. for January 2nd for the hours from midnight to 11:59PM. Other than the home at 175 Bell Avenue the GPS monitor also showed that Y.P. went to a home at 1057 Melvyn Lane and the home at 824 West Avenue. (This information will be relevant later in the report when reviewing the pre-planning for the execution of the search warrant.)

With this information Detective Loesch applied for a search warrant for 316 Brace Avenue through Lorain County Common Pleas Court on January 9th. The search warrant was to search for evidence from and related to the burglary at 175 Bell Avenue to include the firearms. The search warrant was authorized by the Honorable Judge Christopher Cook. [See Appendix 5, 316 Brace Avenue Search Warrant].

On January 10th at 7:05AM the Elyria Police executed the search warrant at 316 Brace Avenue. Located in the home were Jonathan Gibson, Alesha Taylor and four juvenile children of Alesha Taylor, including E.D. and Juvenile Suspect J.K. E.D. was located on the living room couch with a loaded firearm sitting next to him.

E.D., J.K. and Alesha Taylor were all interviewed at the Elyria Police Department. During the interview with E.D., he admitted to breaking into 175 Bell Avenue with Y.P. and removing firearms and ammunition from the residence. E.D. also stated that upon their return to 316 Brace Avenue with the firearms, J.K. and Juvenile Suspect C.S. went to 175 Bell Avenue and broke in, stealing additional firearms. E.D. only knew C.S. by his first name, that he was approximately 13 years of age, and lived somewhere on Parmely Avenue. E.D. admitted to storing the weapons at 316 Brace Avenue, that Y.P. took two of the weapons with him to somewhere in Lorain and that he had taken one of the guns out to fire it near the railroad tracks. E.D. also stated one of the shotguns had gone off in the residence at 316 Brace Avenue and shot a hole in the ceiling of J.K.'s bedroom. Lastly, E.D. admitted to trying to sell firearms and ammunition to several people via text message and Instagram.

During the interview with J.K. he admitted to going to 175 Bell Avenue with C.S. and stealing a sniper rifle and shotgun. He also admitted to going out with E.D. and Y.P. and shooting one of the guns near the railroad tracks. He also acknowledged the hole shot in the ceiling. J.K. provided 's last name as (sp.) and that C.S. had taken the shotgun with him. When asked if the shotgun was at C.S.'s residence, J.K. replied "it should be, I think so". During the interview with Alesha Taylor, she admitted to catching E.D. and Y.P. with guns. She advised the detectives she took the ammunition and placed it in her purse and kicked the two juveniles out of the home on January 2nd. She then stated that she did not see her son E.D. again until January 9th. She then stated she heard her sons, J.K. and another son, age 11 arguing and the 11 YOA son told J.K. he was going to tell "Mom" he shot a hole in the ceiling. She then located a hole in the ceiling disguised with toilet paper and found the ammunition she had placed in her purse was missing. Ms. Taylor provided the last name of C.S. to detectives and that he was 11 or 12 years old. She stated he lives in the next block.

Detectives then worked to confirm the address of C.S. They located a call for service at 824 West Avenue from November 30th, 2023, involving C.S. At that time the report listed C.S.'s address as 331 Parmely Avenue. [See Appendix 6, EPD Report #2022-36532] They began conducting surveillance on the home and observing the license plates at the residence. With the license plates they obtained, one returned to a business, "Respiratory Sleep Solutions" of Westlake and another to a private individual from Ironton, Ohio. No license plates returned to 331 Parmely Avenue.

During this same time, Detective Homoki contacted Northwood Middle School to learn is C.S. attended school there. He was advised C.S. was a student and confirmed C.S.'s listed address as 331 Parmely Avenue in school records. Detective Homoki received an email confirmation of this address from the school's Administrative Assistant at 11:43AM [See Appendix 7, email from Patricia Stiteler]

Sgt. Wise was searching for prior incidents involving C.S. and family members. Sgt Wise located the following:

- January 5, 2022, C.S. brought a BB Gun to Northwood Middle School. During that
 incident he was picked up by his stepfather, Eric Bugg [See Appendix 8, EPD Report
 2022-345]
- It was learned Eric Bugg has a License to Carry a Concealed Handgun Permit issued through the Lorain County Sheriff's Office listing his address as 331 Parmely Avenue. Ohio Revised Code 2923.126 requires the permit holder to notify the Sheriff of a change of address within 45 days of moving. [See Appendix 9, Eric Bugg's License to Carry a Concealed Handgun Application and ORC Section 2923.126]
- Sgt. Grove informed Sgt. Wise that the Elyria Police Department Narcotics Unit had received "criminal intelligence and previous drug complaints" that Eric Bugg utilized 331 Parmely Avenue as a "drug house".

With this information Detective Loesch applied for a search warrant for 331 Parmely Avenue through Lorain County Common Pleas Court on January 10th at 11:42AM. The search warrant was to search for evidence from and related to the burglary at 175 Bell Avenue to

include the firearms. The search warrant was authorized by the Honorable Judge Christopher Cook at 11:50AM. [See Appendix 10, 331 Parmely Avenue Search Warrant and Related Emails].

According to Principal Basinski at Northwood Middle School, he received a telephone call from Detective Homoki on January 10th again confirming C.S. was a student at Northwood Middle School. Principal Basinski confirmed that he is a student. Detective Homoki then inquired if he was in school that day and it was confirmed he was in school. Shortly before 2:00PM Detective Homoki and Detective Loesch arrived at Northwood Middle School and asked for C.S. to be brought to the main office. When C.S. was brought into the office by Principal Basinski, Detective Homoki asked C.S. his name and address. According to Detective Homoki, Detective Loesch and Principal Basinski, C.S. confirmed his name and that he resides at 331 Parmely Avenue.

After C.S.'s arrest he was transported to the Elyria Police Department by Detective Homoki and Detective Loesch. While enroute at 2:05PM, Detective Homoki asks C.S. who he lives with. C.S. stated he lived with his mother, stepfather, and siblings on "Parmely". The Special Response Team pulls out of the Elyria Police Department at 2:07PM.

Part 1

Did the search warrant [See Attached Appendix 4] conform with the statutes and criminal rules of the State of Ohio and Lorain County?

The methodology used in this review will be to examine each section of the search warrant section of the Ohio Revised Code which is applicable to the warrant executed at 331 Parmely Avenue reviewing each element required for each section of the code.

2933.21 Issuance of search warrants.

The applicable sections for this code are:

- A judge of a court of record may, within his jurisdiction, issue warrants to search a house or place:
 - o For property stolen, taken by robbers, embezzled, or obtained under false pretense.
 - For weapons, implements, tools, instruments, articles, or property used as a
 means of the commission of a crime, or when any of the objects or articles are in
 the possession of another person with the intent to use them as a means of
 committing crime.

The warrant was issued by a Judge of Lorain County Common Pleas Court who has jurisdiction and who was duly elected by the citizens of Lorain County. The Judge issued the warrant for the search of stolen weapons along with tools, instruments, and property used as a means of the commission of a crime. Based upon the information provided to the Judge, the warrant was properly issued regarding section 2933.21 of the Ohio Revised Code.

2933.22 Probable cause for search warrant.

The applicable sections for this code are:

A warrant of search or seizure shall issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized.

A search warrant must be based upon probable cause. Probable cause is the facts and evidence that leads someone to believe, in this case, the evidence sought in the search warrant is at the location of the place to be searched. The question relevant to this section of the Ohio Revised Code is did probable cause exist for Elyria Police to obtain a search warrant specifically for 331 Parmely Avenue to recover a stolen firearm and other potential evidence relating to that crime.

Based upon the information which was obtained and provided in the search warrant along with the statement from Detective Loesch that "Affiant avers that in his training and experience, persons in possession of firearms and in particular stolen firearms, keep them for an extended period and often store them in their homes. Affiant avers that not all of the stolen firearms have been recovered in this case and that is probable to believe that additional firearms will be located within the residences of the other juveniles involved, to include" C.S.

As it relates to if probable cause existed to believe that 331 Parmely Avenue was the residential address for C.S., I look at the following:

- 1. During the interviews conducted that day, detectives were told by multiple people C.S. resided on Parmely Avenue, one stating "on the next block" from the 300 Block of Brace Avenue.
- 2. Elyria Police conducted a search on the known parties listed and known to be residing with C.S. through their records management system.
- 3. Elyria Police conducted a search in their call for service records for 331 Parmely Avenue to check for recent activity at the residence and who resided at the address.
- 4. Elyria Police reviewed prior police reports listing C.S. as residing at 331 Parmely Avenue as recently as 42 days earlier.
- 5. School records indicate C.S. resided at 331 Parmely Avenue.
- 6. License to Carry a Concealed Handgun issued to C.S.'s stepfather indicates he lives at 331 Parmely Avenue.

For these reasons I believe Elyria Detectives had probable cause to believe C.S. resided at 331 Parmely Avenue to secure the search warrant for that address. According to reports from detectives and statements made in the presence of Principal Basinski of Northwood Middle School, C.S. advised detectives he resided at 331 Parmely Avenue that very day prior to Elyria Police traveling to 331 Parmely Avenue to serve the search warrant.

During the investigation, I was able to locate two recent calls for service at 331 Parmely Avenue. On September 11, 2023, the Elyria Police Department was detailed to 331 Parmely Avenue regarding a menacing complaint. According to the log entry, 2023-00029061, the property manager of 331 Parmely Avenue was complaining that the "tenants" were receiving threats from a neighbor. In the log entry it does not provide who the tenants are at 331 Parmely Avenue.

In the second call for service, a Deputy from the Lorain County Sheriff's Office went to 331 Parmely Avenue regarding a Civil Matter. The log entry, LCSO 2023-00027488, [See attached Appendix 11, EPD Incident Report 2023-00029061 & LCSO Incident Report 2023-00027488] states, "PERSONAL SERVICE TO MARLON JENNINGS ON STALKING ORDER CASE #23CV210201".

Looking further into these incidents, I was unable to locate the court order. The case number provided is not available through the Lorain County Clerk of Courts Office. An inquiry within the Elyria Police Department revealed there was no report written on the call for service on September 11, 2023. Due to the limited information contained in the log entries for these calls it would not have provided information on who was living at 331 Parmely Avenue. I also do doubt that Elyria detectives would have seen the log entry for the service of a court order by a deputy from the Lorian County Sheriff's Office. Both agencies do utilize the same records management system but for Elyria detectives to have seen the Sheriff's Office log entry, they would have needed to begin searching for records of other agencies one at a time as the system does not universally provide this information in a single search.

Section 2933.23 | Search warrant affidavit.

The applicable sections for this code are:

A search warrant shall not be issued until there is filed with the judge or magistrate an affidavit that particularly describes the place to be searched, names or describes the person to be searched, and names or describes the property to be searched for and seized; that states substantially the offense in relation to the property and that the affiant believes and has good cause to believe that the property is concealed at the place or on the person; and that states the facts upon which the affiant's belief is based. The judge or magistrate may demand other and further evidence before issuing the warrant. If the judge or magistrate is satisfied that grounds for the issuance of the warrant exist or that there is probable cause to believe that they exist, he shall issue the warrant, identifying in it the property and naming or describing the person or place to be searched.

A search warrant affidavit was filed with the Judge at the time the search warrant was sought. The affidavit described 331 Parmely Avenue and the property to be searched for in the warrant. In the affidavit the detective documents the facts that:

- He is investigating a burglary where firearms were stolen and lists the make, model, and serial number of most of the weapons.
- Officers established the time frame for when the firearms were stolen and the direction of travel the subjects believed to have committed the burglary left on foot.
- The detective received a telephone call informing him of the name of one of the juvenile subjects E.D. who was involved in the burglary.
- Another juvenile subject Y.P. involved in the burglary was wearing an ankle monitor which tracked his location from the address of E.D.'s residence to the location of the burglary and back to E.D.'s residence during the reported time of the burglary.

- On January 9th, the Detective received a search warrant for the home of the first juvenile subject and the warrant was served on January 10th. E.D. and a third juvenile subject J.K., were present in the home and were both interviewed about their involvement in the burglary.
- During the search of the home two of the reportedly stolen firearms were recovered.
- During the interview with E.D., he admitted to breaking into the home with Y.P. and stealing several firearms and boxes of ammunition. E.D. stated Y.P. took two firearms to an unknown location in Lorain.
- During the interview with J.K., he admitted to breaking into a home at 175 Bell Avenue with C.S. J.K. admitted to stealing a firearm and ammunition and said C.S. also took ammunition and a shotgun, taking the shotgun home.
- Detectives confirmed the address of C.S. to be 331 Parmely Avenue in Elyria.
- The detective declared that based upon his training and experience people in possession of firearms keep them for extended periods of time and often in their residence.
- The detective believes probable cause exists that evidence of criminal activity will be found at 331 Parmely Avenue.

The warrant was sought for service based upon the officers knocking and announcing their presence and during daytime hours.

The question relevant to this section of the Ohio Revised Code is did the Elyria Police file an affidavit at the time for which they sought the search warrant for 331 Parmely Avenue and did that search warrant contain the pre-requisite information described by Ohio Revised Code. The affidavit appears to contain the required information and based upon an email provided for this review by the Elyria Police Department, the search warrant and affidavit were approved by the Judge through email [See attached Appendix 12, Email approving Search Warrant from the Honorable Judge Christopher Cook]in compliance with Ohio Criminal Rule 41(C)(1). Based upon the affidavit provided to the Judge, the warrant was properly issued regarding section 2933.23 of the Ohio Revised Code.

Section 2933.231 Waiving the Statutory precondition for nonconsensual entry.

No waiver of the statutory preconditions for nonconsensual entry were sought for this search warrant. This section of law is closely related to the arrest and search warrant section of the Ohio Revised code, 2935.12, wherein it requires a law enforcement officer or other authorized individual executing a search warrant to give notice of his intention to execute the warrant and then be refused admittance to a dwelling house or other building before he legally may break down a door or window to gain entry to execute the warrant. A nonconsensual entry is where a prosecutor or law enforcement officer applies to the judge when applying for the arrest or search warrant to not require officer officers to give notice or be refused entry before breaking down a door or window.

When reviewing this section of law, it is important to understand it is very nuanced in case law. Should an officer or prosecutor not apply for nonconsensual entry but at time of service observe actions or other articulable circumstances which would give rise to an exigency then most courts

appear to allow a nonconsensual entry by law enforcement. Examples of this would be loss of evidence or a newly observed reasonably perceived danger.

The courts have established guidance as a road map but no definitive answer on what clearly violates 2935.12 and by extension 2933.231. They have instead stated that each incident should be taken on a case-by-case basis to provide law enforcement with the flexibility to avert danger and prevent the destruction of evidence but the responsibility to do so in a manner which is reasonable. As stated in State v Hunter, "The question of how long police must wait after knocking and announcing their presence before forcibly entering a residence depends upon the facts of the particular case. However, forcible entry prior to a refusal may be justified by exigent circumstances where it appears that evidence can and will be destroyed on short notice, or that compliance could place the officers in peril of great bodily harm." State v. Hunter, 153-Ohio-App. 3d 628

State V Dixon elaborates on this further in relation to the destruction of evidence, but I believe it would apply to bodily harm as well when the court stated that "the police must have reason to believe that the evidence will be destroyed, base upon other factors uniquely present in the present circumstances" State v. Dixon, 141 Ohio App.3d 654

The warrant did not include an exigent circumstance for nonconsensual entry. Case law also establishes a path for a nonconsensual entry based upon the circumstances at time of service. As it relates to the obtainment of the search warrant, applying for a nonconsensual entry warrant is not required.

Section 2933.24 | Contents of search warrant - report of physical conditions.

The applicable sections for this code are:

A search warrant shall be directed to the proper law enforcement officer or other authorized individual and, by a copy of the affidavit inserted in it or annexed and referred to in it, shall show or recite all the material facts alleged in the affidavit, and particularly name or describe the property to be searched for and seized, the place to be searched, and the person to be searched. If a waiver of the statutory precondition for nonconsensual entry, as defined in division (A) of section 2933.231 of the Revised Code, has been granted pursuant to that section, the warrant also shall contain a provision as described in division (C) of that section.

The warrant shall command the officer or individual to search for the place or person named or described for the property, and to bring them, together with the person, before the judge or magistrate. The command of the warrant shall be that the search be made in the daytime, unless there is urgent necessity for a search in the night, in which case a search in the night may be ordered.

The warrant shall be returned promptly by the officer or individual holding it. It shall designate the judge or magistrate to whom it shall be returned if such judge or magistrate is available.

This section of the Ohio Revised Code addresses the requirements of the contents of the search warrant. The search warrant was directed to any law enforcement officer of the Elyria Police Department and/or any law enforcement officer as authorized. The search warrant refers to the affidavit and that it demonstrated probable cause for a search of 331 Parmely Avenue to include the person(s) present. The warrant instructs officers to search for "cell phones, electronic devices, firearms, ammunition, firearm accessories, clothing, clothing accessories, records, documents, correspondence and/or indicia of occupancy or residency, and/or criminal tools relating to the offense of Burglary". The warrant was returned to the Clerk of Courts Office of Lorian County, being sealed at the time of the return [See attached appendix 13, Court Order Sealing the Search Warrant].

The above listed required contents are set in Ohio Revised Code. The only deviation from the Ohio Revised Code is the requirement to bring the evidence before the judge. This section of the Ohio Revised Code is altered by the "Rules of Court Lorain County Court of Common Pleas General Division". On page five of those rules under Rule 2; D "Evidence and Record Retention" [See attached appendix 14]the court directs that all evidence which is not "papers, documents, photographs, diagrams, blueprints, (all must be 8 ½ x 11" in size)" along with "CD s, DVDs", ..."shall be retained and kept by the party, person, agency, office or department offering such evidence".

Based upon the contents of the warrant, the warrant was properly issued regarding section 2933.24 of the Ohio Revised Code except for the warrant requirement for Lorain County Common Pleas Court altered by the courts local rule 2.

Section 2933.241 | Return and inventory of property.

The applicable section for this code is:

The officer taking property under a warrant for search shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken and shall be verified by the officer. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

The police report provided by the Elyria Police Department [See attached Appendix 14, EPD Report 2024-902] document a copy of the search warrant was left at the residence along with a copy of the inventory. A photograph of the documents sitting on a dining table was also provided to document the service [See attached Appendix 15, photograph of warrant/inventory service]. Based upon the information provided the Elyria Police Department followed this section of the code.

Section 2933.25 Form of search warrant

This section of the code pertains to the format in which the warrant is to be written. The warrant was written in compliance with section 2933.25 [See attached Appendix 11, copy of the search warrant].

Section 2933.26 Seized property to be kept by court

When a warrant is executed by the seizure of property or things described therein, such property or things shall be kept by the judge, clerk, or magistrate to be used as evidence.

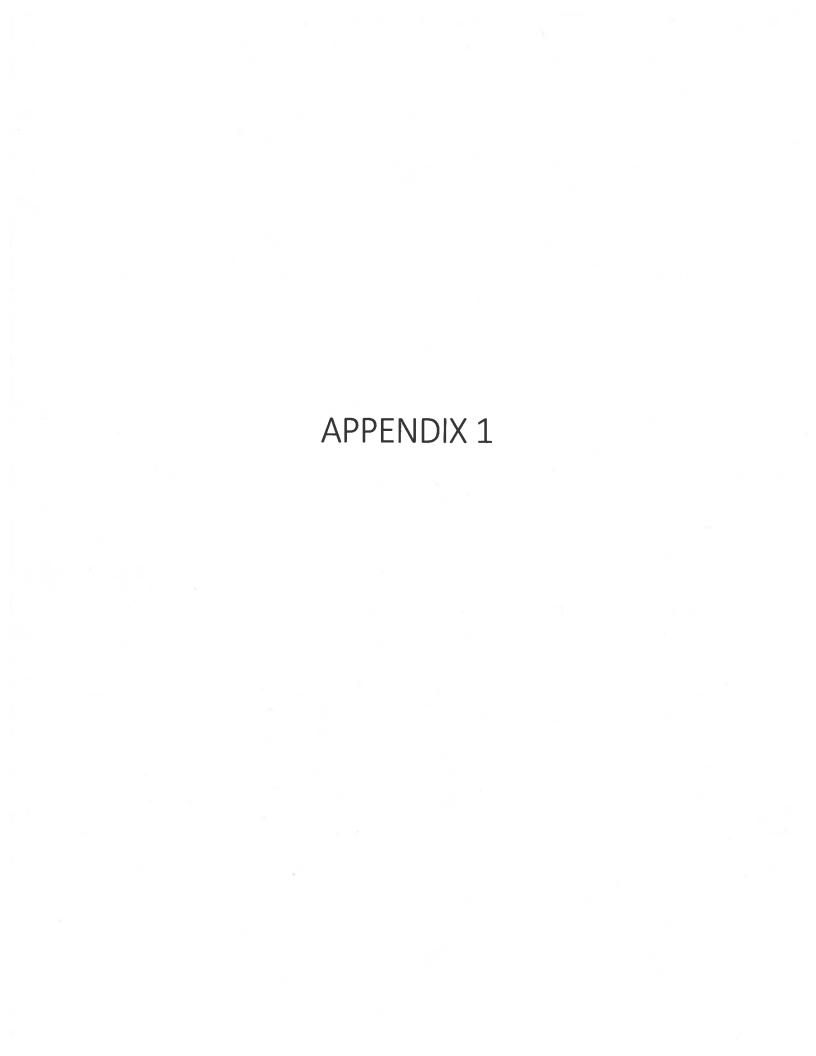
This requires property seized in a search warrant to be turned over to the court to be held as evidence. Lorain County Common Pleas Court deviates from this section of the code under local court rule 2, section "D" in the "Rules of Court Lorain County Court of Common Pleas General Division". On page five of those rules under Rule 2; D "Evidence and Record Retention" [See attached Appendix 16, Lorain County Court of Common Pleas General Division; Rule 2]the court directs that all evidence which is not "papers, documents, photographs, diagrams, blueprints, (all must be 8 ½ x 11" in size)" along with "CD s, DVDs", ... "shall be retained and kept by the party, person, agency, office or department offering such evidence".

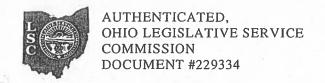
According to the police report [See attached Appendix 14, EPD Report 2024-902] no property was removed from the home. The only inventory listed in the narrative of the report is the photographs of the home taken by an Elyria Police detective. Based upon the information provided the Elyria Police Department followed this section of the code.

During this investigation reports, body camera videos, photographs, laws, and case law were reviewed as well as conducting several interviews. During my review I attempted to speak to the residents at 331 Parmely Avenue. I explained to them the reason for my inquiry and left them my business card but never heard back from them.

When conducting this type of review, it is often difficult. As a reviewer you must attempt to block out what you know was the result of the search warrant and its execution. You must look at the facts as they present themselves and look at the evidence presented from the prism of what the law is, what are established guidelines, and what you believe a reasonable officer would believe under those same conditions. You should also look for takeaways on ways to improve the process and make recommendations where appropriate.

As you read in the report; was the search warrant lawfully obtained and did it meet the standards required by the law? You will see that I believe the search warrant was obtained through the establishment of probable cause. When the search warrant discusses items based upon the training and experience of the detective (affiant) I gave deference to the approval of the judicial branch. To the question as to if probable cause existed to believe the juvenile lived at 331 Parmely Avenue at the time the search warrant was obtained and at the time the search warrant was executed, I believe it did. The address was confirmed by detectives through three different sources prior to the application for the warrant and was confirmed by the juvenile, as reported by detectives and an independent witness, prior to the search warrant.





Section 2933.21 Issuance of search warrants.

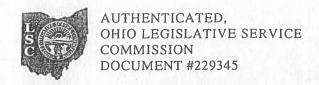
Effective: June 13, 1975

Legislation: House Bill 1 - 111th General Assembly

A judge of a court of record may, within his jurisdiction, issue warrants to search a house or place:

- (A) For property stolen, taken by robbers, embezzled, or obtained under false pretense;
- (B) For weapons, implements, tools, instruments, articles or property used as a means of the commission of a crime, or when any of the objects or articles are in the possession of another person with the intent to use them as a means of committing crime;
- (C) For forged or counterfeit coins, stamps, imprints, labels, trade-marks, bank bills, or other instruments of writing, and dies, plates, stamps, or brands for making them;
- (D) For obscene materials and materials harmful to minors involved in a violation of section 2907.31 or 2907.32 of the Revised Code, but only so much of such materials shall be seized as are necessary for evidence in a prosecution of the violation;
- (E) For gaming table, establishment, device, or apparatus kept or exhibited for unlawful gaming, or to win or gain money or other property, and for money or property won by unlawful gaming;
- (F) For the existence of physical conditions which are or may become hazardous to the public health, safety, or welfare, when governmental inspections of property are authorized or required by law.

The enumeration of certain property and material in this section shall not affect or modify other laws for search and seizure.



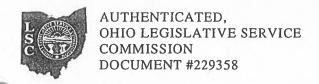
Section 2933.22 Probable cause for search warrant.

Effective: October 23, 1972

Legislation: Senate Bill 397 - 109th General Assembly

(A) A warrant of search or seizure shall issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized.

(B) A warrant of search to conduct an inspection of property shall issue only upon probable cause to believe that conditions exist upon such property which are or may become hazardous to the public health, safety, or welfare.



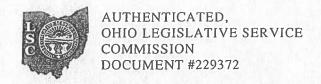
Ohio Revised Code Section 2933.23 Search warrant affidavit.

Effective: November 20, 1990

Legislation: Senate Bill 258 - 118th General Assembly

A search warrant shall not be issued until there is filed with the judge or magistrate an affidavit that particularly describes the place to be searched, names or describes the person to be searched, and names or describes the property to be searched for and seized; that states substantially the offense in relation to the property and that the affiant believes and has good cause to believe that the property is concealed at the place or on the person; and that states the facts upon which the affiant's belief is based. The judge or magistrate may demand other and further evidence before issuing the warrant. If the judge or magistrate is satisfied that grounds for the issuance of the warrant exist or that there is probable cause to believe that they exist, he shall issue the warrant, identifying in it the property and naming or describing the person or place to be searched.

A search warrant issued pursuant to this chapter or Criminal Rule 41 also may contain a provision waiving the statutory precondition for nonconsensual entry, as described in division (C) of section 2933.231 of the Revised Code, if the requirements of that section are satisfied.



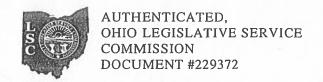
Section 2933.231 Waiving the statutory precondition for nonconsensual entry.

Effective: November 20, 1990

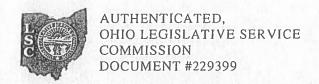
Legislation: Senate Bill 258 - 118th General Assembly

(A) As used in this section:

- (1) "Law enforcement officer" has the same meaning as in section 2901.01 of the Revised Code and in Criminal Rule 2.
- (2) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code, and includes any prosecuting attorney as defined in Criminal Rule 2.
- (3) "Statutory precondition for nonconsensual entry" means the precondition specified in section 2935.12 of the Revised Code that requires a law enforcement officer or other authorized individual executing a search warrant to give notice of his intention to execute the warrant and then be refused admittance to a dwelling house or other building before he legally may break down a door or window to gain entry to execute the warrant.
- (B) A law enforcement officer, prosecutor, or other authorized individual who files an affidavit for the issuance of a search warrant pursuant to this chapter or Criminal Rule 41 may include in the affidavit a request that the statutory precondition for nonconsensual entry be waived in relation to the search warrant. A request for that waiver shall contain all of the following:
- (1) A statement that the affiant has good cause to believe that there is a risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant if they are required to comply with the statutory precondition for nonconsensual entry;
- (2) A statement setting forth the facts upon which the affiant's belief is based, including, but not limited to, the names of all known persons who the affiant believes pose the risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant at the particular dwelling house or other building;



mechanical, electronic, or video recording device. The recording of and any transcript of the recording of such a proceeding shall not be a public record for purposes of section 149.43 of the Revised Code until the search warrant is returned by the law enforcement officer or other authorized officer who executes it. This division shall not be construed as requiring, authorizing, or permitting, and does not require, authorize, or permit, the making available for inspection, or the copying, under section 149.43 of the Revised Code of any confidential law enforcement investigatory record or trial preparation record, as defined in that section.



Section 2933.24 Contents of search warrant - report of physical conditions.

Effective: October 21, 2005

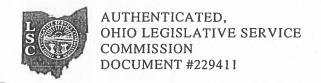
Legislation: House Bill 34 - 126th General Assembly

(A) A search warrant shall be directed to the proper law enforcement officer or other authorized individual and, by a copy of the affidavit inserted in it or annexed and referred to in it, shall show or recite all the material facts alleged in the affidavit, and particularly name or describe the property to be searched for and seized, the place to be searched, and the person to be searched. If a waiver of the statutory precondition for nonconsensual entry, as defined in division (A) of section 2933.231 of the Revised Code, has been granted pursuant to that section, the warrant also shall contain a provision as described in division (C) of that section.

The 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. The command of the warrant shall be that the search be made in the daytime, unless there is urgent necessity for a search in the night, in which case a search in the night may be ordered.

The warrant shall be returned promptly by the officer or individual holding it. It shall designate the judge or magistrate to whom it shall be returned, if such judge or magistrate is available.

(B) When a search warrant commands a proper law enforcement officer or other authorized individual to inspect physical conditions relating to public health, safety, or welfare, such officer or individual, upon completion of the search, shall complete a report of the conditions and file a copy of such report with the officer's or individual's agency headquarters.

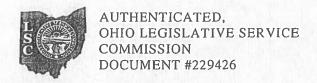


Ohio Revised Code Section 2933.241 Return and inventory of property.

Effective: October 14, 1963

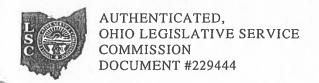
Legislation: House Bill 418 - 105th General Assembly

The officer taking property under a warrant for search shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken and shall be verified by the officer. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.



Section 2933.25 Form of search warrant.

ffective: January 1, 1958 egislation: House Bill 937 - 102nd General Assembly		
Legislation, nouse bill 937 - 102hd	Jeneral Assembly	
	1 of the Revised Code shall be substant.	
	County, ss:	
	County, ss:	
	d County, greeting:	
Whereas there has been filed with me	an affidavit, of which the following is a	a copy (here copy the
affidavit).		
These are, therefore, to command you	in the name of the State of Ohio, with t	
proper assistance, to enter, in the dayt	ime (or in the nighttime) into (here desc	cribe the house or place
as in the affidavit) of the said	of the township of	in the
County aforesaid, and there diligently	search for the said goods and chattels,	or articles, to wit: here
describe the articles as in the affidavit) and that you bring the same or any par	rt thereof, found on
such search, and also the body of E.F.	, forthwith before me, or some other jud	lge or magistrate of the
county having cognizance thereof to b	be disposed of and dealt with according	to law.
Given under my hand, this	day of	
A.B., Judge, County Court		

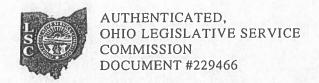


Section 2933.26 Seized property to be kept by court.

Effective: October 1, 1953

Legislation: House Bill 1 - 100th General Assembly

When a warrant is executed by the seizure of property or things described therein, such property or things shall be kept by the judge, clerk, or magistrate to be used as evidence.

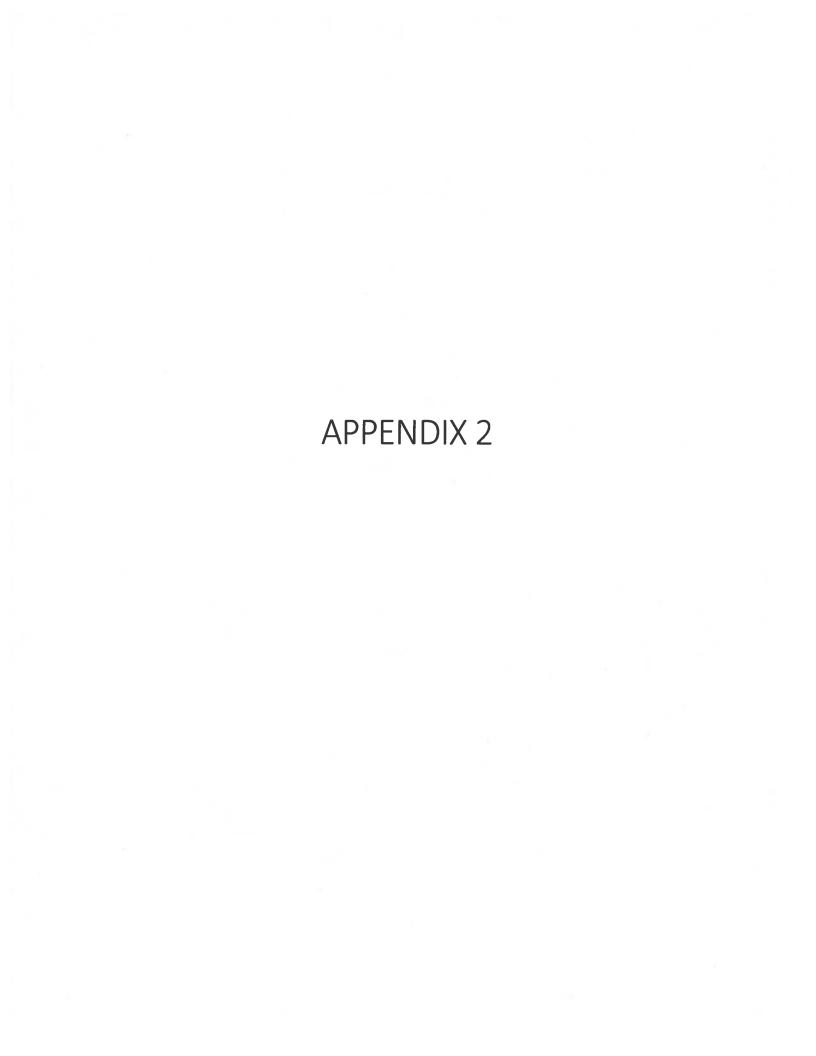


Section 2933.27 Keeping of seized property until trial.

Effective: October 1, 1953

Legislation: House Bill 1 - 100th General Assembly

If, upon examination, the judge or magistrate is satisfied that the offense charged with reference to the things seized under a search warrant has been committed, he shall keep such things or deliver them to the sheriff of the county, to be kept until the accused is tried or the claimant's right is otherwise ascertained.



RULE 41. Search and Seizure.

(A) Authority to issue warrant

Upon the request of a prosecuting attorney or a law enforcement officer:

- (1) A search warrant authorized by this rule may be issued by a judge of a court of record to search and seize property located within the court's territorial jurisdiction; and,
- (2) A tracking device warrant authorized by this rule may be issued by a judge of a court of record to install a tracking device within the court's territorial jurisdiction. The warrant may authorize use of the device to track the movement of a person or property within or outside of the court's territorial jurisdiction, or both.

(B) Property which may be seized with a search warrant

A search warrant may be issued under this rule to search for and seize any:

- (1) evidence of the commission of a criminal offense; or
- (2) contraband, the fruits of crime, or things otherwise criminally possessed; or
- (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(C) Issuance and contents

- (1) 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. In the case of a search warrant, the affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located. In the case of a tracking device warrant, the affidavit shall name or describe the person to be tracked or particularly describe the property to be tracked, and state substantially the offense in relation thereto, state the factual basis for the affiant's belief that the tracking will yield evidence of the offense. If the affidavit is provided by reliable electronic means, the applicant communicating the affidavit shall be placed under oath and shall swear to or affirm the affidavit communicated.
- (2) If the judge is satisfied that probable cause exists, the judge shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched or the person or property to be tracked. The warrant may be issued to the requesting prosecuting attorney or other law enforcement officer through reliable

electronic means. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally or by reliable electronic means, and may examine under oath the affiant and any witnesses the affiant may produce. Such testimony shall be admissible at a hearing on a motion to suppress if taken down by a court reporter or recording equipment, transcribed, and made part of the affidavit. The warrant shall be directed to a law enforcement officer. A search warrant shall command the officer to search, within three days, the person or place named for the property specified. A tracking device warrant shall command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days, and shall specify the time that the device may be used, not to exceed 45 days. The court may, for good cause shown, grant one or more extensions of time that the device may be used, for a reasonable period not to exceed 45 days each. The warrant shall be executed in the daytime, unless the issuing court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant shall provide that the warrant shall be returned to a designated judge or clerk of court.

(D) Execution and return of the warrant

(1) Search warrant

The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly, either in person or by reliable electronic means, and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. Property seized under a warrant shall be kept for use as evidence by the court which issued the warrant or by the law enforcement agency which executed the warrant.

(2) Tracking Device warrant

The officer executing a tracking device warrant shall enter onto the warrant the exact date and time the device was installed and the period during which it was used. The return shall be made promptly, either in person or by reliable electronic means, after the use of the tracking device has ended. Within 10 days after the use of the tracking device has ended, the officer executing a tracking device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who,

or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon the request of a prosecuting attorney or a law enforcement officer, and for good cause shown, the court may authorize notice to be delayed for a reasonable period.

(E) Return of papers to clerk

The law enforcement officer shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk or the judge, if the warrant so requires.

(F) Definition of property and daytime

The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 7:00 a.m. to 8:00 p.m.

(G) Definition of tracking device

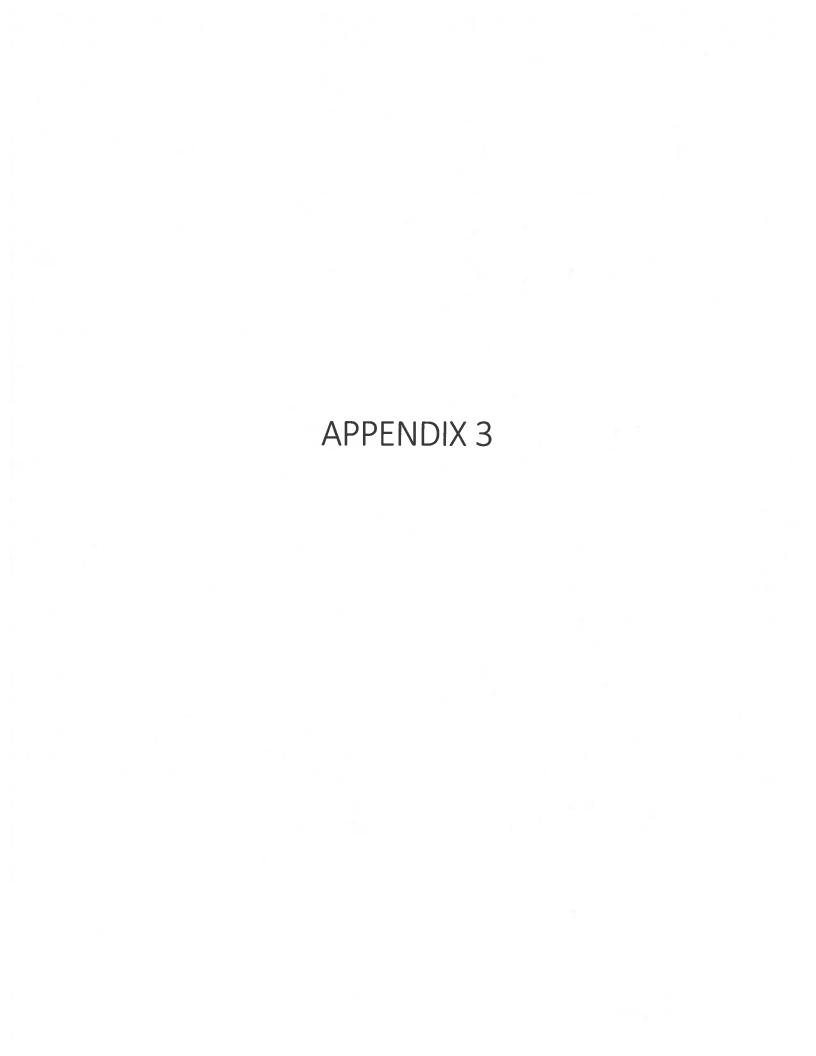
The term "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

Effective Date: July 1, 1973

Amended: July 1, 2010; July 1, 2014; July 1, 2021

Staff Note (July 1, 2010 Amendment)

The revisions to Crim.R. 41 now permit an applicant for a search warrant to be in communication with a judge by reliable electronic means. The concept of reliable electronic means is seen as broad enough to encompass present communication technologies as well as those that may be developed over the next decades. Nothing in these revisions is intended to lessen the requirement that the judge confirm the identity of the applying law enforcement officer, that the judge is satisfied that probable cause for a warrant exists, and that an appropriate record for subsequent review is created.

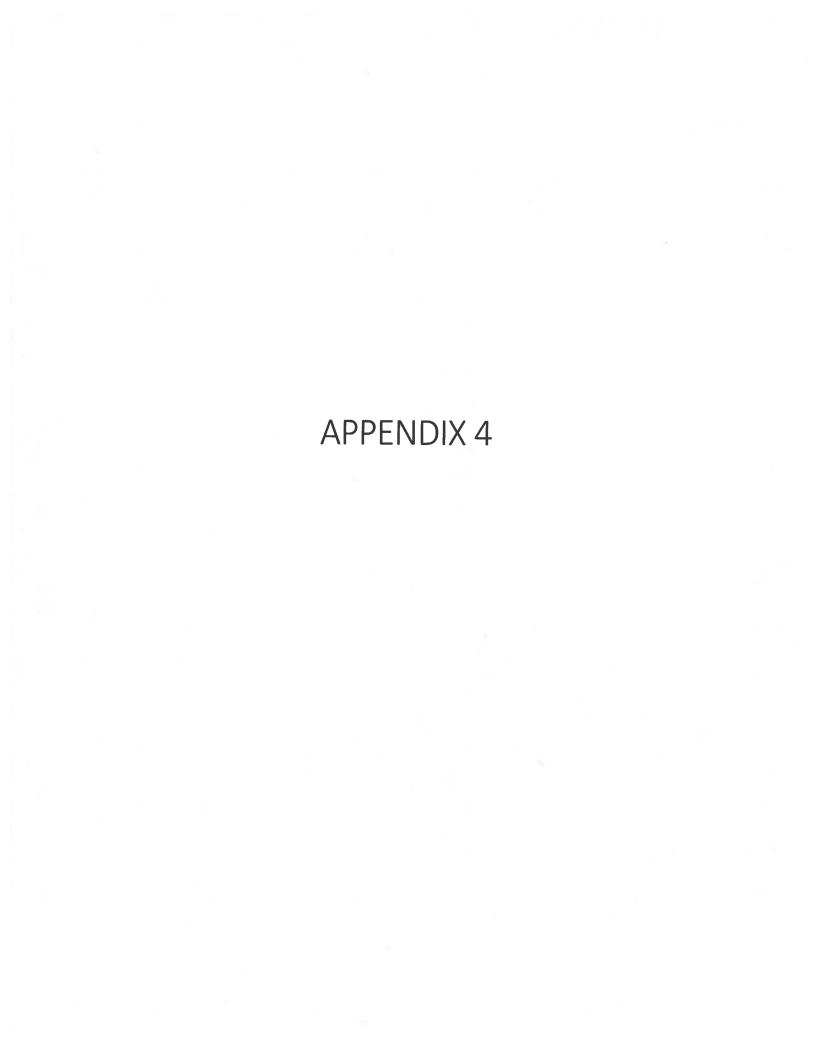


ELYRIA POLICE DEPARTMENT

2023 Organizational Goals & Objectives Statement

As a law enforcement agency we play a vital role in keeping our community safe. We must also examine and improve our capabilities to better serve the community. For these reasons the following goals and objectives have been developed. Division, Shift and Unit Commanders should develop strategies and responses in order for their assigned components to contribute to these goals and objectives. When practical, employees shall be tasked with individual assignments that are designed to contribute to the Organizational Goals & Objectives.

GOAL 1	Hiring and retention
• I	ational Objective(s): Increase the number of sworn personnel to 100 Increase the number of full-time dispatchers to the authorized level (12) Implement the 12-hour shift plan If a recruitment specialist If Reduce the number of fatal and serious injury motor vehicle crashes
• F	Reduce the number of fatal crashes to zero (0) Reduce the number alcohol and drug related crashes by 10% Reduce the number of serious injury crashes by 10% Increase traffic enforcement throughout the City Improve technology
• III R • U • P • B • U • C	Actional Objective(s): Implement the use of Body Worn cameras, In-car mobile video cameras, and License Plate Reader (LPR) cameras Utilize virtual reality, to enhance in-service training for officers Furchase and outfit an armored vehicle Regin construction of the joint firing range with the FBI Regrade the existing CCTV camera system at the Police Department Construct and evidence building Reduce crime
Organiza D D D GOAL 5	tional Objective(s): Develop initiatives to decrease violent crime by 10% Decrease opiate overdoses by 10% Decrease opiate deaths by 10% Wellness tional Objective(s):
	Chief William R. Pelko Chief William R. Pelko Chief William R. Pelko



James M. Wise

From:

Jeb N. Larson

Sent:

Wednesday, January 3, 2024 12:20 PM

To:

James M. Wise; Gerald Lantz; Steven A. Robinson Jr; Tyler S. Loesch; Anthony P. DeMarco; Justin A. Campana; Nicholas P. M. Marquardt; Eric Grove; James Homoki

FW: 316 Brace Ave

Subject:

FYI

From: Christina Bigrigg < Christina. Bigrigg@lcfct.org>

Sent: Wednesday, January 3, 2024 11:14 AM **To:** Jeb N. Larson < jlarson@cityofelyria.org>

Subject: 316 Brace Ave

CAUTION: This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

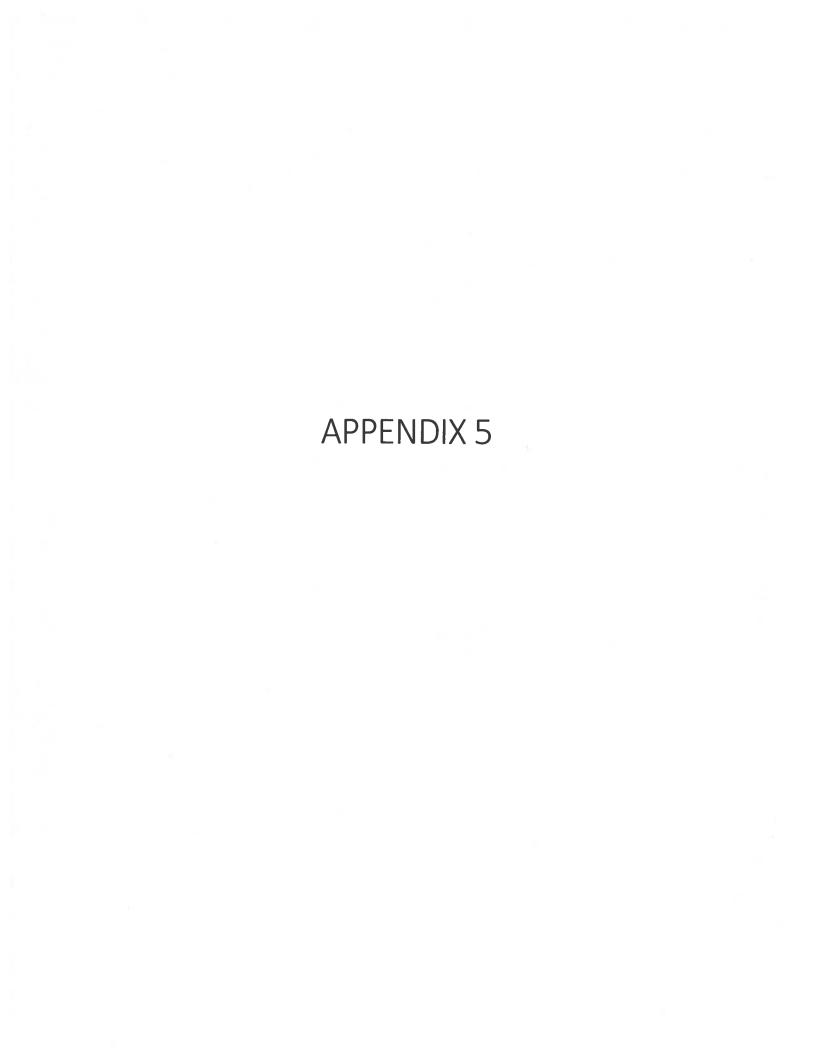
Good Morning,

I wanted to put a house on your radar if it is not already. We have a youth, E D that resides at 316 Brace Ave, Elyria. There are constantly random youth at the home. They are sleeping all over the floors. Constant smell of marijuana. Supervision is a concern. We have seen N and Y and Y and Y and a few other's but I cannot remember their names at this time.

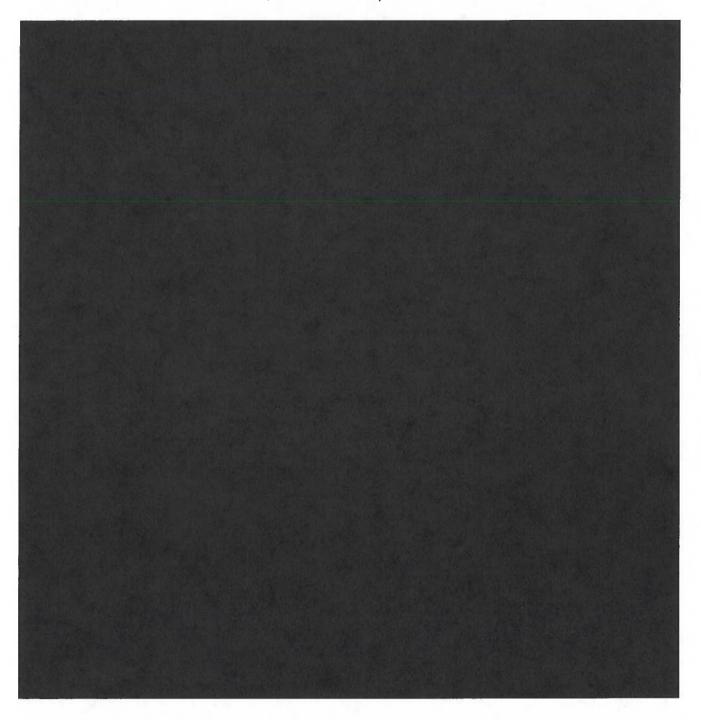
Christina Bigrigg Assistant PDS Supervisor Lorain County Domestic Relations Court 9967 Murray Ridge Rd. Elyria, OH 44035

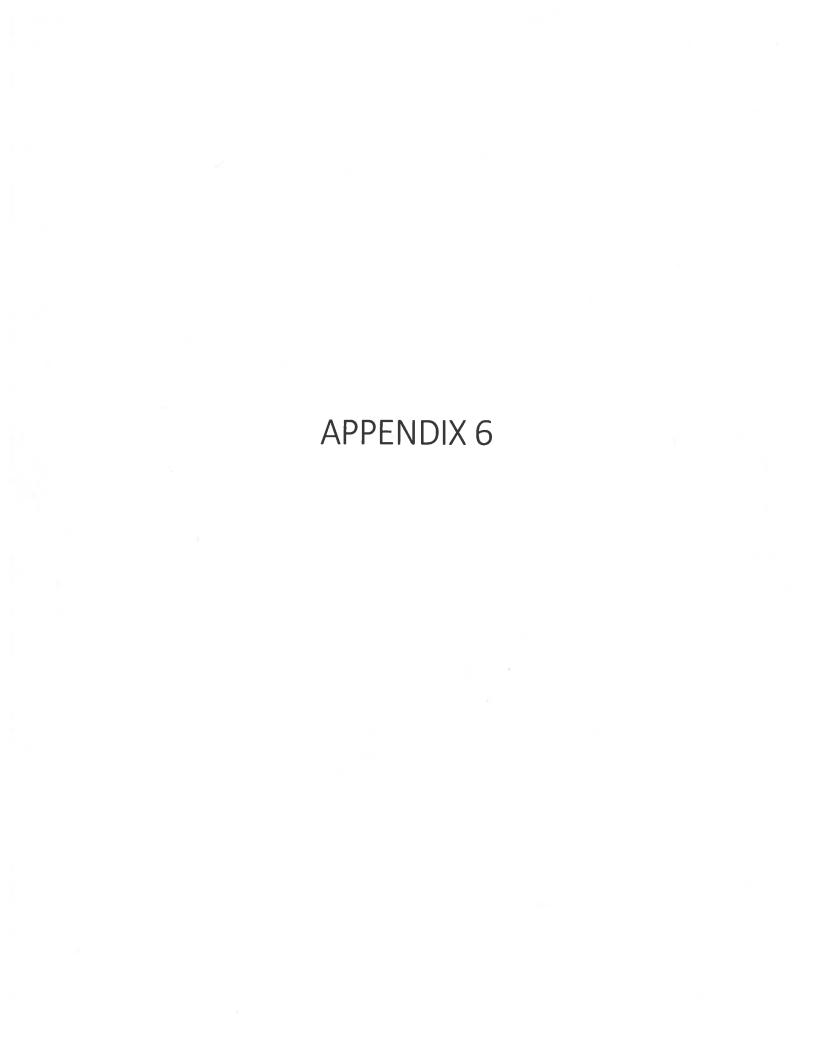
Phone: (440) 326-4016 Fax: (440) 323-0188

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Search Warrant COURT OF COMMON PLEAS SS: LORAIN COUNTY, OHIO









Elyria Police Department OH0470400

Print Date/Time:

01/18/2024 09:43

Login ID:

glantz

Case Number: 2023-00036532 **ORI Number:**

Case Details:

Case Number: Location:

2023-00036532

824 WEST AVE

ELYRIA, OH 44035

EL144-Helmink

Disposition: Arrest

Patrol Division Exc Clear:

Status:

Cleared by Arrest -

Juvenile

Incident Type:

Occurred From:

Occurred Thru:

Disposition Date:

Reported Date:

Weapons Violations

11/20/2023 16:33 Monday

Status Date:

11/20/2023

Exc Clear Date:

11/20/2023 16:33

11/20/2023 16:33

11/20/2023

11/20/2023

11/20/2023

Committed

Case Assignments: Assigned Officer

Assigned Bureau:

Reporting Officer ID:

EL144-Helmink

Assignment Date/Time

Assignment Type

Assigned By Officer

Due Date/Time

11/20/2023 17:37

Primary Unit

EL144-Helmink

Offense Date:

Offenses

No. Group/ORI Crime Code Statute Description Counts State 90Z 2921.31 **Obstructing Official Business**

Offense #

Group/ORI: State Description:

Crime Code: 90Z

Obstructing Official Business Street

Scene Code:

IBR Seq. No:

Statute: 2921.31

Bias/Motivation:

Counts:

No Bias / Not Applicable

Attempt/ Commit Code:

Method of Entry:

Burglary Unknown

Weapon Code: None

Subjects





Print Date/Time: 01/18/2024 09:43

Login ID: Case Number: glantz 2023-00036532 ORI Number:

Elyria Police Department OH0470400

Туре		No.	Name		Address		Phone		Race	Sex	DOB/Age
Complaina	nt	1	White, Lis	sa	320 10TH	ST	(440)258-	1039	Black/ African American	Female	12/06/1973
					ELYRIA,C)H 44035					49
Involved		1	W	-	1108 W 1	8TH ST	(440)435-	7184	Black/ African American	Male	08/26/2010
			100		LORAIN,C)H 44052					13
Involved		2	Tenanto, Br		936 W 22					Male	05/20/2009
					LORAIN,C					Maio	14
Involved		3	Table 1	J	936 W 22	ND ST	(440)298-	8602	Black/ African American	Male	08/19/2010
					LORAIN,C	DH 44052			71110110011		13
Involved		4	9 —	C	163 PARM	MELY AVE	(440)731-	6388	Black/ African American	Male	09/27/2011
					ELYRIA,O						12
Involved		5	1. — J		225 BOST		(440)755-	3054	Black/ African American	Male	01/23/2008
					ELYRIA,O						15
Involved		6	U J			SHINGTON AVE 1	(440)533-	5286			03/29/2010
Involved		7	Hallie Co	urtney Leigh	LORAIN,C 478 8TH S		(440)204	2505	Black/ African	Formal	13
HIVOIVEU		1	1000,00	armey Leigh	77001113	, ,	(440)281-	2000	American	Female	02/10/1985
					ELYRIA,O						38
Juvenile Suspect		1	F	A	478 8TH S	ST	(440)281-	3585	Black/ African	Male	08/06/2008
Suspect					ELYRIA,O	H 44035			American		15
Subject #	1-C	alamo	inant								10
rimary:	No										
lame:		e, Lis	а		Race:	Black/ African American	Sex:	Fem	ale DOE	3:	12/06/197
\ddress:		10TH			Height:	5ft 2 in	Weight:	500.	0 lbs.		
			H 44035		Eyes:	Brown	Hair:	Blac			49
rimary Phon			258-1039 t Type:	Written	SSN:	286-88-4658	DVL#:	RS5	33584 Stat	e:	ОН
Domestic	Viole	nce R	eferrals:								
Subject#	<u>1-ln</u>	olve	<u>d</u>								
rimary:	No										
ame:	W			- 100	Race:	Black/ African American	Sex:	Male	DOB	:	08/26/201
ddress:			8TH ST								
			H 44052		Eyes:	Brown	Hair:	Black	k Age	:	13
rimary Phone			35-7184 t Type :	Field Video	State	e:					
	Grati	strict!	. Type.	Statement							

Domestic Violence Referrals:





Elyria Police Department OH0470400

Print Date/Time: 01/18/2024 09:43 Login ID: glantz

Case Number:

2023-00036532

Subject # 2-Involved

Primary: Name: Address:

k Bu 936 W 22ND ST

LORAIN OH 44052 State:

Statement Type:

Male

DOB:

ORI Number:

05/20/2009

Age:

Sex:

14

Domestic Violence Referrals:

Subject #

3-Involved

Primary: Name:

936 W 22ND ST Address: LORAIN OH 44052

Primary Phone: (440)298-8602

Statement Type:

Field Video

Statement

Race:

Black/ African American

ОН

Male

DOB:

08/19/2010

Field Video Statement

> Eyes: Brown State:

Hair:

Sex:

Brown

Age:

13

Domestic Violence Referrals:

Subject #

4-Involved

Primary: Name:

Address:

163 PARMELY AVE

ELYRIA OH 44035

Primary Phone: (440)731-6388

Statement Type:

Field Video Statement

Race:

Eyes:

Race:

Age:

State:

State:

Black/ African American

Black/ African

15

13

American

Brown

Sex:

Hair:

Sex:

03/29/2010

Male

Black

Male

DOB:

DOB:

09/27/2011

01/23/2008

12

Age:

Domestic Violence Referrals:

Subject #

5-Involved

Primary:

Name: Address:

225 BOSTON AVE

ELYRIA OH 44035

Primary Phone: (440)755-3054

Statement Type:

Field Video

Statement

Domestic Violence Referrals:

Subject #

6-Involved

Primary:

No

Name: Address:

2705 WASHINGTON AVE 1 LORAIN OH 44052

Primary Phone:

(440)533-5286

Age:

State:

DOB:

Domestic Violence Referrals:

Page: 3 of 12





Elyria Police Department OH0470400

Print Date/Time: Login ID:

01/18/2024 09:43

glantz

Case Number:

2023-00036532

Subject # 7-Involved

Primary:

Name:

Hollis, Courtney Leigh

Race:

Black/ African

Female

ORI Number:

DOB:

02/10/1985

Address:

478 8TH ST

ELYRIA OH 44035

Height: 5ft 4 in Eyes: Brown Weight: Hair:

220.0 lbs. Black

Age:

38

Primary Phone:

(440)281-3585

SSN: 295-82-9891

American

DVL#:

Sex:

RZ432082

State:

ОН

Domestic Violence Referrals:

Subject #

1-Juvenile Suspect

Primary:

No

Juvenile Suspect Type: Race:

Height:

Eyes:

Black/ African

Arrestee Sex:

DOB:

08/06/2008

Name: Address:

478 8TH ST

ELYRIA OH 44035

(440)281-3585

City

Referred Juv

State:

Resident Status: Date:

Resident

American

5ft 8 in

Brown

Weight: 140.0 lbs. Hair: Black

Male

Age:

15

Resident Type: Disposition:

Primary Phone:

Group/ORI

Court/Probation Crime Code

Statute

11/20/2023

Custody Status:

Not in Custody

Related Offenses

State

2921.31

Description Obstructing Official Business

Domestic Violence Referrals:

Arrests

Arrest No.	Name	Address	Date/Time	Туре	Age
18522J	President, Anthony	824 WEST AVE ELYRIA,OH 44035	11/20/2023 17:24	Other	15





Elyria Police Department OH0470400

Print Date/Time:

01/18/2024 09:43

Login ID:

glantz

Case Number:

2023-00036532

18522 A

Arrest# Name:

President, Anthony

Date/Time: 11/20/2023 17:24

Type: Other

ORI Number:

Status: Released to

Guardian

Address:

478 8TH ST

Race:

Black/ African American

ELYRIA, OH 44035

Height: Eyes:

5ft 8 in Brown

Weight: 140.0 lbs

Black

Hair:

DOB:

08/06/2008

Phone:

(440)281-3585

Location:

824 WEST AVE

ELYRIA, OH 44035

Age at Arrest:

Call for Service

Resident Type:

City

Resident Status:

Resident

Arrest Result Of: **Resisted Arrest:**

Yes

Arresting Officers

Bureau

School Resource Officer

Weapon Codes

Unarmed

EL329-Walker

Patrol Division

Arrest Charges

No.

Group/ORI State

Crime Code 90Z

Crime Code

Statute

Description

Resisting Arrest

2921.33

Counts:

Disposition: Juvenile Court Other ORI: No

Attempt/Commit: Committed Disposition Date: 11/20/2023

NCIC Code:

Arrest Charges

Group/ORI State

90Z

2921.31

Statute

Description

Obstructing Official Business

Counts:

Committed

Disposition:

Other ORI:

Juvenile Court

No

Attempt/Commit:

Disposition Date:

NCIC Code:

Property

Date 11/20/2023

Code Evidence

Type Drugs Make

Model

Description

Tag No.

2023-

Item No.

282-1 1.8 Grams of Suspected Marijuana 00036532

TPW (9.5 Grams)

Sea #1

Tag Number: **Property Codes:**

2023-00036532

Item Number: Property Type:

Drugs

Date Received:

11/20/2023

Evidence

Date

Quantity: 1.800

Unit of Measure:

Chain of Custody

Description: 282-1 1.8 Grams of Suspected Marijuana TPW (9.5 Grams)

From Role

To

To Role

11/20/2023 17:36 Type: Intake

Transaction

EL282-Jacob Shackelford

EL234-Benjamin Miracle

Code: Initial Intake

Remarks:

Vehicles

Page: 5 of 12

REPORT#: 2023-36532

NARRATIVE BY: Helmink #144 REVIEWED BY: Lt. Frank

INCIDENT TYPE: Weapons Complaint

NARRATIVE:

On 11/20/2023 at approximately 1633 hours multiple Elyria Police officers were detailed to the area of Middle Ave and 10th St. in reference to a juvenile complaint. The initial caller advised of a fight involving multiple juveniles in the above area. The second caller Lisa White advised one of the juveniles, a black male in a blue jacket had a firearm and put it in his waistband.

Officers Bargaheiser, Lenz, and Sgt. Walker arrived in the area and located 4 juvenile males identified as — • and — • — — — — — — — • They advised the following to Officer Bargaheiser. Initially — • said — • was jumped by a juvenile wearing latex gloves, however — — denied this accusation once confronted by officers. The boys proceeded to deny any fight occurring and they did not wish to provide any information to officers.

Sgt. Walker along with Officers Helmink and Shackelford began to check the area for other juveniles who may have been involved. Officers observed 3 juveniles on the front porch of 824 West Ave., one of which had a blue jacket on. Officers arrived and upon noticing officers, the 3 juveniles immediately ran into the residence and up the stairs. Sgt. Walker pursued them and ordered them downstairs to which they complied. They were identified as follows. I male in the blue jacket), Anthony President, and male of whom do NOT live at 824 West Ave. Anthony and move detained for investigation.

Sgt. Walker asked —— what he had ran up the stairs for and he advised he hid "weed" upstairs and adamantly denied having a firearm. Officer Helmink conducted a protective sweep of the upstairs and located a clear plastic baggie with suspect marijuana in plain view, which was seized for destruction. No firearm was located during the sweep.

While Sgt. Walker was interviewing the males located at 824 West Ave., Officers Helmink and Shackelford were detailed to speak Lisa White regarding what she witnessed. She advised she observed a group of 5 juvenile males walking from West Ave to Middle Ave on 10th St. A male, approximately 15 years old produced a firearm, cocked it and pointed it at other juveniles that were on Middle Ave. The juveniles began fighting and proceeded to run towards 11th St. When asked where the alleged suspect placed the gun, Lisa said he put it in his jacket pocket. Officers took Lisa to 824 West for a show up and she was unable to identify any of the above identified males as the suspect with the firearm. She provided a witness statement which was added to the case file.

See Sgt. Walkers narrative for arrest details. Officer Shackelford entered the marijuana into evidence for destruction as 282-1 (1.8g marijuana) 9.5gTPW.

REPORT#: 2023-36532

NARRATIVE BY: Sgt. M. Walker #329 REVIEWED BY: Lt. Frank

INCIDENT TYPE: Obstructing Official Business

NARRATIVE:

On November 20, 2023, at approximately 4:33 p.m., Sergeant Walker along with multiple other officers were detailed to the area of Middle Avenue and 10th Street, in reference to a large group of juveniles fighting. As officers proceeded to the call dispatchers advised that they received a second call from a complainant who stated that one of the juveniles involved in the fight brandished and pointed a handgun. The complainant advised that a young black male, wearing a blue "puffy" jacket, pulled a handgun from his waistband, pointed it at other juveniles during the fight, but had since put the gun back into his waistband.

Sgt. Walker and other officers arrived in the area of Middle Avenue and 10th Street, and immediately located a group of juveniles walking southbound. Officers stopped the juveniles and as they approached the group one of them said "I was jumped", but then several others told him not to talk to the police. Officers conducted a pat-down for weapons due to the report of weapons and learning that these juveniles had recently been involved in an altercation. Officers did not locate any weapons and began gathering information.

While officers spoke with these juvenile, Sergeant Walker and several other officers continued to check the area for a male who matched the description of the juvenile with the gun. Sergeant Walker circled around the block and began heading northbound on West Avenue. While scanning the area for potential suspects Sergeant Walker observed a group of juveniles standing and sitting on the front porch of 824 West Avenue. All of the subjects on the porch were young black males, approximately 14-16 years of age, which matched the description of the subjects we were looking for. One of the males had on a bright blue "puffy" coat and was nervously looking at Sergeant Walker as he passed by. There was another young male standing next to the male in the blue jacket, who had on a black ski mask, a black hoody, and black latex gloves. All of the subjects on the porch simultaneously stopped talking and turned and looked at Sergeant Walker as he drove by.

Sergeant Walker is familiar with this house from his time in the investigative division. This house has been involved in multiple drive-by shootings and is known to be a hangout for young juveniles involved in violent crimes and weapons offenses. Based on the subject matching the exact description of the subject with the gun, his associate being dressed in what would be considered clothing someone would wear to conceal their identity and fingerprints, along with the known history of the residence they were at, I believed I had reason to further investigate.

Sergeant Walker gathered with several other officers in the alley to the north of the residence prior to approaching the front porch. This was done in an attempt to maintain the element of surprise as well as to make a safe and tactical approach. As officers approached, one of the subjects looked quickly around the corner of the front porch and saw officers. All of the juvenile then turned and ran inside of the residence. An adult male exited the home and began speaking to Sergeant Walker. Sergeant Walker saw the subjects running up the stairs to the second floor of the home and he yelled "STOP...STOP", in an attempt to get the juveniles to exit but they did not comply. Sergeant Walker pursued safely but was met by Diatra Woods, who lives at the home. Diatra stated that the juveniles who just ran upstairs do not reside their and stated they are friends with her children. Diatra and the other adult male assisted in trying to get the juveniles to come back outside peacefully and without any issues. The group of juveniles exited the home and were met by other officers on the porch.

Sergeant Walker obtained consent from Diatra to go upstairs with her in an attempt to locate a weapon which Sergeant Walker believed was most likely hidden upstairs. While doing so Sergeant Walker located a small bag of marijuana, which admitted to throwing. Sergeant Walker was unable to locate a firearm.

Sergeant Walker returned to the porch where Anthony President, and were standing. Sergeant Walker is familiar with Anthony and knows that he has been involved in multiple shootings and other violent offenses. Anthony was belligerent and hostile toward officers on scene. Sergeant Walker attempted to speak with officers about what information they had gathered at that time. Anthony got up from where he was and approached Sergeant Walker,

still being aggressive. Due to the fear of Anthony attempting to flee or attack officers, Sergeant Walker asked Anthony to sit down on the porch steps, to maintain scene safety. Anthony refused and continued to be uncooperative. Sergeant Walker then told Anthony that he was going to be detained in handcuffs. This would be done for officer safety due to the potential of a weapon which at this point had been reported but not located, and the history with the residence and Anthony.

Anthony stated he would not let officers place him into handcuffs and became even more aggressive, pulling away from officers as they attempted to detain him. Officers were able to place him into cuffs but he continued to actively resist, at one point grabbing onto Sergeant Walker's finger and attempting to bend it. Sergeant Walker gained control of his wrist and escorted him with the assistance of other officers to a patrol car. Anthony continued to cuss and act belligerent as they escorted him to the car. Throughout this process he continued to tense up and pull away.

Officer reached the patrol cruiser and opened the rear door, attempting to get Anthony into the seat and secure. Anthony then tensed up his entire body and refused to get into the car. Sergeant Walker then grabbed Anthony's pant leg and sweatshirt simultaneously to position his body so that he could be placed into the cruiser. As Anthony was forced into the cruiser, his lip apparently struck something inside the rear seat. Sergeant Walker did not see Anthony face or head hit anything but Anthony complained of it later, as he yelled at officers.

Anthony's mother, Courtney Hollis, was contacted via cellular phone and she agreed to come to the scene. She arrived a short time later and was advised of the incident. She stated that she has constant issues with Anthony and that he has problems in regards to his anger and defiance. She agreed to take responsibility of Anthony. Courtney was instructed to meet officers at the Elyria Police Department so that she could sign the Waiver of Detention Form.

Anthony was transported to the Elyria Police Department and was briefly detained in the juvenile holding area until his mother arrived. She arrived, signed the form and they all briefly spoke about a solution to Anthony's issues.

This report is to be forwarded to the Lorain County Juvenile Court for consideration of the following criminal charges:

- Obstructing Official Business (ORC 2921.31) (M2)
- Resisting Arrest (ORC 2921.33) (M2)

Courtney Hollis was advised of the same and Anthony was turned over to her after she signed the waiver.



James M. Wise

From:

James M. Wise

Sent:

Wednesday, January 10, 2024 12:27 PM

To:

Benjamin Harris

Subject:

Attachments:

FW: EPD S _

_ **3**0 -

Gr6 NWD.jpeg; EPD Demographics - SI

53)

1872, 1871

Ryan.pdf

Target.

Family to Allen Sanford (5/31/95) and Eric Bugg

From: James Homoki homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofelyria.org>">homokijm@cityofel

Subject: FW: S -

From: Stiteler, Patricia <StitelerPatricia@elyriaschools.org>

Sent: Wednesday, January 10, 2024 11:43 AM
To: James Homoki < homokijm@cityofelyria.org>

Subject: S' -



Demographics

Student Profile

Last Name * S! ___

Gender

Male (M)

Grade Level 6

Phone/Email **Home Phone**

Student Address Area/Neighborhood

Home Address Street 331 Parmely Ave.

Mailing Address Street

331 Parmely Ave.

First Name

Date of Birth

Student Email

Email not entered

Aggregate Days of Membership (YTD)

Age 12 years 3 months

Middle Name

Custody

Student Cell Phone

Student Personal Email

Suffix

Student Status

Living With

Proof of Address

Apt/Suite

Apt/Suite

Elyria

City

Elyria

City

State Ohio (OH)

> State Ohio (OH)

Zipcode 44035

Zipcode

44035

Preferred Name

Graduation Year

2030

District Customization

Additional Information

Field Trips

Handbook Received

Internet Access

Release of Info

Guardian Alert

11/2/15 Grandparent POAno longer in effect as student ceased to reside with grandmother and now back with natural mother.

10/19/15 JE 15JR46854 Grandparent POAto Kimberly Sanford Thomas. Student resides with grandmother only.

MO: Alandria Sanford, 808 Allen, Elyria.

Alert Expires (date)

0/0/0

Federal Ethnicity and Race

Ethnicity

O Yes

No

O Not Recollected

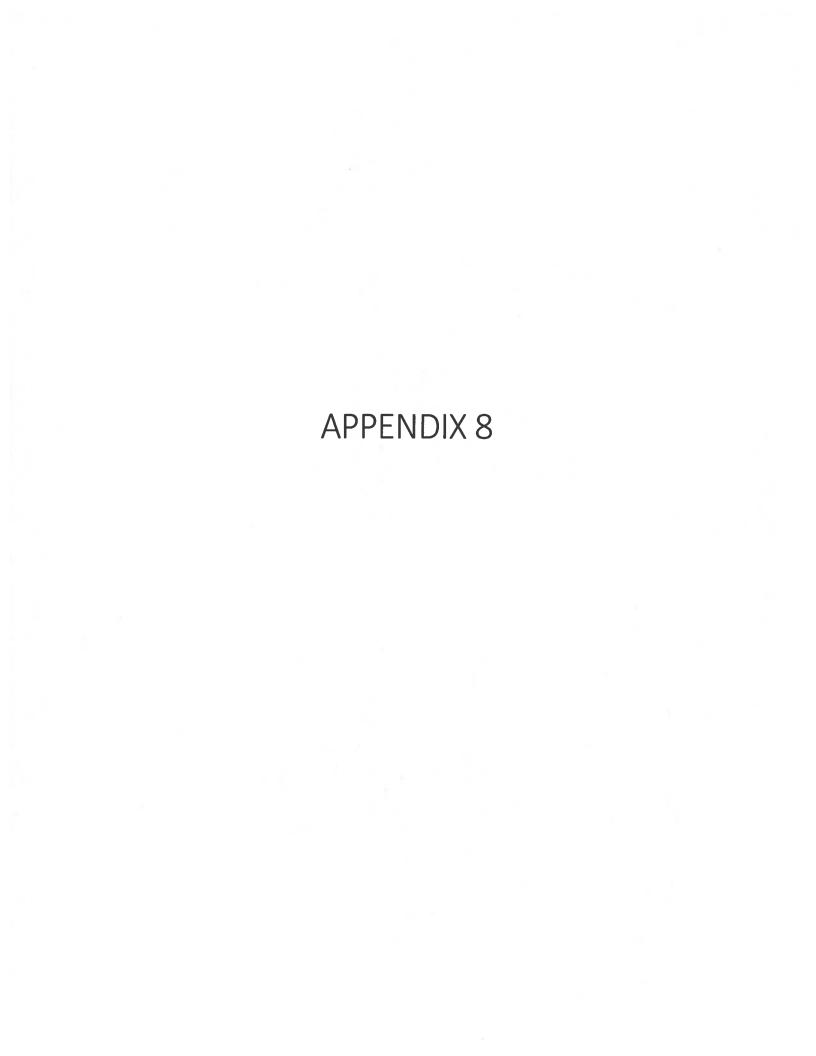
Is the Student Hispanic or Latino?

What is the student's race?

Black or African American

Scheduling/Reporting Ethnicity African-American (B)

Notes



INVESTIGATIVE NARRATIVE

REPORT#: 22-345

NARRATIVE BY: Brown #041 REVIEWED BY: Lt. Eichenlaub 093

INCIDENT TYPE: Suspicious Activity

NARRATIVE:

On 01/05/2022, at approximately 1200 hours Officer Brown was working as a SRO at Northwood Middle School when he was detailed to Ely Elementary School located at 312 Gulf Rd. for a suspicious activity complaint. Upon arrival, Officer Brown met with Principal Brandon Easton in his office with juvenile C _____ S ____(4th grade, age 10), and learned the following:

Principal Easton advised prior to the arrival, of police, he was requested by 4th Grade teacher Ms. Smith to come immediately to her classroom. Upon arrival, Ms. Smith advised Principal Easton a student told her C______ (S_____ (in the classroom) was in possession of a BB gun. Principal Easton stated as he looked at S_____ S____ removed an unknown object from his pocket, and placed it into his desk. When Principal Easton opened S_____ 's desk, a silver unloaded BB gun dropped from the desk onto the floor. S_____ was immediately removed from the classroom with his belongings. He was not found to be in possession of any additional contraband.

When asked what happened, S — stated he was over his grandmother's residence playing with the BB gun and placed it in his backpack. He stated he forgot the BB gun was in his backpack when he later went to school. While in Ms. Smith's class he showed an unknown juvenile, he was in possession of it because he thought it was cool. This juvenile then told the teacher S — was in possession of it. S — was visibly upset about the matter and stated he understood the severity of the situation.

S — 's step-father, Eric Bugg, later came to the school where he was advised of the incident. Bugg advised S — obtained the BB gun for Christmas from family, but it was taken from him at home because he did not S — to have it. Officer Brown confiscated the BB gun and later entered it into evidence as 041-1. Principal Easton requested a report be submitted on the matter and stated S — would be disciplined for the incident. He was sent home with Bugg pending the incident being further reviewed by the school.



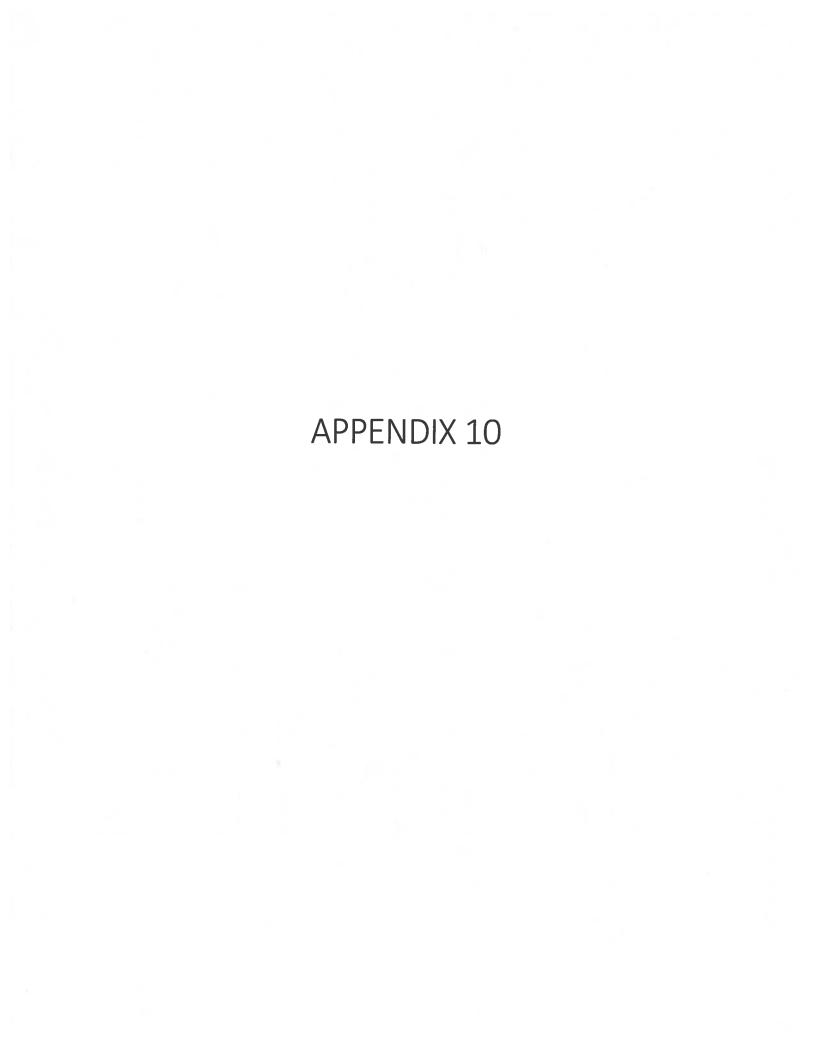
	State of Ohio Application for License to			
	Type or Print in Ink	Date Issued: 82770 F	Fee Collected: 5	1549
	SECTION I	Type: @Original Renewal		
I am applying for a: Inew license Inew license	This application will not be processed and until all required supporting doct Section 2923.125(B) or (F) and, unle fee have been submitted. FEES ARE I forms of payment.	uments as described in Ohio R ss waived, the applicable licer	devised Code (ORC nse fee or license	C) renewal
© CLEO certification	SECTION II	- 0		
	Name of Applicant: 5099	Eric		551515
Designation of	County of Residence: Local	Date of Birth	MM/DD/YY	994
Alterial Section 2	Current Residence: 331 parm	dy Ave Elyria	OH	4405
Applicant Photo	Mailing Address (if different from abo	ve):	State	ZIP
	Street	City	State	ZIP
	Social Security Number (optional):	Place of Birth	: Elyric	
			CONTRACTOR OF THE PARTY OF THE	
	Residence Telephone Number: Sex of Applicant: Male Female	Cell Phone:		n/Alaskan
CTION III SWER THE FOLLOWING QU	Sex of Applicant: Male Female	Cell Phone: Race/National Origin of A	Applicant: India Aslar Islan X Black Hispa White Othe	n/Pacific der k anic e
WER THE FOLLOWING Q	Sex of Applicant:	Cell Phone: Cell Phone: Race/National Origin of A	Applicant: India Aslar Islan X Black Hispa White Othe	der k anic e r
WER THE FOLLOWING QU Are you legally living in the Have you lived in Ohio fo	Sex of Applicant: Male Female UESTIONS. The United States?	Cell Phone: Cell Phone: Race/National Origin of A	Applicant: India Aslar Islan Aslar Islan I	n/Pacific der k anic e n NO
WER THE FOLLOWING QI Are you legally living in the Have you lived in Ohio fo Are you at least 21 years	Sex of Applicant: Male Female UESTIONS. The United States?	Cell Phone: Cell Phone: Race/National Origin of A	Applicant: India Aslar Islan Aslar Islan I	n/Pacific der k anic e r NO
Are you legally living in the Have you lived in Ohio for Are you at least 21 years Are you a fugitive from ju	Sex of Applicant: Male Female UESTIONS. The United States?	Cell Phone:	Applicant: India Aslar Islan X Black Hispa White Othe Tyes Ty	n/Pacific der k anic e n NO
Are you legally living in the Have you legally living in the Have you lived in Ohio for Are you at least 21 years Are you a fugitive from justing you prohibited by few THE FOLLOWING QUESTING SEALED OR EXPUNSUANT TO ORC 2923.14,	Sex of Applicant:	Cell Phone: Race/National Origin of A Race/National Origin of A ONVICTION FOR WHICH A COU HAS GRANTED RELIEF FROM E MEANOR LEVEL OFFENSE.	Applicant: India Aslar Islan Aslar A	n/Pacific der k anic e n NO
Are you legally living in the Have you lived in Ohio for Are you at least 21 years Are you a fugitive from jutting and Are you are fugitive from jutting are you prohibited by few THE FOLLOWING QUESTIVE SUANT TO ORC 2923.14, Are you under indictment pleaded guilty to a felony act that would be a felony are you under indictment.	Sex of Applicant: Male Female UESTIONS. The United States?	Cell Phone: Race/National Origin of A ONVICTION FOR WHICH A COU HAS GRANTED RELIEF FROM E MEANOR LEVEL OFFENSE. or have you ever been convicted delinquent child for committing you been convicted of, or plea	Applicant: India Aslar Islan X Black Hispa White Othe YES YE	n/Pacific der k anic e r NO NO NO NO
Are you legally living in the Have you lived in Ohio for Are you at least 21 years. Are you a fugitive from justine you prohibited by feet THE FOLLOWING QUESTIVERED SEALED OR EXPUNSUANT TO ORC 2923.14, Are you under indictment pleaded guilty to a felony act that would be a felong are you under indictment guilty to an offense under administration, distribution Have you ever been adjusted in Ohio Carlos Car	Sex of Applicant:	Cell Phone: Race/National Origin of A Race/National Origin of A ONVICTION FOR WHICH A COU HAS GRANTED RELIEF FROM E MEANOR LEVEL OFFENSE. Or have you ever been convicted delinquent child for committing you been convicted of, or plead illegal possession, use, sale g an act that would, if commit	Applicant: India Aslar Islan I	N/Pacific der k anic e r NO NO NO NO NO

Section 2923.126 | Duties of licensed individual.

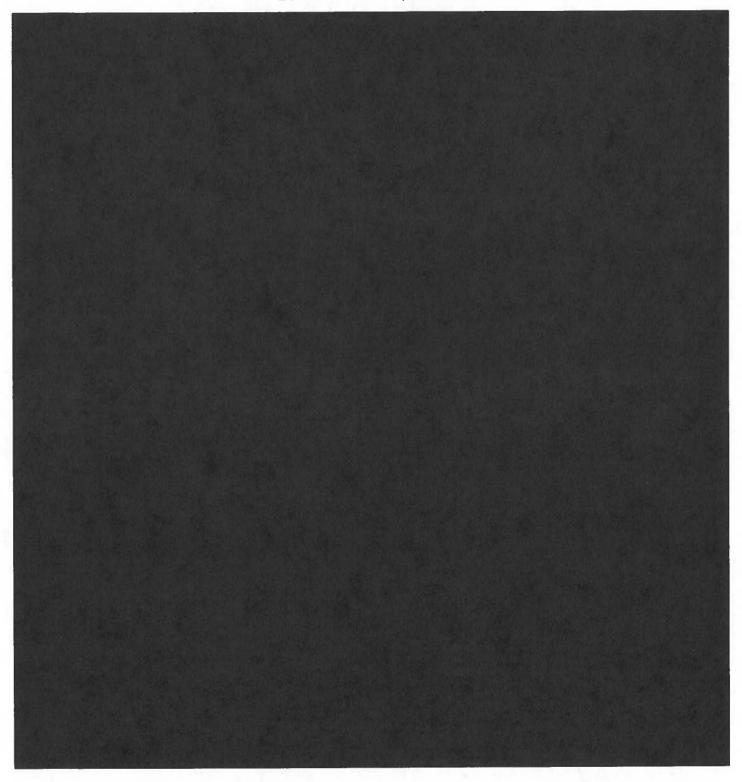
Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2923 Conspiracy, Attempt, and Complicity; Weapons Control; Corrupt Activity

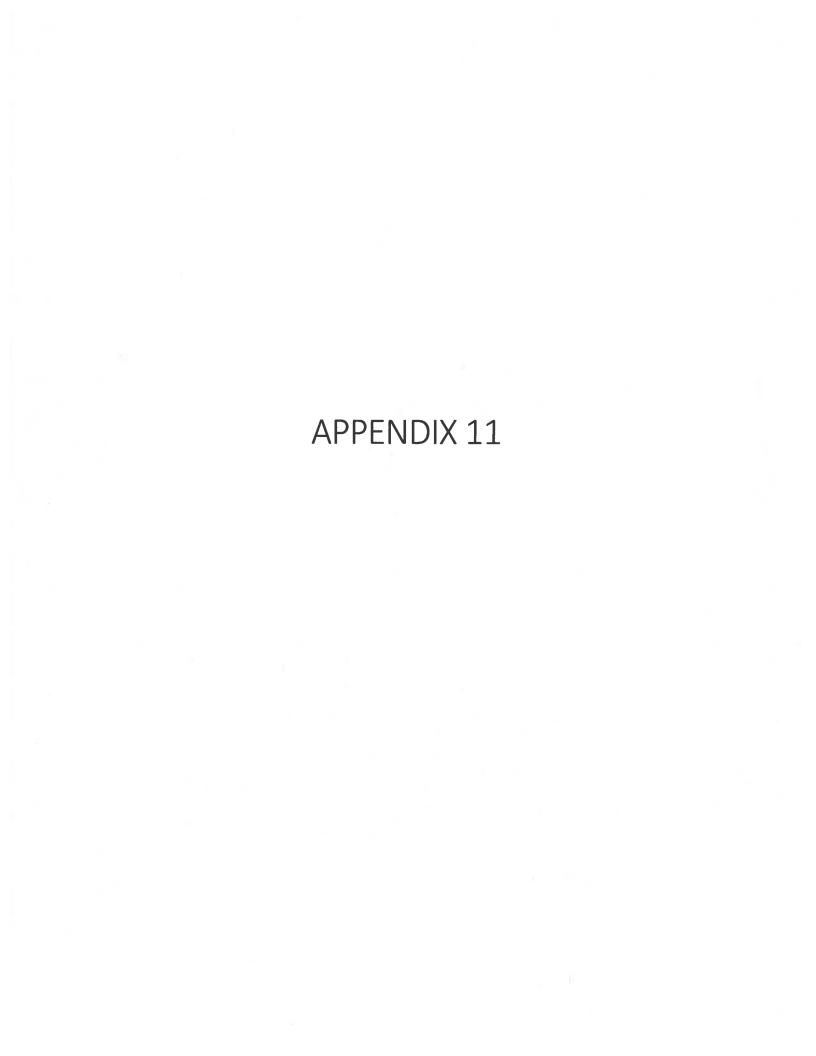
Effective: October 3, 2023 Latest Legislation: House Bill 33 - 135th General Assembly

- (A) A concealed handgun license that is issued under section 2923.125 of the Revised Code shall expire five years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of thirty days after the licensee's license expires during which the licensee's license remains valid. Except as provided in divisions (B) and (C) of this section, a licensee who has been issued a concealed handgun license under section 2923.125 or 2923.1213 of the Revised Code may carry a concealed handgun anywhere in this state if the license is valid when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within forty-five days after that change.
- (B) A valid concealed handgun license does not authorize the licensee to carry a concealed handgun in any manner prohibited under division (B) of section <u>2923.12</u> of the Revised Code or in any manner prohibited under section <u>2923.16</u> of the Revised Code. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:
- (1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation; a state correctional institution, jail, workhouse, or other detention facility; any area of an airport passenger terminal that is beyond a passenger or property screening checkpoint or to which access is restricted through security measures by the airport authority or a public agency; or an institution that is maintained, operated, managed, and governed pursuant to division (A) of section 5119.14 of the Revised Code or division (A)(1) of section 5123.03 of the Revised Code;



Search Warrant
COURT OF COMMON PLEAS
SS:
LORAIN COUNTY, OHIO







Incident Report

2023-00029061



Print Date/Time:

01/18/2024 16:46

Login ID:

glantz

Incident:

Elyria Police Department

ORI Number:

OH0470400

Incident Date/Time:

9/11/2023 8:31:22 AM

Location:

331 PARMELY AVE ELYRIA OH 44035

Phone Number: Report Required: (907)223-1088 No No

Prior Hazards:

LE Case Number:

Venue:

Incident Type: Menacing

ELYRIA

Source: **Priority:** Phone High

Status:

In Progress

Nature of Call:

Unit/Personnel

Unit

Personnel

EL144

EL144-Helmink

EL256

EL256-Palko

Person(s)

No. Role

Name

Address

327 PARMELY AVE

Phone

Race

Sex

DOB

2

Involved Involved

Tiwari, Shavani

Peshek, Gerald P

ELYRIA OH 44035

(440)309-6367 (907)223-1088

White

Male

10/20/1962

Vehicle(s)

Role

Type

Year

Make

Model

Color

License

State

Disposition(s)

Disposition

Report

Date/Time

Count

09/11/2023 09:33

Property

Date

Code

Туре

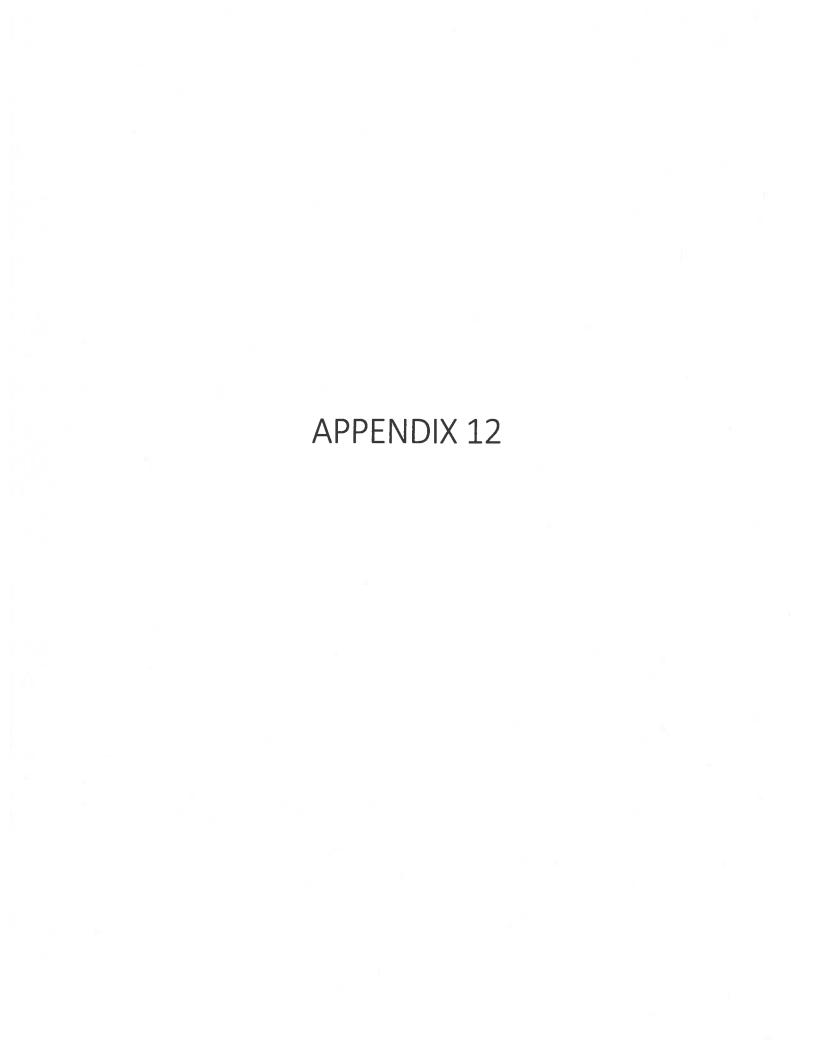
Make

Model

Description

Tag No.

Item No.



Tyler S. Loesch

From:

Judge Cook <judgecook@loraincommonpleas.us>

Sent:

Wednesday, January 10, 2024 11:50 AM

To:

Lindsey Poprocki Tyler S. Loesch

Cc: Subject:

RE: Search Warrant

CAUTION: This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.



Judge D. Chris Cook

Presiding Judge

225 Court Street, #705

Elyria, OH 44035

w (440) 329-5416

f (440) 329-5712

judgecook@loraincommonpleas.us

From: Lindsey Poprocki <Lindsey.Poprocki@lcprosecutor.org>

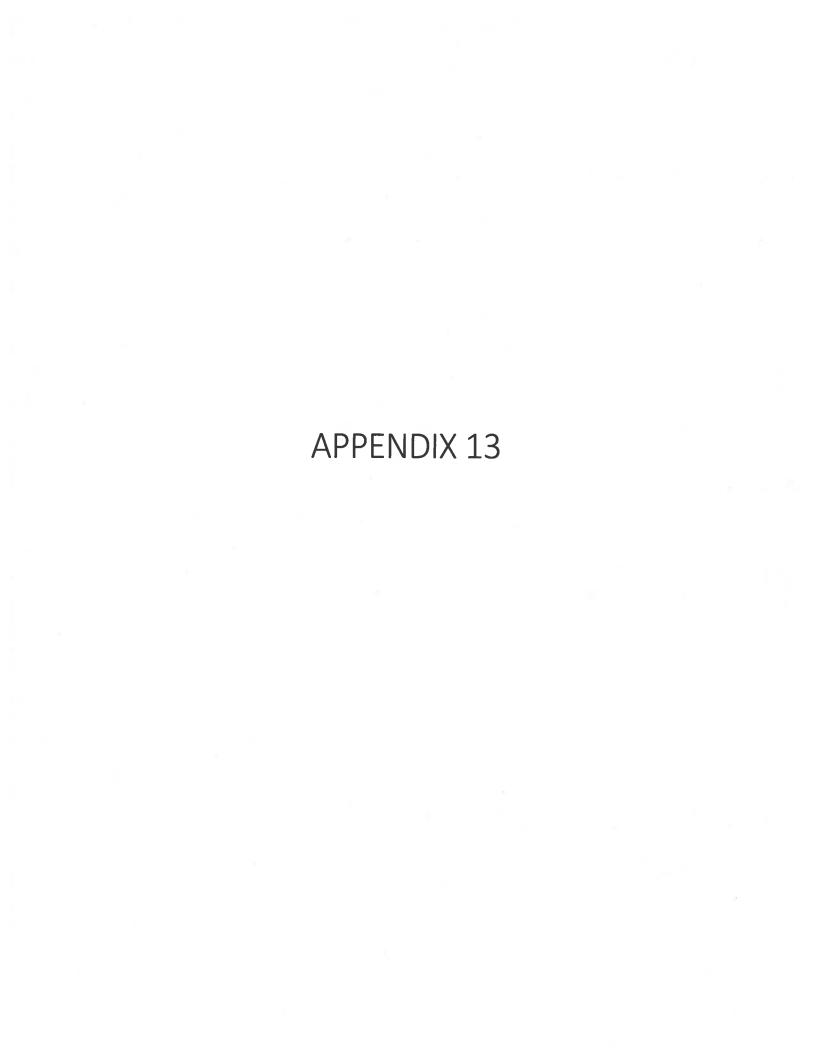
Sent: Wednesday, January 10, 2024 11:42 AM

To: Judge Cook < judgecook@loraincommonpleas.us>

Cc: Tyler S. Loesch <tloesch@cityofelyria.org>

Subject: Search Warrant

Lindsey C. Poprocki
Assistant Prosecuting Attorney
Criminal Division
Lorain County Prosecutor's Office
225 Court Street, Third Floor
Elyria, OH 44035
Office (440) 328-2233
Fax (440) 328-2183



FILED
LORAIN COUNTY

2024 JAN 19 P 12: 38
COURT OF COMMON PLEAS
TOMORLANDO

IN THE COURT OF COMMON PLEAS LORAIN COUNTY, OHIO CRIMINAL DIVISION JUDGE D. CHRIS COOK Presiding Judge

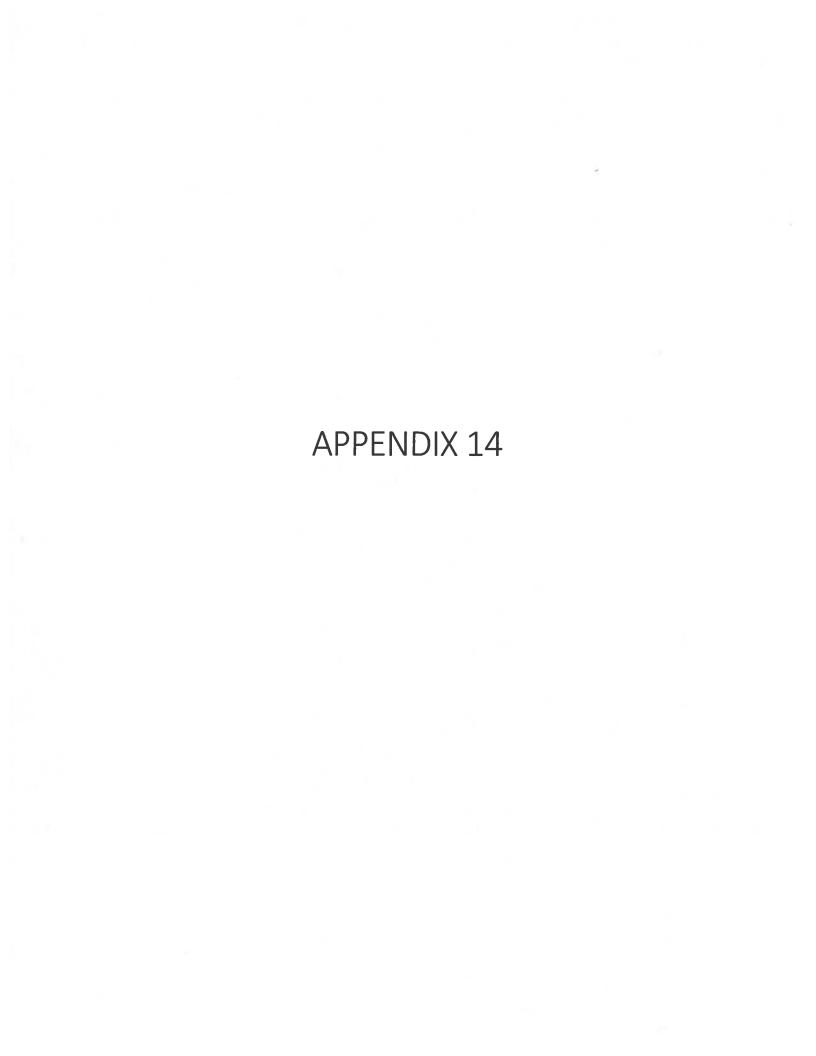
IN RE: SEARCH WARRANT OF) CASE NO. MISC 2024
331 Parmely Avenue Elyria, Ohio))) JOURNAL ENTRY)
Date: Jan. 19, 2024	J.E. VolPage

BY ORDER OF THE COURT, upon motion of the State, and at the request of the Elyria Police Department, for good cause shown, the Affidavit in support of the above-referenced search warrant issued on January 10, 2024 and executed on January 10, 2024, contained in the attached envelope along with the search warrant and inventory, is hereby ordered sealed until further order of the Court.

The Court finds that sealing the Affidavit will protect the government's compelling interest in preserving the integrity of any and all ongoing investigations which may be compromised by the release of the Affidavit. See: State v. Lawson, 11th Dist. Lake No. 2001-L-071, 2002-Ohio-5605, ¶ 25; R.C. 149.43(A)(1)(h); Supp. R. 45(E).

IS SO ORDERED. No Record

JUDGE D. CHRIS COOK







Elyria Police Department OH0470400

ORI Number:

Case Details:

Case Number:

Print Date/Time:

Login ID:

Case Number:

2024-00000902

02/29/2024 15:52

2024-00000902

glantz

Location:

331 PARMELY AVE

ELYRIA,OH 44035

EL324-Whiting Disposition:

Closed

Status:

Closed

Reported Date:

Incident Type: Occurred From:

Occurred Thru:

01/10/2024 14:04 Wednesday

Status Date:

Offense Date:

Disposition Date:

Warrant Service

01/10/2024 14:00

01/10/2024 14:00

01/10/2024

Assigned Bureau: Detective Bureau

Case Assignments: Assigned Officer

Reporting Officer ID:

EL202-Loesch

Assignment Date/Time

01/11/2024 00:00

Assignment Type Lead Investigator Assigned By Officer EL198-Lantz

Due Date/Time

01/10/2024

Associated Cases

2024-00000108

Status Open/Active

Offenses

Crime Code Statute Description No. Group/ORI Counts OH0470400 90Z NO OFFENSE NO OFFENSE

1 Offense #

Description:

Group/ORI: OH0470400 Crime Code: 90Z

NO OFFENSE

IBR Seq. No:

Statute: NO OFFENSE Counts:

01/10/2024

Method of Entry:

Burglary Unknown

Subjects

Type No. Name **Address** Phone Race Sex DOB/Age ** Non-Disclosure Subject Mentioned

Mentioned

** Non-Disclosure Subject

Subject #

1-Mentioned

Primary:

Name: Non-Disclosure Subject

Domestic Violence Referrals:

Subject #

2-Mentioned

Primary: Name:

Non-Disclosure Subject

Domestic Violence Referrals:

Arrests





Elyria Police Department OH0470400

Print Date/Time: Login ID: 02/29/2024 15:52

Case Number:

glantz

2024-00000902

ORI Number:

Arrest No.

Name

Address

Date/Time

Type

Age

Property

Date Code

Туре

Make

Model

Description

Tag No. Item No.

Vehicles

No. Role Vehicle Type

e Year

Make

Model

Color

License Plate

State

Investigative Narrative

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: Whiting 324 REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Search Warrant

NARRATIVE:

On 01/10/2024, at approximately 1415hrs, the Elyria SRT Team executed a search warrant at 311 Parmely Ave., Elyria, Ohio relating to EPD case 2024-108. The EPD Detective Bureau (Capt. Hammonds, Sgt. Wise, Sgt. Grove, Det's Campana, Marquardt, and Catalano) assisted in the execution of the search warrant, and conducted the search of the premises. Det. Whiting was assigned as the evidence technician and custodian for the property.

Det. Whiting photographed the exterior of the residence in a counter clockwise fashion, and noted that the residence was a split-level home. Det. Whiting then photographed the interior of the residence starting from the north entry door. Det. Whiting noted that entry door led to two sets of stairs with one going up and the other down. Taking the steps upstairs, Det. Whiting noted that the stairs led into a living room area with a kitchen off to the east side. Off the living room, going south, Det. Whiting observed a hallway with a bedroom, a storage room/bedroom, and a bathroom leading off of it. Going downstairs, Det. Whiting noted a hallway with a bedroom off to the west side, a laundry room to the east side, another storage/ bedroom off the south east corner, and another bedroom off the South west side. The rooms were labeled A-G, and detectives began the search of the residence.

Det. Whiting set up an evidence receiving area on the kitchen table. After a thorough search by the detectives, it was determined that no evidence was located. Det. Whiting recorded that a CD with photos of the scene would be submitted to evidence. A copy of the search warrant and Elyria Police Department Property Report was left on the kitchen table. Det. Whiting photographed the items for documentation purposes.

Investigative Narrative

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: Sgt. Grove #139 REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Search Warrant Execution

NARRATIVE:

On 1/10/2024 at approximately 1404 hours, Sgt. Grove assisted Detectives with the Elyria Police Investigative Division and Elyria Police Special Response Team (SRT) with the execution of a search warrant at 331 Parmely Ave. Sgt. Grove assisted with securing the perimeter of the residence while Elyria PD SRT made entry into the residence.

While outside on perimeter, Sgt. Grove observed a white female subject, later identified as Courtney Price, exit the front door of the residence where she was handcuffed and escorted to the sidewalk area pending confirmation that the residence was secured by Elyria PD SRT. While speaking with Price, Sgt. Grove learned that her 17-month-old son, ________, was inside of the residence along with a dog. Price advised her Aunt and Uncle live at the residence who she identified as Redia and Coke Jennings. Price provided information on other family members to Sgt. Wise and Sgt. Grove. Price advised her child is currently on a ventilator. Sgt. Grove explained to Price that initially law enforcement would have her sit in a vehicle, at which time, Price advised _____ was having some respiratory issues prior to this incident.

Once learning of — 's current respiratory issue, Sgt. Grove confirmed the residence was secured by Elyria PD SRT, and NO other subjects were in the residence, Sgt. Grove directed Ptlm. Catalano to release Price from the handcuffs, and contact Lifecare for treatment of the child as a precautionary measure. Sgt. Grove, Sgt. Wise, and Ptlm. Catalano escorted Price back into the residence to make contact with the child. Sgt. Grove walked upstairs to the living room area. Sgt. Grove observed — laying in a baby (bouncy) seat that was placed on the floor next to a baby crib and/or changing table. Sgt. Grove observed — to be wearing only a diaper and hooked to a ventilator attached to the child's torso area. Sgt. Grove observed — to be slightly pale and rapidly moving his legs up and down. Sgt. Grove did NOT observe any physical injuries to — at this time.

Sgt. Grove then turned around after observing — and noticed Price did NOT follow Sgt. Grove to the child. Sgt. Grove observed Price with Sgt. Wise in an adjoining bedroom where Price was putting on a pair of socks. Sgt. Grove re-directed Price to her child, so she could tend to — Price asked for information on her cell phone that Sgt. Wise currently had, so that she could provide information to — s respiratory specialist, who Price was previously text messaging. Sgt. Grove instructed Price to use her phone to call the specialist which she did. While waiting for a response from the specialist, Sgt. Grove asked Price if the behaviors — was displaying were normal for him. Price advised the behaviors were normal and — just recently was released from the hospital after being admitted for one year due to several medical issues. Price received no response from the specialist. Price then monitored the medical equipment — was hooked up too. Price again advised — s physical behaviors were normal and he is "okay", but his breathing was not. All (3) Elyria PD SRT Medics (Elyria Fire Department) made contact with Price and — Price provided Medics with — 's medical

INVESTIGATIVE NARRATIVE

history as they began to evaluate him. Sgt. Grove left the room to provide the Medics room to evaluate ____

A short time later, Lifecare personnel arrived on-scene and — and Price were transported to a nearby hospital for further evaluation and/or treatment. Sgt. Grove continued to assist with a search of the residence as a result of the search warrant. At the conclusion of the search, Sgt. Grove cleared the property with all other Elyria Police units.



ELYRIA

Kevin A. Brubaker, Mayor

Elyria Police Department 18 West Avenue Elyria, OH 44035 440-323-3302 FAX 440-326-1338 William R. Pelko Chief of Police



January 12, 2024

PRESS RELEASE

Elyria, OH – On January 10, 2024, Elyria Police Detectives obtained a court-authorized search warrant for the residence located at 331 Parmely Ave., Elyria, Ohio, as part of an ongoing criminal investigation.

At approximately 2:12 p.m., the Elyria Police Special Response Team (SRT) executed the search warrant at 331 Parmely Ave. which was the correct address of the search warrant.

During the tactical operation, two diversionary devices, commonly known as a "flash-bangs" were deployed outside of the residence. These devices produce sound and light that is noticeable in day or night conditions and are intended to distract the suspects attention. Diversionary devices do not produce a continuous burn and they do not deploy or contain any pepper gas or chemical agents.

After repeated announcements, the tactical team entered the interior of the residence, where an adult female and her 17-month-old child were located. The female informed officers that the child had a pre-existing medical condition. Elyria Police Detectives, Elyria Fire Paramedics and the mother assessed the condition of the child, confirming that the child did not sustain any apparent, visible injuries.

The child's mother informed detectives that she intended on taking the child to the hospital due to the child's pre-existing illness unrelated to the tactical operation; however, she lacked an available car seat for transportation.

Elyria Police detectives called Lifecare Ambulance to the scene to provide any medical attention that EMS deemed necessary. Lifecare Paramedics arrived on the scene, and the medics assessed the child and provided transportation to a nearby hospital.

Any allegation suggesting the child was exposed to chemical agents, lack of medical attention or negligence is not true.

The investigation that led to the affidavit to obtain a search warrant for 331 Parmely Ave. in Elyria Ohio remains active and ongoing. As the investigation progresses, additional details will be released to the public.

Lt. Bill Lantz - Elyria Police Investigative Division

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: Ptl. Catalano #052 RE

INCIDENT TYPE: Search Warrant

NARRATIVE:

On 01/10/24 at approximately 1404 hours, Officer Catalano assisted the Elyria Police Investigative Division with the execution of a search warrant at 331 Parmely Ave. Officer Catalano was approaching the area of the residence while the Elyria Police Special Response Team (SRT) made entry into the residence.

While outside the residence, Officer Catalano observe a white female, later identified Courtney Price, exit the front door of the residence. Price was secured in handcuffs by an SRT member and Officer Catalano escorted Price to the sidewalk area while SRT continued to secure the residence. As Officer Catalano was escorting Price to the sidewalk, Price had mentioned her child, later identified as _____ (DOB: 0731/22), was inside the residence and was on a ventilator.

A consent search of Price's person was conducted by Officer Catalano with Officer Catalano locating Price's cellphone in her front, right pant's pocket. Officer Catalano secured Price's phone at that time. Price told Officer Catalano she would give officer the password to her phone if needed.

Price was originally going to be placed in a vehicle as the investigation continued. Price began talking about her son and about his various medical issues. After it was confirmed that the residence had been secured, Sgt. Grove instructed Officer Catalano to remove the handcuffs from Price and for Lifecare to be contacted to respond to the scene due to s reported medical issues.

Sgt. Grove began escorting Price back into the residence with Sgt. Wise and Officer Catalano following behind Price. Sgt. Grove walked upstairs into the living room area where had been located and Price walked upstairs into a bedroom to change her socks. Sgt. Grove then walked over and advised Price to take care of her child first.

Officer Catalano walked into the living room with Price and observed — to be laying in a baby bouncy seat with only a diaper on. The baby bouncy seat was on the floor located next to a crib. Officer Catalano observed — to have a ventilator hooked up to his throat area. Officer Catalano did not observe any physical injuries to — .

Price requested for Officer Catalano to unlock her phone to communicate with sespiratory therapist. Officer Catalano gave Price her phone back, so she could communicate with the respiratory therapist. Officer Catalano observed began to kick his legs up and down which Price later stated was typical behavior. Price had mentioned that had been in the hospital for a year due to multiple medical issues and that he just had been recently released from the hospital. Price was unable to get in contact with separatory therapist at that time.

Sgt. Grove advised Price to continue taking care of —as she normally would. Price advised again that — s behavior was normal, but that his breathing was not normal, but that — was okay.

Elyria PD SRT Medics made contact with Price. Price began to provide the medics with some of — s medical history including being born pre-mature at 26 weeks and other pre-existing respiratory and pulmonary conditions. Price advised — typically is not on oxygen, but was currently on it due to recent medical issues. Price also explained that — had been running a fever the past four days. Price stated she was able to get the "105" fever down with a "double dose of Tylenol". Price stated to the medics that — was acting normal, but that the breathing was not normal. Medics then began assessing and evaluating — s condition.

Price began also to explain that she had been staying at that residence for only a few days and that she and ___ were supposed to leave, but did not leave due to ___ getting sick.

Officer Catalano gathered Price's and — 's personal information as Lifecare personal began to arrive on scene at 1432 hours. Price explained to Lifecare that — 's main specialist doctor is in Kentucky. Price stated she wanted — 's transported to the hospital due to the recent cold he has had.

Officer Catalano later went downstairs with Price to locate some of — 's medical supplies (tubing for the ventilator), but she was unable to locate any in the basement at that time.

After Lifecare assisted Price on how to safely transport — to the hospital, — was placed on a cot and loaded into the rear of the ambulance around 1448 hours. Price and — were later transported to a hospital.

Officer Catalano then continued to assist with the search of the residence due to the search warrant. Officer Catalano then cleared then scene with all other Elyria PD units at the end of the search.

Larson Investigative Narrative

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: Detective Larson 199 REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Warrant Service

NARRATIVE:

On Wednesday, January 10, 2024 at approximately 1100hrs., Detective Larson conducted surveillance on 331 Parmely Ave. Detective Larson drove by the residence and took photographs of the residence as well as vehicles parked in the driveway. These photos will be maintained in the EPD digital evidence locker. While driving by, Detective Larson observed two vehicles in the driveway, one sedan and a silver Toyota SUV Ohio registration (HAU 2952) parked behind the sedan which returned to Respiratory Sleep Solutions Inc, 159 Crocker Park Blvd. STE 400. Detective Larson was unable to observe the license plate on the sedan due to the Toyota being parked behind it obstructing view. No subjects were observed outside the residence during the timeframe that surveillance was conducted.

Following the residential search warrant being signed for 331 Parmely Ave, Detective Larson performed his duties on the Elyria Police Special Response Team during the execution of the search warrant for 331 Parmely Ave. After the residence was secure, Detective Larson assisted in searching the residence. Detective Larson searched the downstairs southern most bedrooms. The south east bedroom appeared to be lived in, with property all over the room, slightly cluttered. During the search, Detective Larson checked the bed for any items listed on the search warrant then searched the remainder of the room placing items on the bed after they had been searched.

Following the search of the south east bedroom, Detective Larson searched the southwest bedroom which appeared to be storage. There was no bed in this room and a large number of items varying from tools to general household items. Once the search was complete, Detective Larson cleared from the residence.

Investigative Narrative

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: DeMarco 076 REVIEWED BY: Sgt Wise

INCIDENT TYPE: Search Warrant Execution

NARRATIVE:

On January 10, 2024, Detective DeMarco was notified that the Elyria Police Special Response Team will be executing a search warrant at 331 Parmely Ave. As a member of the Elyria Police Special Response Team, Detective DeMarco assumed the duties as an operator of the Special Response Team, as well as helping with the search of the residence, due to being a member of the detective bureau.

After the Elyria Police Special Response Team completed the execution of the search warrant, Detective DeMarco assisted with the search of the residence. Detective DeMarco assisted Sgt Wise with searching the first upstairs bedroom, on the west side of the house, labeled "C." Before conducting the search Det. Whiting took photographs of the entire house to include each room. Before Detective DeMarco started searching room "C," he noticed it to be messy, with clothes all over the floor and bed, with miscellaneous items/trash scattered all over the floor and dressers. Detective DeMarco did not locate any firearms inside room "C."

Detective DeMarco also searched the laundry room and the crawl space underneath the stairwell attached to the laundry room, on the bottom level, of the east side of the house. Detective DeMarco noticed the laundry room to have clothes and bedding scattered all over the floor, as well as multiple baskets of laundry and a large TV box. Detective DeMarco did not locate any firearms inside of the laundry room/crawl space.

Robinson Investigative Narrative

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: Robinson 259 REVIEWED BY: Sgt Wise

INCIDENT TYPE: Warrant Service

NARRATIVE:

On January 10, 2024 Det. Robinson was notified that the Special Response Team (SRT) was being activated to execute a search warrant at 331 Parmely Ave. Det. Robinson assumed his responsibilities of an SRT operator, followed up as a member of the "search team" due to being a detective in the Investigative Division.

At the conclusion of SRT, conducting a primary and secondary search of the residence, the house was turned over to the detective bureau. Det. Robinson at this point secured his ballistic vest and helmet and stored said items in an unmarked vehicle.

Det. Robinson then followed up with determining which portion of the residence still needed to be checked for stolen firearms. It was seen that the Southeast room on the main floor still needed to be checked. Upon entering the room, Det. Robinson observed a desk or vanity positioned on the East wall, under the window which had makeup and other items on the desk surface. On the South wall there was a large metal cabinet which contained pull out drawers as well as horizontal sliding doors. The entire cabinet contained medical equipment. On the west wall, there was a metal shelving unit which contained clothes folded on the shelves as well as clothes hung on hangers. Also, on the West wall was a drawer which contained clothes. On the North wall there was a closet located which contained random personal items and a large box containing shoes. Also, on the North wall was a metal and glass TV stand which had random items lying on top of it. Overall, based on the items located in the room, it was used as storage and also for women to put make up on and also care for hair.

Det. Robinson completed a thorough search of the room which entailed removing items from the closet and drawers where a firearm could possibly be concealed. After the thorough search was completed and no firearms were located, Det. Robinson left the room, eventually leaving the residence once the search was complete.

Investigative Narrative #214

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: Detective Marquardt #214 REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Search Warrant

NARRATIVE:

On January 10, 2024, Detective Marquardt was assigned to assist the Investigative Unit with the execution of a search warrant for 331 Parmely Avenue, Elyria Ohio. Detective Marquardt staged one block south of the location on Brace Avenue. Once the Special Response Team (SRT) arrived, Detective Marquardt along with Lieutenant Lantz secured the rear/south perimeter. A short time later Detective Marquardt and Lieutenant Lantz were notified that the residence was secured and to approach the front.

Detective Marquardt entered the residence and waited for the overall photographs to be taken by Detective Whiting. Once overall photographs were taken, Detective Marquardt began searching the residence. Detective Marquardt started in the northwest bedroom on the lower level with Sergeant Grove. Detective Marquardt searched the south side of the bedroom. Prior to starting the search, Detective Marquardt observed the bedroom in disarray with clothes scatted on the floor with miscellaneous trash. Detective Marquardt searched the closet area and dresser on the wall next to the closet. Detective Marquardt moved multiple items of clothing and looked in multiple miscellaneous boxes.

Detective Marquardt then searched the storage space on the lower level located under the steps leading to the living room. Detective searched through and moved multiple boxes filled with miscellaneous clothes, tools, and toiletry items.

Detective Marquardt then searched the exposed celling space in the laundry room located in the northeast portion of the lower level. The lower portion of this room was already searched prior to Detective Marquardt's arrival.

REPORT#: 2024-00902

NARRATIVE BY: Lt Lantz 198 REVIEWED BY: Capt Hammonds 147

INCIDENT TYPE: Search Warrant

NARRATIVE:

On Wednesday, January 10, 2024, Elyria PD Detectives were following up investigation 2024-108. This investigation involved the aggravated burglary of 108 Bell Ave. that was reported on January 2, 2024. Details in the report indicated that more than a dozen firearms along with several boxes of ammunition was stolen from the residence. These firearms included several handguns, revolvers, shotguns and rifles. Det. Loesch was the assigned lead investigator.

During the course of the investigation several juvenile suspects were identified, arrested and charged for the burglary and other offenses. Additionally three of the stolen firearms were recovered and several firearms to include rifles, shotguns and hundguns remained unrecovered. Investigators learned that these juveniles were recklessly and negligently discharging the firearms in the city of Elyria both outdoors and inside a residence. Additionally investigators determined that there were attempts to sell the stolen firearms. Additional juvenile suspects remained at large and were suspected of being in possession of stolen firearms.

Investigators were aware that these juvenile suspects were associated with many other juveniles and young adults that are connected/affiliated with several reported and investigated violent crimes and weapons offenses involving firearms. These crimes include homicides, felonious assaults and aggravated robberies involving firearms.

As a result of information learned during the course of this investigation Det. Loesch applied for a search warrant for 331 Parmely Ave. to locate evidence relating to this investigation.

Sgt. Wise began gathering intelligence on the subjects that are affiliated with 331 Parmely Ave. Sergeant Wise briefed Lt. Lantz and Capt. Hammonds on high level threat assessment. Lt. Lantz and Capt. Hammonds both agreed upon the utilization of the Special Response Team for this residential search warrant. Chief Pelko was briefed and approved the activation of the Special Response Team.

On Wednesday, January 10, 2024, at approximately 1150 hours, the search warrant was authorized by the Honorable Judge D. Chris Cook of the Lorain County Court of Common Pleas.

On Wednesday, January 10, 2024, at approx. 1325 hours, Lt. Lantz took an unmarked vehicle to the area of 331 Parmely to conduct surveillance. Lt. Lantz drove past the residence and observed three vehicles parked in the driveway with the closest vehicle to the roadway was a red in color vehicle. Lt. Lantz acquired the vehicle's license of Ohio RP #KDU9175. This information was relayed to Sgt. Wise. The vehicle returned to Loretta Holloway, with the listed address of 2101 S. 6th St, Ironton, Ohio. Sgt. Wise informed Lt. Lantz that Eric Bugg was likely familiar with the UC vehicle Lantz was utilizing. At approximately 1345 hours, Lt. Lantz

contacted Sgt. Grove and asked that he and Det. Marquardt respond and take over surveillance. Lt. Lantz drove up to 300 block of Warden Ave. and remained in the area awaiting the arrival of SRT on Parmely Ave.

At the same time, Lt. Lantz took up a rear security position on Brace Ave. monitoring the rear of the residence. Upon determining that the residence was secured, Lt. Lantz drove to 331 Parmely Ave. Lt. Lantz briefly entered the residence and made contact with Captain Hammonds. Lt. Lantz advised that he would return to station to ascertain the status of an interview. Captain Hammonds, Sgt. Grove, Sgt. Wise and additional investigative personnel remained at the scene. At approximately 1424 hours, Lt. Lantz cleared 331 Parmely Ave. and returned to station.

Lt. Lantz directed investigative personnel involved in this incident to complete a report narrative detailing their actions/involvement. Lt. Lantz later reviewed these narratives and various body camera footage relating to this incident.

On January 12, 2024, the search warrant for 331 Parmely Ave. was returned by Det. Loesch to Lindsey Poprocki of the Lorain County Prosecutor's office with instructions to seal the warrant and affidavit.

T. Loesch investigative narrative

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: T. Loesch 202

REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Search Warrant

NARRATIVE:

On Wednesday, January 10, 2024, Elyria Police detectives continued their investigation into Elyria Police Case 2024-108, which centered on the aggravated burglary reported at 175 Bell Avenue, Elyria, Ohio, reported on Tuesday, January 2, 2024. The report detailed the theft of over a dozen firearms, including handguns, revolvers, shotguns, and rifles, along with several boxes of ammunition. Detective T. Loesch was assigned as the lead investigator.

During the investigation multiple juvenile suspects were apprehended and charged in connection with the burglary at 175 Bell Avenue, and related crimes. Three of the stolen firearms were recovered the morning of Wednesday, January 10, 2024. Several firearms to include rifles, shotguns and handguns remained stolen and unrecovered.

During the course of several interviews, Detective T. Loesch learned that these and other identified juveniles had been recklessly discharging the firearms both outdoors and indoors in Elyria. Additionally, Detective T. Loesch learned that there were attempts to sell the stolen weapons.

Detective T. Loesch identified the other juvenile suspects that remained at large and were believed to be in possession of stolen firearms.

Investigators were aware that these juvenile suspects were part of a broader network involving other juveniles and young adults associated with various violent crimes and weapons offenses.

	During the course of the investigation Detective T. Loesch learned that C
S	iuvenile, had committed the burglary at 108 Bell Ave. with other juveniles and that
C	was in possession of a stolen shotgun from the residence. Utilizing investigative
re	sources C 's address was confirmed by investigators as 331 Parmely Avenue, Elyria,
Ol	hio.

Based on the information obatined to this point of the investigation, Detective T. Loesch sought a search warrant for 331 Parmely Avenue to locate evidence relating to this investigation. At approximately 11:50 AM, the search warrant was granted by the Honorable Judge D. Chris Cook of the Lorain County Court of Common Pleas.

At approximately 1:56 PM, Christopher was informed of his arrest by the detectives, with Principal Basinski present throughout the process. Detective Homoki verified C ———————————————————————————————————
During the transport, at 2:06 PM, Detective Homoki inquired about C —— s living arrangements. C —— stated that he resides with his mother, Alandria Sanford, and his stepfather, Eric Bugg, along with his siblings. C —— confirmed that their residence was on Parmely Avenue.
On January 10, 2024, at 2:12 PM hours, the Elyria PD Special Response Team and members of the Investigative Division executed the search warrant at 331 Parmely Ave., Elyria Ohio.
On January 10, 2024, upon arrival at the Elyria Police Department, C was escorted to an interview room. Detectives T. Loesch and Homoki began the interview by advising C of his Miranda Rights, which C verbalized that he understood. Detective T. Loesch confirmed a second time that C understood his Miranda Rights, and C again verbalized that he understood.
At 2:19 PM, Detectives began by gathering C —— 's basic information, at which time C —— confirmed that he was currently living at 331 Parmely Avenue.
During the interview, (confessed to participating in the burglary and theft of firearms at 175 Bell Avenue on January 2, 2024. (admitted to being coerced into the burglary by his associates from 316 Brace Avenue, Elyria, Ohio, namely E D: J W and Y ? C claimed that he left the stolen shotgun at 316 Brace Avenue.
At 2:35 PM, Detective Homoki asked C to confirm his address. C responded "331 Parmely Avenue." Detective Homoki asked C where his bedroom was at in 331 Parmely Avenue, and C advised his bedroom is the upstairs back – left bedroom.
At 2:37 PM, when asked what color his bedroom walls are, C advised "I ain't finna [I am not going to] lie to you" and advised that he does not live at 331 Parmely Avenue, but that he actually lives at 163 Parmely Avenue, Elyria, Ohio. advised he and his family moved out of the 331 Parmely Avenue residence sometime in November of 2023.
Despite the inconsistencies in his statements, estimated that he and his associates stole seven firearms.

Wise Investigative Narrative

INVESTIGATIVE NARRATIVE

REPORT#: 2024-0902

NARRATIVE BY: Sgt. Wise

REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Search Warrant

NARRATIVE:

On January 10th, 2024, Elyria PD Detectives were following up an burglary investigation reference EPD Case 2024-108. The burglary was reported on January 2, 2024 and involved the theft of more than a dozen firearms along with several boxes of ammunition from the residence.

During the course of this investigation several juvenile suspects were identified, arrested and charged for the burglary and other offenses. Additionally three of the stolen firearms were recovered at 316 Brace Ave. and several firearms to include rifles, shotguns and hundguns remained unrecovered.

Investigators learned that these juveniles were recklessly and negligently discharging the stolen firearms in the city of Elyria both outdoors and inside a residence. Additionally investigators determined that there were attempts to sell the stolen firearms. Additional juvenile suspects were identified, remained at large and were suspected of being in possession of stolen firearms. C a juvenile, was one of these identified juvenile suspects in this burglary investigation and probable cause was established that one of the stolen shotguns was at residence.

Sergeant Wise reviewed information learned thus far in the investigation and gathered additional intelligence on C _____ S ____. This information indicated that C _____ S ____ residence was 331 Parmely Avenue, Elyria, Ohio.

As a result of information learned during the course of this investigation Det. Loesch applied for a search warrant for 331 Parmely Ave. to locate evidence relating to this investigation.

Sergeant Wise reviewed incidences, cases, coordinated surveillance, reviewed statements of involved parties, and intelligence gathered, five subjects were identified, C S Eric Bugg, Alan Sanford, Redia Jennings and Marlon Jennings. After an evaluation of those subject's criminal history, location factors, weapons involved, and general risk factors, Sergeant Wise briefed Lieutenant Lantz and Captain Hammonds on high level threat assessment. Lieutenant Lantz and Captain Hammonds both agreed upon the utilization of the Special Response Team for this residential search warrant. Chief Pelko was briefed on these facts as well, pertaining to the subjects involved and the high-level threat assessment, with Chief Pelko approving the activation of the Special Response Team.

Sergeant Wise at that time began providing Sergeant Harris, a Team Leader for the Special Response Team, the pertinent information about the above five subjects, weapons, location, and safety concerns.

On January 10th, 2024, at 1150 hours, the search warrant for 331 Parmely Ave. was authorized by the Honorable Judge D. Chris Cook of the Lorain County Court of Common Pleas.

On January 10th, 2024, at 1412 hours, the Elyria PD Special Response Team and members of the Investigative Division executed the search warrant at 331 Parmely Ave., Elyria Ohio. Upon arrival, SRT personnel knocked and announced in accordance with warrant requirements. After the residents failed to open the door SRT personnel made entry into residence.

Sergeants Wise and Grove met with a female later identified as Courtney Price who was escorted out of the residence. Courtney explained that she has a seventeen-month-old child, later identified as _______, remained inside of the residence. Courtney advised that she does not live at the residence, she is just visiting, as her aunt lives there. Courtney explained who currently lived at the residence as well, to include her mother, who she assumed this type of action was directed toward.

Once the Special Response Team deemed the residence clear and safe, Courtney was escorted into the residence to tend to her child. Courtney walked inside of the residence, looked toward her child in the living room, then walked into the back-left bedroom.

Courtney began putting on socks, Sergeant Wise asked Courtney if C — lived at the residence, Courtney went over who lived at the residence, without mentioning C — Sergeant Grove instructed Courtney to come to the living room to tend to her child.

Courtney was allowed to use her cell phone to speak to the respiratory therapist. Courtney ensured that _____ appears to "normally do that". Sergeant Grove instructed Courtney to do what she has to do to tend to the child. Courtney brought up that this is "naughty side of her family" so this is the first time ever being involved in something like this.

Sergeant Wise showed Courtney the Northwood School photograph of C'

S. — she replied "that kind of looks like their kid" as she pointed to a nearby picture in the living room. Elyria Fire Paramedics, who are assigned to the Special Response Team, assessed — Shortly afterwards, Life Care personnel arrived and transported — to a local hospital at the request of Courtney.

As Waylon was transported by Life Care, Sergeant Wise spoke to the following Detectives regarding the search of the residence:

Evidence Technician / Evidence Log

 Detective Whiting – who was assigned as the custodian for any evidence collected by Detectives. Detective Whiting is assigned to take photographs of the residence prior to

the search. If/when Detectives locate contraband, those Detectives take photographs of the contraband prior to seizing it, then provide that contraband to Detective Whiting. Detective Whiting later left the evidence log at the residence, in which the only item taken was photographs of the residence, which were later placed onto a CD.

Search Team

- Capt. Hammonds generalized search
- Sgt Grove generalized search
- Sgt Wise generalized search
- Det. Campana generalized search
- Det. Robinson generalized search
- Det. Demarco generalized search
- Det. Catalano-generalized search
- Det. Marquardt generalized search
- Det. Larson generalized search

During the search of the residence, Sergeant Wise	communicated with Detective Homoki
who was interviewing the juvenile suspect, C S	at Elyria Police Department.
Detective Homoki informed Sergeant Wise that C	stated that he lives at 331 Parmely
Ave with his mother and step dad Eric Bugg. Sergeant W.	
C 's bedroom is located in the residence. Detecti	ive Homoki replied that Christopher
stated that it was the upstairs back left bedroom.	

At approximately 1440 hours, Detective Homoki informed Sergeant Wise that C _____ admitted that he burglarized the residence (175 Bell Ave), but now stated that he lives at 163 Parmely Ave.

331 Parmely Ave Owner

On January 10th 2024 at approximately 1600 hours, Sergeant Wise was notified that subjects were in the lobby requesting to speak to Sergeant Wise. Sergeant Wise spoke with Anand Dubey and his wife (did not obtain her name) in the lobby interview room. Anand advised Sergeant Wise that they were the homeowners of 331 Parmely Ave and asked for a reason behind the search warrant at the residence. Sergeant Wise informed them that the residential search warrant was signed this afternoon for 331 Parmely Ave, regarding an on-going investigation to stolen firearms. Anand and his wife informed Sergeant Wise that he was unaware of anyone committing crimes at that residence, because they complete background checks prior to allowing the tenants to move in. Anand mentioned that the previous tenant, Eric Bugg, was assumingly enough the person in question. Anand advised that he completed a background check on him as well, not revealing a criminal history. Anand also stated that he and his wife are currently still attempting to locate Eric Bugg, as he was responsible for damage to 331 Parmely Ave, prior to moving out. Anand stated that he would like to know where Eric Bugg was currently stating, Sergeant Wise advised that he cannot release that information. Sergeant Wise provided Anand his

police business card and informed him that no police reports can be released at this point. Anand provided his email address, _____ and phone number _____?.



Screenshot of EPD's lobby video surveillance. Anand and his wife can be seen walking into the lobby interview room.

Northwood Principal Interview

Lieutenant Lantz advised following this search warrant, that he reviewed Detective Loesch's body camera footage. During Detective Loesch's and Homoki's initial encounter with C _____ S ____ inside of Northwood School, the body camera was still "buffering" for the first thirty seconds, only capturing the encounter visually, no audio was captured.

On January 17th 2024 at approximately 1148 hours, Sergeant Wise went to Northwood School Principal Michael Basinski residence to speak to him about what occurred at Northwood School when C ______ S ____ was taken into custody. Principal Basinski advised the following had occurred.

On January 10th 2024, Principal Basinski advised that Detective Homoki contacted him and asked he had a student named C ______ S ____, with Principal Basinski confirming that he did. Detective Homoki asked what C ______ 's listed address was, Principal Basinski pulled up their school records and informed Detective Homoki. Detective Homoki then asked if C ______ was currently at school, Principal Basinski confirmed that he was. Detective Homoki informed him that he would be en route to Northwood "in a half hour. Don't quote me on that. Maybe 45 minutes".

Upon Detective Loesch and Homoki's arrival, Detectives asked Principal Basinski where C _____ is currently at. Principal Basinski then went and got C _____ , under the premise that he was getting picked up by his mother. Once C _____ walked into the office, Detectives confirmed his name, how old he was, where he lives, then advised him that he is under arrest. Detectives search C _____ , collecting some of his money in his pocket.

Sergeant Wise asked Principal Basinski what address did Cl state that he lived at, he replied 331 Parmely. Principal Basinski showed Sergeant Wise a photograph of C _____ s school demographics, showing his address as 331 Parmely Ave. Sergeant Wise left the residence after that.

Investigative Narrative- Campana

INVESTIGATIVE NARRATIVE

REPORT#: 2024-902

NARRATIVE BY: Det. Campana 042

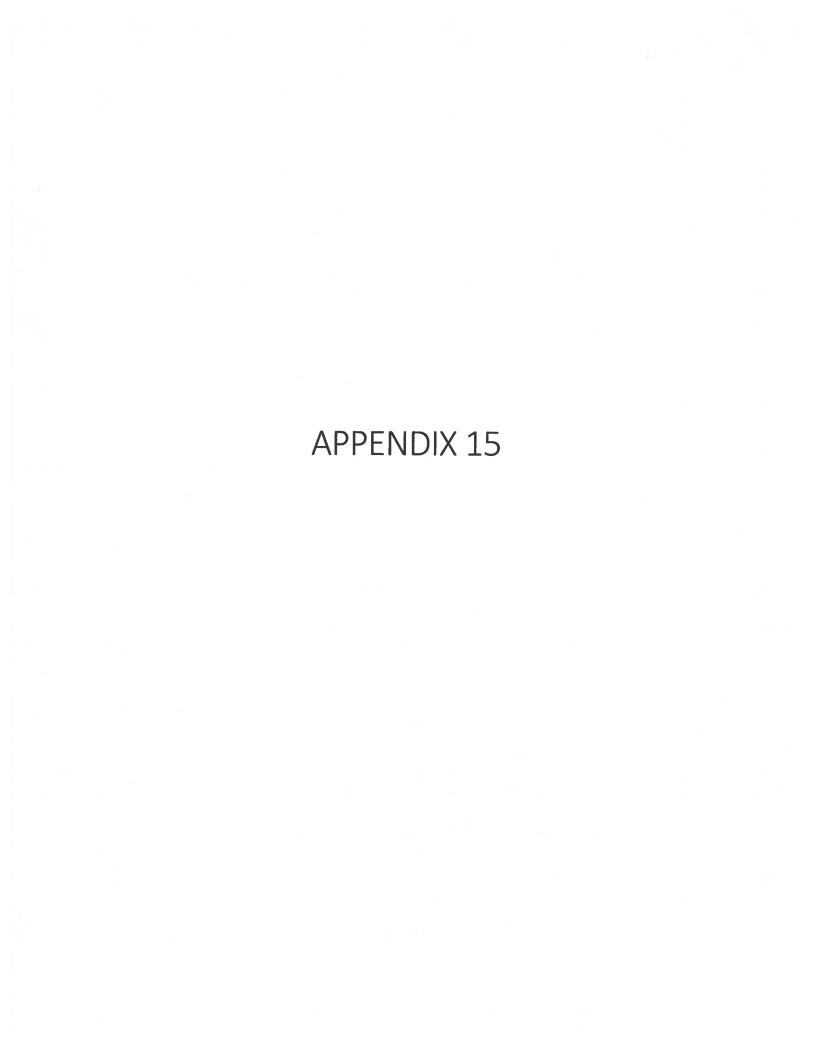
REVIEWED BY: Lt Lantz 198

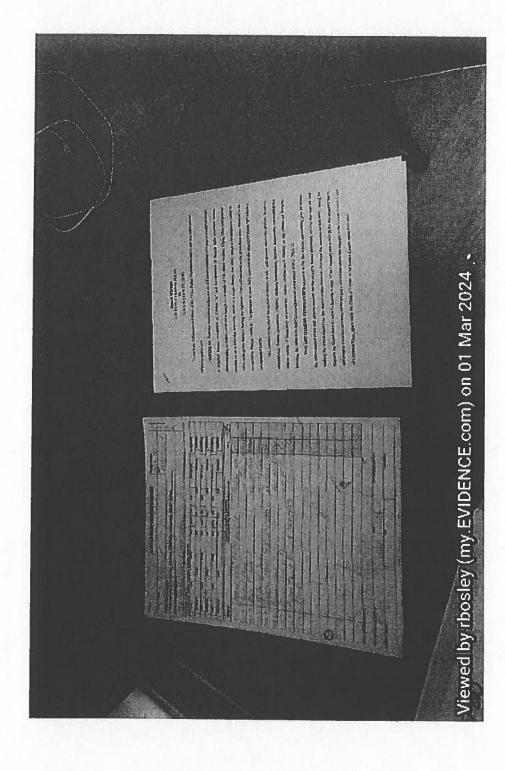
INCIDENT TYPE: Search Warrant

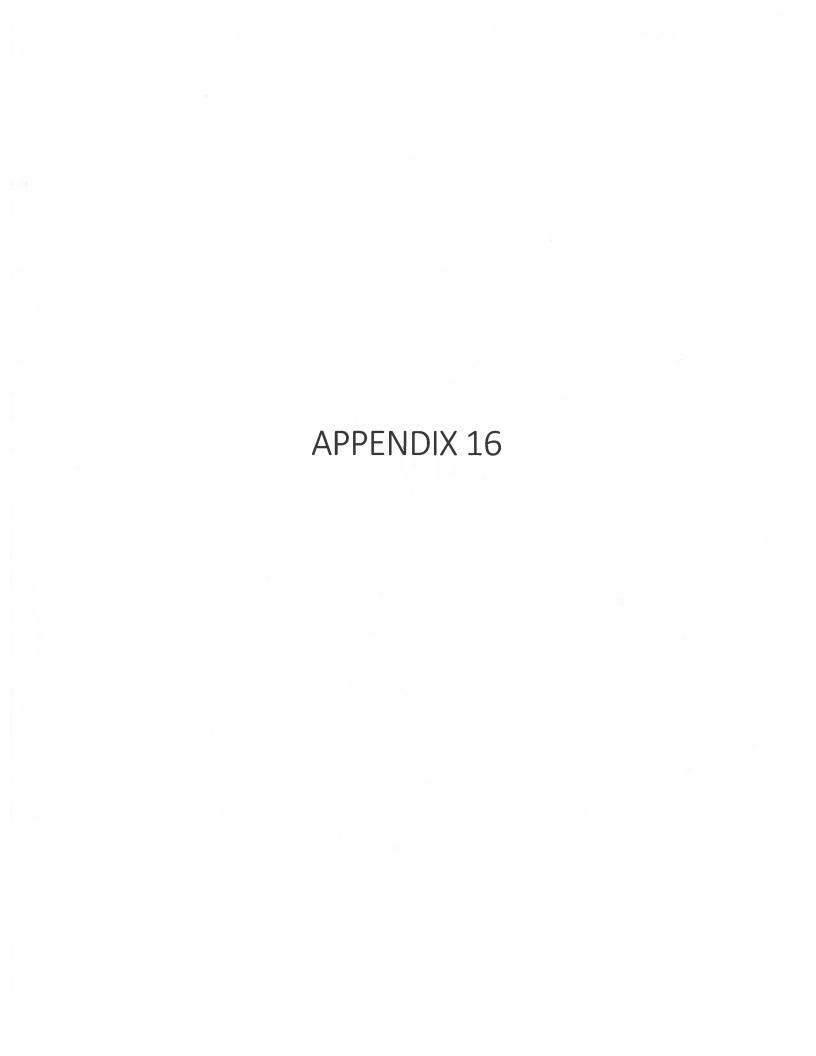
NARRATIVE:

On January 10th, 2024 Law Enforcement executed a search warrant at 331 Parmely Ave, in relation to an ongoing investigation. During the search warrant execution, Detective Campana was assigned as a member of the Elyria SRT. After entry was made into the house, and the scene was secure, Detective Campana transitioned into the role of search team.

Detective Whiting completed overall photos prior to the search beginning. Once the search began, Detective Campana started by searching the back left (southeast corner) bedroom on the lowest level. After completion of that bedroom, Detective Campana searched a bedroom, appearing to be used for storage, on the first level. Finally, towards the end of the search, Detective Campana learned that the downstairs bathroom had not yet been searched, due to the family dog being placed in there for the duration of the search. Detective Campana moved the dog to the back left (southeast) bedroom, and searched the downstairs bathroom. No other rooms or locations were searched by Detective Campana.







RULE 2

FILING, REMOVAL, SERVICE OF PROCESS, AND RECORDS RETENTION BY THE CLERK

A. FILING

1. Duties of Clerk

In accordance with these rules, the Clerk of Courts shall file and maintain all documents delivered to the Clerk's Office. The Clerk is instructed to refuse to accept for filing any document or case that does not conform to these rules.

2 Filing Requirement in General

All pleadings, motions, briefs and other similar documents that are filed with the Clerk shall meet the following requirements:

- (a) Be typewritten or legibly printed on 8 ½" x 11" paper, securely bound and without backing;
- (b) Contain a blank space of at least 2 ½ inches at the top of the first page for endorsements;
- (c) Contain a short title indicating the nature of the document (complaint, answer, motion, brief, etc.);
- (d) Be signed by the attorney of record or party when not represented by counsel;
- (e) Include the attorney registration number, if applicable, along with the address, telephone, fax, and email of the individual filing the document.

3. Complaint

Every complaint shall be accompanied by a case designation sheet which may be obtained from the Clerk of Courts. In addition, the complaint shall include the name and address, if known, of each party.

4. Subsequent Documents

All pleadings, motions, briefs, and documents subsequent to the complaint shall include the following:

- (a) The name of the first party plaintiff and the first party defendant;
- (b) The name of the Judge to whom the case is assigned;
- (c) The case number.

D. EVIDENCE AND RECORD RETENTION

The following evidentiary materials which have been proffered and admitted into evidence will be retained by the Court in accordance with the appropriate period of retention:

- papers, documents, photographs, diagrams, blueprints (all must be 8 ½" x 11" in size);
- (b) CDs, DVDs.

Evidence which is not admitted or which has not been specifically identified herein shall be retained and kept by the party, person, agency, office or department offering such evidence, pursuant to all applicable rules governing the retention of such evidence.

All exhibits must conform to the standards for retention set forth in this rule. By way of example, oversized demonstrative exhibits, such as presentation boards, shall be substituted with an exact duplicate copy 8 ½" x 11" in size.

Additionally, the Court's receipt and admission of other types of evidence shall not be construed as taking possession, custody or control of said evidence. Possession, custody, or control at all times shall remain with the offering party, person, agency, office or department.

Upon the expiration of the appropriate period of retention, evidence or records in the custody of the Clerk and/or Court may be destroyed after notice and in accordance with the relevant rules.



Elyria Police Department Risk Assessment

Critical Incidents and Warrant Service

2024-902
331 Parmely Ave, Elyria
Residential Search Warrant
Loesch #202
C S

Subject & General Risk Factor sections should be repeated for each suspect or subject that is known or suspected to be present

	Location Factors	
X	Additional persons on site = 5 points	
	Armed counter surveillance = 25 points	
	Chemicals / Lab = 35 points	
	Dogs = 5 points	ik P.
	Fortification = 5 points	11 0
	Locked perimeter / gate / fence = 5 points	
	Possible booby traps = 5 points	
	Security gate = 5 points	
	Use of undercover personnel (police) = 5 points	
X	Video surveillance = 5 points	

	Explosives = 35 points
8	Fully Automatic = 35 points
	Pistol = 10 points
	Revolver = 10 points
	Rifle = 10 points
Х	Shotgun = 10 points
	Stabbing Instrument = 5 points
	Unknown = 5 points

Weapon Factors

	Suspect's Criminal History
N	Top 25 Violent Offender List = 15 points
	Assault on Police = 25 points
	Felony Crime Violence = 10 points
PE'	Drug Lab = 5 points
X	Firearms = 10 points
	Homicide = 35 points
	Probation / Parole = 5 points
	Robbery = 10 points
	Sexual Assault = 5 points
	Unknown = 5 points

	General Risk Factors
Х	Drug / Alcohol abuse = 5points
	Gang Association = 5 points
	Hate Groups = 10 points
X	Mentally Unstable / violent tendencies = 35 points
	Military Experience = 10 points
	Known to be PSTD = 10
	Paramilitary/Militia = 35 points
	Police Experience = 10 points
	Religious extremist = 10 points
	Suicidal = 20 points
	Terrorist = 35 points
	Unknown = 5 points

Total Points	70
TANKS TO SELECT THE SECOND OF SECOND	

	Operation Risk Level
	Risk Level 1 (Low) 0 to 20 points – SRT not activated
	Risk Level 2 (Moderate) 21 to 34 points – SRT commander consulted
X	Risk Level 3 (High) 35 points or more - SRT activate



Federal and State Case Law Reviewed During this Investigation

Tab A United States v. Banks, 540 U.S. 31, 124 S. Ct. 521, 157 L. Ed. 2d 343,

72 U.S.L.W. 4005, 2003

Tab BUnited States v. Dawkins, 83 Def. Appx. 48

Tab C United States v. Hython, 443-F.3d 480

Tab D State v. Bembry, 151 Ohio St. 3d 502, 2017-Ohio-8114

Tab E State v. Dixon, 141 Ohio App. 3d 654

Tab FState v. Hunter, 153-Ohio-App. 3d 628

Tab G State v. Marcum, 2006-Ohio-7068

Tab H State v. Shropshire, 2016-Ohio-7224

Tab I Stewart, 2021-Ohio-4444

Syllabus

After 15 to 20 seconds without a response, officers could fairly have suspected that Banks would flush away the cocaine if they remained reticent. Each of Banks's counterarguments—that he was in the shower and did not hear the officers, and that it might have taken him longer than 20 seconds to reach the door—rests on a mistake about the relevant enquiry. As to the first argument, the facts known to the police are what count in judging a reasonable waiting time, and there is no indication that they knew that Banks was in the shower and thus unaware of an impending search. As to the second, the crucial fact is not the time it would take Banks to reach the door but the time it would take him to destroy the cocaine. It is not unreasonable to think that someone could get in a position to destroy the drugs within 15 to 20 seconds. Once the exigency had matured, the officers were not bound to learn anything more or wait any longer before entering, even though the entry entailed some harm to the building. Pp. 37-40.

(c) This Court's emphasis on totality analysis leads it to reject the Government's position that the need to damage property should not be part of the analysis of whether the entry itself was reasonable and to disapprove of the Ninth Circuit's four-part vetting scheme.

Pp. 41-42.

2. The entry here also satisfied 18 U.S.C. §3109, which permits entry by force "if, after notice of his authority and purpose, [an officer] is refused admittance." Because §3109 implicates the exceptions to the common law knock-and-announce requirement that inform the Fourth Amendment itself, §3109 is also subject to an exigent circumstances exception, which qualifies the requirement of refusal after notice, just as it qualifies the obligation to announce in the first place. Pp. 42-43.

282 F. 3d 699, reversed.

SOUTER, J., delivered the opinion for a unanimous Court.

David B. Salmons argued the cause pro hac vice for the United States. With him on the brief were Solicitor General Olson, Assistant Attorney General Chertoff, Deputy Solicitor General Dreeben, and John A. Drennan.

Randall J. Roske, by appointment of the Court, 538 U.S. 943, argued the cause and filed a brief for respondent.*

^{*}Timothy A. Baughman filed a brief for Wayne County, Michigan, as amicus curiae urging reversal.

A brief of amici curiae was filed for Americans for Effective Law Enforcement, Inc., et al. by Richard Weintraub, Bernard J. Farber, Wayne W. Schmidt, and James P. Manak.

Syllabus

UNITED STATES v. BANKS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02-473. Argued October 15, 2003—Decided December 2, 2003

When federal and local law enforcement officers went to respondent Banks's apartment to execute a warrant to search for cocaine, they called out "police search warrant" and rapped on the front door hard enough to be heard by officers at the back door, waited for 15 to 20 seconds with no response, and then broke open the door. Banks was in the shower and testified that he heard nothing until the crash of the door. The District Court denied his motion to suppress the drugs and weapons found during the search, rejecting his argument that the officers waited an unreasonably short time before forcing entry in violation of both the Fourth Amendment and 18 U.S.C. § 3109. Banks pleaded guilty, but reserved his right to challenge the search on appeal. In reversing and ordering the evidence suppressed, the Ninth Circuit found, using a four-part scheme for vetting knock-and-announce entries, that the instant entry had no exigent circumstances, making forced entry by destruction of property permissible only if there was an explicit refusal of admittance or a time lapse greater than the one here.

Held:
1. The officers' 15-to-20-second wait before forcible entry satisfied the Fourth Amendment. Pp. 35-43.

(a) The standards bearing on whether officers can legitimately enter after knocking are the same as those for requiring or dispensing with knock and announce altogether. This Court has fleshed out the notion of reasonable execution on a case-by-case basis, but has pointed out factual considerations of unusual, albeit not dispositive, significance. The obligation to knock and announce before entering gives way when officers have reasonable grounds to expect futility or to suspect that an exigency, such as evidence destruction, will arise instantly upon knocking. Richards v. Wisconsin, 520 U. S. 385, 394. Since most people keep their doors locked, a no-knock entry will normally do some damage, a fact too common to require a heightened justification when a reasonable suspicion of exigency already justifies an unwarned entry. United States v. Ramirez, 523 U. S. 65, 70-71. Pp. 35-37.

(b) This case turns on the exigency revealed by the circumstances known to the officers after they knocked and announced, which the Government contends was the risk of losing easily disposable evidence.

Syllabus

After 15 to 20 seconds without a response, officers could fairly have suspected that Banks would flush away the cocaine if they remained reticent. Each of Banks's counterarguments—that he was in the shower and did not hear the officers, and that it might have taken him longer than 20 seconds to reach the door—rests on a mistake about the relevant enquiry. As to the first argument, the facts known to the police are what count in judging a reasonable waiting time, and there is no indication that they knew that Banks was in the shower and thus unaware of an impending search. As to the second, the crucial fact is not the time it would take Banks to reach the door but the time it would take him to destroy the cocaine. It is not unreasonable to think that someone could get in a position to destroy the drugs within 15 to 20 seconds. Once the exigency had matured, the officers were not bound to learn anything more or wait any longer before entering, even though the entry entailed some harm to the building. Pp. 37-40.

(c) This Court's emphasis on totality analysis leads it to reject the Government's position that the need to damage property should not be part of the analysis of whether the entry itself was reasonable and to disapprove of the Ninth Circuit's four-part vetting scheme.

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282 F. 3d 699, reversed.

SOUTER, J., delivered the opinion for a unanimous Court.

David B. Salmons argued the cause pro hac vice for the United States. With him on the brief were Solicitor General Olson, Assistant Attorney General Chertoff, Deputy Solicitor General Dreeben, and John A. Drennan.

Randall J. Roske, by appointment of the Court, 538 U.S. 943, argued the cause and filed a brief for respondent.*

*Timothy A. Baughman filed a brief for Wayne County, Michigan, as amicus curiae urging reversal.

A brief of amici curiae was filed for Americans for Effective Law Enforcement, Inc., et al. by Richard Weintraub, Bernard J. Farber, Wayne W. Schmidt, and James P. Manak.

JUSTICE SOUTER delivered the opinion of the Court.

Officers executing a warrant to search for cocaine in respondent Banks's apartment knocked and announced their authority. The question is whether their 15-to-20-second wait before a forcible entry satisfied the Fourth Amendment and 18 U. S. C. § 3109. We hold that it did.

I

With information that Banks was selling cocaine at home, North Las Vegas Police Department officers and Federal Bureau of Investigation agents got a warrant to search his two-bedroom apartment. As soon as they arrived there, about 2 o'clock on a Wednesday afternoon, officers posted in front called out "police search warrant" and rapped hard enough on the door to be heard by officers at the back door. Brief for United States 3 (internal quotation marks omitted). There was no indication whether anyone was home, and after waiting for 15 to 20 seconds with no answer, the officers broke open the front door with a battering ram. Banks was in the shower and testified that he heard nothing until the crash of the door, which brought him out dripping to confront the police. The search produced weapons, crack cocaine, and other evidence of drug dealing.

In response to drug and firearms charges, Banks moved to suppress evidence, arguing that the officers executing the search warrant waited an unreasonably short time before forcing entry, and so violated both the Fourth Amendment and 18 U.S.C. §3109.¹ The District Court denied the motion, and Banks pleaded guilty, reserving his right to challenge the search on appeal.

¹ The statute provides: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

A divided panel of the Ninth Circuit reversed and ordered suppression of the evidence found. 282 F. 3d 699 (2002). In assessing the reasonableness of the execution of the warrant, the panel majority set out a nonexhaustive list of "factors that an officer reasonably should consider" in deciding when to enter premises identified in a warrant, after knocking and announcing their presence but receiving no express acknowledgment:

"(a) size of the residence; (b) location of the residence; (c) location of the officers in relation to the main living or sleeping areas of the residence; (d) time of day; (e) nature of the suspected offense; (f) evidence demonstrating the suspect's guilt; (g) suspect's prior convictions and, if any, the type of offense for which he was convicted; and (h) any other observations triggering the senses of the officers that reasonably would lead one to believe that immediate entry was necessary." *Id.*, at 704.

The majority also defined four categories of intrusion after knock and announcement, saying that the classification "aids in the resolution of the essential question whether the entry made herein was reasonable under the circumstances":

"(1) entries in which exigent circumstances exist and non-forcible entry is possible, permitting entry to be made simultaneously with or shortly after announcement; (2) entries in which exigent circumstances exist and forced entry by destruction of property is required, necessitating more specific inferences of exigency; (3) entries in which no exigent circumstances exist and non-forcible entry is possible, requiring an explicit refusal of admittance or a lapse of a significant amount of time; and (4) entries in which no exigent circumstances exist and forced entry by destruction of property is required, mandating an explicit refusal of admittance or a

lapse of an even more substantial amount of time." Ibid.

The panel majority put the action of the officers here in the last category, on the understanding that they destroyed the door without hearing anything to suggest a refusal to admit even though sound traveled easily through the small apartment. The majority held the 15-to-20-second delay after knocking and announcing to be "[in]sufficient . . . to satisfy the constitutional safeguards." *Id.*, at 705.

Judge Fisher dissented, saying that the majority ought to come out the other way based on the very grounds it stressed: Banks's small apartment, the loud knock and announcement, the suspected offense of dealing in cocaine, and the time of the day. Judge Fisher thought the lapse of 15 to 20 seconds was enough to support a reasonable inference that admittance had been constructively denied. *Id.*, at 710.

We granted certiorari to consider how to go about applying the standard of reasonableness to the length of time police with a warrant must wait before entering without permission after knocking and announcing their intent in a felony case. 537 U.S. 1187 (2003). We now reverse.

H

There has never been a dispute that these officers were obliged to knock and announce their intentions when executing the search warrant, an obligation they concededly honored. Despite this agreement, we start with a word about standards for requiring or dispensing with a knock and announcement, since the same criteria bear on when the officers could legitimately enter after knocking.

The Fourth Amendment says nothing specific about formalities in exercising a warrant's authorization, speaking to the manner of searching as well as to the legitimacy of searching at all simply in terms of the right to be "secure ... against unreasonable searches and seizures." Although the notion of reasonable execution must therefore be fleshed

out, we have done that case by case, largely avoiding categories and protocols for searches. Instead, we have treated reasonableness as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case; it is too hard to invent categories without giving short shrift to details that turn out to be important in a given instance, and without inflating marginal ones. See, e.g., Ohio v. Robinette, 519 U.S. 33, 39 (1996) ("[W]e have consistently eschewed bright-line rules, instead emphasizing the factspecific nature of the reasonableness inquiry"); Ker v. California, 374 U.S. 23, 33 (1963) (reasonableness not susceptible to Procrustean application); Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931) (no formula for determining reasonableness; each case on its own facts and circumstances). We have, however, pointed out factual considerations of unusual, albeit not dispositive, significance.

In Wilson v. Arkansas, 514 U.S. 927 (1995), we held that the common law knock-and-announce principle is one focus of the reasonableness enquiry; and we subsequently decided that although the standard generally requires the police to announce their intent to search before entering closed premises, the obligation gives way when officers "have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or ... would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence," Richards v. Wisconsin, 520 U.S. 385, 394 (1997). When a warrant applicant gives reasonable grounds to expect futility or to suspect that one or another such exigency already exists or will arise instantly upon knocking, a magistrate judge is acting within the Constitution to authorize a "no-knock" entry.2 And even when executing a warrant silent about

² Some States give magistrate judges the authority to issue "no-knock" warrants, and some do not. See, e. g., Richards v. Wisconsin, 520 U.S. 385, 396, n. 7 (1997) (collecting state statutes and cases).

that, if circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in. *Id.*, at 394, 396, n. 7.

Since most people keep their doors locked, entering without knocking will normally do some damage, a circumstance too common to require a heightened justification when a reasonable suspicion of exigency already justifies an unwarned entry. We have accordingly held that police in exigent circumstances may damage premises so far as necessary for a no-knock entrance without demonstrating the suspected risk in any more detail than the law demands for an unannounced intrusion simply by lifting the latch. *United States* v. *Ramirez*, 523 U. S. 65, 70–71 (1998). Either way, it is enough that the officers had a reasonable suspicion of exigent circumstances.³

III

Like Ramirez, this case turns on the significance of exigency revealed by circumstances known to the officers, for the only substantive difference between the two situations goes to the time at which the officers reasonably anticipated some danger calling for action without delay.⁴ Whereas the

³The standard for a no-knock entry stated in *Richards* applies on reasonable suspicion of exigency or futility. Because the facts here go to exigency, not futility, we speak of that alone.

⁴Ramirez and Richards v. Wisconsin, 520 U. S. 385 (1997), our cases addressing the role of exigency in assessing the reasonableness of a no-knock entry, involved searches by warrant for evidence of a felony, as does this case. In a different context governed by the Fourth Amendment, we have held that the risk of losing evidence of a minor offense is insufficient to make it reasonable to enter a dwelling to make a warrantless arrest. See Welsh v. Wisconsin, 466 U. S. 740 (1984). Courts of Appeals have applied Welsh to warrantless entries simply to search for evidence, considering the gravity of the offense in determining whether exigent circumstances exist. See, e. g., United States v. Aquino, 836 F. 2d 1268, 1271–1273 (CA10 1988); United States v. Clement, 854 F. 2d 1116, 1120 (CA8 1988) (per curiam). We intimate nothing here about such warrantless entry cases. Nor do we express a view on the significance of the existence of a warrant in evaluating whether exigency justifies action in

Ramirez Magistrate Judge found in advance that the customary warning would raise an immediate risk that a wanted felon would elude capture or pose a threat to the officers, see id., at 68, here the Government claims that a risk of losing evidence arose shortly after knocking and announcing. Although the police concededly arrived at Banks's door without reasonable suspicion of facts justifying a no-knock entry, they argue that announcing their presence started the clock running toward the moment of apprehension that Banks would flush away the easily disposable cocaine, prompted by knowing the police would soon be coming in. While it was held reasonable for the police in Ramirez to enter forcibly upon arrival, the Government argues it was equally reasonable for the officers to go in with force here as soon as the danger of disposal had ripened.

Banks does not, of course, deny that exigency may develop in the period beginning when officers with a warrant knock to be admitted, and the issue comes down to whether it was reasonable to suspect imminent loss of evidence after the 15 to 20 seconds the officers waited prior to forcing their way. Though we agree with Judge Fisher's dissenting opinion that this call is a close one, 282 F. 3d, at 707, we think that after 15 or 20 seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer. Courts of Appeals have, indeed, routinely held similar wait times to be reasonable in drug cases with similar facts including easily disposable evidence (and some courts have found even shorter ones to be reasonable enough).⁵

knock-and-announce cases when the reason for the search is a minor offense.

⁵ Several Courts of Appeals have explicitly taken into account the risk of disposal of drug evidence as a factor in evaluating the reasonableness of waiting time. See, e. g., United States v. Goodson, 165 F. 3d 610, 612, 614 (CAS 1999) (holding a 20-second wait after a loud announcement at a one-story ranch reasonable); United States v. Spikes, 158 F. 3d 913, 925–927 (CA6 1998) (holding a 15-to-30-second wait in midmorning after a loud announcement reasonable); United States v. Spriggs, 996 F. 2d 320, 322–

A look at Banks's counterarguments shows why these courts reached sensible results, for each of his reasons for saving that 15 to 20 seconds was too brief rests on a mistake about the relevant enquiry: the fact that he was actually in the shower and did not hear the officers is not to the point, and the same is true of the claim that it might have taken him longer than 20 seconds if he had heard the knock and headed straight for the door. As for the shower, it is enough to say that the facts known to the police are what count in judging reasonable waiting time, cf., e. g., Graham v. Connor, 490 U.S. 386, 396 (1989) ("The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"), and there is no indication that the police knew that Banks was in the shower and thus unaware of an impending search that he would otherwise have tried to frustrate.

And the argument that 15 to 20 seconds was too short for Banks to have come to the door ignores the very risk that justified prompt entry. True, if the officers were to justify their timing here by claiming that Banks's failure to admit them fairly suggested a refusal to let them in, Banks could at least argue that no such suspicion can arise until an occu-

^{323 (}CADC 1993) (holding a 15-second wait after a reasonably audible announcement at 7:45 a.m. on a weekday reasonable); United States v. Garcia, 983 F. 2d 1160, 1168 (CA1 1993) (holding a 10-second wait after a loud announcement reasonable); United States v. Jones, 133 F. 3d 358, 361-362 (CA5 1998) (per curiam) (relying specifically on the concept of exigency, holding a 15-to-20-second wait reasonable). See also United States v. Chavez-Miranda, 306 F. 3d 973, 981-982, n. 7 (CA9 2002) ("Banks appears to be a departure from our prior decisions. . . . [W]e have found a 10 to 20 second wait to be reasonable in similar circumstances, albeit when the police heard sounds after the knock and announcement"); United States v. Jenkins, 175 F. 3d 1208, 1215 (CA10 1999) (holding a 14-to-20-second wait at 10 a.m. reasonable); United States v. Markling, 7 F. 3d 1309, 1318-1319 (CA7 1993) (holding a 7-second wait at a small motel room reasonable when officers acted on a specific tip that the suspect was likely to dispose of the drugs).

pant has had time to get to the door, a time that will vary with the size of the establishment, perhaps five seconds to open a motel room door, or several minutes to move through a townhouse. In this case, however, the police claim exigent need to enter, and the crucial fact in examining their actions is not time to reach the door but the particular exigency claimed. On the record here, what matters is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink. The significant circumstances include the arrival of the police during the day, when anyone inside would probably have been up and around, and the sufficiency of 15 to 20 seconds for getting to the bathroom or the kitchen to start flushing cocaine down the drain. That is, when circumstances are exigent because a pusher may be near the point of putting his drugs beyond reach, it is imminent disposal, not travel time to the entrance, that governs when the police may reasonably enter; since the bathroom and kitchen are usually in the interior of a dwelling, not the front hall, there is no reason generally to peg the travel time to the location of the door, and no reliable basis for giving the proprietor of a mansion a longer wait than the resident of a bungalow, or an apartment like Banks's. And 15 to 20 seconds does not seem an unrealistic guess about the time someone would need to get in a position to rid his quarters of cocaine.

Once the exigency had matured, of course, the officers were not bound to learn anything more or wait any longer before going in, even though their entry entailed some harm to the building. Ramirez held that the exigent need of law enforcement trumps a resident's interest in avoiding all property damage, see 523 U.S., at 70–71, and there is no reason to treat a post-knock exigency differently from the no-knock counterpart in Ramirez itself.

⁶ It is probably unrealistic even on its own terms. The apartment was "small," 282 F. 3d 699, 704 (CA9 2002), and a man may walk the length of today's small apartment in 15 seconds.

IV

Our emphasis on totality analysis necessarily rejects positions taken on each side of this case. Ramirez, for example, cannot be read with the breadth the Government espouses, as "reflect[ing] a general principle that the need to damage property in order to effectuate an entry to execute a search warrant should not be part of the analysis of whether the entry itself was reasonable." Brief for United States 18; Reply Brief for United States 4. At common law, the knock-and-announce rule was traditionally "justified in part by the belief that announcement generally would avoid 'the destruction or breaking of any house . . . by which great damage and inconvenience might ensue." Wilson, 514 U.S., at 935-936 (quoting Semayne's Case, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 196 (K. B. 1603)). One point in making an officer knock and announce, then, is to give a person inside the chance to save his door. That is why, in the case with no reason to suspect an immediate risk of frustration or futility in waiting at all, the reasonable wait time may well be longer when police make a forced entry, since they ought to be more certain the occupant has had time to answer the door. It is hard to be more definite than that, without turning the notion of a reasonable time under all the circumstances into a set of sub-rules as the Ninth Circuit has been inclined to do. Suffice it to say that the need to damage property in the course of getting in is a good reason to require more patience than it would be reasonable to expect if the door were open. Police seeking a stolen piano may be able to spend more time to make sure they really need the battering ram.

On the other side, we disapprove of the Court of Appeals's four-part scheme for vetting knock-and-announce entries. To begin with, the demand for enhanced evidence of exigency before a door can reasonably be damaged by a warranted no-knock intrusion was already bad law before the Court of Appeals decided this case. In Ramirez (a case from the

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Ninth Circuit), we rejected an attempt to subdivide felony cases by accepting "mild exigency" for entry without property damage, but requiring "more specific inferences of exigency" before damage would be reasonable. 523 U.S., at 69–71 (internal quotation marks omitted). The Court of Appeals did not cite *Ramirez*.

Nor did the appeals court cite *United States* v. Arvizu, 534 U. S. 266 (2002) (again, from the Ninth Circuit). There, we recently disapproved a framework for making reasonable suspicion determinations that attempted to reduce what the Circuit described as "troubling . . . uncertainty" in reasonableness analysis, by "describ[ing] and clearly delimit[ing]" an officer's consideration of certain factors. Id., at 272, 275 (internal quotation marks omitted). Here, as in Arvizu, the Court of Appeals's overlay of a categorical scheme on the general reasonableness analysis threatens to distort the "totality of the circumstances" principle, by replacing a stress on revealing facts with resort to pigeonholes. Id., at 274 (internal quotation marks omitted). Attention to cocaine rocks and pianos tells a lot about the chances of their respective disposal and its bearing on reasonable time. Instructions couched in terms like "significant amount of time," and "an even more substantial amount of time," 282 F. 3d, at 704, tell very little.

V

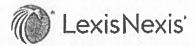
Last, there is Banks's claim that the entry violated 18 U. S. C. §3109. Ramirez held that the result should be the same under the Fourth Amendment and §3109, permitting an officer to enter by force "if, after notice of his authority and purpose, he is refused admittance." We explained the statute's "'requirement of prior notice . . . before forcing entry . . . [as] codif[ying] a tradition embedded in Anglo-American law,'" 523 U. S., at 72 (quoting Miller v. United States, 357 U. S. 301, 313 (1958)); see also Sabbath v. United States, 391 U. S. 585, 591, n. 8 (1968), and we held that §3109 implicates the exceptions to the common law knock-and-

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announce requirement that inform the Fourth Amendment itself, 523 U.S., at 73. The upshot is that §3109 is subject to an exigent circumstances exception, *ibid.*, which qualifies the requirement of refusal after notice, just as it qualifies the obligation to announce in the first place. Absent exigency, the police must knock and receive an actual refusal or wait out the time necessary to infer one. But in a case like this, where the officers knocked and announced their presence, and forcibly entered after a reasonable suspicion of exigency had ripened, their entry satisfied §3109 as well as the Fourth Amendment, even without refusal of admittance.

The judgment of the Court of Appeals is reversed.

So ordered.



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Date and Time: Friday, January 19, 2024 8:40:00AM EST

Job Number: 214934532

Document (1)

1. United States v. Dawkins, 83 Fed. Appx. 48

Client/Matter: -None-

Search Terms: When can the police utilize a flash bang device when executing a knock and announce search

warrant

Search Type: Natural Language

Narrowed by:

Content Type

Cases

Narrowed by

Sources: OH, Related Federal; Cases

As of: January 19, 2024 1:40 PM Z

United States v. Dawkins

United States Court of Appeals for the Sixth Circuit

November 24, 2003, Filed

No. 01-6151

Reporter

83 Fed. Appx. 48 *; 2003 U.S. App. LEXIS 24841 **

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LARRY D. DAWKINS, Defendant-Appellant.

Notice: [**1] CONSULT 6TH CIR. R. 32.1 FOR CITATION OF UNPUBLISHED OPINIONS AND DECISIONS.

Prior History: ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE. 00-10059. Todd. 08-29-01.

Disposition: AFFIRMED.

Core Terms

<u>flash-bang</u>, ammunition, apartment, <u>announce</u>, seized, rifle, motion to suppress, <u>search warrant</u>, removing, waiting

Case Summary

Procedural Posture

Appellant challenged a decision entered by the United States District Court for the Western District of Tennessee that convicted appellant with possession of a firearm by a convicted felon in violation of <u>18 U.S.C.S.</u> § <u>922(g)</u>, and granted in part and denied in part appellant's motion to suppress evidence.

Overview

A <u>search warrant</u> was issued for appellant's residence, which permitted the officers to <u>search</u> for firearms and ammunition. Upon reaching the apartment, the officer pounded on the door several times while <u>announcing</u> that the <u>police</u> were there with a <u>search warrant</u>. The officers forced entry with a one-man battering ram. The officers deployed a diversionary <u>device</u>, commonly

known as a <u>flash-bang</u>, which emitted a loud <u>bang</u> and a bright <u>flash</u> of light. Appellant informed the officers that he had a hunting rifle in the closet of the bedroom. The officers recovered rifle. Appellant moved to suppress the seized evidence prior to trial. The district court granted the motion to suppress all the evidence obtained that was not mentioned in the <u>warrant</u>, but denied the motion to suppress regarding the rifle and ammunition. The reviewing court found that the officers sufficiently complied with the <u>knock and announce</u> rule. The court also found that the appellee United States' use of a <u>flash-bang</u> did not violate appellant's <u>U.S. Const. amend. IV</u> rights. The officers knew both that appellant possessed an assault rifle and that he had previously been convicted of a crime of violence.

Outcome

The court affirmed the district court's decision.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Motions to Suppress

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > General Overview

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Motions to Suppress

<u>HN1</u> Clearly Erroneous Review, Motions to Suppress

In reviewing a motion to suppress, the court reviews factual findings for clear error and legal determinations de novo.

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

HN2 [Appeals, Standards of Review

The reviewing court is to review the evidence in the light most likely to support the district court's decision.

Constitutional Law > ... > Fundamental Rights > <u>Search</u> & Seizure > Exigent Circumstances

Criminal Law & Procedure > ... > Exclusionary
Rule > Exceptions to Exclusionary Rule > Exigent
Circumstances

Constitutional Law > ... > Fundamental
Rights > <u>Search</u> & Seizure > Scope of Protection

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > <u>Knock</u> & <u>Announce</u> Rule

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > General Overview

Criminal Law & Procedure > ... > Warrantless

<u>Searches</u> > Exigent Circumstances > Reasonable
& Prudent Standard

HN3 Search & Seizure, Exigent Circumstances

In the absence of exigent circumstances, the <u>Fourth Amendment</u> requires <u>police</u> entering a dwelling pursuant to <u>search warrants</u> to comply with the common law <u>knock and announce</u> rule. Under the rule, an officer must identify himself as a law enforcement officer with a <u>warrant</u>. Following this announcement, the officer may break into the dwelling only after waiting a reasonable amount of time. What constitutes a "reasonable" amount of time between announcement and entry is a fact-intensive inquiry that cannot be distilled into a constitutional stop-watch where a fraction of a second assumes controlling significance. Instead, the inquiry is guided by the flexible requirement of reasonableness.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > <u>Execution</u> of <u>Warrants</u>

HN4[3 Search Warrants, Execution of Warrants

The use of a <u>flash-bang</u> is neither per se objectively reasonable nor unreasonable. Instead, the reasonableness of the <u>device</u>'s use--much like the reasonableness of the officers' wait prior to entry-depends upon the facts and circumstances of each case.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > <u>Execution</u> of <u>Warrants</u>

HN5[Search Warrants, Execution of Warrants

The use of <u>flash-bang</u> <u>devices</u> will be inappropriate in many cases. But where the officers had evidence that a violent felon possessed high-powered weapons, it would strain credulity to find that the <u>Fourth Amendment's</u> reasonableness requirement precluded the officers from using a <u>device</u> intended to reduce the risks to all parties associated with entry.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > Scope of <u>Search Warrants</u>

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > General Overview

HN6[Search & Seizure, Warrants

Unquestionably, general <u>searches</u> are prohibited by the <u>Fourth Amendment's</u> requirement that <u>warrants</u> particularly describe the things to be seized during the <u>search</u>. However, a <u>search</u> does not become invalid merely because some items not covered by a <u>warrant</u> are seized. Rather, an otherwise valid <u>search</u> is transformed into an impermissible general <u>search</u> only where the <u>searching</u> officers demonstrate a flagrant disregard for the limitations of a <u>search warrant</u>. In

such circumstances, all evidence seized during the <u>search</u>--whether permitted under the <u>warrant</u> or not-will be suppressed.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Victor L. Ivy, James W. Powell, Asst. U.S. Attorneys, U.S. Attorney's Office, Jackson, TN.

For LARRY D. DAWKINS, Defendant - Appellant: Stephen B. Shankman, Fed. Public Defender, M. Dianne Smothers, J. Patten Brown, III., Asst. F.P. Defender, Office of the Federal Public Defender for the Western District of Tennessee, Memphis, TN.

Judges: BEFORE: BATCHELDER and ROGERS, Circuit Judges; RUSSELL, District Judge.*

Opinion by: Thomas B. Russell

Opinion

[*49] RUSSELL, District Judge. Following a <u>search</u> of Larry Dawkins's apartment on July 12, 2000 pursuant to a <u>warrant</u>, [**2] a federal grand jury in the Western District of Tennessee returned an indictment charging Dawkins with possession of a firearm by a convicted felon in violation of <u>18 U.S.C. § 922(g)</u>. Dawkins filed a motion to suppress on December 27, 2000. After holding an evidentiary hearing on January 5 and 8, 2001, the district court granted in part and denied in part the motion to suppress. Dawkins entered a conditional change of plea to guilty to the one-count indictment on January 9, 2001. On August 24, 2001, Dawkins was sentenced to 120 months imprisonment and 3 years of supervised release. Dawkins timely filed his notice of appeal on September 10, 2001.

BACKGROUND

On July 12, 2000, Officer Frank Kelsey of the Jackson, Tennessee <u>Police</u> Department obtained a <u>search</u> <u>warrant</u> for the residence of Larry Dawkins. Judge Joseph C. Morris of the Madison County, Tennessee Chancery Court issued the <u>warrant</u>, which permitted the officers to <u>search</u> for firearms and ammunition. The <u>warrant</u> was supported by an affidavit, which stated that a confidential informant had been present in Dawkins's

residence in the last two weeks and observed Dawkins - a convicted felon -- in possession [**3] of "several firearms to include rifles." The affidavit also stated that another law enforcement officer received information from two other reliable informants who stated that Dawkins "is frequently in possession of weapons and will maintain them at his residence." Kelsey testifled that he was aware that there would "more than likely be" an AK-47 at the residence, and very possibly handguns. Kelsey also testified that he knew prior to the <u>search</u> that Dawkins had previously been convicted of facilitation of first degree murder. At the briefing of the officers prior to the <u>execution</u> of the <u>warrant</u>, the officers were also informed that Dawkins was a suspected gang member.

The warrant was issued at approximately 7 p.m. and was executed approximately three hours later by Lieutenant Mike Siler and five other members of the Jackson Police Department's Tactical Unit. Dawkins's apartment was at the top of a narrow staircase. Upon reaching the apartment, Lieutenant Siler pounded on the door several times while announcing, "Police. Search warrant." After waiting for what Lieutenant Siler characterized as "at least 15 seconds," the officers forced entry with a one-man battering ram. The officers [**4] then deployed a diversionary device, commonly known as a *flash-bang*, which emits a loud bang and a bright flash of light. Its purpose, according to Lieutenant Siler, is "to bring about a peaceful resolution of the situation[,] allowing the entry team to get inside the residence with the greatest possibility of not having shots fired on them as they enter the door and them having to return fire." See also United States v. Yarbrough, 65 Fed. Appx. 539, 541 n.1 (6th Cir. 2003) ("A 'flashbang' creates a bright flash of light and a very loud noise; its purpose is to stun and disorient any occupants of premises to be searched."). The flash-bang hit a penny jar, which shattered [*50] and injured one of the officers. While Lieutenant Siler assisted the injured officer, the remaining officers entered the apartment and found Dawkins in a prone position in the kitchen, where he was secured by Officer Slack.

Dawkins informed the officers that he had a "hunting rifle" in the closet in the bedroom that belonged to his wife's father. The officers recovered a MAADI MISR 7.62 x 39 millimeter caliber rifle with a thirty round clip of ammunition from the bedroom. The officers then [**5] commenced a thorough <u>search</u> of the apartment, removing vent covers, emptying cereal boxes, removing the smoke detector and doorbell, and leaving the place

^{*}Honorable Thomas B. Russell, United States District Judge for the Western District of Kentucks, sitting by designation

"a mess." In justifying the level of intrusion, Officer Dyer testified that removing vent covers is "common practice because weapons or ammo or anything could be hidden in those vents." Officer Hallenback suggested that they generally go through food items, because these are common hiding places, and "[a] pistol could be hidden inside a cereal box[.]" The officers ultimately seized the rifle and ammunition, cell phones, a social security card, a birth certificate, mail, photographs, marijuana residue, and scales.

Dawkins moved to suppress the seized evidence prior to trial. At an evidentiary hearing, Dawkins called Tracie Davis, his second cousin, with whom he had lived until February 2000. Ms. Davis testified that she began having contact with Sergeant Hallenback as an informant in May 2000. She testified that Hallenback had questioned her about Dawkins's whereabouts and in particular about his drugs. Dawkins also called Orlando Hale, who is also a cousin of Mr. Dawkins. Mr. Hale stated that he spoke with an officer at the [**6] scene, who told him that "all we know is somebody came to our division earlier today and said there was going to be a drug bust, and that's what we're here for." Mr. Hale also stated that he saw a utility man "messing with something in the ground" before any officers arrived, and that when he went up to Dawkins's apartment after the search the water was off.

In response to a pre-trial motion, Judge Todd granted Dawkins's motion to suppress all the evidence obtained that was not mentioned in the <u>warrant</u>, but denied the motion to suppress regarding the rifle and ammunition. Dawkins then pled guilty (reserving his right to appeal the pre-trial motion) and was sentenced to 120 months imprisonment. This appeal followed.

ANALYSIS

HN1[1] In reviewing a motion to suppress, this court reviews factual findings for clear error and legal determinations de novo. <u>United States v. Williams</u>, 962 F.2d 1218, 1221 (6th Cir. 1992). HN2[1] "The reviewing court is to review the evidence in the light most likely to support the district court's decision." <u>Id.</u>

HN3 [1] In the absence of exigent circumstances, the Fourth Amendment requires police entering a dwelling pursuant to search warrants to [**7] comply with the common law knock and announce rule. Wilson v. Arkansas, 514 U.S. 927, 929, 131 L. Ed. 2d 976, 115 S. Ct. 1914 (1995). Under the rule, an officer must identify

himself as a law enforcement officer with a <u>warrant</u>. Following this announcement, the officer may break into the dwelling only after waiting a reasonable amount of time. <u>United States v. Spikes, 158 F.3d 913, 925 (6th Cir. 1998)</u>. What constitutes a "reasonable" amount of time between announcement and entry is a factintensive inquiry that cannot be "distilled into a constitutional stop-watch where a fraction of a second assumes controlling significance." <u>Id. at 926</u>. Instead, the inquiry is guided by the "flexible requirement of reasonableness." <u>f*511 Id.</u> (quoting <u>Wilson, 514 U.S. at 934</u>).

Viewing the circumstances of this case against the backdrop of "reasonableness," there is little doubt that the officers sufficiently complied with the knock and announce rule. The officers knocked repeatedly and announced "Police. Search Warrant." At the time of the entry, the officers were aware that Dawkins may have possessed an AK-47, a weapon capable of firing rounds that [**8] could penetrate bullet-proof yests. The officers were also aware that Dawkins had previously been convicted of a violent felony and that he was a suspected gang member. Armed with this information, the officers broke the door open after waiting at least 15 seconds. This time was reasonable; "the officers did not need to wait long enough for a barrage of bullets from within before concluding that they had given the occupants enough time to respond to their request for entry." Spikes, 158 F.3d at 926.

Dawkins next argues that the Government's use of a flash-bang violated his Fourth Amendment rights. HN4[The use of a <u>flash-bang</u> is "neither per se objectively reasonable nor unreasonable." Kirk v. Watkins, 182 F.3d 932 (table), 1999 WL 381119, at *3 (10th Cir. 1999). Instead, the reasonableness of the device's use -- much like the reasonableness of the officers' wait prior to entry -- depends upon the facts and circumstances of each case. See United States v. Folks. 236 F.3d 384, 387-88 (7th Cir. 2001); United States v. Myers, 106 F.3d 936, 940 (10th Cir. 1997). Under the circumstances of the present case, we find [**9] the officers' use of the flash-bang diversionary device to be objectively reasonable. The officers knew both that the suspect possessed an assault rifle and that he had previously been convicted of a crime of violence. Neither Mr. Dawkins nor anyone else in the residence was injured by the *flash-bang*. ¹ Although Mr. Dawkins

¹ The fact that the <u>flash-bang</u>'s detonation caused an injury to one of the officers is irrelevant to the inquiry into whether the

suffered some property damage from the <u>device</u>'s use (the shattered penny jar, a dented file cabinet, and burn marks on the floor), this damage does not create a <u>Fourth Amendment</u> violation. Rather, the appropriate remedy, if any, for this damage lies in tort. <u>Folks, 236 F.3d at 388</u>; <u>United States v. Jones, 214 F.3d 836, 838 (7th Cir. 2000)</u>.

The court is mindful that <u>HN5</u>[4] the use of <u>flash-bang</u> <u>devices</u> will be inappropriate in many cases. See, e.g., <u>Molina v. Cooper, 325 F.3d 963, 973</u> & n.6 (7th Cir. 2003); [**10] Watkins, 182 F.3d 932, 1999 WL 381119, at *4; <u>Myers, 106 F.3d at 940</u>; <u>Jenkins v. Wood, 81 F.3d 988, 996-98 (10th Cir. 1996)</u> (Henry, J., concurring). But where, as here, the officers had evidence that a violent felon possessed high-powered weapons, it would strain credulity to find that the <u>Fourth Amendment's</u> reasonableness requirement precluded the officers from using a <u>device</u> intended to reduce the risks to all parties associated with entry.

Dawkins's final contention is that the officers violated his Fourth Amendment rights by conducting a general search, which exceeded the limitations of the warrant. HN6[4] Unquestionably, general searches are prohibited by the Fourth Amendment's requirement that warrants particularly describe the things to be seized during the search. Marron v. United States, 275 U.S. 192, 196, 72 L. Ed. 231, 48 S. Ct. 74, Treas. Dec. 42528 (1927). However, "[a] search does not become invalid merely because some items not covered by a warrant are seized." [*52] United States v. Henson, 848 F.2d 1374, 1383 (6th Cir. 1988). Rather, an otherwise valid search is transformed into an impermissible general search only where the searching officers [**11] demonstrate a "flagrant disregard for the limitations of a search warrant." United States v. Lambert, 771 F.2d 83, 93 (6th Cir. 1985). In such circumstances, all evidence seized during the search -- whether permitted under the warrant or not - will be suppressed. Id.

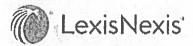
In support of his allegation that the officers conducted an impermissible general <u>search</u>, Mr. Dawkins contends that the way in which the <u>search</u> was conducted -- with the officers removing vent covers, opening cereal boxes, removing and inspecting his doorbell and smoke detectors, and the like -- was unreasonable because the <u>warrant</u> granted the officers permission to <u>search</u> only for firearms and ammunition. The implied thrust of Dawkins's argument is that the

officers were <u>searching</u> for drugs. While this might be so, the areas <u>searched</u> could very well have contained small arms or ammunition, making the officers' broad <u>search</u> permissible under the terms of the <u>warrant</u>. While the officers seized items, including scales, beepers, and documents that were beyond the scope of the <u>warrant</u> (and were therefore excluded by the court below), the <u>search</u> was not so broad as to be in flagrant disregard to the limitations [**12] of the <u>warrant</u>. See, e.g., <u>United States v. Medlin, 842 F.2d 1194, 1199 (10th Cir. 1988)</u> (finding that the improper seizure of 667 pieces of property grossly exceeded the scope of the <u>warrant</u> and required suppression of all evidence under the <u>warrant</u>).

CONCLUSION

In conclusion, we find no error in the district court's disposition of Mr. Dawkins's motion to suppress. Accordingly, the opinion of the district court is **AFFIRMED.**

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1. United States v. Hython, 443 F.3d 480

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United States v. Hython

United States Court of Appeals for the Sixth Circuit

March 16, 2006, Argued; April 6, 2006, Decided; April 6, 2006, Filed

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Reporter

443 F.3d 480 *; 2006 U.S. App. LEXIS 8286 **; 2006 FED App. 0123P (6th Cir.); 13 A.L.R. Fed. 2d 719

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ANDRE HYTHON, Defendant-Appellant.

Prior History: [**1] Appeal from the United States District Court for the Southern District of Ohio at Columbus. No. 04-00111--James L. Graham, District Judge.

Core Terms

probable cause, crack cocaine, district court, controlled buy, female, informant, good-faith, searched, <u>staleness</u>, ongoing, affiant, objectively reasonable, issuing magistrate, motion to suppress, <u>search warrant</u>, good faith, surveillance, invalid, confidential informant, criminal activity

Case Summary

Procedural Posture

Defendant challenged the decision entered by the United States District Court for the Southern District of Ohio that convicted defendant for possession of crack cocaine with the intent to distribute, in violation of 21 U.S.C.S. § 841(a)(1) and (b)(1)(B)(iii), following his guilty plea to the first count of a three-count indictment.

Overview

Defendant's plea was conditional, permitting him to challenge the district court's order denying his motion to suppress, in which he contended that police had seized the evidence used to convict him during a search of his home pursuant to a defective <u>search warrant</u>. The district court agreed that the warrant was deficient but denied defendant's suppression motion on the basis that the officers were reasonable in their reliance on the warrant and, therefore, that the Leon good-faith exception applied. The appellate court held that Leon

was inapplicable in the case and that the motion to suppress should have been granted. The district court correctly ruled that the <u>warrant</u> authorizing a <u>search</u> was invalid due to <u>staleness</u> but nevertheless sustained the search on the basis of Leon. However, considering only those facts contained within the four corners of the affidavit, as instructed by Laughton, the appellate court concluded that the good faith exception could not be applied to the search in the case, because a well-trained officer could not reasonably rely on the affidavit, given that it was based on one undated, acontextual controlled buy.

Outcome

The court reversed the district court's resolution of the motion to suppress and remanded the case to the district court.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > General Overview

HN1[♣] Standards of Review, De Novo Review

The district court's application of the good-faith exception is a legal conclusion reviewed de novo.

Criminal Law & Procedure > Search &
Seizure > <u>Search Warrants</u> > Issuance by Neutral & Detached Magistrate

HN2 Search Warrants, Issuance by Neutral & Detached Magistrate

United States v. Leon modified the exclusionary rule so as not to bar from admission evidence seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective. Where an officer's reliance on a warrant is objectively reasonable. the Supreme Court held, no additional deterrent effect will be achieved through the exclusion from evidence of the fruits of that search. However, the good-faith exception is inapposite in four situations: (1) where the issuing magistrate was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth; (2) where the issuing magistrate wholly abandoned his judicial role and failed to act in a neutral and detached fashion, serving merely as a rubber stamp for the police; (3) where the affidavit was nothing more than a bare bones affidavit that did not provide the magistrate with a substantial basis for determining the existence of probable cause, or where the affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where the officer's reliance on the warrant was not in good faith or objectively reasonable, such as where the warrant is facially deficient.

Criminal Law & Procedure > ... > <u>Search</u>
<u>Warrants</u> > Probable Cause > General Overview

HN3[Search Warrants, Probable Cause

The parameters of objective reasonableness in the good-faith context have been explored primarily in relation to whether an affidavit established a sufficient nexus between illegal activity and a place to be searched. Although no bright-line rule dictates its outer limit, the zone in which the good-faith exception may be applied is bound on one end by the requirements of probable cause--once that standard is met, application of the exception is unnecessary.

Criminal Law & Procedure > ... > <u>Search</u>
<u>Warrants</u> > Probable Cause > General Overview

HN4 Search Warrants, Probable Cause

The probable cause inquiry gauges the likelihood that evidence of a crime may presently be found at a certain location. A warrant must be supported by facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time. The

expiration of probable cause is determined by the circumstances of each case, and depends on the inherent nature of the crime. Relevant variables include the character of the crime (chance encounter in the night or regenerating conspiracy?), the criminal (nomadic or entrenched?), the thing to be seized (perishable and easily transferable or of enduring utility to its holder?) the place to be searched (mere criminal forum of convenience or secure operational base?). The passage of time becomes less significant when the crime at issue is ongoing or continuous and the place to be searched is a secure operational base for the crime.

Criminal Law & Procedure > ... > <u>Search</u>
<u>Warrants</u> > Probable Cause > General Overview

HN5[Search Warrants, Probable Cause

Because probable cause has a durational aspect, at least some temporal reference point is necessary to ascertain its existence.

Criminal Law & Procedure > ... > <u>Search</u>

<u>Warrants</u> > Probable Cause > General Overview

HN6[Search Warrants, Probable Cause

A determination of good-faith reliance, like a determination of probable cause, must be bound by the four corners of the affidavit. The relevant question is whether the officer reasonably believed that the warrant was properly issued, not whether probable cause existed in fact. This bright-line rule is in harmony with the objective nature of the good-faith test and prevents reviewing courts from delving into an analysis of the subjective knowledge of affiants.

Counsel: ARGUED: Steven S. Nolder, FEDERAL PUBLIC DEFENDER'S OFFICE, Columbus, Ohio, for Appellant.

Benjamin C. Glassman, ASSISTANT UNITED STATES ATTORNEY, Cincinnati, Ohio, for Appellee.

ON BRIEF: Steven S. Nolder, FEDERAL PUBLIC DEFENDER'S OFFICE, Columbus, Ohio, for Appellant.

Michael J. Burns, ASSISTANT UNITED STATES ATTORNEY, Columbus, Ohio, for Appellee.

Judges: Before: DAUGHTREY and GILMAN, Circuit

Judges; RUSSELL, District Judge. *

Opinion by: MARTHA CRAIG DAUGHTREY

Opinion

[*482] MARTHA CRAIG DAUGHTREY, Circuit Judge. The defendant, Andre Hython, appeals his conviction for possession of crack cocaine with the intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(iii), following his guilty plea to the first count of a three-count indictment. Hython's plea was conditional, permitting him to challenge the district court's order denying his motion to suppress, in which he contended [**2] that police had seized the evidence used to convict him during a search of his home pursuant to a defective search warrant. The district court agreed that the warrant was deficient but denied Hython's suppression motion on the basis that the officers were reasonable in their reliance on the warrant and, therefore, that the Leon good-faith exception applied. Because we find, to the contrary, that no reasonably objective police officer could have concluded that the warrant was supported by probable cause, we hold that Leon is inapplicable in this case and that the motion to suppress should have been granted.

FACTUAL AND PROCEDURAL BACKGROUND

The warrant in question was issued by a municipal judge and directed officers to a two-story brick residence located at 241 South Fifth Street in Steubenville, Ohio. It authorized the search of "all persons present at the time of officer entry" and the seizure of all property related to the sale of controlled substances. The judge issued the warrant on the basis of an affidavit sworn by Detective Jason Hanlin of the Steubenville Police Department Narcotics Division, which stated:

Narcotics Officers from the Steubenville [**3] Police Department, Toronto Police and Jefferson County Sheriff's Office in a joint investigation conducted a controlled buy of crack cocaine from 241 South Fifth Street in the city of Steubenville.

'The Honorable Thomas B. Russell, United States District Judge for the Western District of Kentucky, sitting by designation.

A reliable confidential informant advised officers that he was able to purchase crack cocaine from a female in Toronto. The female had advised the informant in the past that her source of crack cocaine is subject in the city of Steubenville. Officers provided the informant with one hundred and fifty dollars in marked US [*483] currency for a transaction. Officers conducted surveillance and were able to follow the informant to the known drug location in Toronto where the informant met with the female suspect. Officers were able to hear conversation via an audio transmitter. During the conversation the female received the currency from the informant and advised that she would travel to Steubenville to obtain the crack cocaine. Officers were then able to follow the female to 241 South Fifth Street in the City of Steubenville. The female entered the residence and exited within two minutes. Officers were then able to follow the female back to Toronto where she met with the informant and provided [**4] him with a baggie containing crack cocaine.

Due to the above transaction with the residence, officers believe there to be further crack cocaine within the residence.

Detective Hanlin and other officers executed the "noknock" warrant later that same day. After entering the house with drawn weapons, the officers found five people in the house, including defendant Hython. Hython was in the living room with two other men; there were two females in the kitchen. Hython and the two others in the living room were handcuffed and read their Miranda rights. In response to a question from Detective Hanlin, Hython indicated that he had contraband in the right front pocket of his pants. A search of this pocket yielded two baggies containing crack cocaine. Detective Hanlin found a large wad of cash in Hython's left pocket, and currency was strewn on the floor in the area near where Hython had been standing at the time of the officers' entry. Hython told Detective Hanlin that he had been counting the currency that was found on the floor, which was later identified as the pre-recorded buy money.

Following indictment on charges growing out of the execution of the warrant, Hython filed [**5] separate motions to suppress his confession and all physical evidence seized from both his house and person. The district court found that the affidavit contained sufficient information from which the issuing judge could have concluded that the informant was reliable and that there was probable cause to believe that crack cocaine was

being supplied from the residence at 241 South Fifth Street. The court also found, however, that the warrant was void for <u>staleness</u> because neither the affidavit nor the warrant specified the date on which the transaction at the defendant's house took place. Nevertheless, the district court held that apart from this defect, the affidavit was not so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable and, therefore, that application of the good faith exception was warranted.

Next, the court addressed Hython's contention that the warrant was invalid because it authorized a search of all persons found within the residence. The judge found that the warrant contained insufficient probable cause to believe that every person in the two-story residence would be involved in the drug activity and, further, that [**6] no well-trained officer would have reasonably believed otherwise, militating against the application of the good faith exception to the warrant requirement. However, the judge observed that the search of Hython's person could be justified on different grounds: given the smell of marijuana in the house, Hython could have been arrested and the contraband inevitably discovered as the result of a search incident to that arrest. A ruling on this aspect of Hython's motion was deferred in order to hear testimony regarding the execution of the search warrant.

[*484] Following the evidentiary hearing, the district court denied Hython's motion to suppress his statements and held that the search of Hython's person was justified under the plain view rationale set forth in the earlier order. Hython subsequently pleaded guilty to a single count of the indictment, reserving the right to appeal the district court's rulings on his motions to suppress.

DISCUSSION

The government does not contest the district court's legal conclusion that the warrant was invalid due to staleness. Therefore, the sole issue on appeal is whether the district court properly applied the good-faith exception to the search, [**7] a question that we review de novo as a conclusion of law. See HN1[4] United States v. Frazier, 423 F.3d 526, 533 (6th Cir. 2005) (the district court's application of the good-faith exception is a legal conclusion reviewed de novo).

HN2[주] United States v. Leon modified the exclusionary rule so as not to bar from admission

evidence "seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective." 468 U.S. 897, 905, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). Where an officer's reliance on a warrant is objectively reasonable, the Supreme Court held, no additional deterrent effect will be achieved through the exclusion from evidence of the fruits of that search. See id. at 922. However, the good-faith exception is inapposite in four situations: (1) where the issuing magistrate was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth; (2) where the issuing magistrate wholly abandoned his judicial role and failed to act in a neutral and detached fashion, serving merely as a rubber stamp for the police; (3) where the affidavit was nothing more than a "bare [**8] bones" affidavit that did not provide the magistrate with a substantial basis for determining the existence of probable cause, or where the affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where the officer's reliance on the warrant was not in good faith or objectively reasonable, such as where the warrant is facially deficient. See id. at 923.

The record contains no indication that Detective Hanlin presented false or reckless statements to the magistrate; nor is there any indication that the magistrate acted merely as a rubber stamp or that the warrant was facially deficient. The question, therefore, is whether the affidavit supporting the warrant was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. The showing required to establish that reliance was "objectively reasonable" is less than the "substantial basis" showing required to establish probable cause. See United States v. Carpenter, 360 F.3d 591, 595 (6th Cir. 2004) (en banc). "It is entirely possible that an affidavit could be insufficient for probable [**9] cause but sufficient for good-faith reliance." United States v. Washington, 380 F.3d 236, 241 (6th Cir. 2004).

HN3[1] The parameters of "objective reasonableness" in the good-faith context have been explored primarily in relation to whether an affidavit established a sufficient nexus between illegal activity and a place to be searched. See Carpenter, 360 F.3d at 594 (affidavit describing marijuana field near residence "falls short of establishing required nexus" between criminal activity and residence); United States v. Laughton, 409 F.3d 744, 751 (6th Cir. 2005) (no modicum of evidence connected defendant, [*485] criminal activity, and address to be searched); United States v. Helton, 314

F.3d 812, 821-23 (6th Cir. 2003) (outgoing calls from house to known drug dealer did not create substantial basis to believe evidence could be found in house); United States v. Van Shutters, 163 F.3d 331, 337 (6th Cir. 1998) (affidavit did not establish any connection between target of investigation and home to be searched); United States v. Weaver, 99 F.3d 1372, 1378-79 (6th Cir. 1998) (boilerplate language [**10] in affidavit failed to provide particularized facts regarding alleged crime occurring on premises to be searched); United States v. Leake, 998 F.2d 1359, 1365 (6th Cir. 1993) (minimal surveillance did not corroborate anonymous tip that narcotics could be found in basement of specific house); see also United States v. Washington, 380 F.3d at 248 (Moore, J., dissenting) (affidavit created only sparse and speculative connection between drug supplier and place to be searched). Although no bright-line rule dictates its outer limit, the zone in which the good-faith exception may be applied is bound on one end by the requirements of probable cause - once that standard is met, application of the exception is unnecessary. Therefore, the relationship between staleness and probable cause is a reasonable place to begin this analysis.

A. Staleness and Probable Cause

HN4[1] The probable cause inquiry gauges the likelihood that evidence of a crime may presently be found at a certain location. A warrant must be supported by "facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." Sgro v. United States, 287 U.S. 206, 210, 53 S. Ct. 138, 77 L. Ed. 260 (1932) [**11] (emphasis added). The expiration of probable cause is determined by the circumstances of each case, see id. at 210-11, and depends on the inherent nature of the crime. See United States v. Henson, 848 F.2d 1374, 1382 (6th Cir. 1988). Relevant variables include "the character of the crime (chance encounter in the night or regenerating conspiracy?), the criminal (nomadic or entrenched?), the thing to be seized (perishable and easily transferable or of enduring utility to its holder?) the place to be searched (mere criminal forum of convenience or secure operational base?)." United States v. Spikes, 158 F.3d 913, 923 (6th Cir. 1998) (internal citation omitted). The passage of time becomes less significant when the crime at issue is ongoing or continuous and the place to be searched is a secure operational base for the crime. See Henson, 848 F.2d at 1382; United States v. Greene, 250 F.3d 471, 481 (6th Cir. 2001).

The crime at issue in this case - the sale of drugs out of a residence - is not inherently ongoing. Rather, it exists upon a continuum ranging from an individual who effectuates the occasional [**12] sale from his or her personal holdings of drugs to known acquaintances, to an organized group operating an established and notorious drug den. The inclusion of outdated information has been insufficient to render an entire affidavit stale when the affidavit as a whole establishes that the criminal activity in question is ongoing and continuous, or closer to the "drug den" end of the continuum. In Greene, a search was upheld despite the fact that the last of 12 controlled buys took place 23 months prior to the issuance of the warrant. See id. The number of controlled buys, in combination with ongoing observation of the comings and goings at the residence, established probable cause to believe that the residence continued to be an operational base for a drug ring. See id. In Spikes, although some evidence in the affidavit was over four years old, 158 F.3d at 923, [*486] very recent information, coupled with surveillance over a span of years, established probable cause that the home to be searched was the primary source of crack cocaine in the town and that crack was regularly being manufactured on the premises. See id.

Unlike those detailed above, the affidavit [**13] in this case did not establish that 241 South Fifth Street was the secure operational base for an ongoing drug enterprise. Rather, the investigation consisted solely of one modified controlled buy, in which a confidential informant gave pre-recorded buy money to an unidentified female, who was followed to the address in question, observed entering and leaving, and who later delivered a baggie of crack cocaine to the confidential informant. 1 The only other possible suggestion that the house in question was an operational base for a continuing enterprise is that the unidentified female "advised the informant in the past that her source of crack cocaine is subject in the city of Steubenville." Although this ambiguous language suggests that she had purchased crack more than once from someone in Steubenville, or perhaps even from someone residing at the South Fifth Street address, it does not eliminate the possibility that the criminal activity in question is very

¹ The affidavit in this case, unlike the one in *Laughton*, does not establish the reliability of either the tipster or the female supplier, nor does it assert that they were patted down to make sure that they were not carrying drugs at the time of the controlled buy, in an effort to eliminate them as the potential source for the drugs. See *Laughton*. 409 F.3d at 746.

close to the opposite end of the continuum, where an individual occasionally sells drugs to acquaintances out of his or her personal holdings. The fact that the confidential informant himself did not purchase the crack, but [**14] rather used the female as an intermediary, not only calls into question the degree of control involved in this "controlled buy," but it also militates against the conclusion that the premises at 241 South Fifth Street constituted an established and notorious drug den. The single transaction is not supported by any further police investigation - the affidavit includes no observation of deliveries to the address, no monitoring of the frequency or volume of visitors to the house, no second controlled buy, no further surveillance whatsoever.

More importantly, the affidavit offers no clue as to when this single controlled buy took [**15] place. HN5[金] Because probable cause has a durational aspect, at least some temporal reference point is necessary to ascertain its existence. See, e.g., United States v. Harris, 403 U.S. 573, 578, 91 S. Ct. 2075, 29 L. Ed. 2d 723 n.* (1971) (affidavit not stale or lacking in specificity when informant reported purchasing illegal items from defendant "within the past two weeks" as part of a regular pattern over a two year period); United States v. McKeever, 5 F.3d 863, 866 (5th Cir. 1993) (although affidavit provided no date for on-site surveillance. probable cause existed because affidavit indicated a 21month time frame for illegal activity, and evidence was of durable nature). Even had the affidavit stated that from time out of mind, 241 South Fifth Street had been a notorious drug den, some recent information would be necessary to eliminate the possibility that a transfer in ownership or a cessation of illegal activity had not taken place. In this instance, without a date or even a reference to "recent activity," etc., there is absolutely no way to begin measuring the continued existence of probable cause. See United States v. Williams, 480 F.2d 1204, 1205 (6th Cir. 1973) [**16] (although affidavit did not allege date of informant's information, affidavit in its entirety "clearly rebuts any information or lack of specificity"). [*487] This deficiency alone is sufficient to render the warrant invalid, without considering any of the affidavit's other weaknesses. 2

²Hython also objected, for example, to the fact that the <u>warrant</u> was issued to <u>search</u> "all persons" at 241 South Fifth Street, which is a two-story residence, without any basis for establishing that all persons on the premises were likely to have evidence. Because we have invalidated the search on other grounds, consideration of this issue is not necessary to

Thus, we agree with the district court's finding that the warrant was invalid on <u>staleness</u> grounds.

B. Objectively Reasonable Reliance

In the district court, Hython argued that the third exception to the *Leon* good-faith rule ought to apply in this case, namely that the affidavit was so lacking in indicia of probable cause as to [**17] render official belief in its existence entirely unreasonable. The district judge disagreed:

In this case, the defendant is charged with offenses which occurred on April 20, 2004, the same date the <u>search warrant</u> was issued. Although it is not stated in the affidavit, the affiant officer was aware of the fact that the purchase of crack cocaine described in the affidavit occurred on the same day that he applied for the <u>search warrant</u>. In light of this information, the officer could reasonably have believed that the warrant was not an invalid warrant based on stale information.

Since <u>search warrants</u> are frequently obtained immediately after controlled purchases from a residence, it would not be totally unreasonable for an experienced officer to believe that this language implicitly indicated that the investigation was recent and ongoing rather than something which occurred in the distant past.

This analysis relies on information not contained in the affidavit, and as such, violates the rule of this circuit set out in <u>United States v. Laughton, 409 F.3d at 751</u>, in which we held that <u>HN6[1]</u> "a determination of goodfaith reliance, like a determination [**18] of probable cause, must be bound by the four corners of the affidavit." *Laughton* instructs that "the relevant question is whether the officer reasonably believed that the warrant was properly issued, *not* whether probable cause existed in fact." <u>Id. at 752</u> (quoting <u>Carpenter, 360 F.3d at 598</u> (Gilman, J., concurring)). This bright-line rule is in harmony with the objective nature of the goodfaith test and prevents reviewing courts from delving into an analysis of the subjective knowledge of affiants. See id.

The district court's decision predated *Laughton*. In its analysis, the court placed emphasis on language from *Leon* stating that in determining whether a reasonably

well-trained officer would have known that the search was illegal despite the warrant, "all of the circumstances . . . may be considered." Leon, 468 U.S. at 922, n. 23. The district court also considered case law from other circuits. allowing consideration of extra-affidavit material, as well as the ambiguity in then-existing Sixth Circuit case law. Compare United States v. Gahagan, 865 F.2d 1490, 1498 (6th Cir. 1989) (relying on information [**19] known to officer but not included in warrant in determining good faith) with United States v. Van Shutters, 163 F.3d 331, 337 (6th Cir. 1998) (limiting inquiry to affidavit); cf. Carpenter, 360 F.3d at 597 ("We leave for another day the question of whether the search could have been saved under the 'good faith exception' on the basis that these officers had other information that was not presented to the [*488] issuing magistrate, but that would have established probable cause.").

The Laughton decision settled this ambiguity, and has since been reaffirmed in United States v. Frazier, 423 F.3d 526 (6th Cir. 2005), in which we determined that the rule announced in Laughton is inapplicable when the extra-affidavit information was made known to the issuing magistrate. See id. at 535. In Frazier, the fact that two controlled buys, effectuated through a confidential informant, were tape-recorded by the police, was not included in the affidavit. These recordings established the veracity of the informant, an element that the district court found lacking in its probable cause analysis. See <u>id. at 532-33.</u> [**20] The issuing magistrate requested that the affiant officer include this information in his affidavit. See id. at 530. Five of the six warrants requested in relation to the drug investigation were supplemented with this information, but the sixth -Frazier's - was not. See id. Nevertheless, application of the exclusionary rule was not warranted given that the failure to amend the affidavit was nothing more than "a scrivener's error." Id. at 535. "Punishing [the affiant officer] for such a ministerial oversight would have no foreseeable deterrent effect on future police misconduct." Id.

The exception delineated in *Frazier* is in accord with the guiding principle of the *Laughton* rule, that "the test for good faith reliance, because it is an objective one, does not permit consideration of the executing officer's state of mind." *Laughton, 409 F.3d at 750*. Where the record clearly indicates, as it did in *Frazier*, that the magistrate actually factored the omitted information into the probable cause determination, a reviewing court does not have to engage in an after-the-fact assessment of "how much affiants knew" and [**21] "when and from

whom they learned it." Id. at 752.

The <u>Frazier</u> exception does not apply in this case. Although the district court felt that the affidavit "implicitly indicated" that the controlled buy had taken place in temporal proximity to the warrant application, the record does not make this fact explicit in any way, nor does it indicate an awareness on the part of the issuing magistrate of the timing of the controlled buy.

However, the district court concluded that even without considering information not included, the affidavit was not so lacking in probable cause that the officers executing the warrant were unreasonable in their reliance upon it:

The affidavit states that the informant had purchased crack cocaine from a female in Toronto previously, and that this supplier had advised the informant in the past that she obtained her crack cocaine from a source in Steubenville. The affidavit also indicates that on the date of the sale, the supplier obtained her crack cocaine from the residence in Steubenville described in the warrant. This information could be construed as suggesting an ongoing drug operation based in the residence. The fact that [**22] a residence was involved suggests that the place to be searched for controlled substances was a base of operations where drugs could be found over a period of time, rather than, for example, a single sale at a public park.

For the reasons discussed above with respect to the relationship of probable cause to staleness, we cannot agree with the analysis of the district court on this point. The South Fifth Street transaction is not dated, and the affidavit contains no indication of ongoing investigation, subsequent or previous controlled buys, or further surveillance of the address or the female supplier. Any of these things might serve to [*489] establish that the house was the site of an ongoing criminal enterprise, or ground the undated controlled buy within a finite period of investigation. However, without any of these elements, the affidavit is patently insufficient. No welltrained officer could have reasonably relied on a warrant issued on the basis of this affidavit. In fact, it seems that only one officer, the one who filled out the warrant and had subjective knowledge of the proximity of this application to the facts set out in the affidavit, could have failed to notice this [**23] deficiency.

The majority in Laughton recognized that, in some cases, a warrant may be issued on the basis of an

inference. In United States v. Schultz, 14 F.3d 1093 (6th Cir. 1994), an experienced officer drew an inference from certain facts that the defendant was involved in specific criminal activity and that evidence of this activity could be found in safety deposit boxes. Although the facts set forth in the affidavit were insufficient to support a finding of probable cause, the nexus was not so remote as to render the officer's reliance on the warrant unreasonable. Id. at 1098. However, the affidavit before the court in Laughton contained a list "of the address of the premises to be searched, a summary of the [affiant]'s professional experience, and two acontextual allegations." 409 F.3d at 751. Judge Gilman, dissenting from the majority opinion in Laughton, felt that the majority's refusal to draw an inference between the address to be searched and the reference to "the home" and "the residence" made in the affidavit was an "unwarranted hypertechnicality." 409 F.3d at 752-53. The probable cause inquiry [**24] necessarily involves inferences - between a confidential informant's past and future reliability, between an observed pattern of behavior and a suspected crime, or between the nature of a crime and the location of its evidence, for example. The dissent and the majority in Laughton disagreed about the distance that an inference (or inferences) may permissibly bridge in order to render reliance on a defective warrant objectively reasonable. But in each case, the inference is drawn between facts that are contained in the affidavit or warrant application, and not on assumptions about standard police practices or unasserted but hypothetically possible facts. In Laughton, the district court unacceptably assumed the existence of "information within the knowledge of the affiant, if he had been able or chose to state it properly, to establish probable cause." 409 F.3d at 751. It is equally unacceptable in this case to assume, as did the district court, that the affidavit described recent events because that is usually the way that investigations proceed. This inference connects an event in the affidavit with an insufficiently substantiated assumption about police practice [**25] and, as such, is not a valid basis for rescuing the warrant.

CONCLUSION

The district court correctly ruled that the <u>warrant</u> authorizing a <u>search</u> of 241 South Fifth Street was invalid due to <u>staleness</u> but nevertheless sustained the search on the basis of *Leon*. However, considering only those facts contained within the four corners of the affidavit, as instructed by <u>Laughton</u>, we conclude that the good faith exception may not be applied to the

search in this case, because a well-trained officer could not reasonably rely on the affidavit, given that it was based on one undated, acontextual controlled buy. We therefore REVERSE the district court's resolution of the motion to suppress and remand the case to the district court for further proceedings consistent with this opinion.

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THE STATE OF OHIO, APPELLEE, v. BEMBRY ET AL., APPELLANTS. [Cite as State v. Bembry, 151 Ohio St.3d 502, 2017-Ohio-8114.]

Criminal law—Once a warrant has been issued, the exclusion of evidence is not the appropriate remedy under Article I, Section 14 of the Ohio Constitution for a violation of the knock-and-announce statute, R.C. 2935.12.

(No. 2016-0238—Submitted March 1, 2017—Decided October 10, 2017.)

APPEAL from the Court of Appeals for Mahoning County, Nos. 14 MA 51 and

14 MA 52, 2015-Ohio-5598.

O'NEILL, J.

{¶ 1} In this appeal, we take up whether the exclusionary rule is the appropriate remedy when police executing a valid search warrant violate the requirements of the knock-and-announce statute, R.C. 2935.12. We conclude that the exclusion of evidence is not the proper remedy for a violation of the knock-and-announce statute. We therefore affirm the judgment of the Seventh District Court of Appeals and remand the cause to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

- {¶ 2} Boardman police supervised two "controlled buys" in October 2012, during which a confidential informant purchased heroin from appellant Harsimran Singh near the apartment where Singh lived. Based upon the two incidents during which Singh sold heroin and because of his prior arrest for a crime of drug abuse, Boardman police sought and acquired a search warrant for the apartment.
- {¶ 3} Singh lived with his girlfriend, appellant Sherri A. Bembry. Seven Boardman police officers executed the warrant at her apartment at 8:30 a.m. on November 2, 2012. Officers knocked several times. Thirty seconds after police

R.C. 2935.12. The trial court granted the motion to suppress, finding that the Boardman police had violated R.C. 2935.12 without any exigent circumstances justifying the violation.

- {¶ 8} The state appealed pursuant to R.C. 2945.67(A), raising the following assignment of error: "The trial court should have denied defendants' motion to suppress, because the law is well-settled that the exclusionary rule does not apply to violations of the knock-and-announce rule.' 2015-Ohio-5598, ¶ 7. The court of appeals explained that the facts of Bembry and Singh's case were "virtually identical" to the facts in *Hudson v. Michigan*, 547 U.S. 586, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006). 2015-Ohio-5598, at ¶ 11. Applying the logic of *Hudson*, the court of appeals reversed the judgment of the trial court, vacated the suppression order, and remanded the matter. 2015-Ohio-5598, at ¶ 11-19.
- {¶ 9} Bembry and Singh appealed, and we accepted jurisdiction over the following proposition of law: "The exclusionary rule is the appropriate remedy under Article I, Section 14 of the Ohio Constitution for a violation of R.C. 2935.12." See 145 Ohio St.3d 1470, 2016-Ohio-3028, 49 N.E.3d 1313.

DISCUSSION

{¶ 10} The court of appeals made no mention of the independent protection provided by Article I, Section 14 of the Ohio Constitution. Generally, we will not consider any issue "that was not raised in any way in the Court of Appeals and was not considered or decided by that court." *Toledo v. Reasonover*, 5 Ohio St.2d 22, 213 N.E.2d 179 (1965), paragraph two of the syllabus. We have justified this rule in no uncertain terms:

Any other rule would relieve counsel from any duty or responsibility to the court, and place the entire responsibility upon the trial court to give faultless instructions upon every possible feature of the case, thereby disregarding entirely the true relation of in *Hudson* governs the appropriate remedy for a violation of the knock-and-announce principle under both the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

{¶ 13} Turning to the proposition at hand, we must answer whether Ohio's independent provision of the "right of the people to be secure * * * against unreasonable searches and seizures" in Ohio Constitution, Article I, Section 14 requires the suppression of evidence when police fail to comply with the knock-and-announce principle while executing a valid search warrant. We hold that it does not.

THE EXCLUSIONARY RULE

- {¶ 14} The exclusionary rule is a fairly recent legal development, and its rise is inextricably entwined with the incorporation of the Bill of Rights within the Fourteenth Amendment. More than 100 years ago, the United States Supreme Court recognized the federal suppression remedy for warrantless searches and seizures, in Weeks v. United States, 232 U.S. 383, 398, 34 S.Ct. 341, 58 L.Ed. 652 (1914). The court held that a federal district court in Missouri committed error when it denied a criminal defendant's pretrial application to return seized property on the grounds that the property was taken from his home during a warrantless search. Id.
- {¶15} Prior to 1936, Ohio courts sometimes excluded evidence resulting from search-and-seizure violations in criminal investigations, but application of the exclusion remedy was inconsistent. See State v. Lindway, 131 Ohio St. 166, 172-180, 2 N.E.2d 490 (1936). When this court squarely took up whether illegally obtained evidence should be barred from trial, it noted that courts in the majority of other states had "[held] such evidence admissible on the basis that if it is pertinent to the main issue in the case, a court need not concern itself with the collateral issue of how it was gotten." Id. at 173. Joining the courts of those states, this court held that the Fourth Amendment had "no application to the various states" and that "[i]n

by an unlawful search and seizure is admissible in a criminal prosecution." State v. Mapp at 430.

States Supreme Court overruled its decision in *Wolf* and reversed this court's decision in *State v. Mapp.* In overruling *Wolf*, the court adopted the reasoning of the California Supreme Court that the "other remedies" developed by the states for protection of the right to privacy "[had] been worthless and futile." *Mapp v. Ohio* at 652, citing *People v. Cahan*, 44 Cal.2d 434, 282 P.2d 905 (1955). Left with only inadequate alternative remedies, the court held that the Fourth Amendment's exclusionary remedy must be "enforceable against the States through the Due Process Clause of the Fourteenth [Amendment]" just the same as the Fourth Amendment's right to privacy against arbitrary intrusion by the police. *Id.* at 655. The court remarked:

Were it otherwise, then just as without the *Weeks* rule the assurance against unreasonable federal searches and seizures would be "a form of words", valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in the concept of ordered liberty."

Id. Put most simply, there can be no meaningful right to privacy in the home if the right has no meaningful remedy. And so, through operation of the Fourteenth Amendment, the Fourth Amendment applies in Ohio courts, it protects the right to privacy, and it may require the suppression of evidence gained in violation of that right.

and-announce principle provides the same basic rule: police executing a warrant must give notice of their presence and purpose and may enter a home only after refusal of admission. R.C. 2935.12(A) ("when executing a search warrant, the peace officer * * * executing the warrant * * * may break down an outer or inner door or window of a dwelling house or other building, if, after notice of his intention to * * * execute the warrant * * * he is refused admittance"). The knock-and-announce principle becomes relevant only after a warrant has issued, for if a warrant has not issued, a search or seizure inside the home is "presumptively unreasonable" whether or not police give notice of their presence and purpose. Payton v. New York, 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); see also State v. Carr, 2d Dist. Montgomery No. 19121, 2002-Ohio-4201, ¶ 13 ("The statute sets forth requirements to be followed when police are entering a residence to execute a warrant. The police in this case were not executing a warrant. Therefore, we conclude that R.C. 2935.12 is inapplicable to this case").

- {¶ 20} Despite the fact that the knock-and-announce principle is "an element of the reasonableness inquiry under the Fourth Amendment," Wilson at 934, the United States Supreme Court held in Hudson that suppression is categorically the wrong remedy when police armed with a valid warrant violate the knock-and-announce principle. Hudson at 594, 599. The court gave two related reasons why "the massive remedy of suppressing evidence of guilt is unjustified." Id. at 599.
- {¶21} First, the knock-and-announce principle protects different interests than those protected by the warrant requirement and vindicated by the suppression remedy. *Id.* at 590-594. The warrant requirement protects the privacy of one's home and its contents, while the suppression of evidence found during a warrantless search of the home appropriately restores the private nature of that evidence. *Id.* at 593. The knock-and-announce principle, however, protects "human life and limb" placed in jeopardy by "supposed self-defense by the surprised resident," assures

contents of Bembry and Singh's home to state scrutiny by issuing a warrant before the search occurred. Because the warrant issued, Bembry and Singh's privacy interest in their apartment abated within the scope of the search warrant. It makes no sense then to restore the privacy interest that existed prior to the issuance of the warrant by suppressing evidence merely because police executed the *valid* warrant in an unlawful manner.

{¶ 29} Finally, Bembry and Singh argue that pursuant to the discussion of the "new federalism" in Mole, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, at ¶ 14-22, we should take the decisions of other state courts as persuasive authority on the question at hand. The authorities Bembry and Singh offer are simply not persuasive. Several of these decisions provide for suppression as a remedy for a violation of another state's knock-and-announce statute or a criminal rule rather than of a constitutional provision. State v. Cable, 51 So.3d 434, 441-443 (Fla.2010); Berumen v. State, 182 P.3d 635, 641-642 (Alaska 2008); Commonwealth v. Chambers, 528 Pa. 403, 410, 598 A.2d 539 (1991). The plain language of R.C. 2935.12 provides no remedy for its violation, and we cannot "brazenly ignore the unambiguous language of a statute" simply because another state would do so under its own law. Jacobson v. Kaforey, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8. In still other states, the law in this area is as undeveloped as it is in Ohio. E.g., State v. Jean-Paul, 2013-NMCA-032, 295 P.3d 1072, 1077 ("Our Supreme Court has not had the occasion since Hudson to reconsider [State v. Attaway, 117 N.M. 141, 1994-NMSC-011, 870 P.2d 103] or the application of the exclusionary rule for knock-and-announce violations under the state constitution. * * * Therefore, Attaway controls, and the remedy for any violation of [the New Mexico Constitution's] knock-and-announce requirement continues to be suppression of the evidence").

 $\{\P\ 30\}$ We find the United States Supreme Court's reasoning in *Hudson* to be far more persuasive than the arguments made by Bembry and Singh. The knock-



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Job Number: 214933962

Document (1)

1. State v. Dixon, 141 Ohio App. 3d 654

Client/Matter: -None-

Search Terms: What is an acceptable to wait on a knock and announce search warrant

Search Type: Natural Language

Narrowed by:

Content TypeCases

Narrowed by

Sources: OH, Related Federal; Cases



State v. Dixon

Court of Appeals of Ohio, Third Appellate District, Logan County

March 28, 2001, Date of Judgment Entry

CASE NO. 8-2000-34

Reporter

141 Ohio App. 3d 654 *; 752 N.E.2d 1005 **; 2001 Ohio App. LEXIS 1442 ***; 2001-Ohio-2120

STATE OF OHIO, PLAINTIFF-APPELLEE v. DANNY RAY DIXON, DEFENDANT-APPELLANT

Prior History: [***1] CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

Disposition: Judgment Reversed.

Core Terms

announce, knock, door, search warrant, trial court, destroyed, arrest, law enforcement officer, exigent circumstances, motion to suppress, suppression, premises, execute

Case Summary

Procedural Posture

Defendant appealed the judgment of the Logan County Court of Common Pleas (Ohio) denying defendant's motion to suppress evidence seized as a result of the <u>search</u> of his residence. The evidence led to defendant's entry of a guilty plea to possession of drugs.

Overview

Officers went to defendant's house at night to execute a <u>search warrant</u>. Officers <u>knocked and announced</u> their presence twice without any answer. The <u>knocking</u> caused the door to partially open. Approximately 10 to 20 seconds passed between the announcements. After the second announcement, the officers immediately entered. During the officers' <u>search</u>, they found marijuana. Defendant pleaded guilty to possession of drugs. The reviewing court reversed. An officer was permitted to enter the premises upon actual or constructive refusal to admit. There was no actual refusal, because there were no adults on the first floor. Because it was a nighttime <u>search</u>, the officers did not wait long enough before entering for it to constitute a

constructive refusal. There were no exigent circumstances to justify entry. The <u>search</u> was unreasonable, and the evidence seized should have been suppressed.

Outcome

The judgment was reversed. The officers' <u>search</u> of defendant's home pursuant to a <u>search warrant</u> was unreasonable, because the officers were not refused admission into the home, and there were no exigent circumstances present justifying entry without defendant's permission.

LexisNexis® Headnotes

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > Juries & Jurors > Province of Court & Jury > Legal Issues

HN1[Appeals, Standards of Review

Appellate review of a decision on a motion to suppress evidence presents mixed questions of law and fact. At a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. The weight of the evidence is also primarily for the trier of fact.

Criminal Law & Procedure > ... > Standards of

141 Ohio App. 3d 654, *654; 752 N.E.2d 1005, **1005; 2001 Ohio App. LEXIS 1442, ***1

Review > De Novo Review > General Overview

HN2[3] Standards of Review, De Novo Review

A reviewing court must accept a trial court's factual findings if they are supported by competent, credible evidence. Accepting those facts as true, a reviewing court must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard. That is, a reviewing court must review a trial court's application of the law de novo.

Constitutional Law > ... > Fundamental Rights > <u>Search</u> & Seizure > <u>Warrants</u>

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > Execution of <u>Warrants</u>

Constitutional Law > ... > Fundamental
Rights > <u>Search</u> & Seizure > General Overview

Criminal Law & Procedure > <u>Search</u> & Seizure > General Overview

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > General Overview

HN3[Search & Seizure, Warrants

<u>U.S. Const. amend. IV</u> requires law enforcement officers to execute <u>search warrants</u> in a reasonable manner. In determining whether law enforcement officers executed a <u>search warrant</u> in a reasonable manner, one aspect that courts must consider is the procedure in which the <u>search warrant</u> was executed. <u>U.S. Const. amend. IV</u> incorporates the common-law principle of <u>knock-and-announce</u> prior to entering a residence. Whether law enforcement officers properly complied with the <u>knock and announce</u> procedures forms part of the reasonableness inquiry under <u>U.S. Const. amend. IV</u>. In other words, an officer must act reasonably.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > Execution of <u>Warrants</u>

Criminal Law & Procedure > ... > Exclusionary
Rule > Exceptions to Exclusionary Rule > Exigent

Circumstances

HN4 Search Warrants, Execution of Warrants

The same protections of <u>U.S. Const. amend. IV</u> hold true even if the door is ajar. A partially open door with an occupant standing therein, without exigent circumstances, does not diminish or vitiate the protection afforded by, and the values inherent in, <u>U.S. Const. amend. IV</u>.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > Execution of <u>Warrants</u>

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > <u>Knock</u> & <u>Announce</u> Rule

HN5 Search Warrants, Execution of Warrants

Under the <u>U.S. Const. amend. IV knock and announce</u> rule, once an officer has properly <u>knocked and announced</u> his presence, he may enter the premises upon refusal to admit. A refusal to admit may be actual or constructive. Officers are constructively refused admittance when the occupant of the premises fails to respond to the officers within a reasonable period of time. Once a reasonable period of time has elapsed, the officers may enter the premises.

Criminal Law & Procedure > ... > Warrantless
<u>Searches</u> > Exigent Circumstances > Destruction of
Evidence

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > <u>Knock</u> & <u>Announce</u> Rule

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Exigent Circumstances

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > Execution of <u>Warrants</u>

<u>HN6</u>[♣] Exigent Circumstances, Destruction of Evidence

In the context of the <u>knock and announce</u> rule, whether police officers paused long enough before admitting themselves into a home entails a highly contextual analysis, requiring the examination of all the circumstances of the case. For example, the <u>knock and announce</u> principle need not be strictly followed if exigent circumstances exist which require otherwise. Exigent circumstances include situations where the officers believe that evidence can and will be destroyed quickly on short notice or that compliance could place the officers in jeopardy.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > Execution of Warrants

HN7[Search Warrants, Execution of Warrants

Where the evidence sought can easily and quickly be destroyed, the police may bypass the requirements of the *knock and announce* principle. Articulable facts must be introduced which prove that in the particular case there is a strong probability that evidence will be destroyed. In other words, the police must have reason to believe that the evidence will be destroyed, based upon other factors uniquely present in the circumstances.

Counsel: DANIEL J. LaROCHE, Attorney at Law, Bellefontaine, Ohio For Appellant.

ALAN N. HALE, Attorney at Law, Bellefontaine, Ohio For Appellee.

Judges: HADLEY, J. WALTERS and BRYANT, JJ., concur.

Opinion by: HADLEY

Opinion

[**1007] [*657]

HADLEY, J. The defendant-appellant, Danny Ray Dixon ("the appellant"), appeals from a judgment of the Logan County Court of Common Pleas denying his motion to suppress the evidence seized as a result of the <u>search</u> of his residence. For the following reasons, we reverse the judgment of the trial court.

The pertinent facts and procedural history of the case

are as follows. On the evening of May 4, 2000, six uniformed SWAT team members of the Bellefontaine Police Department executed a search warrant on the appellant's residence in Bellefontaine, Ohio. In execution of the warrant, the officers proceeded to the appellant's front door. Officer Jim Tetrich knocked on the appellant's door and announced "Bellefontaine Police Department, search warrant." The force of Officer Tetrich's knock caused the door to partially open. For a second time, Officer Tetrich announced "Bellefontaine [***2] Police Department, warrant." Through the partially open door, the officers observed several individuals in a room located on the first floor of the home.

Immediately thereafter, the officers entered the home through the partially open door. At that time, the officers conducted a protective sweep of the entire residence. The officers eventually found the appellant sitting on a couch in an upstairs bedroom. The ensuing <u>search</u> of the home resulted in the seizure of 435.1 grams of marijuana and miscellaneous drug paraphernalia.

As a result of the <u>search</u> of the appellant's home, on June 12, 2000, the appellant was indicted by the Logan County Grand Jury on one count of possession of drugs, in violation of <u>R.C. 2925.11(A)</u>, a felony of the fifth degree. On September 1, 2000, the appellant challenged the legality of the execution of the <u>search warrant</u>. [**1008] In his motion to suppress, the appellant alleged that the [*658] <u>search</u> was unlawful since the officers had failed to wait an adequate time after <u>knocking and announcing</u> their presence before entering the home.

On September 19, 2000, a suppression hearing was held in the Logan County Court of Common Pleas. By judgment [***3] entry of October 5, 2000, the trial court overruled the appellant's motion to suppress by finding that the officers' actions were reasonable on the basis that the occupants of the home had constructively refused their entry into the home.

On October 9, 2000, pursuant to a negotiated plea agreement, the appellant pleaded no contest to one count of possession of drugs. The trial court accepted the appellant's plea and found him guilty of the offense as charged in the indictment.

A sentencing hearing was held on September 13, 2000. At the conclusion of the sentencing hearing, the appellant was sentenced to a term of imprisonment of six months.

The appellant now appeals, asserting the following sole assignment of error for our review.

Assignment of Error

The trial court erred in finding a constructive refusal where: (1) only 10 to 15 seconds had elapsed between the time of the <u>knock-and-announce</u> by police; (2) the <u>search</u> was conducted at night; (3) there is no evidence to indicate that the Defendant had a prior criminal record; (4) there is no evidence to indicate that the Defendant's residence had ever been <u>searched</u> before; and (5) no adults were in a position to answer [***4] the door in the time allowed by police.

In his sole assignment of error, the appellant maintains that the trial court erred in overruling his motion to suppress. The appellant argues that the <u>search</u> was unlawful because the officers did not properly execute the <u>search warrant</u>. For the following reasons, we agree.

Initially, we note that HN1 (1) appellate review of a decision on a motion to suppress evidence presents mixed questions of law and fact. United States v. Martinez (C.A.11, 1992), 949 F.2d 1117, 1119, At a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. See, e.g., State v. Carter (1995), 72 Ohio St. 3d 545, 552, 651 N.E.2d 965; State v. Mills (1992), 62 Ohio St. 3d 357, 366, 582 N.E.2d 972, certiorari denied (1992), 505 U.S. 1227, 120 L. Ed. 2d 915, 112 S. Ct. 3048, citing State v. Fanning (1982), 1 Ohio St. 3d 19, 20, 437 N.E.2d 583. The weight of the evidence is also primarily for the trier of fact. State v. DeHass (1967), 10 Ohio St. 2d 230, 227 N.E.2d 212, paragraph [***5] one of the syllabus; State v. Smith (1997), 80 Ohio St. 3d 89, 105, [*659] 684 N.E.2d 668; State v. Brooks (1996), 75 Ohio St. 3d 148, 154, 661 N.E.2d 1030; Fanning, 1 Ohio St. 3d at 20.

<u>HN2</u>[1] A reviewing court must accept a trial court's factual findings if they are supported by competent, credible evidence. <u>State v. Guysinger (1993), 86 Ohio App. 3d 592, 594, 621 N.E.2d 726</u>. Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard. <u>State v. Anderson (1995), 100 Ohio App. 3d 688, 691, 654 N.E.2d 1034</u>. That is, we must review the trial court's application of the law de novo. *Id.*

R.C. 2935.12 sets forth Ohio's knock and announce

procedures. The [**1009] statute prohibits law enforcement officers from forcibly entering the premises to be <u>searched</u> unless certain requirements are met. The statute provides, in pertinent part, as follows:

When making an arrest or executing an arrest <u>warrant</u> or summons in lieu of an arrest <u>warrant</u> * * *, the peace officer * * * making the arrest [***6] or executing the <u>warrant</u> or summons may break down an outer or inner door or window of a dwelling house or other building, if, after notice of his intention to make the arrest or to execute the <u>warrant</u> or summons, he is refused admittance, but the law enforcement officer * * * executing a <u>search warrant</u> shall not enter a house or building not described in the <u>warrant</u>.

The provisions stated herein make it clear that it applies only when an officer makes a forced entry by breaking down a door or window. Here, the officers *knocked and announced* their presence and then entered the home through the unlocked door that had become ajar. Because the officers did not have to break down the door or break a window to effectuate the arrest, *R.C.* 2935.12 does not apply to the case herein.

Although the officers did not violate <u>R.C. 2935.12</u>, the appellant nonetheless asserts in his brief that the <u>search</u> was unlawful. The appellant's claim is premised upon his state and federal constitutional rights to be free from unreasonable <u>searches</u> and seizures.

HN3[1] The Fourth Amendment to the United States Constitution requires law enforcement officers to execute [***7] search warrants in a reasonable manner. See U.S. Const. Am. IV (protecting "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures"). In determining whether law enforcement officers executed a search warrant in a reasonable manner, one aspect that courts must consider is the procedure in which the search warrant was executed, In Wilson v. Arkansas (1995), 514 U.S. 927, 131 L. Ed. 2d 976, 115 S. Ct. 1914, the United States Supreme Court interpreted the Fourth Amendment to incorporate the common-law principle of "knock-and-announce" prior to entering a residence. The Court held that whether law [*660] enforcement officers properly complied with the knock and announce procedures forms part of the reasonableness inquiry under the Fourth Amendment. Id. In other words, an officer must act reasonably.

<u>HN4[</u>율] The same protections hold true even if the door

is ajar. A partially open door with an occupant standing therein, without exigent circumstances, does not diminish or vitiate the protection afforded by, and the values inherent in, the Fourth Amendment. <u>State v. Campana (1996), 112 Ohio App. 3d 297, 303, 678 N.E.2d 626; [***8] State v. Davies, 1986 Ohio App. LEXIS 5215 (Jan. 8, 1986), Hamilton App. Nos. C-850112, C-850113, C-850128 and C-850129, unreported.</u>

HN5[千] Once an officer has properly knocked and announced his presence, he may enter the premises upon refusal to admit. A refusal to admit may be actual or constructive. See State v. Valentine (1991), 74 Ohio App. 3d 110, 113, 598 N.E.2d 82; State v. DeFiore (1979), 64 Ohio App. 2d 115, 411 N.E.2d 837. Officers are constructively refused admittance when the occupant of the premises falls to respond to the officers within a reasonable period of time. See United States v. Moore (C.A.10, 1996), 91 F.3d 96, 98; People v. Riddle (III.App.1994), 258 III. App. 3d 253, 196 III. Dec. 444, 630 N.E.2d 141. Once a reasonable period of time has elapsed, the officers may enter the premises.

HN6[1] Whether police officers paused long enough before admitting themselves [**1010] into a home entails "a highly contextual analysis, [requiring] examin[ation of] all the circumstances of the case." U.S. v. Spikes (1998) 158 F.3d 913, 926, quoting United States v. Bonner (1989), 277 U.S. App. D.C. 271, 874 F.2d 822, 824. For example, [***9] the knock and announce principle need not be strictly followed if exigent circumstances exist which require otherwise. State v. Boyd, 1993 Ohio App. LEXIS 2596 (May 21, 1993), Montgomery App. No. 13425, unreported; citing Defiore, 64 Ohio App. 2d at 119. Exigent circumstances include situations where the officers believe that evidence can and will be destroyed quickly on short notice or that compliance could place the officers in jeopardy. State v. Southers, 1992 Ohio App. LEXIS 3000 (June 8, 1992), Stark App. No. CA-8682, unreported; DeFiore, 64 Ohio App. 2d at 117; Boyd, supra.

Having set forth the applicable law with regard to "knock and announce" procedures, we must now determine whether the trial court erred in overruling the appellant's motion to suppress. We first note that neither party disputes whether the officers properly knocked and announced their presence. Rather, the center of the dispute revolves around whether the officers waited a sufficient period of time before entering the appellant's home and whether there were exigent circumstances

present which would justify their non-compliance. The trial court found that the officers did properly *knock and announce* their purpose [*661] and [***10] that enough time had elapsed before they entered the home to permit them to infer that their admittance was constructively refused.

At the suppression hearing held on September 19, 2000, Officer Jim Tetrich testified that he and his fellow officers entered the appellant's home immediately after they had made their second announcement. According to Tetrich, the second announcement was made approximately ten to fifteen seconds after the initial knock and announce. Meanwhile, Officer Brandon Stanley testified that, in total, only fifteen to twenty seconds had elapsed between the initial knock and announce and their subsequent entry into the home. Although Officer Tetrich testified that there was a lot of "commotion" at the scene, the only individuals located on the first floor of the home were the appellant's girlfriend and three young children. In fact, Officer Sebring testified that the only individuals he observed prior to entering the home were several screaming children. Given all of these circumstances and that the search was conducted at such a late hour, we cannot say that such a scene was unexpected. Therefore, we cannot in good conscience say that there was a constructive or [***11] actual refusal to admit.

There was also no factual basis established on the record that evidence would be destroyed in this case particular case if the officers' entry was delayed. Some courts have held that HN7[1] where the evidence sought can easily and quickly be destroyed, the police may bypass the requirements of the knock and announce principle. See, e.g., State v. Roper (1985), 27 Ohio App. 3d 212, 213, 500 N.E.2d 353. The majority of jurisdictions, however, have held that articulable facts must be introduced which prove that in the particular case there is a strong probability that evidence will be destroyed. See, e.g., Defiore, 64 Ohio App. 2d at 119; Valentine (1991), 74 Ohio App. 3d at 117-118. In other words, the police must have reason to believe that the evidence will be destroyed, based upon other factors [**1011] uniquely present the present circumstances. Valentine, 74 Ohio App. 3d at 118.

Here, while the evidence to be seized was capable of being destroyed, there is nothing in the record to indicate the officers suspected that the occupants were trying to destroy evidence. Further, neither the testimony of the officers [***12] nor the <u>search</u> warrant's supporting affidavit contains facts or

141 Ohio App. 3d 654, *661; 752 N.E.2d 1005, **1011; 2001 Ohio App. LEXIS 1442, ***12

circumstances upon which a reasonable belief could be founded that the suspected occupants of the home would be armed or dangerous.

In conclusion, we find that the officers waited an insufficient period of time before entering the appellant's home and that there were no exigent circumstances present which would justify their non-compliance. For these reasons, we find that the manner in which the <u>search warrant</u> was executed was unreasonable [*662] and, as a consequence, the evidence seized as a result thereof should be suppressed.

Accordingly, the appellant's assignment of error is well-taken and is sustained.

Having found error prejudicial to the appellant herein, in the particulars assigned and argued, we find merit to the appellant's assignment of error.

Judgment reversed.

WALTERS and BRYANT, JJ., concur.

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Document (1)

1. State v. Hunter, 153 Ohio App. 3d 628

Client/Matter: -None-

153 Ohio App. 3d 628, *628; 2003-Ohio-4204, **2003-Ohio-4204; 795 N.E.2d 139, ***139; 2003 Ohio App. LEXIS 3740, ****1

Criminal Law & Procedure > Search & Seizure > Search Warrants > Execution of Warrants

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > Knock & Announce Rule

HN2 Search Warrants, Execution of Warrants

The common law knock and announce rule forms part of the reasonableness inquiry under the Fourth Amendment and requires that officers knock on the door and announce their identity and purpose before forcibly entering a residence.

Criminal Law & Procedure > Search & Seizure > Search Warrants > Execution of Warrants

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

HN3 Search Warrants, Execution of Warrants

See Ohio Rev. Code Ann. § 2935.12.

Criminal Law & Procedure > Search &
Seizure > Search Warrants > Execution of Warrants

HN4 Search Warrants, Execution of Warrants

Regarding the execution of an arrest warrant, silence constitutes an implied refusal of admittance.

Criminal Law & Procedure > ... > Warrantless Searches > Exigent Circumstances > Destruction of Evidence

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Exigent Circumstances

Criminal Law & Procedure > Search & Seizure > Search Warrants > Execution of Warrants

The question of how long police must wait after knocking and announcing their presence before forcibly entering a residence depends upon the facts of the particular case. The length of time involved is one part of that inquiry. However, forcible entry prior to a refusal may be justified by exigent circumstances where it appears that evidence can and will be destroyed on short notice, or that compliance could place the officers in peril of great bodily harm.

Criminal Law & Procedure > ... > Warrantless Searches > Exigent Circumstances > Destruction of Evidence

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > Knock & Announce Rule

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Exigent Circumstances

<u>HN6</u> Exigent Circumstances, Destruction of Evidence

Articulable facts must be introduced which prove that in the particular case there is a strong probability that evidence will be destroyed for exigent circumstances to apply.

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Inevitable Discovery

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule > General Overview

<u>HN7</u>[基] Exceptions to Exclusionary Rule, Inevitable Discovery

Under the inevitable discovery doctrine, if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means then the deterrence rationale of the exclusionary rule has so little basis that the evidence should be received.

HN5 Exigent Circumstances, Destruction of Evidence

Civil Procedure > Discovery & Disclosure > General Overview 153 Ohio App. 3d 628, *628; 2003-Ohio-4204, **2003-Ohio-4204; 795 N.E.2d 139, ***139; 2003 Ohio App. LEXIS 3740, ****1

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Inevitable Discovery

HN8[₺] Civil Procedure, Discovery & Disclosure

The inevitable-discovery doctrine does not apply where the evidence was gathered directly as a result of a constitutional violation and an appellant cannot show that the evidence could have been gathered from an alternative legal method or procedure.

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Inevitable Discovery

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > Knock & Announce Rule

<u>HN9[2]</u> Exceptions to Exclusionary Rule, Inevitable Discovery

The inevitable discovery doctrine does not apply to allow the admission of evidence that would have been obtained by a valid warrant had the police not violated the knock and announce rule in executing the warrant.

Counsel: NATALIA S. HARRIS, Assistant Prosecuting Attorney, Dayton, Ohio, Attorney for Plaintiff-Appellant.

ARVIN S. MILLER, Assistant Public Defender, Dayton, Ohio, Attorney for Defendant-Appellee.

Judges: WOLFF, J. FAIN, P.J. and BROGAN, J., concur.

Opinion by: WOLFF

Opinion

[***141] [*630] WOLFF, J.

[**P1] The State of Ohio appeals from a judgment of the Montgomery County Court of Common Pleas, which granted Tia Hunter's ("Hunter") motion to suppress.

[**P2] The evidence established the following facts:

[**P3] At approximately 9:00 p.m. on December 12, 2002, nine officers from the Dayton Police Department

arrived at 1319 Superior Avenue, Hunter's residence, to execute a search warrant. The warrant authorized them to search the residence for evidence of drug trafficking and drug possession.

[**P4] Upon arriving at 1319 Superior Avenue, the police lined up in the back of the house preparing to go around the house and enter through the front door. The first two officers in line were Detectives Timothy Braun and Douglas Hall. Also near the front of the line were two officers carrying the equipment used to break [****2] open doors-a "hooligan", which is basically a pry bar, and a ram. At the end of the line was Lieutenant Michael Wilhelm, who carried a battery-operated megaphone.

[**P5] The line of officers proceeded from the back of the house around to the front porch. On the front porch, Hunter's sister, Yalonda Hunter, and another woman were talking to the occupants of the house through the front door. The interior door of the house was open, and the exterior door, which was made of plexiglass and provided a clear view of the occupants inside, was closed. As the police reached the front porch, they were spotted by Yalonda Hunter and her companion, who began screaming "police" and "po-po", which is a slang term for police. Several things then began to happen almost simultaneously. Lieutenant Wilhelm began quickly and repeatedly over the announcing megaphone, "1319 Superior, Dayton Police, search warrant." The front of the line reached the door, through which they could see the occupants of the house, including Hunter and her cousin Curtis Hunter. Detective Braun knocked quickly. The occupants of the house looked surprised and stared at the police with wide eyes. Detective Braun told the officer [****3] operating the hooligan to set the tool in the door, and the officers broke open the door and entered the residence. As they were entering, Detectives Braun and Hall observed Curtis Hunter remove something from his [*631] pocket and place it in the cushions of the sofa on which he sat. They testified that they had been unable to see what the object was but that they had been concerned that Curtis might be arming himself. The total time from when the first officers reached the porch until they made entry into the residence was less than ten seconds. The time from when Detectives Braun and Hall reached the glass door until they made entry was two to five seconds. The announcement had been made over the megaphone two to five times before the police broke open the door.

[**P6] Upon entering the residence, the police

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immediately secured the occupants. They observed marijuana on a bar next to where Hunter had been standing. Two [***142] grams of crack cocaine were found in a closet. Hunter was then arrested and read her *Miranda* rights, following which she made some statements to the police.

[**P7] Hunter was indicted on December 20, 2002 on possession of crack cocaine in an amount greater than [****4] or equal to one gram but less than five grams in violation of *R.C. 2925.11(A)*. On January 14, 2002, Hunter filed a motion to suppress. A hearing was held on February 4, 2003. Following the hearing, both Hunter and the state filed supporting memoranda. On February 27, 2003, the trial court granted Hunter's motion to suppress, concluding that the police had violated the knock and announce rule of *R.C. 2935.12* and the *Fourth Amendment in* executing the search warrant.

[**P8] The state appeals, raising one assignment of error.

[**P9] "THE TRIAL COURT ERRED WHEN IT SUSTAINED HUNTER'S MOTION TO SUPPRESS AS THE POLICE COMPLIED WITH OHIO'S 'KNOCK AND ANNOUNCE' STATUTE BEFORE GAINING ENTRY TO EXECUTE THE SEARCH WARRANT, AND BECAUSE A 'KNOCK AND ANNOUNCE' VIOLATION DOES NOT INVOKE APPLICATION OF THE EXCLUSIONARY RULE."

[**P10] The state argues that the trial court erred in granting Hunter's motion to suppress. Specifically, it contends that the police did not violate the knock and announce rule in executing the search warrant, that exigent circumstances justified the entry, and that the inevitable discovery rule should apply to [****5] prevent the suppression of the evidence.

[**P11] Initially, we note that the following standard governs our review of a trial court's decision regarding a motion to suppress: HN1[**] "We are bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard." State v. Retherford (1994), 93 Ohio App.3d 586, 592, 639 N.E.2d 498.

[**P12] <u>HN2</u>[香] [*632] The common law knock and announce rule forms part of the reasonableness inquiry

under the <u>Fourth Amendment and</u> requires that officers knock on the door and announce their identity and purpose before forcibly entering a residence. See <u>Wilson v. Arkansas (1995), 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d 976</u>, paragraph one of the syllabus; <u>State v. Allen, Montgomery App. No. 18788, 2002 Ohio 263</u>. The rule has been codified in Ohio in <u>R.C. 2935.12</u>, which provides:

[**P13] HN3[*] "When making an arrest or executing an arrest warrant or summons in lieu of an arrest warrant, [****6] or when executing a search warrant, the peace officer, law enforcement officer, or other authorized individual making the arrest or executing the warrant or summons may break down an outer or inner door or window of a dwelling house or other building, if, after notice of his intention to make the arrest or to execute the warrant or summons, he is refused admittance, but the law enforcement officer or other authorized individual executing a search warrant shall not enter a house or building not described in the warrant."

[**P14] Courts have recognized that <u>HN4</u>[*] silence constitutes an implied refusal of admittance. See <u>State v. Edmonds, Montgomery App. No. 19129, 2002 Ohio 3807, P18.</u>

[**P15] The trial court concluded, and the record supports, that the officers in this case both knocked and announced their identity and purpose. Therefore, the only issue before us is whether they waited long enough after doing so before entering [***143] the residence. HN5 1 The question of how long police must wait after knocking and announcing their presence before forcibly entering a residence depends upon the facts of the particular case. See Allen, supra. The length of time involved is one part [****7] of that inquiry. However, forcible entry prior to a refusal may be justified by exigent circumstances where it appears that evidence "can and will be destroyed on short notice, or that compliance could place the officers in peril of great bodily harm." Id.; see, also, State v. Boyd (May 21. 1993), Montgomery App. No. 13425, 1993 Ohio App. LEXIS 2596. Courts have upheld entry after twenty seconds, see Edmonds, supra; within five to ten seconds after police announced their identity where a drug deal had recently taken place at the residence, it was a time of day when people were unlikely to be in bed, and there was concern that evidence would be destroyed if the police delayed, see Allen, supra; and within ten to fifteen seconds where a person was seen running across the top stairs and there was concern that 153 Ohio App. 3d 628, *632; 2003-Ohio-4204, **2003-Ohio-4204; 795 N.E.2d 139, ***143; 2003 Ohio App. LEXIS 3740, ****7

evidence would be destroyed, *Boyd*, supra. However, courts have found a violation where entry was made after three to four seconds and no exigent circumstances existed. See <u>State v. Taylor (1999)</u>, 135 <u>Ohio App.3d 182</u>, 186, 733 <u>N.E.2d 310</u>. See, also, <u>State v. Dixon</u>, 141 <u>Ohio App.3d 654</u>, 661, 2001 <u>Ohio 2120</u>, 752 <u>N.E.2d 1005</u>, (finding [****8] a violation where entry was made immediately after second announcement, which occurred [*633] ten to fifteen seconds after initial announcement, and no exigent circumstances existed).

[**P16] The state's argument is twofold. First, it argues that the record establishes that there was an implied refusal of admittance and therefore that the knock and announce rule was not violated. Second, it argues that exigent circumstances existed to allow the police officers to deviate from the precise requirements of *R.C.* 2935.12.

[**P17] We must defer to the trial court's findings of fact, which we conclude are supported by competent, credible evidence. Based upon our review of the record, we are also able to fill in some of the facts not discussed by the trial court. The state's version of events differs significantly from the facts in the record and as stated by the trial court. The state argues that Lieutenant Wilhelm began announcing the presence and purpose of the police, then the officers began banging on the door and demanding that it be opened, then they observed Curtis Hunter remove something from his pocket and place it in the sofa cushions, then they entered. [****9] There are several problems with this recitation of events. First, all of these events were happening nearly simultaneously within a very brief time period, spanning less than ten seconds. Second, although the trial court does not discuss it in its statement of facts, the record is clear that the officers observed Curtis Hunter place something from his pocket between the cushions after the decision had been made to break open the door. It appears that the movement was seen as the door was already being broken open and the officers were entering the residence, rather than before the decision was made as the state contends. In fact, Detective Braun testified that he had told the officer with the hooligan to set the tool in the door immediately after he had knocked. He further testified that he had seen Curtis Hunter's movement "as the door was opening."

[**P18] Based upon these facts, we must agree with the trial court that the police officers violated the knock and announce rule. Lieutenant Wilhelm testified that he had announced the presence of police only two to five times before entry was made. This was happening simultaneously with the other officers reaching the glass door [****10] and Detective Braun knocking quickly. There was insufficient time for the occupants [***144] of the house to register anything other than shock at the officers' presence. The testimony of both Detective Braun and Detective Hall supports this fact. Therefore, we cannot find that there was an implied refusal of admittance in the brief time span between the first announcement of the officers' presence and the time that the officers broke open the door.

[**P19] Furthermore, no exigent circumstances justified entry at the time it was made. Some courts have held that the police may avoid strict compliance with the knock and announce rule where the evidence sought is by its [*634] nature capable of being quickly and easily destroyed. See State v. Roper (1985), 27 Ohio App.3d 212, 213, 27 Ohio B. 252, 500 N.E.2d 353. However, other courts have required that HN6[47] "articulable facts must be introduced which prove that in the particular case there is a strong probability that evidence will be destroyed." See, e.g., Dixon, supra, at 661. We believe that the latter is the better approach. In this case, the officers were able to observe the occupants of the house through the glass door. Thus, [****11] they would have been able to observe any attempt at destroying evidence. No such attempt was observed. Although the state argues that there could have been someone else in the house who was destroying evidence, there is nothing to support that the police thought this to be the case. Furthermore, the trial court concluded that no rapid or threatening movements were made by the occupants of the house. We believe that the evidence supports that conclusion. Although the state argues that Curtis Hunter's movement provided exigent circumstances to enter the house, the testimony of Detectives Braun and Hall reveals that they observed this movement as they were already entering the residence. Therefore, it cannot form the basis of exigent circumstances justifying the entry itself. Accordingly, the trial court properly concluded that the officers violated the knock and announce rule in entering Hunter's residence.

[**P20] The state also argues that the evidence in this case should be admitted pursuant to the "inevitable discovery" exception to the exclusionary rule. The state correctly recites the law relating to inevitable discovery.

HNT[4] Under the inevitable discovery doctrine, "if the prosecution [****12] can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means

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* * * then the deterrence rationale [of the exclusionary rule] has so little basis that the evidence should be received." Nix v. Williams (1984), 467 U.S. 431, 444, 104 S. Ct. 2501, 2509, 81 L. Ed. 2d 377; State v. Perkins (1985), 18 Ohio St.3d 193, 195-96, 18 Ohio B. 259, 480 N.E.2d 763. The rationale behind the inevitable discovery doctrine is that the prosecution should not be placed in a worse position because of earlier police misconduct where the evidence in question would have inevitably been discovered absent the police misconduct. See Nix, supra; Perkins, supra. Thus, the state argues here that the evidence inevitably would have been discovered because they were exercising a valid warrant.

[**P21] We disagree with the state's argument. First, we note that this argument was not made before the trial court. Therefore, it cannot be said that the state proved by a preponderance of the evidence that the evidence inevitably would have been discovered, and this argument is waived. However, [****13] we do not believe that the state's argument is meritorious in any case. In <u>Taylor, supra, at 186</u>, the Twelfth District addressed this issue:

[**P22] HN8[4] [*635] [***145] "The inevitable-discovery doctrine does not apply where the evidence was gathered directly as a result of a constitutional violation and appellant cannot show that the evidence could have been gathered from an alternative legal method or procedure. * * * If this court were to apply the inevitable-discovery doctrine to this case, the knock-and- announce rule would cease to have any meaningful deterrent value." (Citations omitted.)

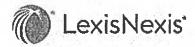
[**P23] We agree with the Twelfth District. HN9[1] The inevitable discovery doctrine does not apply to allow the admission of evidence that would have been obtained by a valid warrant had the police not violated the knock and announce rule in executing the warrant. Such a result would render the knock and announce rule meaningless.

[**P24] We conclude that the trial court properly granted Hunter's motion to suppress.

[**P25] The sole assignment of error is overruled.

[**P26] The judgment of the trial court will be affirmed.

FAIN, P.J. and BROGAN, J. [****14], concur.



User Name: Richard Bosley

Date and Time: Friday, January 19, 2024 8:43:00AM EST

Job Number: 214934653

Document (1)

1. State v. Marcum, 2006-Ohio-7068

Client/Matter: -None-

Search Terms: When can the police utilize a flash bang device when executing a knock and announce search

warrant

Search Type: Natural Language

Narrowed by:

Content Type

Cases

Narrowed by

Sources: OH, Related Federal; Cases

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > <u>Execution</u> of <u>Warrants</u>

HN2[Search Warrants, Execution of Warrants

"Reasonableness," under the Fourth Amendment protection against unreasonable <u>searches</u> and seizures, requires <u>police</u> officers to <u>knock</u> on the door and <u>announce</u> their presence before forcibly entering a residence. Once an officer has properly <u>knocked and announced</u> his presence, he may enter the premises upon refusal to admit. Officers may also enter the premises once a reasonable period of time has elapsed.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > <u>Execution</u> of <u>Warrants</u>

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > <u>Knock</u> & <u>Announce</u> Rule

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Scope of Exceptions

HN3[Search Warrants, Execution of Warrants

The suppression of evidence is not an applicable remedy for a violation of the constitutional <u>knock-and-announce</u> rule.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > <u>Execution</u> of <u>Warrants</u>

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Scope of Exceptions

HN4[\$\frac{\pi}{2}\$] Search Warrants, Execution of Warrants

The interests protected by the <u>knock-and-announce</u> requirement do not include the shielding of potential evidence from the government's eyes. The <u>knock-and-announce</u> rule was meant to protect against injury due to the sudden appearance of **police** inside a home, or to

protect against the invasion of privacy and dignity that <u>can</u> be destroyed by a sudden entrance. The <u>knock-and-announce</u> rule has never protected one's interest in preventing the government from seeing or taking evidence described in a <u>warrant</u>. The exclusionary rule is inapplicable to violations of the <u>knock-and-announce</u> rule.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > <u>Execution</u> of <u>Warrants</u>

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > Exigent Circumstances

HN5 Search Warrants, Execution of Warrants

A <u>police</u> officer is excused from following the "<u>knock</u> <u>and announce</u>" rule when exigent circumstances exist. The validity of exigent circumstances is decided on a case-by case basis.

Criminal Law & Procedure > <u>Search</u> & Seizure > <u>Search Warrants</u> > <u>Execution</u> of <u>Warrants</u>

Criminal Law & Procedure > Commencement of Criminal Proceedings > Arrests > <u>Knock</u> & <u>Announce</u> Rule

HN6 [Search Warrants, Execution of Warrants

It is well-settled that where officers hold a reasonable belief that they are in danger of bodily harm or that suspects are trying to escape or destroy evidence, compliance with the *knock-and-announce* principle is excused.

Evidence > Authentication > General Overview

<u>HN7</u>[₺] Evidence, Authentication

Authentication deals with reliability and relevance of evidence, rather than with the possible violation of constitutional rights that might require the suppression of evidence to preserve those rights.

When a defendant requests an instruction on an inferior degree offense, the burden is on the defendant to persuade the factfinder of the mitigating elements of the offense. It is axiomatic that the burden is also on the defendant to establish reversible error on appeal.

Criminal Law & Procedure > ... > Jury Instructions > Particular Instructions > Lesser Included Offenses

Criminal Law & Procedure > Defenses > Self-Defense

Criminal Law & Procedure > ... > Jury Instructions > Particular Instructions > Theory of Defense

<u>HN16</u>[♣] Particular Instructions, Lesser Included Offenses

A self-defense theory is usually contradictory to proof of sudden passion or rage. Self-defense requires proof that a defendant had a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force. These elements have nothing to do with whether a person is in a sudden fit of passion or sudden rage.

Criminal Law & Procedure > ... > Assault & Battery > Aggravated Offenses > General Overview

HN17 Assault & Battery, Aggravated Offenses

Fear alone is not a basis for establishing the mitigating circumstances of aggravated assault.

Criminal Law & Procedure > ... > Assault & Battery > Aggravated Offenses > Elements

HN18[♣] Aggravated Offenses, Elements

It is clear that theft of personal property is not the type of provocation that satisfies the provocation element in aggravated assault.

Criminal Law & Procedure > ... > Assault &

Battery > Aggravated Offenses > Elements

HN19 Aggravated Offenses, Elements

A single argument, or even a history of arguments, with another person is not sufficient provocation to satisfy the requirements of aggravated assault.

Counsel: For Plaintiff-Appellee: Atty. Robert Herron, Columbiana County Prosecutor, Atty. Timothy J. McNicol, Assistant Prosecuting Attorney, Lisbon, Ohio.

For Defendant-Appellant: Atty. Dominic A. Frank, East Liverpool, Ohio; Atty. Brian P. Kish, Canfield, Ohio.

Judges: Hon. Cheryl L. Waite, Hon. Gene Donofrio, Hon. Joseph J. Vukovich. Donofrio, P.J., concurs. Vukovich, J., concurs.

Opinion by: Cheryl L. Waite

Opinion

WAITE, J.

[*P1] Appellant Matt I. Marcum challenges his conviction on one count of felonious assault. The charge arose after Appellant attacked his wife and fired a number of gunshots at her both inside their trailer and while she was driving away. Appellant argues that evidence retrieved from his trailer should have been suppressed because the police violated the knockand-announce rule when executing their arrest warrant. The U.S. Supreme Court recently ruled that evidence obtained in violation of the knock-andannounce rule is not required to be suppressed. Furthermore, exigent circumstances existed to excuse the officers from following [**2] the knock-andannounce rule. Appellant also argues that statements he made over the telephone to the police should have been suppressed because the statements were not properly authenticated at trial. The record reveals that Appellant identified himself during the phone call and that it was otherwise properly authenticated. Finally, Appellant argues that the trial court should have sustained his motion for a jury instruction on the inferior degree offense of aggravated assault. The record reflects that there is no reasonable interpretation of the evidence to support the conclusion that Appellant acted in a sudden rage or heat of passion provoked by the victim, which is part of the definition of aggravated assault, and that the trial court was correct in denying

Appellant's motion. Appellant's three assignments of error are without merit, and the judgment of the Columbiana County Court of Common Pleas is affirmed.

FACTS AND PROCEDURAL HISTORY

[*P2] On September 14, 2003, Amy Marcum, Appellant's wife, drove to the Leetonia <u>Police</u> Department and reported that Appellant had attacked her at their home and fired shots at her and her three-year-old son while they were fleeing in [**3] the family van. She had visible injuries, and the <u>police</u> identified bullet holes in the van. The Leetonia <u>police</u> immediately requested assistance from Chief Shelby Blakeman of Washingtonville, from the Columbiana County Sheriff's Department, and from the Columbiana County Prosecutor's Office.

[*P3] Amy Marcum apprised the *police* that Appellant was intoxicated, was taking nitroglycerin for a heart condition, and was complaining of chest pains when she left. Mrs. Marcum gave Chief Blakeman her home phone number, and he called the number to determine if Appellant needed medical care. Chief Blakeman identified himself and asked to speak to Matt Marcum, to which Appellant responded: "This is Matt." (2/24/04 Tr., p. 11.) Appellant then proceeded to tell Chief Blakeman that he knew he was going to jail for shooting at Mrs. Marcum, and that he fired shots from the house. (2/24/04 Tr., p. 12.) He also stated, "[i]f someone came back to the house tonight, somebody was gonna die." (2/24/04 Tr., p. 12.)

[*P4] An arrest warrant was issued, and the regional Special Response Team ("SRT") went to Appellant's residence to execute the warrant. The SRT believed Appellant to be armed and [**4] dangerous. Upon arriving at the residence, the members of the SRT took up positions around the house. The SRT was prepared to use a battering ram to enter the house. Deputy Willie Coleman shouted "Sheriff's Office," waited five to ten seconds for a response, and then hit the front door with the battering ram when there was no response. The officers also threw an explosive device, known as a "flash bang" grenade or percussion grenade, through one of the windows in the home. (2/19/04 Tr., p. 16.) The officers found Appellant asleep in his bed with a handgun lying next to him. They arrested Appellant and confiscated the gun as evidence.

[*P5] On October 31, 2003, the Columbiana County Grand Jury issued a two-count indictment against

Appellant. Count one was for felonious assault, a second degree felony pursuant to R.C. § 2903.11(A)(1). The second count was for arson, involving a separate incident that occurred on June 21, 2003. On December 22, 2003, the two counts were severed for purposes of trial. Appellant pleaded not guilty to the charges and obtained private counsel.

[*P6] On February 3, 2004, Appellant filed a motion to suppress any oral statements [**5] he made to the *police*, including any statements he made to Chief Blakeman. A hearing was later held on this motion.

[*P7] Also on February 3, 2004, Appellant filed a motion to suppress the evidence that was seized during his arrest, including the 9mm handgun found on his bed. A hearing was also held on this motion.

[*P8] On March 5, 2004, the trial court filed a journal entry overruling the motion to suppress the handgun, and partially overruling the motion to suppress statements made to the *police*.

[*P9] The case went to jury trial on October 4, 2004. At the close of the evidence, Appellant made an oral motion that the jury be instructed on the inferior degree offense of aggravated assault. The motion was overruled. The jury returned a guilty verdict on October 6, 2004, on one count of felonious assault. A sentencing hearing was held November 18, 2004, and the trial court imposed a six-year prison term.

ASSIGNMENT OF ERROR NO. 1

[*P10] "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS AND PERMITTED INTO EVIDENCE ITEMS SEIZED FROM THE PERSONAL RESIDENCE IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION [**6] AS WELL AS THE SECTION 14, ARTICLE I OF THE OHIO CONSTITUTION."

[*P11] On February 3, 2004, Appellant filed a motion to suppress all physical evidence seized from his home after the <u>police executed</u> their arrest <u>warrant</u> by <u>knocking</u> down his front door and throwing a percussion grenade through the living room window. Appellant argues that the <u>police</u> action violated the statutory "<u>knock-and-announce</u>" rule found in <u>R.C. § 2935.12(A)</u>:

[*P12] HN1[*] "(A) When making an arrest or

and there was an odor of alcohol on him. Officers removed the handgun and then arrested him. Their reasonable belief of danger was shown to be [**11] justified by the existence of the gun and the evidence of multiple gunshots subsequently recovered from the crime scene.

[*P18] From the overwhelming evidence admitted at the suppression hearing, it was clear that the *police* had a reasonable belief of danger when *executing* the arrest *warrant*. This provided exigent circumstances to excuse the requirements of the *knock-and-announce* rule. For all the aforementioned reasons, Appellant's first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

[*P19] "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN IT PERMITTED INTO EVIDENCE ORAL STATEMENTS ALLEGEDLY MADE BY THE APPELLANT."

[*P20] Appellant argues that certain statements he made during a telephone call with Chief Blakeman should have been suppressed because the state never authenticated that Appellant was actually the person speaking on the phone. The phone call was obviously an important piece of the evidence, because during the call, Appellant admitted that he tried to shoot Mrs. Marcum. Appellant has not raised any Fourth or Fifth Amendment issues on appeal regarding the phone call that would require the suppression of evidence, and it appears [**12] that the question on appeal is actually whether the trial court abused its discretion by not excluding the telephone call pursuant to the authentication requirements of Evid.R. 901. HN7[1] Authentication deals with reliability and relevance of evidence, rather than with the possible violation of constitutional rights that might require the suppression of evidence to preserve those rights. State v. Brown, 151 Ohio App.3d 36, 2002 Ohio 5207, 783 N.E.2d 539,

[*P21] HN8[*] "Ordinarily, a trial court is vested with broad discretion in determining the admissibility of evidence in any particular case, so long as such discretion is exercised in line with the rules of procedure and evidence." Rigby v. Lake County (1991), 58 Ohio St.3d 269, 271, 569 N.E.2d 1056.

[*P22] Evid.R. 901(A) states: HN9[4] "The requirement of authentication or identification as a

condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

[*P23] <u>HN10</u>[4] Evid.R. 901(B) provides a number of examples of valid authentication, "[b]y [**13] way of illustration only, and not by way of limitation * * *." Evid.R. 901(B)(6) provides an example of how to authenticate a telephone conversation:

[*P24] HN11[*] "(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (a) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (b) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone."

[*P25] The staff notes to *Evid.R.* 901 clarify how a telephone call may be authenticated:

[*P26] "Thus <u>HN12[*]</u> if the testifying witness testifies that he dialed a number listed under the name of a particular person, and the person answering the phone identified himself as the person listed in the directory, then the testifying witness may testify as to the contents of the call; that is, 'self-identification' (of the person called) is sufficient authentication." (Staff notes to Evid.R. 901(B)(6) [**14]).

[*P27] In the instant case, Mrs. Marcum provided Chief Blakeman with her home phone number, which was also Appellant's home phone number. Chief Blakeman dialed the number, identified himself, and asked to speak with Matt Marcum, who then identified himself:

[*P28] "Q. [Prosecutor Gamble] Okay. <u>Can</u> you describe to us then what took place when you dialed the Marcum number?

[*P29] "A. [Chief Blakeman] Mr. Marcum answered the phone, sounded very intoxicated, and he explained to me, you know, I asked him if, you know, he was okay, if he was experiencing any chest pains, do you need medical attention, are you all right? And he just said that he had been drinking, obviously.

[*P30] "Q. Did he-- did you identify yourself?

[*P31] "A. Yes, I did.

[*P32] "Q. Okay, and do you recall how you identified

yourself?

[*P33] "A. I told him that I was Chief Blakeman from Washingtonville <u>Police</u> Department, that I was assisting Leetonia.

[*P34] "Q. All right. And did you ask to speak to Matt Marcum, or did you ask him to identify himself?

[*P35] "A. I asked for Matt Marcum, and he said, 'This is Matt.'

[*P36] "Q. All right. I'm sorry to interrupt [**15] you.

[*P37] "A. Yeah. And uh, at that point he says, 'I--He said, 'I know why you're calling, I'm going to go to jail.' You know, he says, 'I missed, I'd have shot the bitch.' And this is basically the gist of it." (2/24/04 Tr., pp. 11-12.)

[*P38] This evidence, if believed by the trial court, was sufficient to authenticate that Matt Marcum was the person speaking on the phone. One of the residents of the home (Mrs. Marcum) provided the phone number, and another resident of the home (Appellant) answered the phone and identified himself. This is at least as reliable a method of authenticating a phone call as that provided in the illustration in Evid.R. 901, which involves a person looking up the number in a phone directory and having the person who answers the phone identify himself or herself. Therefore, the trial court did not abuse its discretion in accepting that the phone call was properly authenticated, and Appellant's assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 3

[*P39] "THE TRIAL COURT ABUSED ITS DISCRETION TO THE PREJUDICE OF APPELLANT WHEN IT FAILED TO GRANT APPELLANT'S REQUEST FOR A CHARGE OF THE LESSER [**16] INCLUDED OFFENSE OF AGGRAVATED ASSAULT."

[*P40] Appellant argues that the trial court should have given a jury instruction on the lesser included offense of aggravated assault. It should first be clarified that HN13[**] aggravated assault is not a lesser included offense of felonious assault, but is an inferior degree offense, meaning that, "its elements are identical to those of felonious assault, except for the additional mitigating element of serious provocation." State v. Deem (1988), 40 Ohio St.3d 205, 210-211, 533 N.E.2d 294. The elements of felonious assault and aggravated assault

are essentially identical, except for the additional mitigating circumstance in aggravated assault that the defendant was, "under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is sufficient to incite the person into using deadly force * * *." R.C. § 2903.12(A).

[*P41] Appellant contends that a jury instruction should be given for an inferior degree offense, "if under any reasonable view of the evidence, and when all of the evidence is construed in a light most [**17] favorable to the defendant, a reasonable jury could find that the defendant had established by a preponderance of the evidence the existence of one or both of the mitigating circumstances." <u>State v. Rhodes (1992)</u>, 63 Ohio St.3d 613, 617-618, 590 N.E.2d 261.

[*P42] Appellant preserved this issue for review by requesting an instruction on the inferior degree offense, which was denied. (Tr., pp. 599-601.)

[*P43] HN14[4] When reviewing a trial court's jury instructions, the proper standard of review for an appellate court is whether the trial court's refusal to give a requested jury instruction constituted an abuse of discretion under the facts and circumstances of the case. State v. Wolons (1989), 44 Ohio St.3d 64, 68, 541 N.E.2d 443. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. State v. Clark (1994), 71 Ohio St.3d 466, 470, 1994 Ohio 43, 644 N.E.2d 331.

[*P44] <u>HN15</u>[*] When a defendant requests an instruction on an inferior degree offense, the burden is on the defendant to persuade the factfinder of the mitigating elements of the offense. [**18] See <u>State v. Hill (1996), 108 Ohio App.3d 279, 284, 670 N.E.2d 555; State v. Rhodes (1992), 63 Ohio St.3d 613, 590 N.E.2d 261, syllabus. It is axiomatic that the burden is also on Appellant to establish reversible error on appeal.</u>

[*P45] Appellant took the stand in his own defense. He testified that he thought someone was stealing his van, so he took his gun and ran outside. (Tr., p. 551.) He testified that the van was coming toward him, and he fired some shots in self-defense, or possibly as warning shots. (Tr., p. 583.) Special Agent Ed Carlini also noted that the bullet hole in the hood of the van likely indicated that Appellant was either walking toward the van, or that the van was moving toward him, when the shots were fired. (Tr., p. 425.) This is the evidence Appellant relies

on in support of his claim that the trial court should have given an instruction on aggravated assault.

[*P46] Appellant's argument is unpersuasive. Appellant never testified that he was afraid, that he was provoked, that he was in a rage, or anything similar to these emotions. Appellant did claim that he shot in self-defense, but HN16 a self-defense theory is usually [**19] contradictory to proof of sudden passion or rage. <a href="https://example.com/State v. Baker (1996), 111 Ohio App.3d 313, 324, 676 N.E.2d 143. Self-defense requires proof that the defendant had a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force. See State v. Robbins (1979), 58 Ohio <a href="State v. Robbins (1979), 58 Ohio St.2d 74, 388 N.E.2d 755, paragraph two of the syllabus. These elements have nothing to do with whether a person is in a sudden fit of passion or sudden rage.

[*P47] Appellant also testified that the shots he fired were meant to be warning shots. (Tr., p. 573.) Firing a warning shot implies rational and objective thought, not passion and rage. This testimony is also inconsistent with the elements of aggravated assault.

[*P48] Even if one could construe that Appellant had a moment of fear in seeing the van coming toward him, HN17[**] fear alone is not a basis for establishing the mitigating circumstances of aggravated assault. State v. Mack (1998), 82 Ohio St.3d 198, 201, 1998 Ohio 375, 694 N.E.2d 1328. It should be repeated that Appellant never testified that he was afraid during any of [**20] the events involved in the shots being fired at the van.

[*P49] Even if we could surmise that the alleged theft of the van was the provocation for firing the shots, <u>HN18</u>[*] it is clear that theft of personal property is not the type of provocation that satisfies the provocation element in aggravated assault. <u>State v. Clark, 8th Dist. No. 83474, 2004 Ohio 5964</u> (the theft of defendant's car by the victim was not the type of provocation <u>warranting</u> a jury instruction on an inferior degree offense).

[*P50] Appellant also testified that he got into a slight argument with his wife over some money prior to the shooting. (Tr., p. 545.) <u>HN19</u>[*] A single argument, or even a history of arguments, with another person is not sufficient provocation to satisfy the requirements of aggravated assault. <u>State v. Serrano, 164 Ohio App.3d</u> 103, 2005 Ohio 5606, 841 N.E.2d 368, P23.

any theory of sudden passion or sudden rage sufficient to provoke deadly force. Appellant spoke about a minor argument with his wife, "nothing to amount to much." (Tr., p. 547.) According to Appellant, it was Amy Marcum who brought the gun into [**21] the living room, and the shot in the living room supposedly occurred as they were wrestling over the gun. (Tr., p. 549.) There is no indication of any passion or rage on Appellant's part involved in the incident. Concerning the two shots into the van, Appellant again provided no testimony of anger, rage, or sudden passion. In fact, he very clearly established that, during the time period of the crime, he was calm, was not provoked by anything his wife said or did, was clear-headed, and did not intend to hurt anyone when he shot at the van. His account of the events is that he either fired warning shots or fired in self-defense, neither of which is consistent with sudden rage or sudden passion brought on by serious provocation. Appellant points to nothing in the record that could remotely establish a sudden passion or rage brought on by sufficient provocation, and therefore, this assignment of error is overruled.

[*P52] In conclusion, the record fully supports the trial court's decision on both the evidentiary and jury instruction questions. The U.S. Supreme Court has held that suppression of evidence is not appropriate as a remedy to violations of the knock-and-announce rule. [**22] Hudson, supra. Furthermore, the police had exigent circumstances for violating the knock-andannounce rule. The phone call in which Appellant admitted shooting at his wife was properly authenticated. Finally, there was no proof of provocation and passion or rage that would have warranted a jury instruction on aggravated assault. All three assignments of error are overruled, and the judgment of trial court is hereby affirmed in full.

Donofrio, P.J., concurs.

Vukovich, J., concurs.

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Document (1)

1. State v. Shropshire, 2016-Ohio-7224

Client/Matter: -None-

Search Terms: search warrant staleness single event

Search Type: Natural Language

Narrowed by:

Content Type

Cases

Narrowed by

Sources: OH, Related Federal; Cases

State v. Shropshire

Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
October 6, 2016, Released; October 6, 2016, Journalized
No. 103808

Reporter

2016-Ohio-7224 *; 2016 Ohio App. LEXIS 4087 **; 2016 WL 5888151

STATE OF OHIO, PLAINTIFF-APPELLEE vs. KYTRICE SHROPSHIRE, DEFENDANT-APPELLANT

Prior History: [**1] Criminal Appeal from the Cuyahoga County Court of Common Pleas. Case No. CR-14-583600-A.

Disposition: AFFIRMED.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Core Terms

trial court, weapons, disability, shot, firearm, shooting, counts, assigned error, gang, <u>search warrant</u>, phone, weight of the evidence, probable cause, cell phone, manifest, argues, nephew, seized, plain error, declarant, shooters, suppress, excited, circumstances, stale, guns, reviewing court, felony assault, gang member, specifications

Case Summary

Overview

HOLDINGS: [1]-In a case where the trial court convicted defendant of having weapons under disability, although three months had passed between the time the police seized defendant's phone and the time the search warrant for his house was issued, under the Fourth Amendment and Ohio Const. art. I, § 14, the information contained in the search warrant was not stale because the victim had just identified defendant as the person who shot him; a detective explained that defendant was the lead suspect in the victim's shooting, the police had recovered photos of guns from defendant's phone, defendant was a known gang member, the police had previously linked defendant to having weapons at his house, and gang members often kept firearms after committing crimes with them; and the issuing judge could infer that defendant still had one or more of the guns used in the victim's shooting at his house.

Criminal Law & Procedure > Appeals > Standards of Review

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

HN1[Appeals, Standards of Review

An appellate court reviews a decision on a suppression motion under a mixed standard of review. In a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate witness credibility. The reviewing court must accept the trial court's findings of fact in ruling on a motion to suppress if the findings are supported by competent, credible evidence.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Exclusionary Rule

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule > Rule Application & Interpretation

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

HN2[Search & Seizure, Exclusionary Rule

The <u>Fourth Amendment to the United States</u> <u>Constitution</u> and <u>Ohio Const. art. I, § 14</u> prohibit unreasonable searches and seizures. That constitutional guarantee is protected by the exclusionary rule, which mandates exclusion from trial evidence obtained from an unreasonable search and seizure.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > ... > <u>Search</u> <u>Warrants</u> > Probable Cause > Particularity Requirement

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > ... > <u>Search</u>
<u>Warrants</u> > Probable Cause > Totality of
Circumstances Test

Criminal Law & Procedure > ... > Standards of Review > Deferential Review > Probable Cause Determinations

HN3[₺] Search & Seizure, Probable Cause

To determine whether an affidavit submitted in support of a search warrant establishes probable cause, an issuing court must make a practical, common-sense decision based upon all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, that there is a fair probability that contraband or evidence of a crime will be found in a particular place. The duty of a reviewing court is more limited - an appellate court should not substitute its judgment for that of the trial court by conducting a de novo determination. The duty of the reviewing court is simply to ensure that the trial court had a substantial basis for concluding that probable cause existed, after according great deference to the issuing judge's determination and resolving doubtful or marginal cases in favor of upholding the warrant. Reviewing courts must examine the totality of the circumstances in determining whether a search warrant was issued upon a proper showing of probable cause.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause Criminal Law & Procedure > Search &
Seizure > Search Warrants > Affirmations & Oaths

Constitutional Law > ... > Fundamental
Rights > Search & Seizure > Scope of Protection

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > ... > <u>Search</u>
<u>Warrants</u> > Probable Cause > Particularity
Requirement

HN4 Search & Seizure, Probable Cause

An affidavit in support of a search warrant must present timely information and include facts so closely related to the time of issuing the warrant as to justify a finding of probable cause at that time. Whether the proof meets that test must be determined by the circumstances of each case. There is no arbitrary time limit that dictates when information becomes stale: rather the test for staleness is whether the alleged facts justify the conclusion that contraband is probably on the person or premises to be searched at the time the warrant issues. If a substantial period of time has elapsed between the commission of the crime and the search, the affidavit must contain facts that would lead the judge to believe that the evidence or contraband are still on the premises before the judge is justified in issuing a warrant. Ohio courts have identified a number of factors to consider in determining whether the information contained in an affidavit is stale, including the character of the crime, the criminal, the thing to be seized, the place to be searched, and whether the affidavit relates to a single isolated incident or ongoing criminal activity.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > Search & Seizure > Search Warrants > Probable Cause

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

HN5 Search & Seizure, Probable Cause

Where recent information corroborates otherwise stale information, probable cause for a <u>search warrant</u> may be found.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Presence at Trial

<u>HN6</u>[♣] Defendant's Rights, Right to Presence at Trial

A defendant has a fundamental right to be present at all critical stages of the defendant's criminal trial. A defendant's right to be present at trial, however, is not absolute. Prejudicial error exists only where a fair and just hearing is thwarted by defendant's absence.

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Burdens of Proof

HN7[2] Plain Error, Burdens of Proof

Pursuant to <u>Crim.R. 52</u>, plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. To show plain error, a defendant must demonstrate that the trial's outcome would clearly have been different but for the alleged errors. Notice of plain error is taken with the utmost caution, under exceptional circumstances, and only to prevent the manifest miscarriage of justice.

Criminal Law &
Procedure > ... > Reviewability > Waiver > Triggers
of Waivers

HN8[♣] Waiver, Triggers of Waivers

The failure to object has been held to constitute a waiver of the error and to preclude its consideration upon appeal, because, absent an objection, the trial court is denied an opportunity to give corrective instructions as to the error.

Criminal Law & Procedure > Trials > Bench Trials

Evidence > ... > Presumptions > Particular Presumptions > Regularity

<u>HN9</u>[♣] Trials, Bench Trials

In Ohio, the trial court is entitled to the presumption of regularity, that is, the trial court is presumed to know

and follow the law in arriving at its judgment unless it affirmatively appears to the contrary. In other words, in an appeal from a bench trial, an appellate court presumes that a trial court relies only on relevant, material, and competent evidence in arriving at its judgment.

Criminal Law & Procedure > Trials > Bench Trials

Evidence > ... > Presumptions > Particular Presumptions > Regularity

Criminal Law & Procedure > ... > Defendant's Rights > Right to Remain Silent > Self-Incrimination Privilege

HN10[Trials, Bench Trials

In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions. It is equally routine for them to instruct juries that no adverse inference may be drawn from a defendant's failure to testify; surely an appellate court must presume that they follow their own instructions when they are acting as fact finders.

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Evidence

Evidence > ... > Procedural Matters > Preliminary Questions > Admissibility of Evidence

HN11 Abuse of Discretion, Evidence

Generally, the decision whether to admit or to exclude evidence rests within the sound discretion of the trial court. Therefore, an appellate court that reviews the trial court's decision with respect to the admission or exclusion of evidence must limit its review to a determination of whether the trial court committed an abuse of discretion. An abuse of discretion requires a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable.

Evidence > ... > Exceptions > Spontaneous Statements > Excited Utterances

<u>HN12</u>[♣] Spontaneous Statements, Excited Utterances

Evid.R. 803(2) defines an excited utterance as a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition and excludes it from the hearsay rule, even when the declarant is available as a witness. To be an admissible excited utterance, (1) there must occur an event startling enough to produce a nervous excitement in the declarant; (2) the statement must be made while the declarant is still under the stress of excitement the event caused; (3) the statement must relate to the startling event; and (4) the declarant must have personally observed the startling event. The controlling factor comes down to whether the declaration resulted from impulse as opposed to reason and reflection. Additional factors for the court to consider include the lapse of time between the event and the statement, the mental and physical condition of the declarant, the nature of the statement, and the influence of any intervening circumstances.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Double Jeopardy

Criminal Law & Procedure > Commencement of Criminal Proceedings > Double Jeopardy > Double Jeopardy Protection

Criminal Law &
Procedure > Trials > Verdicts > Inconsistent
Verdicts

HN13[₺] Procedural Due Process, Double Jeopardy

Double jeopardy generally does not apply to cases involving inconsistent jury verdicts.

Criminal Law & Procedure > Criminal
Offenses > Weapons Offenses > Possession of
Weapons

Criminal Law & Procedure > Criminal
Offenses > Weapons Offenses > Use of Weapons

No element of having a weapon while under disability requires that a defendant use a firearm; the elements require that the defendant acquire, have, carry, or use a firearm. R.C. 2923.13(A).

Criminal Law & Procedure > Appeals > Reversible Error

Evidence > Weight & Sufficiency

Criminal Law & Procedure > Appeals > Standards of Review

HN15 Appeals, Reversible Error

When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most exceptional case in which the evidence weighs heavily against the conviction.

Criminal Law & Procedure > Trials > Bench Trials

Evidence > ... > Procedural Matters > Preliminary Questions > Admissibility of Evidence

Evidence > ... > Presumptions > Particular Presumptions > Regularity

HN16 Trials, Bench Trials

Where a trial judge acts as the factfinder, a reviewing court will be slow to overturn an adjudication on the basis of the admission of inadmissible testimony, unless it appears that the court below actually considered such testimony in arriving at its judgment, as the trial judge is presumed capable of disregarding improper testimony.

Counsel: ATTORNEY FOR APPELLANT: Richard Agopian, Cleveland, Ohio.

ATTORNEYS FOR APPELLEE: Timothy J. McGinty, Cuyahoga County Prosecutor, BY: Kerry A. Sowul, Steven McIntosh, Assistant County Prosecutors, Cleveland, Ohio. Judges: BEFORE: Jones, A.J., Stewart, J., and Celebrezze, J. MELODY J. STEWART, J., and FRANK D. CELEBREZZE, JR., J., CONCUR.

Opinion by: LARRY A. JONES, SR.

Opinion

JOURNAL ENTRY AND OPINION

LARRY A. JONES, SR., A.J.:

[*P1] Defendant-appellant, Kytrice Shropshire, appeals his conviction for having weapons while under disability. We affirm.

I. Procedural History and Facts

[*P2] In 2014, Shropshire was charged with two counts of attempted murder, two counts of felonious assault, discharge of a firearm on or near prohibited premises, two counts of retaliation, and having weapons while under disability. The attempted murder and felonious assault charges had the following specifications attached to them: one- and three-year firearm specifications, notices of prior convictions, and repeat violent offender specifications. The discharge of a firearm count had one- and three-year firearm specifications.

[*P3] The matter proceeded to a trial [**2] by jury on all counts except the having weapons while under disability count; Shropshire elected to try that count to the bench. He also elected to bifurcate the specifications and notices of prior conviction. The following pertinent evidence was presented.

[*P4] Dionte Hamilton lived in the house he grew up in on the east side of Cleveland with his mother and various other family members. He grew up living across the street from Shropshire, but the two were not friends because Hamilton was older. In 2010, Hamilton had a brief sexual relationship with Shropshire's sister. It did not end well and Hamilton ended up getting into a fight with one of Shropshire's and the sister's older brothers because the sister accused Hamilton of breaking her nose.

[*P5] On August 19, 2013, Hamilton was walking home from work when a guy passed him, nodded, and "then after that I heard a boom sound and I had got [shot] in my back." Hamilton thought that person shot him. He

started to run, ran past Shropshire's house and "then that's when Kytrice had approached me and shot me in the face." Hamilton was shot numerous times, including twice in his arm, in the neck, face, twice in the back, and five times in his leg, [**3] and in his buttocks; 14 bullets remained lodged in his body.

[*P6] Hamilton initially did not identify Shropshire as one of the shooters because he was scared for his family and because he knew that Shropshire "would eventually end up going to jail for something else." According to Hamilton, it was only after his family's house "got shot up" two months after he was shot that he knew he had to tell the police who had shot him.

[*P7] Hamilton's younger sister testified that she was home when her brother was shot, but she did not see who shot him. She denied telling police it was Shropshire who shot her brother, but had identified another man on the scene who was "tall with dreads."

[*P8] Hamilton's uncle, Maurice Hamilton, testified that he went to the hospital after finding out that his nephew had been shot. His nephew was hysterical and in pain and told him that Shropshire was one of the shooters.

[*P9] Officer Rebecca Werner testified that she was working on August 19 and 20, 2013, when she received a call for a male shot. When she and her partner responded, they observed three young males coming from the park; one of the males appeared to be injured. Shropshire was identified as the injured male who had [**4] been shot in the buttocks and he was taken to the hospital for treatment. Shropshire stated to Officer Werner that he had been sitting on his front porch when he saw some type of shooting or robbery occur. He got up and ran off his porch and discovered he had been shot while sitting on the porch.

[*P10] At the hospital, Shropshire told Officer James Thomas that Hamilton was walking past his house when three masked men approached Hamilton and there was "some sort of exchange of gunfire, multiple shots," and Shropshire ran from his porch and it was then that he was shot in the buttocks.

[*P11] Detective Charles Teel processed the scene and recovered multiple bullets, bullet fragments, and shell casings, which indicated that three different types of firearms were used in the shooting — a shotgun, a nine millimeter gun, and an unknown caliber firearm.

[*P12] Detective Louis Vertosnik of Cleveland Police Gang Impact Unit testified that Shropshire and two juveniles detained with him were known members of the "J Park Boys," a local gang.

[*P13] Days prior to the shooting, Shropshire was a passenger in a car that was stopped for an unrelated shooting incident. The police seized Shropshire's cell phone and searched it [**5] pursuant to a warrant. The police found photographs of semiautomatic pistols and a semiautomatic rifle on his phone. Those photographs, which showed that the pictures were taken at Shropshire's house, were used approximately three months later to support a <u>search warrant</u> for his home. Pursuant to the <u>search warrant</u>, police recovered a live .45 caliber round, a 12-gauge shotgun with one live round, nine 12-gauge shotgun shells, miscellaneous ammunition, and mail addressed to Shropshire.

[*P14] The jury acquitted Shropshire of all charges. The trial court convicted Shropshire of having weapons under disability and sentenced him to 18 months in prison. Further facts will be discussed under the appropriate assignments of error.

II. Assignments of Error

I: The trial court erred by failing to suppress evidence obtained from appellant's cell phone, and his residence in violation of <u>U.S. Constitution Amendment IV</u>, and Ohio Constitution Article I, Section 14.

II: The defendant was denied due process of law, a fair trial, the right to be present during a critical stage of the trial, his right to confront evidence against him, and to a public trial in violation of the <u>Fifth</u>, <u>Sixth</u>, and <u>Fourteenth Amendments of the U.S. Constitution</u> and Article I, Sections 10 and 16 of the Ohio Constitution.

III: In a multiple count case where the defendant elects to bifurcate the counts so that [**6] some are tried to the jury and others to the bench, it is improper for the trial court as factfinder, on the bench-tried counts, to discuss the jury's verdict with the jury foreperson before the court reaches its verdict.

IV: The defendant was prejudiced and denied his right to a fair trial and due process of law guaranteed to him by both the United States Constitution and Ohio Constitution.

V: The bench trial conviction of the defendant for

having weapons under disability was a clear violation of his constitutional rights to be free from Double Jeopardy and/or violated the common equitable principle of Collateral Estoppel.

VI: The defendant's convictions are against the manifest weight of the evidence.

VII: It was prejudicial error to allow testimony about the defendant's gang membership.

III. Law and Analysis

A. No error in denying motion to suppress

[*P15] In the first assignment of error, Shropshire argues that the trial court erred in denying his motion to suppress the evidence obtained from his cell phone and his residence. We disagree.

[*P16] HN1[*] This court reviews a decision on a suppression motion under a mixed standard of review. "In a motion to suppress, the trial court assumes the role of trier [**7] of fact and is in the best position to resolve questions of fact and evaluate witness credibility." State v. Curry, 95 Ohio App.3d 93, 96, 641 N.E.2d 1172 (8th Dist.1994). The reviewing court must accept the trial court's findings of fact in ruling on a motion to suppress if the findings are supported by competent, credible evidence. State v. Burnside, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8.

[*P17] On August 14, 2013, days before the shooting involving Hamilton, the Cleveland police received a call about a drive-by shooting. Police conducted a traffic stop in connection with the call. As mentioned, Shropshire was a passenger in the vehicle and the police seized his cell phone in connection with the stop. Police obtained a <u>search warrant to search</u> the cell phone and found pictures of various guns on his phone; the police were able to determine that the photos had been taken inside Shropshire's house.

[*P18] After Hamilton identified Shropshire as one of the shooters, police obtained a <u>search warrant</u> for Shropshire's house and confiscated firearms and ammunition. Prior to trial, Shropshire moved to suppress the contents of the phone and the items seized from his house, arguing that the police did not have probable cause to seize and search the phone or the house. The state filed a brief in opposition and the court heard from [**8] the parties prior to trial. The court did not hold a formal hearing on the motion and denied the

motion prior to the start of trial.

[*P19] HN2[*] "The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14, prohibit unreasonable searches and seizures." State v. Emerson, 134 Ohio St.3d 191, 2012-Ohio-5047, 981 N.E.2d 787, ¶ 15. This constitutional guarantee is protected by the exclusionary rule, which mandates exclusion from trial evidence obtained from an unreasonable search and seizure. Id.

[*P20] Shropshire argues that the affidavit in support of the search warrant of his cell phone lacked probable cause. HN3[17] To determine whether an affidavit submitted in support of a search warrant establishes probable cause, an issuing court must make a practical, common-sense decision based upon all the circumstances set forth in the affidavit, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, that there is a fair probability that contraband or evidence of a crime will be found in a particular place. State v. George, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), paragraph one of the syllabus; Illinois v. Gates, 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

[*P21] The duty of a reviewing court is more limited an appellate court should not substitute its judgment for that of the trial court by conducting a de novo determination. George at paragraph two of the syllabus. The duty of the reviewing court is simply to ensure [**9] that the trial court had a substantial basis for concluding that probable cause existed, after according great deference to the issuing judge's determination and resolving doubtful or marginal cases in favor of upholding the warrant. Id., following Gates; see also State v. Jones, 143 Ohio St. 3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 13-14. Reviewing courts must examine the "totality of the circumstances" in determining whether a search warrant was issued upon a proper showing of probable cause. Jones at ¶ 13, citing Gates at 238.

[*P22] Shropshire claims that the supporting facts in the affidavit were uncorroborated and insufficient to show probable cause to search his cell phone because the police did not include any facts showing that he was involved in the August drive-by shooting. The supporting affidavit stated, in part: (1) on August 14, 2013, police received a report that two people were shot at by occupants of a tan Chevy Cavalier; (2) less than two hours after the shooting, a vehicle matching that description was stopped; the driver was found in

possession of a firearm, and was arrested; (3) Shropshire was a passenger in the car; (4) Shropshire and other people in the car were believed to be members of the "J Park Boys" gang; (5) and gang members use social media and [**10] messaging to boast about crimes they commit.

[*P23] The warrant to search Shropshire's phone was issued less than a week after the phone was seized. Shropshire was riding in a car that matched the description of a car involved in a drive-by shooting that occurred less than two hours prior to the seizure of the phone. The driver of the car Shropshire was riding in had a gun and was arrested. At the time the police seized Shropshire's phone, the police had knowledge that Shropshire and other occupants of the car were members of a local gang, which was known for using social media and cell phones to record their crimes. Thus, based on the totality of the circumstances set forth in the affidavit, the trial court had a substantial basis for concluding that there was probable cause to justify the issuance of the warrant to search Shropshire's mobile phone.

[*P24] Shropshire further argues that the affidavit to search his family's house was not supported by probable cause because the facts upon which the warrant was based were stale.

[*P25] HN4[1] An affidavit in support of a search warrant must present timely information and include facts so closely related to the time of issuing the warrant as to justify a finding [**11] of probable cause at that time. State v. Ingold, 10th Dist. Franklin No. 07AP-648. 2008-Ohio-2303, ¶ 22, citing State v. Hollis, 98 Ohio App.3d 549, 554, 649 N.E.2d 11 (11th Dist.1994). "Whether the proof meets this test must be determined by the circumstances of each case." Ingold at id., quoting Hollis at id. There is no arbitrary time limit that dictates when information becomes stale; rather the test for staleness is whether the alleged facts justify the conclusion that contraband is probably on the person or premises to be searched at the time the warrant issues. See State v. Prater, 12th Dist. Warren No. CA2001-12-114, 2002-Ohio-4487, ¶ 12. If a substantial period of time has elapsed between the commission of the crime and the search, the affidavit must contain facts that would lead the judge to believe that the evidence or contraband are still on the premises before the judge is justified in issuing a warrant. State v. Yanowitz, 67 Ohio App. 2d 141, 147, 426 N.E. 2d 190 (8th Dist. 1980). Ohio courts have identified a number of factors to consider in determining whether the information contained in an

affidavit is stale, including the character of the crime, the criminal, the thing to be seized, the place to be searched, and whether the affidavit relates to a single isolated incident or ongoing criminal activity. <u>Prater at ¶ 13</u>.

[*P26] Detective Louis Vertosnik of the [**12] Cleveland Police Department had been a member of the department's specialized Gang Impact Unit for seven years and on the force for 18 years. He averred that Shropshire was the prime suspect in Hamilton's shooting; Shropshire's cell phone contained pictures of firearms; the GPS data on one of the images identified Shropshire's residence as the origin of the photograph; Shropshire and Hamilton knew each other and had a violent history; the shooting occurred near Shropshire's house; witnesses reported muzzle flashes coming from Shropshire's front porch; Shropshire was a member of the "J Park" gang; the police had twice previously linked Shropshire to having guns at his house; based on the detective's training and experience, gang members store firearms at their homes, remove them to commit criminal activity, and then return them to their homes for safekeeping.

[*P27] We find that although three months had passed between the time the police seized Shropshire's phone and the time the <u>search warrant</u> for his house was issued, the information contained in the <u>search warrant</u> was not stale. Detective Vertosnik explained that Shropshire was the lead suspect in Hamilton's shooting, the police had recovered [**13] photos of guns from Shropshire's phone, Shropshire was a known gang member, the police had previously linked Shropshire to having weapons at his house, and gang members often kept firearms after committing crimes with them rather then disposing of them.

[*P28] And, importantly, Hamilton had just identified Shropshire as the shooter shortly before the police sought the <u>search warrant</u>. <u>HN5[*]</u> "Where recent information corroborates otherwise stale information, probable cause may be found." <u>Ingold, 10th Dist. Franklin No. 07AP-648, 2008-Ohio-2303 at ¶ 35, quoting <u>United States v. Spikes, 158 F.3d 913 (F.C.A.6, 1998)</u>.</u>

[*P29] Thus, based on the totality of the circumstances, the issuing judge could reasonably infer that Shropshire was still keeping one or more of the guns used in Hamilton's shooting at his house. We find that the facts as detailed in the affidavit provided the issuing trial court with probable cause to justify the

issuance of the warrant. The first assignment of error is overruled.

B. No plain error in court's talking with jury after verdict

[*P30] In the second assignment of error, Shropshire argues that he was denied due process when the trial court spoke to the jury after the jury's verdict and without the defendant present, but before the trial court rendered its verdict [**14] on the weapons under disability count.

[*P31] HN6[*] The defendant has a fundamental right to be present at all critical stages of the defendant's criminal trial. State v. Nolan, 8th Dist. Cuyahoga No. 88111, 2007-Ohio-1299, ¶ 38, citing State v. Hill, 73 Ohio St.3d 433, 444, 1995 Ohio 287, 653 N.E.2d 271 (1995). A defendant's right to be present at trial, however, is not absolute. Nolan at id., citing State v. White, 82 Ohio St.3d 16, 1998 Ohio 363, 693 N.E.2d 772 (1998). Prejudicial error exists only where "a fair and just hearing [is] thwarted by [defendant's] absence." White at id., citing Snyder v. Massachusetts, 291 U.S. 97, 108, 54 S.Ct. 330, 78 L.Ed. 674 (1934).

[*P32] In this case, after the jury returned its not guilty verdicts, but before the trial court gave its verdict on the weapons under disability count, the court went on the record and stated the following: "I want to let the parties know I did speak to the jury after they rendered their verdict. I wanted to be open and give the parties an opportunity to object, if any, but I thought I'd put it out there for the record." The attorneys for both parties stated that they had no objection. The court returned a finding of guilty on the weapons while under disability count and then, after a brief conversation with the attorneys at sidebar, continued, "And just for clarification, I did want to put on the record that any conversation I did have with the jury had no bearing on my decision regarding the bifurcated count for which [**15] I found Mr. Shropshire guilty."

[*P33] Shropshire did not object to the trial court's action; therefore, he has waived all but plain error. <u>HN7</u> Pursuant to <u>Crim.R. 52</u>, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." To show plain error, a defendant must demonstrate "that the trial's outcome would clearly have been different but for the alleged errors." <u>State v. George, 8th Dist. Cuyahoga No. 80158, 2003-Ohio-4170, ¶ 26</u>, quoting <u>State v.</u>

Campbell, 69 Ohio St.3d 38, 49, 1994 Ohio 492, 630 N.E.2d 339 (1994). Notice of plain error is taken with the utmost caution, under exceptional circumstances, and only to prevent the manifest miscarriage of justice. George at id., citing State v. Landrum, 53 Ohio St.3d 107, 111, 559 N.E.2d 710 (1990).

[*P34] Shropshire has not shown that the outcome of his trial would have been different had the trial court not spoken to the jury before it issued its verdict on the weapons under disability count. Although the conversation the court had with the jury was off the record, Shropshire's claim that the conversation was improper is unsupported and his assumptions are insufficient to overcome the plain error burden, especially in a case such as this where the trial court expressly stated that its discussion with the jury had no bearing on the court's decision. Further, we note that the discussion did not occur [**16] at a time where testimony was still being given or one in which Shropshire's knowledge was necessary to help with his defense. See State v. Woods, 8 Ohio App.3d 56, 61, 8 Ohio B. 87, 455 N.E.2d 1289 (8th Dist. 1982) (defendant cannot be excluded from testimonial proceedings where defendant's knowledge might assist counsel).

[*P35] In light of the above, the second assignment of error is overruled.

[*P36] In the third assignment of error, Shropshire claims that it was improper for the trial court to discuss the jury's verdict with the jury before the court rendered its own verdict on the weapons charge.¹

[*P37] We again review this claim for plain error because Shropshire did not object to the trial court's action. HN8[*] The failure to object has been held to constitute a waiver of the error and to preclude its consideration upon appeal, because, absent an objection, the trial court is denied an opportunity to give corrective instructions as to the error. State v. Loza, 71 Ohio St.3d 61, 75, 64, 1994 Ohio 409, 641 N.E.2d 1082 (1994). HN9[*] In Ohio, the trial court is entitled to the presumption of regularity, that is, the trial court [**17] is presumed to know and follow the law in arriving at its judgment unless it affirmatively appears to the contrary. State v. Eley, 77 Ohio St.3d 174, 180, 1996 Ohio 323, 672 N.E.2d 640 (1996), citing State v. Post, 32 Ohio

St.3d 380, 513 N.E.2d 754 (1987). In other words, in an appeal from a bench trial, we presume that a trial court relies only on relevant, material, and competent evidence in arriving at its judgment. Id. at 180.

[*P38] The United States Supreme Court has stated that:

HN10 [4] In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions. It is equally routine for them to instruct juries that no adverse inference may be drawn from a defendant's failure to testify; surely we must presume that they follow their own instructions when they are acting as fact finders.

Harris v. Rivera, 454 U.S. 339, 346, 102 S.Ct. 460, 70 L.Ed.2d 530 (1981); White v. Shewalter, N.D.Ohio No. 1:10CV1265, 2012 U.S. Dist. LEXIS 94123 (Mar. 14, 2012).

[*P39] Again, Shropshire's failure to object means it is unknown what transpired between the jury and the trial court when the court spoke with the jury after trial. In other words, because Shropshire did not object, the trial court was not required to give an on-the-record explanation of its actions or detail its conversation with the jury. Shropshire claims that the trial court acted improperly, but, as mentioned, this is an unsupported assertion. Moreover, the trial [**18] court clearly stated that its verdict on the weapons while under disability charge was not influenced by its discussion with the jury.

[*P40] Consequently, Shropshire cannot show that the trial court acted improperly or committed plain error and the third assignment of error is overruled.

C. Witness's statements were excited utterances

[*P41] In the fourth assignment of error, Shropshire contends that the trial court erred when it allowed testimony from Maurice Hamilton, the victim's uncle. Shropshire challenges statements Hamilton made to his uncle identifying Shropshire as the shooter. Shropshire argues that the trial court considered these inadmissible statements to conclude that Shropshire had a weapon at some point and therefore could be convicted of having weapons while under disability. We disagree.

[*P42] HN11[*] Generally, the decision whether to admit or to exclude evidence rests within the sound discretion of the trial court. State v. Brown. 8th Dist

¹ The third assignment of error, as it reads, states that the trial court discussed the jury verdict with the jury foreperson. This assertion does not appear elsewhere in Shropshire's appellate brief or in the trial court record.

Cuyahoga No. 99024, 2013-Ohio-3134, ¶ 50, citing State v. Jacks, 63 Ohio App.3d 200, 207, 578 N.E.2d 512 (8th Dist.1989). Therefore, an appellate court that reviews the trial court's decision with respect to the admission or exclusion of evidence must limit its review to a determination of whether the trial court committed an abuse of discretion. Brown at id., citing State v. Finnerty, 45 Ohio St.3d 104, 107, 543 N.E.2d 1233 (1989). An abuse of discretion [**19] requires a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable. State v. Minifee, 8th Dist. Cuyahoga No. 99202, 2013-Ohio-3146, ¶ 23, citing Blakemore v. Blakemore, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983).

[*P43] HN12[1] Evid.R. 803(2) defines an excited utterance as a "statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" and excludes it from the hearsay rule, even when the declarant is available as a witness. To be an admissible excited utterance, (1) there must occur an event startling enough to produce a nervous excitement in the declarant; (2) the statement must be made while the declarant is still under the stress of excitement the event caused; (3) the statement must relate to the startling event; and (4) the declarant must have personally observed the startling event. State v. Harrison, 10th Dist. Franklin No. 06AP-827, 2007-Ohio-2872, ¶ 17, citing State v. Taylor, 66 Ohio St.3d 295, 612 N.E.2d 316 (1993). The controlling factor comes down to whether the declaration resulted from impulse as opposed to reason and reflection. State v. Webster, 8th Dist. Cuyahoga No. 102833, 2016-Ohio-2624, ¶ 130, citing, State v. Nixon, 12th Dist. Warren No. CA2011-11-116, 2012-Ohio-1292, ¶ 13.

[*P44] Additional factors for the court to consider include the lapse of time between the event and the statement, the mental and physical condition of the declarant, the nature of the statement, and the [**20] influence of any intervening circumstances. Harrison at id., citing State v. Patterson, 11th Dist. Lake No. 96-T-5439, 1998 Ohio App. LEXIS 2289 (May 22, 1998).

[*P45] Shropshire contends that Hamilton's statement to his uncle identifying Shropshire as one of the shooters does not fall under the excited utterance exception, but a review of the uncle's testimony shows otherwise.

[*P46] Maurice Hamilton, a retired detective, testified he went to the emergency room immediately upon

learning that his nephew had been shot. He saw that his nephew had several gunshot wounds and described him as in "substantial pain," "moaning," "groaning," "crying," and "hysterical." Maurice asked his nephew "who did this to him," and his nephew replied, "Kytrice." Maurice then assisted the doctors with counting the number of entry and exit wounds his nephew had sustained.

[*P47] Hamilton had been shot numerous times and was clearly still under the stress of the shooting; Maurice testified that his nephew was hysterical and in pain. The doctors were still assessing how many times Hamilton had been shot and the location of the bullet wounds. Hamilton was clearly still under the stress of the shooting when he answered his uncle's question. In light of these facts, we [**21] find the statement admissible under Evid.R. 803(2).

[*P48] The fourth assignment of error is overruled.

D. Appellant's double jeopardy rights were not violated

[*P49] In the fifth assignment of error, Shropshire argues that his having weapons while under disability conviction was so inconsistent with the not guilty verdicts on the other counts as to violate his constitutional rights against double jeopardy.

[*P50] The United States Supreme Court has held that HN13[*] double jeopardy generally does not apply to cases involving inconsistent jury verdicts. Dunn v. United States, 284 U.S. 390, 393, 52 S.Ct. 189, 76 L.Ed. 356 (1932); United States v. Powell, 469 U.S. 57, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984). Shropshire cites a case from the Maryland Court of Appeals, which held that it was error for the trial court to render a "guilty" verdict that was inconsistent with a "not guilty" verdict rendered by the jury in a criminal trial. Galloway v. State, 371 Md. 379, 401, 809 A.2d 653 (2002).

[*P51] Shropshire concedes that the <u>Galloway</u> case is not binding on our court. Instead, we look to a case from this district for guidance. In <u>State v. White, 8th Dist. Cuyahoga No. 90839, 2008-Ohio-6152</u>, the defendant was charged with ten counts of felonious assault, two counts of improperly discharging a firearm at or into a habitation, and two counts of having a weapon while under disability. The defendant chose to try the disability counts to the court, but submitted the remaining counts to the jury. The jury [**22] returned not guilty verdicts on all counts and the trial court found him guilty of two counts of having a weapon while under disability.

[*P52] On appeal, the defendant argued that his convictions were against the manifest weight of the evidence because the guilty finding on the disability counts would be inconsistent with the jury's not guilty findings on felonious assault. Id. at ¶ 13. This court disagreed, finding that the verdicts were not inconsistent because "[t]he distinction between the charged offenses is that having a weapon while under disability only requires a showing that White possessed a firearm, not that White actually discharged the firearm." Id. at ¶ 14.

[*P53] In finding Shropshire not guilty of attempted murder, felonious assault, retaliation, and discharge of a firearm on or near a prohibited premises, the jury apparently could not find, beyond a reasonable doubt. that Shropshire committed those offenses. But the elements of those crimes and the elements of having weapons while under disability are different. HN14[1] No element of having a weapon while under disability requires that Shropshire use a firearm; the elements require that he acquire, have, carry, or use a firearm. See R.C. 2923.13(A). Shropshire [**23] stipulated to his prior adjudication as a delinquent child for a commission of an offense, that if committed by an adult, would have been a felony offense of violence. R.C. 2923.13(A)(2). The trial court, as trier of fact on the weapons while under disability count, was free to believe Hamilton's testimony that Shropshire had a firearm that night and was not precluded from finding that Shropshire acquired, had, carried, or used a firearm under R.C. 2923.13(A).

[*P54] In the light of the above, the fifth assignment of error is overruled.

E. Weapons while under disability conviction not against the weight of the evidence

[*P55] In the sixth assignment of error, Shropshire argues that his conviction was against the manifest weight of the evidence. HN15[4] When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. [**24] State v. Thompkins, 78 Ohio St.3d 380, 387, 1997 Ohio 52, 678 N.E.2d 541 (1997). An appellate court should reserve

reversal of a conviction as being against the manifest weight of the evidence for only the most "exceptional case in which the evidence weighs heavily against the conviction." *Id.*

[*P56] Shropshire sets forth various arguments for why he believes his conviction was against the manifest weight of the evidence, mainly focusing on his perceived inconsistencies in witness testimony. He relies heavily on the fact that Hamilton initially told police he did not know who shot him but changed his story three months later and identified Shropshire. But Hamilton was questioned and thoroughly cross-examined on this very subject. He explained that he initially did not identify Shropshire because he was afraid for his family and figured that Shropshire would go to jail for another crime. It was only after his family's house was "shot up" and pressure from his mother that he decided to identify Shropshire. And Hamilton's identification is corroborated by his uncle, who testified that Hamilton identified "Kytrice" as the shooter in the hospital just after the shooting.

[*P57] Again, as for the weapon while under disability charge being tried to the bench, we cannot say that the [**25] verdict is against the manifest weight of the evidence due to the fact that the jury acquitted Shropshire of the other charges. The jury's not-guilty verdicts do not preclude the trial judge from finding that Shropshire had a weapon while under disability; the trial judge was free to believe the state's theory that Shropshire acquired, had, carried, or used a firearm.

[*P58] The sixth assignment of error is overruled.

F. No error in allowing testimony in about appellant's gang affiliation

[*P59] In the seventh assignment of error, Shropshire argues that it was prejudicial error to allow the gang impact unit detective to testify about Shropshire's affiliation with the J Park Boys gang.

[*P60] During trial, the state informed the court of its intention to have a Detective Louis Vertosnik of Cleveland Police Gang Impact Unit testify about his knowledge of the J Park Boys gang, including that Shropshire and the two juveniles detained after the shooting were members of that gang. After defense counsel objected, the court held a lengthy discussion without the jury present and questioned the detective. The court ruled that the detective could testify, but limited the testimony to the detective's occupation.

knowledge [**26] of the J Park Boys' existence and its territory, and whether Shropshire and the two juveniles were members of the gang. The state appropriately limited its questions.

[*P61] We find no error in the trial court's admission of the detective's testimony. But even if the trial court had erred in allowing the detective to testify, MN16
"where a trial judge acts as the factfinder, a reviewing court will be slow to overturn an adjudication on the basis of the admission of inadmissible testimony, unless it appears that the court below actually considered such testimony in arriving at its judgment, as the trial judge is presumed capable of disregarding improper testimony."

State v. Lipscomb, 8th Dist. Cuyahoga No. 89116, 2007-Ohio-6815, ¶ 2; In re Sims, 13 Ohio App.3d 37, 41, 13 Ohio B. 40, 468 N.E.2d 111 (12th Dist.1983). There is no evidence that the trial court considered the detective's testimony in reaching its verdict.

[*P62] The seventh assignment of error is overruled.

[*P63] Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed. The court finds there were reasonable grounds for this appeal.

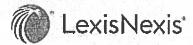
It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to [**27] the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to <u>Rule 27 of the Rules of Appellate</u> Procedure.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and

FRANK D. CELEBREZZE, JR., J., CONCUR



User Name: Richard Bosley

Date and Time: Thursday, February 29, 2024 10:19:00AM EST

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Document (1)

1. State v. Stewart, 2021-Ohio-4444

Client/Matter: -None-

Search Terms: Search warrant staleness

Search Type: Natural Language

Narrowed by:

Content Type

Cases

Narrowed by

Sources: OH, Related Federal; Cases

examined in determining whether probable cause existed for a <u>search warrant</u>. Probable cause means only the probability and not a prima facie showing of criminal activity.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

HN2 Search & Seizure, Warrants

There is no arbitrary time limit that dictates when information offered to support a <u>search warrant</u> application becomes stale. Instead, the test for <u>staleness</u> is whether the alleged facts justify the conclusion that contraband is probably on the person or premises to be searched at the time the warrant issues. An information becomes stale when enough time has elapsed such that there is no longer sufficient basis to believe the items to be seized are still on the premises.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > ... > <u>Search</u>
<u>Warrants</u> > Affirmations & Oaths > Examination
Upon Application

Criminal Law & Procedure > ... > <u>Search</u>
<u>Warrants</u> > Probable Cause > Particularity
Requirement

HN3 Search & Seizure, Warrants

The question of <u>staleness</u> is not measured solely by counting the days between the events listed in the affidavit and the application for <u>search warrant</u>. Ohio courts have identified a number of factors to consider in determining whether the information contained in an affidavit is stale, including the character of the crime, the criminal, the thing to be seized, as in whether it is perishable, the place to be searched, and whether the affidavit relates to a single isolated incident or ongoing criminal activity.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

HN4[3] Search & Seizure, Warrants

An affidavit supporting a <u>search warrant</u> which, viewed in its totality, indicates investigation into an ongoing criminal operation, such as drug trafficking, may support the issuance of a <u>search warrant</u> even where the information provided in the affidavit is not recent. When the supporting facts present a picture of continuing conduct or an ongoing activity, the passage of time between the last described act and the presentation of the application becomes less significant. An affidavit which establishes a pattern of conduct or indicates an ongoing investigation can justify the granting of a <u>search warrant</u> based on old information.

Counsel: For Plaintiff-Appellee: JOSEPH A. FLAUTT, Prosecuting Attorney, New Lexington, Ohio.

For Defendant-Appellant: SCOTT P. WOOD, Conrad / Wood, Lancaster, Ohio.

Judges: Hon. Craig R. Baldwin, P.J., Hon. William B. Hoffman, J., Hon. Patricia A. Delaney, J. Baldwin, P.J. and Delaney, J. concur.

Opinion by: William B. Hoffman

Opinion

Hoffman, J.

[*P1] Defendant-appellant Jalen Stewart appeals the judgment entered by the Perry County Common Pleas Court convicting him following his pleas of no contest to possession of heroin (*R.C. 2925.11*), with a forfeiture specification, and sentencing him to a term of incarceration of three to four-and-a-half years. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

[*P2] On March 3, 2020, the Perry County Municipal Court issued a <u>search warrant</u> for Appellant's residence to the Perry County Sheriff's Department. The application for the warrant was supported by a sixteen-page affidavit of Det. Lt. Kevin Starrett. The affiant stated the Central Ohio Drug Enforcement Task Force received information on May 19, 2019, Appellant was dealing fentanyl in the Roseville/Crooksville area, and was [**2] routinely in possession of large quantities of drugs at any time, as well as weapons and ammunition. A detective from the task force met with the informant on January 10, 2020, and the informant repeated Appellant and Kelsey Cummings were involved in the sale and distribution of heroin and fentanyl, and they

were ounce level dealers. The informant stated Appellant and Cummings resided on Lake Street in Roseville, Ohio, and Cummings drove a white Chevy Cruz.

[*P3] The affiant researched Appellant and Cummings, and discovered a 2018 white Chevy Cruz was registered to Cummings. The affiant personally traveled to Lake Street in Roseville, and found the vehicle parked in the driveway, along with a truck registered to Nellie Stewart. Further research revealed Appellant stated he lived on East Lake Street in Roseville in two separate reports.

[*P4] On December 27, 2019, a <u>search warrant</u> was issued for Nick Smith's Facebook account, in an unrelated investigation. Upon reviewing the records, a detective located several messages between Smith and Appellant in which Appellant asked Smith to obtain ammunition for him. Appellant sent Smith a photograph of a 9mm assault rifle using Glock brand magazines.

[*P5] The [**3] affiant received a call from another confidential informant on February 26, 2020, reporting Appellant was a multi-ounce fentanyl dealer residing on East Lake Street in Roseville. The informant reported Appellant lived with Cummings, and Cummings drove a white vehicle. The informant stated Appellant stores drugs in his bedroom closet inside the residence. The informant stated he/she last saw drugs in Appellant's residence approximately two and a half weeks earlier, and at one time/ he/she knew Appellant had upwards of nine ounces of fentanyl concealed in his residence.

[*P6] The affiant conducted surveillance on Appellant's residence on March 2, 2020, at 3:40 p.m. He observed a vehicle arrive at Appellant's residence. He saw the driver, later identified as Wesley Whitehouse, enter the residence, while a female passenger remained in the vehicle. The passenger was later identified as Jamie Miller. Whitehouse exited the house a short time later. and the vehicle left the residence. The affiant followed the vehicle and observed the driver fail to come to a complete stop at an intersection. The vehicle was stopped by another detective, who found two hypodermic needles and one baggie of unidentified [**4] white powder in Miller's pocket. Upon questioning, neither Whitehouse nor Miller stated they stopped at Appellant's residence. On March 3, 2020, testing revealed the substance found on Miller was heroin. Both Whitehouse and Miller had prior drugrelated convictions.

[*P7] After the search warrant was executed,

Appellant was indicted by the Perry County Grand Jury with two counts of trafficking in heroin, possession of heroin, illegal manufacture of drugs, and tampering with evidence, with accompanying forfeiture and firearm specifications.

[*P8] Appellant moved to suppress the evidence seized from his home on the basis the affidavit did not provide probable cause to support the <u>search warrant</u>. The trial court did not hold an evidentiary hearing, but conducted a four-corners review of the affidavit. The trial court denied Appellant's motion to suppress.

[*P9] Appellant entered a plea of no contest to the charge of possession of heroin with a forfeiture specification, and the State entered a nolle prosequi as to the remaining charges. Appellant was convicted upon his plea and sentenced to an indefinite term of incarceration of three to four-and-one-half years. It is from the April 30, 2021 judgment of [**5] the trial court Appellant prosecutes his appeal, assigning as error:

I. THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF A **SEARCH WARRANT**.

[*P10] Appellant argues the trial court erred in denying his motion to suppress because the information contained in the affidavit was stale, and the information did not state with specificity evidence of a crime would be found in Appellant's residence.

[*P11] HN1[*] The Fourth Amendment to the United States Constitution and Section 14, Article I, Ohio Constitution, prohibit the government from conducting unreasonable searches and seizures of persons or their property. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Andrews, 57 Ohio St.3d 86, 87, 565 N.E.2d 1271 (1991). In determining the sufficiency of probable cause in an affidavit submitted for a search warrant, a trial judge or magistrate must make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, 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. State v. George, 45 Ohio St.3d 325, 544 N.E.2d 640, at paragraph one of the syllabus (1980), citing Illinois v. Gates, 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), As a reviewing court, we must accord great deference to the issuing judge's determination of probable cause. See George at naragraph two of the cyllabus Doubtful

or [**6] marginal cases should be resolved in favor of upholding the warrant. *Id.* The totality of the circumstances must be examined in determining whether probable cause existed for a <u>search warrant</u>. *Illinois v. Gates, supra.* "Probable cause" means only the probability and not a prima facie showing of criminal activity. <u>George, supra, at 644.</u> See, also, <u>Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964).</u>

[*P12] Appellant first argues the information contained in the affidavit was stale.

[*P13] HN2[*] "There is no arbitrary time limit that dictates when information [offered to support a search warrant application] becomes stale." State v. Ingold, 10th Dist. Franklin No. 07-AP648, 2008-Ohio-2303. Instead, "[t]he test for staleness is whether the alleged facts justify the conclusion that contraband is probably on the person or premises to be searched at the time the warrant issues." Id. See also State v. Rieves, 8th Dist. Cuyahoga No. 105386, 2018-Ohio-955, 109 N.E.3d 190, ¶ 31 (information becomes stale when enough time has elapsed such that there is no longer sufficient basis to believe the items to be seized are still on the premises).

[*P14] HN3[*] "The question of staleness is not measured solely by counting the days between the events listed in the affidavit and the application for warrant." Ingold at 23. "Ohio courts have identified a number of factors to consider in determining whether the information contained in an affidavit is stale, including the character of the crime, [**7] the criminal, the thing to be seized, as in whether it is perishable, the place to be searched, and whether the affidavit relates to a single isolated incident or ongoing criminal activity." Id.

[*P15] HN4[*] An affidavit supporting a search warrant which, viewed in its totality, indicates investigation into an ongoing criminal operation, such as drug trafficking, may support the issuance of a search warrant even where the information provided in the affidavit is not recent. United States v. Ortiz, 143 F.3d 728, 733 (2d Cir.1998), quoting United States v. Martino, 664 F.2d 860, 867 (2d Cir.1981) ("[W]hen the supporting facts 'present a picture of continuing conduct or an ongoing activity, ... the passage of time between the last described act and the presentation of the application becomes less significant."); State v. Ridgeway, 4th Dist. Washington 00CA19, 2001-Ohio-2655, quoting State v. McKenzie, 6th Dist. Erie No. E-97-040, 1998 Ohio App. LEXIS 4350 (Sept. 18, 1998) ("

'[A]n affidavit which establishes a pattern of conduct or indicates an ongoing investigation can justify the granting of a <u>search warrant</u> based on old information.'
").

[*P16] For example, information in an affidavit over one month old has been found to support probable cause to issue a search warrant where the affidavit describes ongoing criminal activity. See, e.g., State v. Clouser, 4th Dist. Highland No. 16CA4, 2016-Ohio-5370, 2016 WL 4268772, ¶ 16-17 (two and one-half months between last incidents of drug transactions and warrant application not stale and supported probable [**8] cause); State v. Prater, 12th Dist. Warren No. CA2001-12-114, 2002-Ohio-4487, 2002 WL 2005708, ¶ 10-14 (six months between last drug transactions and warrant application not stale and supported probable cause).

[*P17] In the instant case, the information provided in the affidavit referred to ongoing drug activity, beginning with information provided on May 19, 2019, and culminating with information received from an informant who saw drugs in Appellant's residence approximately one month before the warrant was issued. Based on the case law, we find the trial court did not err in finding a time delay of one month between the last observation of drugs in Appellant's residence and the warrant application did not render the information stale, and the warrant was supported by probable cause. Further, on the day before the warrant application, the affiant observed two persons with a known criminal drug history travel to Appellant's residence, with drugs discovered shortly thereafter in the pocket of one of the individuals. Based on the ongoing investigation of drug activity spanning from nearly a year before the warrant application through the day before the application, we find the trial court did not err in finding the information was not stale.

[*P18] Appellant further argues the information [**9] in the affidavit did not specify contraband would be found in his residence. Regarding one of the informants used by police in the instant case, the affiant stated:

CS-3 states that Stewart stores his drugs in the closet in his bedroom within the residence and that Stewart has multiple firearms inside the residence as well. CS-3 states that they last saw drugs in Stewart's — East Lake Street/Roseville, Ohio approximately 2 1/2 weeks ago. CS-3 states that at one time, he/she knew that Stewart had upwards of nine (9) ounces of fentanyl concealed in his residence.

[*P19] Search Warrant Affidavit, ¶8.

[*P20] We find this information specified drugs were located inside Appellant's residence. While Appellant argues this information was stale, we find the information drugs were located inside the residence approximately one month before the warrant issued was not stale when viewing the totality of the circumstances surrounding an investigation into ongoing drug activity at Appellant's residence.

[*P21] The assignment of error is overruled.

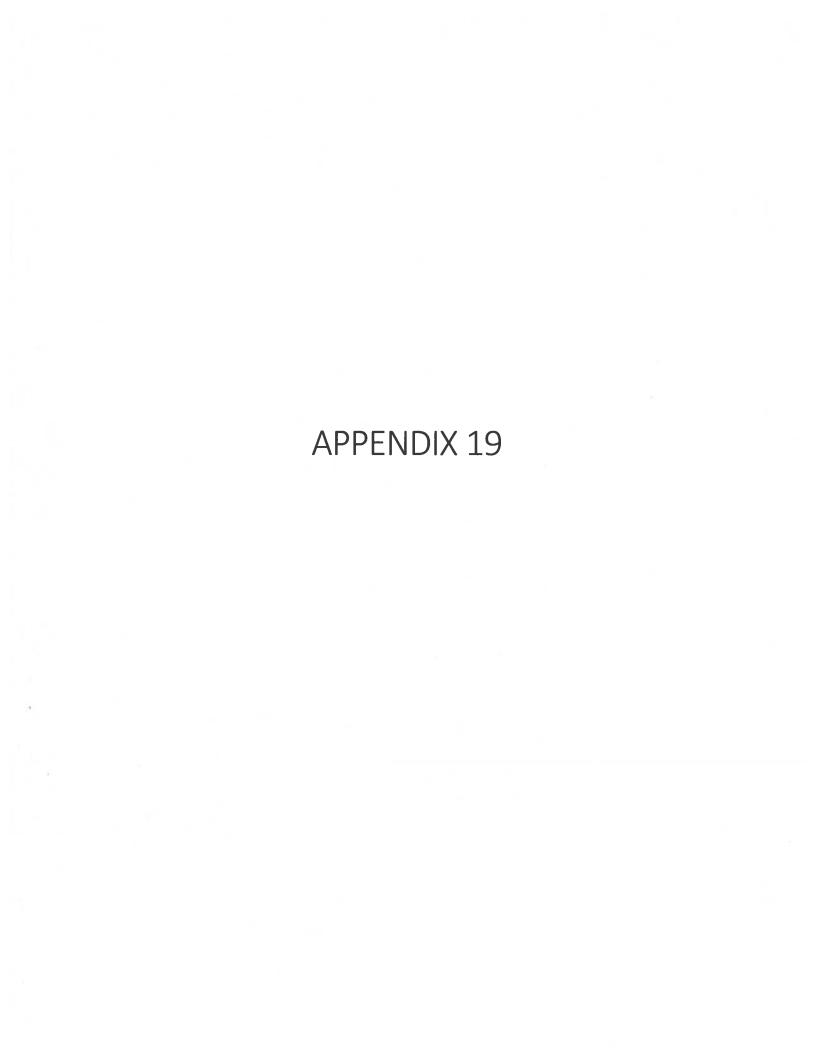
[*P22] The judgment of the Perry County Common Pleas Court is affirmed.

By: Hoffman, J.

Baldwin, P.J. and

Delaney, J. concur

End of Document



Selected Police Reports Reviewed by Elyria Police Department

Related to Risk Assessment for 331 Parmely Avenue (not redacted)

Report 2019-32005	Incident Type: Shooting
Report 2022-15533	Incident Type: Shooting
Report 2022-25466	Incident Type: Suspicious Condition
Report 2022-28756	Incident Type: Weapons Violation
Report 2022-29876	Incident Type: Homicide
Report 2022-31401	Incident Type: Aggravated Robbery
Report 2022-34051	Incident Type: Shooting
Report 2022-34167	Incident Type: Shots Fired
Report 2022-34379	Incident Type: Robbery
Report 2022-34597	Incident Type: Shooting
Report 2023-33790	Incident Type: Death Investigation
Report 2023-34992	Incident Type: CCW (Carrying a Concealed Weapon)
	Report 2022-15533 Report 2022-25466 Report 2022-28756 Report 2022-29876 Report 2022-31401 Report 2022-34051 Report 2022-34167 Report 2022-34379 Report 2022-34597 Report 2023-33790

J

INVESTIGATIVE NARRATIVE

REPORT#: 2019-32005

NARRATIVE BY: Detective Wise #333

REVIEWED BY: Sgt Lantz 198

INCIDENT TYPE: Shooting

NARRATIVE:

On Saturday, November 2nd 2019 at 1830Hrs, Detectives Wise and Conway certified Kae'jon A. Madison for Felonious Assault [ORC 2903.11][F-2], Carrying Concealed Weapon [ORC 2923.12][F-4], Tampering with Evidence [ORC 2921.12][F-3] and Negligent Assault [ORC 2903.14][M-3]. Madison was arrested at 18 West Ave [Elyria Police Department] during a Shooting Investigation that occurred at 824 West Ave, Elyria.

On Saturday, November 2nd 2019 at 1630Hrs, Sergeant Davidson contacted Detectives Wise and Conway in reference to a juvenile male being medically treated at 630 East River St [University Hospital-Elyria] for a gunshot wound.

INITIAL CALL

On Saturday, November 2nd 2019 at 1612Hrs, Officer Huff and Sgt. Whiting were detailed to UHEMC (630 East River St.) in reference to a juvenile victim with a gunshot wound.

Upon arrival, Officer Huff and Sgt. Whiting made contact with _____ (victim, 16 YOA) and learned the following:

On November 2nd 2019 at 1530Hrs, _____ and Harold Willis were hanging out at Jamal Boykin's house [824 West Ave.] with other friends. _____ advised that another juvenile male later identified as **Kaejon Madison was "playing with a gun" taking the magazine in and out of the firearm (loading and unloading the firearm) when the firearm went off striking _____ in his right forearm.** _____ I called his mother Alisha Crook, who picked him up at 824 West Ave. and transported him to University Hospital-Elyria for medical assistance. Officer Huff took photos of _____ and his wound on his right forearm.

FOLLOW-UP INVESTIGATION

Detectives Wise and Conway met with _____ inside of the emergency room. Detective Wise observed _____ to have a gunshot entrance wound on his right forearm but no exit wound. Detective Wise took photographs of his injury and conducted an audio recorded interview, the following was advised.

INVESTIGATIVE NARRATIVE

arrived at sixteen year old Jamal Boykins residence, 824 West Ave, with his sixteen year old cousin Harold Willis at approximately 1500Hrs. ______, Boykins, Willis, and two other friends identified as sixteen year old Kae'jon Madison and Jalen [unknown last name] hung out inside of the residence for approximately one hour. At approximately 1600Hrs, all five of the mentioned males then went outside of the residence and began hanging out in the front yard. At some point, Madison pulled a black handgun from his waistband and began showing it to all of the males. The handgun then got passed around to all the males with each person playing with the handgun and inspecting it.

After each person passed it around, it was returned back to Madison who was standing near the southwest corner of the residence. — turned away from Madison and began walking up the wheelchair ramp attached to the front porch. As soon as he turned away, he heard the firearm go off and immediately felt pain in his right forearm. — looked down at his right forearm and noticed that he had just been struck by a bullet. Madison began apologizing to for shooting him on accident and all five males went inside the residence to clean up the wound. — contacted his mother, Alisha Crook, who drove to the residence and transported — c to University Hospital.

described the handgun as all black, and that it was known to everyone there to be loaded prior to him being shot. — advised that Madison is one of his closest friends and that he did not want him to get in trouble because it was just an accident.

signed a Consent to Search Electronic Equipment Form regarding his cell phone. Detective Wise went through — 's Facebook on his cell phone to identify each subject involved. Detective Wise also observed a text message to "Babygirl" with — texting her "somebody was playin wit ah gun I got shot". Detective Wise took photographs of each male's Facebook and that text message.

Detective Conway completed a Gunshot Residue Kit on — c per policy which was later entered into evidence.— : then signed an Authorization to Release Medical Records Form which was provided to University Hospital staff, later to be collected by Detective Wise in the near future and entered into evidence.

As Detective Wise was still speaking with , his cell phone began ringing with advising that Madison was calling him. answered the phone call then provided the cell phone to Detective Wise. Detective Wise spoke to Madison briefly requesting that he come to Elyria Police Department to speak about the incident. Madison stated that he would and arrived at Elyria Police Department shortly after.

INTERVIEW - KAEJON MADISON

Detectives Wise and Conway arrived back at Elyria Police Department and met with Madison in the front lobby then escorted him into Interview Room 2C. Detective Wise read Madison his Miranda Rights with him advising that he understood and would talk to Detectives without an attorney present. Madison advised the following had occurred.

INVESTIGATIVE NARRATIVE

333-5: Gun Shot Residue Kit-Madison

333-6: Semi-Automatic Pistol Grendel P30

333-7: Gray Cloth with Red Stain

333-8: CD- Photographs of Facebook and Crook's GSW

333-9: Black Zipper Bag

DISPOSITION

On Saturday, November 2nd 2019 at 1830Hrs, Detectives Wise and Conway certified Kae'jon A. Madison for Felonious Assault [ORC 2903.11][F-2], Carrying Concealed Weapon [ORC 2923.12][F-4], Tampering with Evidence [ORC 2921.12][F-3] and Negligent Assault [ORC 2903.14][M-3]. Madison was arrested at 18 West Ave [Elyria Police Department] during a Shooting Investigation that occurred at 824 West Ave, Elyria.

Detective Wise contacted the Lorain County Detention Home and provided there staff the pertinent information regarding this case with the Magistrate accepting Madison into their facility. Detectives Wise and Conway transported Madison to the Lorain County Detention Home.

REPORT#: 2022-15533

NARRATIVE BY: Detective Larson 199 REVIEWED BY: Mahony 209

INCIDENT TYPE: Shooting

NARRATIVE:

On Monday, June 13, 2022 Lt. Lantz assigned this case to Detective Larson.

Initial Report/Leeper Narrative

On 06/13/2022 at approximately 0757 hours Officers Leeper and P. Mitchell responded to UH Elyria (630 East River Street) in reference to a 15-year-old female who had been brought in by her mother with a gunshot wound to her arm. Upon arrival Officers met with the victim's mother, Shanae Lee; the following information was learned:

M: stated the following people were outside of 824 West Ave. with her when gunshots were fired:

- "Tatiana Alice"
- Kamiya Ward (DOB: 04/27/2008)
- Diamond Henderson (DOB: 05/31/2005)
- Makaila Williams (DOB: 05/02/2005)
- "Ameerah" (Unknown last name or DOB)

It should be noted that M — stated to officers that there were "a lot a lot" of people at 824 West Ave. when gunshots were fired, but only provided the above names. When officers asked M — if anyone would want to harm her or had a problem with her, M — stated no. Officers asked M — if she knew of anyone in her friend group that had any issues with anyone else. M — stated Kniaya Carter (DOB: 05/15/2005) who resides at 824 West Ave.

INVESTIGATIVE NARRATIVE

has issues with Mashellay Voorhies (DOB: 07/21/2006). To N_____ knowledge, she nor any of her friends saw the shooter.

Officer Leeper observed a pile of clothes on a table next to M.— in the ER room.

Officer asked M.— if those were the clothes she was wearing when she was shot, M stated they were but she didn't have her jeans because they ripped and she took them off.

M.— was not sure where her jeans were. Officer Leeper collected M.— 's pile of clothes together due to them already being piled together. The clothes consisted of a pink bra, a tie-dye pink and blue t-shirt, black socks, and blue underwear. Officer Leeper later placed the items together into evidence as 203-1.

Officers Leeper and P. Mitchell then responded to 824 West Ave. to check for evidence of a shooting. Upon arrival, officers observed several suspected bullet holes on the exterior of the residence. Officer Leeper spoke with homeowner Cynthia Woods; the following was learned: According to Cynthia, she did not hear gunshots last night because she was asleep. Cynthia stated she was awoken at one point by EPD officers in reference to a shots fired call in the area (2022-15520), but nothing came from it.

Officers then spoke to Kniyah Carter, who resides at 824 West Ave.: Kniyah stated she was inside the residence the entire time and only left the residence after the gunshots stopped. Kniyah said she left the residence and ran southbound down West Ave. in an attempt to see who the shooter was. Kniyah stated she nor anyone else saw the shooter or the vehicle the shooter left in. Officer Leeper asked Kniyah if anyone was injured or shot after the incident. Kniyah stated "my friend M — was shot in the arm". Kniyah stated she did not know who all was outside on the porch when the incident occurred except M —

Officer P. Mitchell took photographs of the suspected bullet holes in 824 West Ave. Officers then went to the area of West Ave. and the 400 block of 9th St. to look for further evidence. Officers located seven spent casings and one live bullet on 9th St. just west of West Ave. Officer P. Mitchell took photographs of the evidence and collected the casings/bullet with the help of Officer Leeper. Officer P. Mitchell later placed the items into evidence.

It should be noted that officers checked houses in the area for any Ring doorbells/security footage. Officer Leeper made contact at 435 9th St. and spoke to the resident who had a Ring doorbell. Officer Leeper looked through the footage which only recorded when motion was detected. No recordings were on file during the time of the shooting. Officer Leeper then observed multiple cameras at 446 9th St. Officer Leeper attempted to make contact at the residence but no one appeared to be home.

Officer Leeper located no other cameras in the area that might assist in this case.

Mitchell Narrative

On 06/13/2022 at approximately 0757 hours Officers P. Mitchell and Leeper were dispatched to UH Elyria (630 East River Street) in reference to a 15-year-old female who had

INVESTIGATIVE NARRATIVE

been brought in by her mother with a gunshot wound to her arm. Upon arrival Officers met with the victim's mother, Shanae Lee, who advised the following: Lee advised her daughter, M: , has been having some issues with being a runaway and staying out all night with her friends. Last night (06/12/2022) — was out with her friends at an unknown location. At approximately 0230 hours on 06/13/2022 Lee began to receive phone calls from her daughter and other numbers she did not recognize. Lee was unaware of these phone calls coming in due to being asleep. Lee advised she was contacted this morning by asking Lee to pick her up at her friend's house in Ely Village (Westway Gardens). Lee picked up _____ from 751 Infirmary Road. Upon picking up _____ , Lee observed her right arm to be injured and have a towel draped over it. When asked about her arm, advised Lee she had been shot last night/ early this morning. Lee then drove Whitfield to the ER where she was being treated by nurses. Officers then spoke with _____ who advised the following: was out with a group of friends last night. She was at 824 West Ave with her group of friends when they realized there was a vehicle circling the area. ————I could only describe the vehicle as a black car with unknown occupants. The last time the vehicle was observed in the area it was observed driving east bound on 8th Street. The vehicle made a right turn onto southbound West Ave and continued driving normally. The vehicle then turned right again (westbound) onto 9th Street and went out a view. Moments later, ——— heard one gunshot. At first, she thought it was a firework and disregarded the noise. She then heard multiple more gunshots and felt they were coming towards her and her friends. Due to that, they all began running towards the door to the residence. In the process, _____ tipped and fell over a wheelchair parked on the front porch. Eventually, they were all able to get back inside the house. advised she did not see the shooter nor the vehicle leave. observed she had been shot on the arm. She had one Once back inside the house, through and through on her right forearm up near her elbow. She also observed she had been grazed on her left upper thigh/ hip area. There were bruises and small scrapes to her knees as well from where she had fallen. attempted to contact her mother but was unable to get

Officer P. Mitchell later observed ______; injuries and took photographs of the same. These photographs were later added into the case file.

Officers P. Mitchell and Leeper then responded to 824 West Ave to check for evidence of a shooting. Upon arrival, Officer P. Mitchell immediately observed multiple suspected bullet holes on the exterior of the residence? While Officer Leeper began making contact with the homeowner, Officer P. Mitchell began to photograph the exterior of the residence.

Officer P. Mitchell observed the following suspected bullet holes/ damage from possible projectiles: two suspected bullet holes in the upstairs bedroom window, 5 suspected bullet holes on the front of the residence between the front porch steps and the bedroom window, two

suspected bullet holes on the north wall of the porch (near the bench in the photographs) and two additional suspected bullet holes in the east wall of the front porch (near the front door but below the mailbox). It should be noted some of the rounds when through the wood on the porch and then struck the house. Photographs of the exterior of the residence where taken and later added into the case file.

Officer P. Mitchell walked through the interior of the residence with Cynthia Woods. Officer P. Mitchell observed one suspected bullet hole that had come through to the inside of the residence but was unable to locate the projectile. Officer P. Mitchell was unable to check the upstairs bedroom where the bullets had gone through the upstairs window due to Woods adult son keeping the door padlocked and him not being home. She was advised to contact Officer P. Mitchell when her son returned home so photographs of the interior bullet holes could be taken as well. At the time of this report, Officer P. Mitchell has not been contacted.

Officers P. Mitchell and Leeper then checked the area of 9th and West Ave for any evidence of a shooting. Officer P. Mitchell located 7 spont shell casings (S&B 45 auto) in the middle of the roadway close to the intersection. Photographs of the casings were taken and the casings were collected and later placed into evidence.

Officers also located one live blazer 9mm round on the ground in front of 402 9th Street. This round was also photographed, collected and placed into evidence.

Officers Leeper and P. Mitchell later canvassed the areas of 8th Street, 9th Street and West Ave for any residences that may have cameras on them. Officer Leeper spoke with the homeowner at 435 9th Street who has a Ring doorbell but the camera did not capture any motion around the suspected time of the shooting. Officers also checked with 446 9th, 474 9th, and 479 9th Street who were either not home or were advised of what Officers were looking for and advised they would check their cameras when they were home from work and would contact Officer P. Mitchell if they had located any video. At the time of this report, there have been no calls in reference to the video.

All photographs were later attached to the case file and all casings/rounds were entered into evidence.

Follow Up

Detective Larson reviewed the photos of M and observed the "graze" on her leg to not be consistent with a bullet graze due the shape of the injury.

On Tuesday, June 28, 2022 Detective Larson contacted Shanae Lee (mother of M and asked that she bring M to EPD to be interviewed. Shanae advised she would bring M on the following day, 6-29-2022, to be interviewed and 1300hrs.

INVESTIGATIVE NARRATIVE

- -Daysheray
- -Cynthia Woods
- -Deetra Woods
- -John Carter

M — then stated she thinks "Enrique Smith/16 YOA" was involved and with a subject named "Antonio" who were in a green or black colored car. M — thinks this because Enrique calls M — everyday and checks on her. Detective Larson asked M — what Enrique's number was and learned he uses Instagram to call her. Detective Larson asked what the account name was which M — stated it was possibly "badbendrique,". Detective Larson asked M — to pull up the account on her phone but M — stated her phone was currently off. It appeared M — was not being forthcoming with information. After the interview M — was using her phone and when asked by Detective Larson if her phone started working randomly she stated she was on Wi-Fi.

M— was unsure of what "Antonio's" last name which she didn't know and only heard through friends that he was involved. Detective Larson asked why someone would want to shoot at them which M— explained it was west side vs. south side Elyria thing and that none of the females were supposed to be involved and that it was between "cam" and Enrique however "cam" wasn't outside. M— also said that Deetra told her mother that neighbors have "cameras" of them hiding in the bushes.

Detective Larson began asking about "cam" and learned his Facebook name is possibly "Cameron Thacker." Detective Larson is familiar with a "Kamron Thacker" from a previous case who is from Elyria. Detective Larson also learned that M—— was referring to the west side and south side Lorain earlier when trying to think of why someone would want to shoot at the house. It should noted that there are gangs from the west or south side of Lorain Ohio and will often feud with one another.

It should be noted that M — 1 has heard all this information third person and has not witnessed anything herself. M — 1 also appeared to not be forth coming when Detective Larson was trying to identify people. Detective Larson was unable to locate "Enrique Smith" in the county data base.

M — s interview was submitted to evidence labeled (199-1).

This case is considered closed pending any new information.

PATROL NARRATIVE

REPORT#: 2022-25455

NARRATIVE BY: Cavanaugh #043 REVIEWED BY: 315

INCIDENT TYPE: Suspicious Condition

NARRATIVE:

On Wednesday, September 14, 2022, at 0900 hours, Officers Cavanaugh, Marquardt, and Csata, were detailed to 824 West Ave. in connection with assignment 2022-25437, at which time Cynthia Woods, who is the Grandmother of J'marion Carter and John Carter-Woods, flagged down officers. Woods escorted Officer Cavanaugh inside of her house at 824 West Ave. and showed him several suspected bullet defects in the stairwell leading into the basement, and near the southeast exterior door. Officer Cavanaugh asked Woods if she heard any gunshots the previous night. Woods stated she went to bed on Tuesday, September 13, 2022, and when she woke up on Wednesday, September 14, 2022, at approx. 0700 hours she noticed "bullet holes" by her southeast exterior door, and stairwell leading to basement.

Officer Marquardt took photos of the exterior and interior of areas showing the suspected bullet defects. The photos were burned to a CD and entered into property 043-1.

PATROL NARRATIVE

M

REPORT#: 2022-28756

NARRATIVE BY: Colon 054 REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Weapons Violation

NARRATIVE:

On 10/16/2022 at approximately 0251 hours, Officers Colon, McDuffee, Leeper, and Helmick were detailed to 1021 Barbara St regarding shots fired. Upon arrival, officers spoke with the complaint, Elisabeth Rodriguez, and the following information was learned:

Elisabeth was awoken by the sound of several gun shots in the area of Garden St. Elisabeth did not see anything when she looked out her window and called EPD.

While on scene, officers were advised by dispatch that 1023 Garden St was struck by several gunshots. Officer Colon went to speak with the resident, Kandia Clayton, and the following information was learned:

Kandia threw a house party at her residence of 1023 Garden St. The following individuals were present at the party earlier in the evening:

Tatyanna Scott (on scene)

Samariae Merrit (on scene)

John Carter (on scene)

Zhion Bodiford (on scene)

Jalia Harvey (on scene)

Shawn Walton-Kirkendoll (on scene)

Josiah Winston "Jo-Jo" or "Getback JoJo" on Facebook

Knowledge King

Sincere King

"Reggie" (unknown real name, possibly Reggie Johnson)

Alonzo Davis

"AJ" (unknown real name)

"Santana" (unknown real name)

"Dymand" (unknown real name)

"Sasha" (unknown real name)

Gaby (last name possibly Zeleya or Ruiz)

"Draco" (unknown real name, approximately 16 YOA from Elyria)

During the party, Kandia was sitting on the stairs of the residence and heard a commotion coming from the kitchen. Kandia and Tatyanna went to investigate the noise and discovered who she initially stated was "JoJo", described to be a light skinned male with tattoos and dreads and Draco arguing. It should be noted, Kandia later found "JoJo" to be Josiah Winston via Facebook.

PATROL NARRATIVE

Kandia told Josiah, Knowledge, Sincere, Reggie, and Draco to leave due to the argument and them not being welcome. Josiah, Knowledge, Sincere and Reggie all left the residence and drove away in a red Chevy Equinox (unknown RP).

Shortly after Kandia kicked the males out, EPD received one call for shots fired in the area of 1023 Garden St. EPD units along with LCSO searched the area with no signs of shots being fired at that time. Several juveniles were located running in the area and all were released on scene to guardians (SEE INCIDENT #2022-28753). It should be noted, officers attempted contact at 1023 Garden St during this incident with no contact being made.

Kandia stated after the above stated incident occurred, she observed the red Chevy that Josiah and the others left in "circling the block" several times. After the Chevy was observed several times, she and all the individuals listed as on scene heard "several" gun shots. Kandia stated she observed several shots enter her residence through various walls and windows. No one inside the residence during that time was struck. Officers located 4 projectiles inside the residence in the living room, kitchen, and upstairs bedroom. Photographs of the scene were taken and entered into evidence (203-1).

Officers checked the area directly east of 1023 Garden St and located 26 spent shell casings along the driveway of 1024 Garden St and the grassy area directly south of it. The casings were marked, photographed, and entered into evidence.

Officers then discovered 1025 Garden St was also struck by gunshots. Officers checked the welfare of the resident inside, identified as Tiana Robertson, who advised everyone was ok. Photographs of that residence were also taken.

Officer Colon went to 1019 Garden St and spoke with Gwinettia Walton. Gwinettia's grandson Shawn was released to her after the incident of juveniles running. With her permission and in her presence, Officer Colon interviewed Shawn regarding his observations at the party and the following was learned:

Shawn went to the party with his brother Alonzo. While at the party, Shawn observed a light skinned male with tattoos and dreads (Josiah) to be in possession of a black firearm with a green laser and flashlight. Josiah brandished the firearm at another male Shawn did not know (possibly Draco). Josiah then robbed the male for another firearm the male had on his waist. Shawn stated that's when the argument Kandia stated broke out and they left the party and were detained by EPD.

REPORT#: 22-29876

NARRATIVE BY: Kasperovich REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Homicide

NARRATIVE:

On Friday, November 4th 2022 at 1025hrs; Elyria Detectives as well as the USMS arrested Antwon President at 1023 Garden Street on an active warrant stemming from the homicide that occurred at 1864 Middle Ave. The warrant was for:

1. Tampering with Evidence (ORC 2921.12 F-3)

2. Discharge of firearm on or near prohibited premises (ORC 2923.162 F-3) Antwon was then transported to EPD for an interview.

On Friday, November 4th at 1225hrs: Elyria Detectives as well as the USMS arrested Nathanuel President on an active warrant stemming from the homicide that occurred at 1864 Middle Ave. Nathanuel was arrested at the intersection of West Bridge Street and Water Street after a traffic stop. Nathanuel had outstanding warrants for:

1. Felonious Assault (ORC 2903.11A1 F-2)
Nathanuel was later transported to EPD for an interview.

Initial Response (Patrol)

On October 27th 2022 at approximately 1946hrs; All available EPD Officers responded to an alert tone at 1864 Middle Ave building H regarding a report of shots fired. Dispatch advised that several vehicles were leaving the area and a man was lying on the ground.

Upon arrival, Officers located a male victim, later identified as , lying face down in the grass outside of building H. ____ had an apparent gunshot wound to the head and was unresponsive. Several subjects were standing around ____ i's body, yelling and screaming for someone to help.

Officers attempted life saving measures until Lifecare and EFD arrived on scene. The gunshot wound was located on ______ 's head, near his upper left eye. There was significant blood loss coming from the gunshot wound. At approximately 1955hrs, Lifecare ambulance arrived on scene and paramedics began providing medical attention. After all life saving measures were exhausted, Lifecare medics pronounced ______ deceased.

Officers set up a perimeter, taped off the scene and provided security until the Detective Bureau arrived on scene.

Officer Perkins Narrative:

On 10/27/2022 at 1946 hours all Elyria Police Officers received an alert tone over the radio. Dispatched advised officers of a shooting and possibly a person down at Midview Crossings 1864 Middle Avenue.

Officers Perkins and Constantino arrived and observed Officer Webber and Det. Garvin giving chest compressions to a male who was laying in front of building H. Officers Perkins and Constantino provided crowd control around Officer Webber and Det. Garvin until other officers arrived. Once the scene was secure Officers Perkins and Constantino were made aware of an apartment that may have been involved in the shooting, 1864 Middle Ave. H5.

Officers Perkins and Constantino arrived at apartment H5 and identified the people inside. Those inside included Kelvin Lane Jr., Donte Williams, Kamron Thacker, John Carter, Kianna McCullum, and Thaliah Lee.

Located just inside of the door, on the kitchen counter, was a magazine loader for a Glock pistol. That magazine loader was later entered into evidence as 264-1.

The lease holders of the apartment were identified as Malaysia Eason and Jeffrey Lawson Jr. The lease holders were in the state of Florida but gave consent to officers, over the telephone, to search the apartment. Officer did search the apartment and did not located anything of evidentiary value.

Those inside told officers that the shooting victim, , was in the apartment prior to being shot. The victim left his cell phone in the apartment which was given to Officer Constantino. The victim's phone was turned over to Det. Larson on scene

Officers stood by in the apartment while Detectives interviewed the occupants. Once the Detectives were complete with their interviews the occupants left the apartment and the apartment was left to Malaysia Eason's mother.

Photographs of the apartment are submitted with this report as evidence.

Detective Investigation (Kasperovich):

Involved Parties:

- 1. Deceased victim- shot by Henry Spooner IV
- 2. Kaeion Madison: Analeise Velez child's father (Jeep)
- 3. Henry Spooner IV: Second victim shot by Nathanuel President
- 4. Ja'Lyn Ke'Von Spooner: Involved
- 5. Demetrius Willis: Driver of the Jeep Cherokee
- 6. Nathaniel President: Suspect- shot Henry Spooner IV
- 7. Antwon President: Involved-picked up Jordan Flanigan's firearm
- 8. Harold Willis: Involved (In Jeep during pursuit)
- 9. Karlos Whitaker: On scene at time of shooting, drove Chrysler from scene

LOUNELTED
ASSOCIATES
BY WEST AVE

On Thursday, October 27th 2022 at approximately 1950hrs; All available Detectives were called in by Sgt. Grove regarding a homicide that occurred at 1864 Middle Ave. Initial reports stated that a male was lying face down in front of 1864 Middle Ave building H.

Detective Kasperovich responded directly to scene with Detective Garvin. Detectives Homoki and T. Loesch responded to UH Elyria to speak with one of the two gunshot victims; H —— S —— Detectives also interviewed Kae'jon Madison, Jaylen Spooner, Demetrius Willis and Harold Willis.

The below is not intended to be a verbatim account and does not memorialize all statements made during the interviews. Communications by the parties in the interview room were electronically recorded. The recordings capture the actual words spoken and are maintained by EPD.

Detective Homoki's Interviews (UH Elyria):

Synopsis of recorded audio interview with Kae'jon Madison Conducted at 630 East River St. – University Hospital – Elyria Medical Center Thursday, October 27th 2022:

Det. Loesch arrived first at the hospital and initiated contact with Kae'jon in the family room. Kae'jon told Det. Loesch that he walked from Parkview Ct. to the liquor store on East Broad St. Once at the liquor store, Kae'jon meet up with his friend, Henry Spooner, and his associates.

Kae'jon refused to cooperate or provide any other names that were in the vehicle or where he sat in the vehicle. Kae'jon continued and explained that they went to the 1864 Middle Av. (SouthPark) parked in the parking lot, and listened to music in the parking lot. Kae'jon heard multiple shots fired and Henry ran to the vehicle and they drove him to the hospital.

During the conversation, Kae'jon told detectives that even if he knew the information or the name of the shooter he would not cooperate.

Synopsis of recorded audio interview with Demetrius Willis

Conducted at 630 East River St. – University Hospital – Elyria Medical Center

Thursday, October 27th 2022:

After the interview with Kae'jon, detectives learned that Demetrius Willis was arrested and transported to University Hospital for medical attention. Det. Homoki advised Demetrius of his Miranda Rights. Demetrius understood his rights and advised the following: Demetrius explained that he was with Henry, Kae'jon, and his cousin. Demetrius could not recall who sat where in the vehicle but was able to tell detectives that they drove from Parkview Ct. to the liquor store, and finally to 1864 Middle Av. (Southpark).

Once in the apartment complex, Demetrius back his vehicle into a parking spot and several individuals left his vehicle. After an unknown period of time, Demetrius heard multiple shots

fired and Henry accompanied by another male returned to his vehicle and yelled, "hospital." Demetrius drove north on Middle Av. to the hospital and dropped off Henry and Kae'jon.

Demetrius left the hospital and returned to his residence on East Av. After returning home, Demetrius and his cousin, Harold, left. Demetrius initially tried to say he was driving but later admitted to trying to exit the vehicle and looking at the police while they were trying stop the vehicle.

Demetrius was seen but the doctor and received medical attention prior to being transported to the county jail. ***End of Homoki's report***

Detective Kasperovich Investigation Continued:

Detective arrived on scene and observed a large portion of the parking lot and common area in front of building H secured with crime scene tape. All available EPD units as well as Lifecare and EFD were on scene. Detective observed a male, later identified as _______ lying supine in the grass directly in front of building H. The male was covered with a white sheet. There was blood pooling under his head and an apparent gunshot wound above his left eye. It was learned that the entire homicide was recorded on surveillance video. There are several cameras affixed to every building inside of 1864 Middle Ave. Sgt. Ligas responded to scene and began pulling the video footage.

Before Detective could speak with any EPD Units, he was pulled aside by Nick Pinero advising he was also shot. Nick was upright, communicating and not actively bleeding. Detective observed a superficial gunshot wound on Nicks upper right shoulder/back. Nick was evaluated by Lifecare Paramedics and signed off on a refusal to treat form. Nick advised he was feeling fine and did not wish to be transported to UH Elyria. Detective asked Nick how he was shot and learned the following:

Synopsis of recorded audio interview with Nick Pinero Conducted at 1864 Middle Ave Thursday, October 27th 2022:

Nick was hanging out with friends in front of building J when he observed a vehicle driving through the parking lot. Nick then heard several gunshots coming from the vehicle and he began to run towards the back of the building. As he was running, he felt a sharp pain in his shoulder and knew he was struck by gunfire. Nick remained in concealment until the shooting stopped. Nick could not provide any information on the type of vehicle or suspects. Nick was familiar with Jordan but they were not close and he could not provide any motive for the shooting. Detective then ended the interview as no other pertinent information was learned.

1864 Middle Ave Apartment H5 Interviews:

Detective then learned that Officers Constantino and Perkins were inside building H apartment 5, speaking with several juveniles and adults. Detective also learned that a Glock magazine loader was observed in plain sight on the counter of apartment 5. Detective entered the apartment and identified the following subjects:

- 1. Kelvin Lane Jr.
- 2. Donte Williams
- 3. Kamron Thacker
- 4. John Carter
- 5. Kianna McCullum
- 6. Thaliah Lee
- 7. Analeise Velez

Detectives Kasperovich and Garvin interviewed Kianna McCullum, Thaliah Lee, Kelvin Lane and Analeise Velez and learned the following:

Synopsis of recorded audio/video interview with Analeise Velez Conducted at 1864 Middle Ave H building apartment 5 Thursday, October 27th 2022:

Detectives Kasperovich and Garvin interviewed Analeise Velez and learned the following:

On Thursday, October 27th 2022; Analeise was out "doing hair" and was dropped off at 1864 Middle Ave after being gone all day. As she was walking into her building (J), she heard several gunshots. After hearing the gunshots, she, her friend and sister ran and hid under the staircase. Analeise was not forthcoming with information and repeatedly stated she had no idea why this happened or who Jordan is feuding with, even though they are close friends.

Synopsis of recorded audio/video interview with Thaliah Lee Conducted at 1864 Middle Ave, H Building apartment 5 Thursday, October 27th 2022

Detectives Kasperovich and Garvin then interviewed Thaliah Lee and learned the following:

Thaliah and her friends were handing out at 1864 Middle Ave building H5 as she is house sitting for her sister. Jordan and his friends arrived and was carrying a "bottle" (alcohol). Jordan and his friends then went outside after hearing a "skirting noise" after Analeise was dropped off. The car that dropped off Analeise was the car the suspects allegedly arrived in. Jordan has "beef" with several people but Analeise is unaware as what the beef is about.

After Jordan and his friends went outside, Thaliah heard several gunshots and she ducked to the floor for cover. Thaliah believes she heard anywhere from 10-15 gunshots. Thaliah then overheard someone state, "oh my god he's dead." Thaliah went outside and held —— and told him to think about his daughter. EPD, EFD and Lifecare then arrived on scene and began providing life saving measures. Thaliah did not observe any cars leaving the area and did not observe any suspects.

Thaliah explained that Jordan and his friends were only at the apartment for a very brief amount of time, less than thirty minutes. Thaliah explained that she recently just met Jordan so did not know much about his outstanding "beefs" with anyone.

Thaliah repeatedly told Detectives to talk to Jordan's "sister", Analeise as she would know more information on this shooting. Thaliah overheard that the people responsible for this homicide was in the car with Analeise before the shots were fired. Analeise exited the car and entered her apartment before the shots rang out.

Thaliah stated she would talk to Analeise and encourage her to talk to Detectives regarding this homicide. Detectives then ended the interview as no other pertinent information was learned.

Synopsis of recorded audio/video interview with Kyanna McCullum Conducted at 1864 Middle Ave building H apartment 5 Thursday, October 27th 2022

Detectives began the interview by asking Kyanna to describe what she remembers prior to Jordan being shot and learned the following:

On Thursday, October 27th 2022; Kyanna and her friends had plans to "go out." Jordan, came over to the apartment with his friends but only Jordan came inside. Jordan was only in the apartment for a very short amount of time and left back outside again. Shortly after Jordan exited the apartment, he and his friends went outside. Kyanna then heard what she recalled as 45-50 gunshots. After hearing the gunshots, Kyanna went to the ground for cover but eventually looked out of the window and saw an unknown male running. Kyanna was unsure why Jordan and his friends went outside and she could not identify any of his other friends he was with.

When asked if — was feuding with anyone, Kyanna advised that Analeise's child's father, Kaejon, is Jordan's "opp." Analeise told Kyanna that prior to . — being shot, she did Kaejon's hair and was with him before — was shot. Kaejon believes that — is in a relationship with Analeise. Kyanna stated that approximately two weeks ago, Jordan "pulled a gun" on Kaejon. Kyanna then stated that Analeise told her that she thinks Kaejon was the shooter.

Kyanna explained that Kaejon broke into Analeise house very recently and stole a gun from her house. Kyanna did not have any information on the firearm but knew it was not Analeise's gun. Kyanna explained that Analeise had a male friend over, and while he was over another person snuck in and stole the unknown friend's gun. Detectives then ended the interview as no other pertinent information was learned.

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Synopsis of recorded audio/video interview with Kelvin Lane Conducted at 1864 Middle Ave H5 Thursday, October 27th 2022:

Detective Garvin began the interview by asking Kelvin to recall the events that occurred on Thursday, October 27th 2022 prior to _____ being shot.

Kelvin was inside the apartment (H5) with his friends, hanging out. Jordan was also at the apartment but only stayed for approximately 30 minutes. Jordan came alone and he does not own a car. Jordan then exited the apartment and went outside. Shortly after he walked outside, Kelvin heard several gunshots and observed ______, bleeding on the ground.

Kelvin was unfamiliar with any feuds Jordan has with anyone and is unsure why this would have happened. Detectives ended the interview as no other pertinent information was learned.

Synopsis of recorded audio interview with Justin Flanigan Conducted at 1864 Middle Ave Thursday, October 27th 2022:

After interviewing the aforementioned subjects, Detective Kasperovich and Sgt. Grove exited the apartment and located Analeise after learning that the shooting potentially involved her child's father; Kaejon. Analeise was located and interviewed by Det. Larson (See Det. Larson's report).

Detective Kasperovich was then flagged down by Justin Flanigan (——'s brother) who was inquiring about ——. It should be noted at this point; no notification had been made to immediate family due to the on-going active investigation. Detective spoke with Justin who could not provide much information about —— I or his life style. Justin explained that he has been removed from the city of Elyria for approximately six years after joining the Marine Corp.

Justin was adamant that he knew who shot ———— and provided Detective with the name of John Stewart. Justin stated after he found out his brother was potentially shot and killed, he drove to 1864 Middle Ave and met with his mom; Lori Flanigan. After arriving at 1864, he was pulled aside by an unknown male only known as DJ. DJ explained that Analeise knew why ——— was shot and her child's father was directly involved. DJ provided Justin with the name of John Stewart and provided him with John Stewart's Instagram handle. Justin could not obtain any more information.

Death Notification:

Detective then made a death notification to 's mother; Lori Flanigan who was on scene.
Lori advised that she last observed. — on Thursday, October 27th 2022 at 1130hrs
was at her residence and she observed with an all-black handown with a laser light
attachment. Lori could not provide any information as to why was shot Detective
provided her with all his contact information and advised he would be in contact with her when more information was learned.
note intermation was realised.

Vehicle Pursuit/Arrest: 2022-29980

After making the notification, Detective heard on the radio that Officer Mason was in an active pursuit with a dark colored Jeep Cherokee, believed at the time to be the suspect vehicle. Detectives Kasperovich and Lt. Lantz began driving towards the area of the pursuit which at this time was near Middle Ave and 5th Street. While en-route, Officer Mason advised all EPD units that the Jeep had wrecked directly in front of the high school and two of the three occupants fled on foot towards East Ave.

Officer Mason Report:

On 10/27/2022, at approximately 2107 hours, Officers Gregory Jr. and Walland arrested Harold Willis Jr. in the mid 200 block of 5th St. Harold was charged with Failure to Comply (ORC:2921.331/F3), Obstructing (ORC: 2921.31/F5), and Resisting Arrest (ORC: 2921.33/M2). Harold was issued a traffic citation for Reckless OP (ORC: 4511.20/MM), Failure to Control (ORC: 4511.202/MM) and No Operators License (ORC: 4510.12A/MM). Harold was brought back to the Elyria PD to be interviewed by Detectives and later transported to the Lorain County Jail (LCJ), where he will stay until his arraignment due to NO BOND.

On 10/27/2022, at approximately 2125 hours, Officers from the Lorain Police Department arrested Demetrius Willis behind 254 5th St. Demetrius was charged with **Obstructing (ORC: 2921.31/M2)** and **Resisting Arrest (ORC: 2921.33/M2)**. Demetrius was transported the UH-Elyria for medical attention and then transported to the LCJ. Demetrius will remain at the LCJ until he posts bond or appears for his arraignment.

On 10/27/2022, at approximately 2100 hours, Officer Mason had just cleared a shooting scene (Incident #22-29876). While Officer Mason was on scene, he learned that a possible suspect vehicle may have been an early 2000's blue Jeep Grand Cherokee Laredo but there was no registration for the vehicle. Officer Mason was parked at a parking lot in the area of 16th St. near Middle Ave. As Officer Mason was stationary, he observed a blue 2005 Jeep Grand Cherokee Laredo (OH/RP: EIM 1005) off of Middle Ave. E/B onto 16th St. heading towards East Ave. As the vehicle passed, Officer Mason used his flashlight and confirmed it was a Laredo edition.

Officer Mason activated his overhead lights and sirens to catch up to the vehicle and Officer Gregory Jr. was directly behind Officer Mason. Officer Mason noticed that the vehicle started to accelerate at a high rate of speed. Officer Mason notified EPD dispatch of the situation. The suspect vehicle stopped at the stop sign at 16th St/East Ave. The passenger side door opened and black male with a yellow jacket and blue pants exited and immediately faced towards Officer Mason. The passenger was later identified as Demetrius Willis. The vehicle operator, later identified as Harold Willis Jr. opened the driver side door but never exited the vehicle. Officer Mason placed his vehicle in park, exited his vehicle and drew his pistol. Officer Mason order Demetrius at gun point to stop and turn around. Demetrius reentered the vehicle and the vehicle took off N/B on East Ave. at a high rate of speed.

Officer Mason entered his vehicle and started to pursue the vehicle. Officer Mason notified EPD dispatch that the vehicle was N/B on East Ave. at a high rate of speed and not yielding. The vehicle then turned left (W/B) onto 7th St. continuing to go at a high rate of speed. The vehicle then turned right (N/B) onto Middle and then right (E/B) onto 6th St. The vehicle then turned left (N/B) into the Elyria Masonic Center (251 6th St). The vehicle then traveled left (NW/B) into the parking lot, crashing through a metal chain linked fence. The vehicle continued towards Middle Ave. As the vehicle was in the curb lawn area of Middle Ave near Sederis Ln, the driver side door opened and Harold jumped out of the vehicle. It should be noted at this time there were pedestrians walking and the vehicle nearly struck them. The vehicle continued over the median on Middle Ave. striking a light pole and coming to a final rest at the Elyria High School. The vehicle was impounded and later taken to the Elyria Police Department jail sally port for processing.

Due to the metal fence being there, Officers had to use the roadway to drive around. By the time Officers were at Middle Ave near the crashed Jeep, both Harold and Demetrius took off running N/B on Middle Ave towards 5th St. Officer Mason's patrol vehicle windows were down, and Officer Mason yelled at both Harold and Demetrius to stop running. They failed to comply to Officer Mason's lawful order and continued to run E/B on 5th St. At that point they both split up. Harold ran N/B on 5th St. near 424 Middle Ave. Officer Gregory Jr. parked his patrol vehicle and took chase after Harold. Officer Gregory Jr. attempted to utilize his department issued taser but was unsuccessful. Officer Gregory Jr. and Officer Walland were eventually able to take Harold into custody in the mid 200 block of 5th St. (FOR FURTHER SEE OFFICER GREGORY JR. REPORT).

Officer Mason parked his vehicle and gave chase to Demetrius near 254 5th. Officer Mason gave Demetrius orders to stop but he failed to comply with them. Demetrius ran behind the home out of Officer Mason's sight. Officer Mason slowed down to pie the corner of the house and noticed there was heavy vegetation, making it hard to move behind the home. Officer Mason cleared the area and noticed cellar stairs on the northside of the house. Officer Mason cleared the area and didn't locate Demetrius. Officer Mason radioed EPD dispatch and advised them of the suspect's description. EPD dispatch advised Lorain Police Department (LPD) would be responding with a K9. Other Officers set up a perimeter and attempted to locate Demetrius. At one point, an Officer called out seeing a black male wearing a yellow shirt walking on Middle Ave. holding his chest.

Upon LPD K9 arrival, Officer Mason briefed the handler of the area (behind 254 5th St.) Officer Mason last saw Demetrius. After briefing the K9 team, Officer Mason walked toward the suspect vehicle, so that he could start the tow process. As Officer Mason was half way there, he heard numerous Officers giving loud verbal commands. Officer Mason ran back towards 254 5th St. Officer Mason observed Officers had Demetrius in custody. Officer Mason learned that due to Demetrius resisting arrest he had been tased by and Officer and was bitten by the K9. It should be noted that Demetrius had taken off his yellow jacket and blue pants and was in a black shirt and shorts. Lifecare was detailed to the scene and transported Demetrius to UH-Elyria for medical treatment. Officers on scene took photos of Demetrius's clothes, which were later collected and placed into evidence. Demetrius was later transported to the LCJ, where he will remain.

Officer Mason returned to the Elyria Police Department and completed the above affidavits for both Harold and Demetrius. Officer Mason swore to and signed the affidavits in front of the OIC. ***End of Officer Mason's report***

Detective Kasperovich investigation continued:

Synopsis of recorded audio interview with Jovanna Willis Conducted at Middle Ave and 5th Street Thursday, October 27th 2022:

Detective Kasperovich remained on scene and obtained consent from the vehicle owner; Jovanna Willis. Jovanna signed the consent to search form which gave EPD permission to search her vehicle. Detective briefly spoke with Jovanna who advised that her son; Demetrius Willis asked her to use her vehicle prior to the shooting at 1864 Middle Ave. Demetrius told Jovanna he was using her car to go to work, which was later discredited. Jovanna also stated that just prior to the vehicle pursuit, she saw Demetrius in the vicinity of her residence. Jovanna could not provide any further information and Detective ended the interview.

Jeep Grand Cherokee (OH RP: EIM1005) Search/Processing:

The vehicle was subsequently towed to EPD and processed per department policy. Detective Whiting completed the search and the following items were located and seized:

- **324-1:** Swab of suspected blood from the vehicle hood by the Jeep logo.
- 324-2: Swab of suspected blood from the detached front bumper.
- 324-3: Blind swab from the steering wheel
- 324-4: Blind swab from the gear shifter
- 324-5: Swab of suspected blood from driver interior door panel
- 324-6: Swab of suspected blood from the area around the radio
- 324-7: Two Ohio Driver License for Demetrius Willis and debit cards
- 324-8: Black bag with unknown blue pills (3.9g TPW)
- 324-9: Brown towel with suspected blood
- 324-10: Gray sweatshirt with suspected blood
- 324-11: Back cloth portion of driver front seat with suspected blood
- 324-12: Driver back seat cloth with suspected blood
- 324-13: CD with photos taken during examination

After the Jeep was processed, it was subsequently towed to Sugar Ridge Towing.

Detective Kasperovich returned to station and re-interviewed Thaliah Lee.

Synopsis of recorded audio/video interview with Thaliah Lee Conducted at the Elyria Police Department Thursday, October 27th 2022:

Thaliah advised she and several of her friends were house sitting (1864 Middle Ave H5) for her sister who is currently in Florida. Jordan Flanigan also came over and drank for a brief amount of time. Thaliah has known Jordan for only a few months but considers him to be a "brother" to her.

Thaliah recalled hearing a "skrt" noise, twice and Jordan exited the apartment and went outside. Shortly after Jordan got outside, she heard approximately 15 gunshots.

Thaliah heard that the shooters were in the car that pealed out of the parking lot. Thaliah did not observe any cars but heard it was a "wide body black truck." Thaliah was adamant that Analeise knew what kind of car it was and who was driving. Thaliah heard that Analeise was in the car with the shooter prior to the shooting and shortly after she exited the car, the shooting occurred. Thaliah also heard that Analeise's "babydad" was the shooter and the one responsible for the homicide.

Thaliah heard that there is "beef' between —— and Analeise's "babydad." The beef is over the fact that —— is currently living at Analeise's house and her child's father believes they are in a sexual relationship. Analeise has denied these allegations.

Detective then showed Thaliah pictures of the subjects standing in the hallway prior to the shooting. Thaliah identified Karlos Whitaker, Jeff (Ja'yln Spooner), AP (Antwon President), Nathanuel President and Spooner (Henry Spooner). Thaliah also identified a male by the name of "JB." Thaliah stated that "JB" was arrested recently through EPD.

Thaliah has known Jordan for approximately 2-3 months, Karlos Whitaker for one year and Nathanuel President for four years. After the shooting, the group of subjects identified ran after the car. Thaliah also stated that "JB" shouldn't have been around Elyria and he is a runaway from Texas.

No other pertinant information was learned and Detective ended the interivew.

Detective then learned that Detectives Homoki and T.Loesch interviewed Jaylen Spooner and Harold Willis. Below is Detective Homoki's interview synopsis.

Detective Homoki's interviews:

Synopsis of recorded audio interview with Jaylen Spooner 18 West Av. Elyria, OH (Elyria Police Department) Thursday, October 27th 2022:

Det. Homoki and Loesch arrived at the police station and learned that Jaylen Spooner was sitting in interview room 2B waiting to be interviewed. Detectives were briefed and learned that Jaylen was observed exiting the apartment complex and attempted to walk northbound on Middle Av. Officer Chalkley contacted Jaylen and learned that his brother, Henry Spooner, was with him prior to the shooting. Officer Chalkley detained Jaylen and transported him to the police department.

Det. Homoki explained that Jaylen was only detained but there were no charges filed against him. Jaylen was asked to provide a statement regarding the events from the day. Jaylen agreed.

Jaylen explained that he was behind a building on the northside of 1864 Middle Av. and heard multiple gunshots. After hearing the shots, Jaylen walked westbound towards Middle Av. and tried to turn northbound on Middle Av. Jaylen said officers contacted him and detained him.

Detectives exited the interview and learned that Jaylen, Harold, and Henry were in a video posted on Instagram calling out individuals and flashing a Taurus handgun with an extended magazine.

After seeing the video, detectives returned and spoke with Jaylen again. Prior to speaking with Jaylen, detectives informed Jaylen that there was as video of Jaylen with a handgun and there are multiple videos from the scene.

Jaylen started over and explained that he, Henry, Harold, Demetrius, and Kae'jon were on Parkview Ct. dancing and flashing a Taurus handgun. Jaylen told the detectives that the handgun belonged to his brother, Henry, but Jaylen grabbed the handgun from the rear seat and pointed it at the camera.

After the video, Demetrius drove, Kae'jon (front passenger), Jaylen passenger rear, Harold, middle, and Henry, driver rear, to the liquor store on East Broad St. After being at the liquor store, the five left and traveled to 1864 Middle Av.

Once at 1864 Middle Av., Henry grabbed his Taurus firearm and exited the vehicle with Jaylen. The two walked to the second floor of H building and knocked on apartment #5. Jordan Flanigan exited the apartment with others. Jaylen watched Henry, Jordan, and Jamonte Cannon leave H building. Jaylen said that Henry and Jordan were not friends but did not worry about his brother because he had his firearm with him.

After a few minutes, Jaylen heard multiple shots fired outside. Jaylen tried to enter Apt. 5 but the residence refused to allow him inside. Jaylen walked upstairs trying to look out the window and final left H building walking northbound on the property. Once on the northside, Jaylen continued to walk westbound towards Middle Av. and then he attempted to turn northbound on Middle Av. prior to being stopped by officers.

Detectives ended the interview and then spoke with Harold.

Synopsis of recorded audio interview with Harold Willis 18 West Av. Elyria, OH (Elyria Police Department) Thursday, October 27th 2022:

After interviewing Jaylen, Det. Homoki and Loesch spoke with Harold about the incident. Prior to the interview, Det. Homoki advised Harold of his Miranda Rights. Harold understood his rights and told detectives the following:

Harold that he, Henry, Jaylen, Demetrius, and Kae'jon were on Parkview Ct. dancing and flashing a Taurus handgun. Harold tried to minimize his involvement while on Parkview Ct. but did acknowledge that there was a handgun involved and the last person he was aware had possession of the handgun was Jaylen.

After the video, Demetrius drove, Kae'jon (front passenger), Jaylen passenger rear, Harold, middle, and Henry, driver rear, to the liquor store on East Broad St. After being at the liquor store, the five left and traveled to 1864 Middle Av.

Once they arrived at 1864 Middle Av., Henry and Jaylen exited the car and walked to a nearby building. Harold, Demetrius, and Kae'jon remained in the car listening to music. After an unknown period of time, Harold though he had heard gunshots but was not sure. A few minutes later, Henry ran to the car, jumped in, and was bleeding from his face and chest area. Henry still had possession of his firearm in his waistband. Demetrius left the area with Kae'jon, passenger front, Henry, driver rear, and Harold, passenger rear.

Harold was nervous but told detectives that between the area north of 16th St and south of 9th St. he took possession of the firearm and threw the firearm into the grass area. Harold understood that he should not have done that but was freaked out and did not know what to do.

It should be noted that with the information provided by Harold, detectives returned to the area and located a 9mm Taurus in the front yard of 1508 Middle Av. with blood on the handgrip and extended magazine.

After the interview, Harold was transported to the county jail pending his current criminal charges. ***End of Homoki's report***

The firearm recovered from the front yard of 1508 Middle Ave was collected and secured in evidence per department policy.

Detective Kasperovich investigation continued:

Detectives obtained search warrants for the following evidentuary items:

- 1. Phone records for both Nathanuel and Antwon President
- 2. An iPhone, red in color, with the word "Product" on the back, seized by the Elyria Police Department on October 27, 2022, pursuant to the inventory of a 2005 Grand Cherokee Laredo, bearing Ohio registration EIM 1005.
- 3. An iPhone, black in color, with gray case with Jaylen Spooner's ID inside, seized by the Elyria Police Department on October 27, 2022, pursuant to the inventory of a 2005 Grand Cherokee Laredo, bearing Ohio registration EIM 1005.
- 4. An iPhone, black in color, with red Nike case, seized by the Elyria Police Department on October 27, 2022, pursuant to the inventory of a 2005 Grand Cherokee Laredo, bearing Ohio registration EIM 1005.
- 5. An iPhone S, white in color, seized by the Elyria Police Department on October 27, 2022, pursuant to the inventory of a 2005 Grand Cherokee Laredo, bearing Ohio registration EIM 1005.

On Friday, October 28th 2022; Detective Kasperovich signed two arrest warrants for Nathanuel and Antwon President.

Nathanuel President's juvenile warrant was signed by the Honorable Judge Glass for the following offenses:

1. Felonious Assault (ORC 2903.11)

Detectives issued warrants for Antwon President for the following offenses:

1. Tampering with evidence (ORC 2921.12)

Video Surveillance/Timeline:

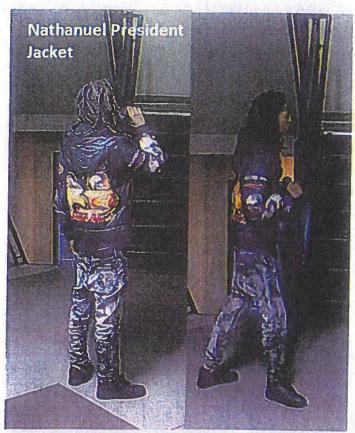
Sgt. Ligas and Detective Garvin copied the video surveillance footage from 1864 Middle Ave. Below is a timeline of events:

Channel 15:

Antwon President is identified wearing a blue jacket with a large emblem on the back



Nathanuel President is identified wearing a black jacket with a large yellow and orange emblem, black shoes and light grey jeans:



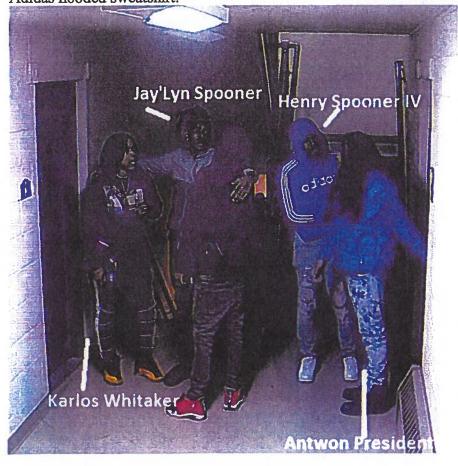
1927hrs: Antwon and Nathanuel President are exiting apartment H5 and walking outside



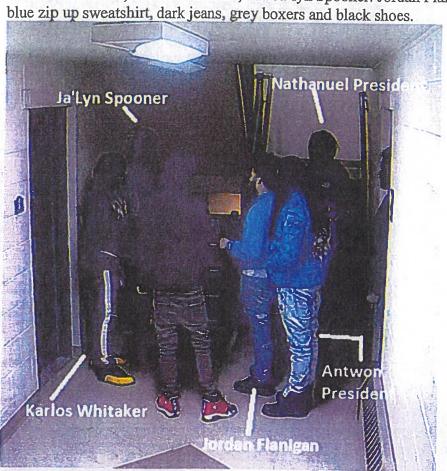
1931hrs: Jordan Flanigan exits apartment H5 and walks outside



1947hrs: Karlos Whitaker, Ja'Lyn Spooner, Antwon President and Henry Spooner IV are in the halway directly infront of apartment H5. Henry Spooner IV is identified wearing a blue and white Adidas hooded sweatshirt.



1947hrs: Jordan Flanigan is exiting apartment H5. Present in the hallway is Nathanuel and Antwon President, Karlos Whitaker, and Ja'lyn Spooner. Jordan Flanigan is identified wearing a



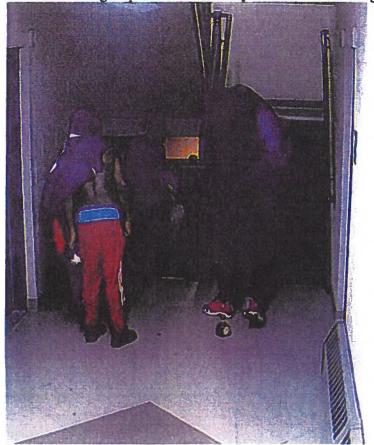
1947:43: Jordan Flanigan is observed holding a firearm in his right hand



1947hrs: Jordan Flanigan exits H building



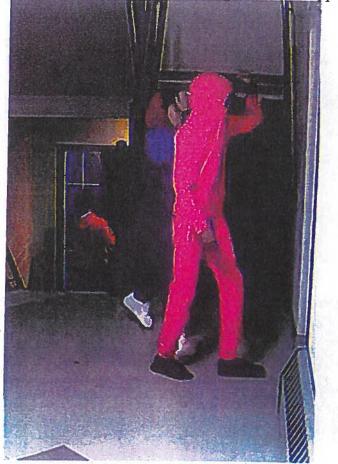
1947hrs: The group from the hallway reacts to something (most likely gunshots)



1947hrs: The group of subjects exit the apartment building



1956hrs: Analeise Velez enters apartment H5 apparently crying

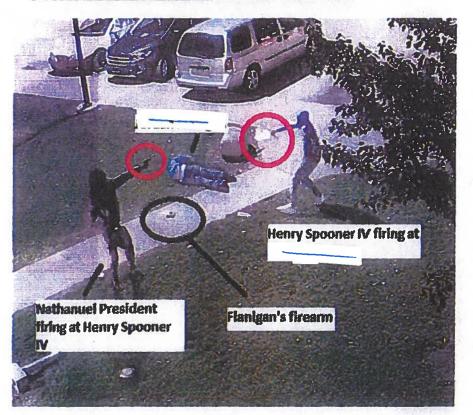


1959hrs: Elyria Police Officers enter apartment H5.

Channel 18: 1947hrs:

1947hrs:









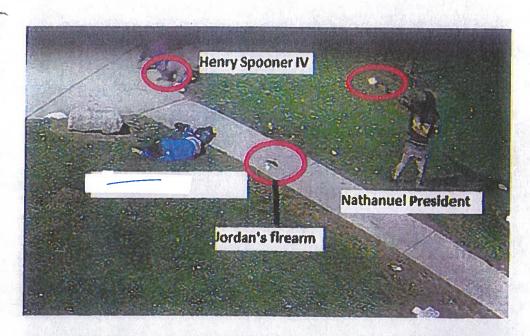
2000hrs: Elyria Police Officers arrive on scene

Channel 19 - 1947hrs:

1947hrs: Henry Spooner IV, JB and Nathanuel President are standing outside







Antwon President exiting H building and picking up Jordan Flanigan's dropped firearm



EPD arrives at 2000hrs.

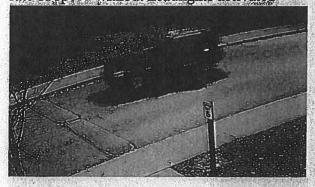
Channel 7: Timestamp is not accurate to actual time. The timestamp on the camera reads 1845hrs:

The Chrysler being driven by Karlos Whitaker is exiting the apartment at a high rate of speed

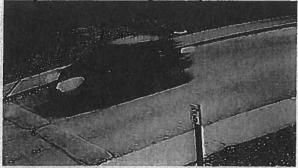
without headlights activated



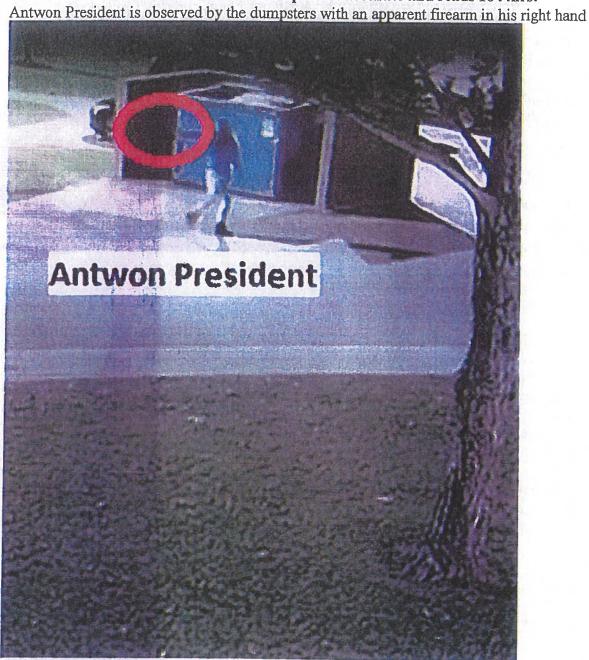
Channel 9: The timestamp is not accurate. The timestamp on the camera reads 1845hrs: The blue Jeep Cherokee driven by Demetrius Willis is seen exiting 1864 Middle Ave at a high rate of speed without headlights activated



Shortly after the Jeep pulls out of the parking lot, the Chrysler being operated by Karlos Whitaker also pulls out following directly behind the Jeep.



Channel 26: The timestamp is not accurate and reads 1844hrs:



End of video timeline

After reviewing the video, Detectives were unable to identify for certain who "JB" was. On Tuesday, November 1st 2022; Detectives Kasperovich and Wise met with J'Marion Carter-Woods who identified JB and Jamarye Rhea. This was also confirmed by J'Marion's legal guardian who advised that Jamarye recently moved to Elyria from Texas. Detective attempted to contact Jamarye's mother; Cimone Rhea with no response. Detective also sent a text message to Cimone with no response.

Antwon President Arrest:

On Friday, November 4th 2022 at 1025hrs; Detectives Kasperovich and T. Loesch alongside of the United States Marshalls arrested Antwon President at 1023 Garden Street on an outstanding warrant for:

- 1. Tampering with Evidence (ORC 2921.12 F-3)
- 2. Discharge of firearm on or near prohibited premises (ORC 2923.162 F-3)

Antwon was placed into custody and transported back to the Elyria Police Department for an interview.

On Friday, November 4th 2022; Detectives from the Elyria Police Department with the USMS were attempting to locate Antwon President on outstanding warrants. Utilizing police resources, Detectives tracked Antwon to 1023 Garden Street. Detectives and USMS knocked for several minutes with no response. Eventually, Detectives and the USMS obtained a key to the residence and made entry through the rear door. Officers announced themselves and called the occupants out of the house through the back door.

The first subject to come downstairs was the lessee, Kandia Clayton followed by her friend, Tatyanna Scott. Officers continued to announce their presence with no response. Officers made entry into the residence and held on the stairway, continuing to announce their presence, calling for Antwon to come downstairs. After a few minutes, Antwon came down stairs with his hands raised and was secured in handcuffs, per department policy. After Antwon was secured, Officers conducted a protective sweep of the residence and located, in plain view, a black in color firearm in the closet of the bedroom where Antwon and Tatyanna were sleeping.

Officer Helmink responded to 1023 Garden Street and transported Antwon to EPD for an interview. Detectives then spoke with Kandia Clayton who signed a consent to search form, allowing Officers to search her residence. Detective interviewed Kandia and learned the following:

Kandia is the lessee at 1023 Garden Street. On November 3rd 2022; she allowed her friend; Tatyanna Scott and her boyfriend; Antwon President to stay the night. Nathanuel president was also at the residence but left at 0300hrs. Kandia knows Antwon to carry a gun and stated that if there were any firearms in the residence, they did not belong to her as she does not have any firearms.

Kandia explained that Jordan Flanigan was her boyfriend and she was close friends with Tatyanna and Antwon. No other information was learned and Detective ended the interview. Detective Garvin and Sgt. Grove responded to the residence and processed the house. While searching the house, Detectives located a firearm in a box in the closet where Antwon was sleeping for the night.

Detective returned to EPD and interviewed Antwon President.

Consent Search- Detective Garvin's Report:

On 11/4/2022 at approximately 1030 hours, Det. Garvin was detailed to 1023 Garden St. to assist in a search of a residence. Upon arrival Det. Garvin was advised that the homeowner had consented to a search of her residence. Written consent had been provided to Det. Kasperovich. The consent for was provided to Det. Garvin and later submitted to evidence.

Det. Garvin began by photographing the residence. Following the photographs detectives began searching for evidence. Det. Garvin located a firearm in an inflatable mattress box on the second floor, in the closet of the northwest bedroom. Det. Garvin photographed the firearm in place, then retrieved it using gloved hands. Det. Garvin ejected the magazine, and cleared the firearm but no ammunition was located in either the magazine or the chamber. The firearm was identified as a Springfield XD-9 bearing serial number AT204479. The firearm was later packaged and submitted to evidence. No additional evidence was recovered from the residence.

Upon returning to station, Det. Garvin copied the photographs from the search onto a disc. Det. Garvin submitted all evidence per policy under the following evidence numbers:

114-1 Springfield XD-9, S/N: AT204479

114-2 Consent to Search

114-3 Photographs

Detective Kasperovich investigative continued:

Synopsis of recorded audio/video interview with Antwon President Conducted at the Elyria Police Department Friday, November 4th 2022:

Detectives began the interview by advising Antwon of his Miranda Rights. Antwon stated he understood his rights and agreed to speak with Detectives without his attorney present. Detectives obtained basic information and began asking Antwon about the shooting. Antwon then asked for his attorney and Detectives ended the interview.

Antwon was transported to LCSO where he will remain on no bond pending his initial court appearance at the Elyria Municipal Court.

Nathanuel President Arrest/Interview:

On Friday, November 4th 2022 at 1225hrs: Detectives from the Elyria Police Department and the USMS arrested Nathanuel President after a traffic stop at the intersection of West Bridge Street and Water Street. Nathanuel was compliant and placed into handcuffs per department policy. Nathanuel was then transported back to EPD for an interview. Detectives remained on scene and processed the vehicle Nathanuel was in at the time of the traffic stop. Black Ford Fusion (OH RP: HUM7268).

Detective Kasperovich interviewed the driver of the vehicle; Dynasty Thomas and learned the following:

Synopsis of recorded audio interview with Dynasty Thomas Conducted at West Bridge Street and Water Street Friday, November 4th 2022 at 1230hrs:

Detective began the interview by advising Dynasty of her Miranda Rights. Dynasty stated she understood her rights and agreed to speak with Detectives. Dynasty advised she picked Nathanuel up from Oberlin at approximately 1000hrs after dropping her daughter off at school. Dynasty was unaware that Nathanuel had a warrant but knew something was happening. Nathanuel told her, "the less you know the better."

After picking Nathanuel up from Oberlin, they drove around and talked. She never brought him back to her house and she maintained that they stayed in the car together. Detective asked Dynasty for consent to search her car which was granted. Dynasty signed a consent to search form. Detectives located two cell phones in the vehicle, one of which belonged to Nathanuel President. Nathanuel's phone was collected per department policy. Nothing else of evidentiary value was located in the vehicle. The vehicle was then released back to Dynasty.

Detective Kasperovich returned to EPD to interview Nathanuel President.

Synopsis of recorded audio/video interview with Nathanuel President Conducted at the Elyria Police Department Friday, November 4th 2022:

Detectives Kasperovich and Homoki began the interview by advising Nathanuel of his Miranda Rights. Nathanuel stated he understood his rights and stated, "Can I wait till my attorney get here?" Detective advised he could wait to have his attorney present but that was entirely his decision to make. Detective asked Nathanuel if he understood and he stated, "yeah." Nathanuel then stated, "okay" and nothing else.

Detectives asked if they knew why they needed to talk to him to which he said, "yeah." Nathanuel stated he didn't know how to explain it but would try.

On Thursday, October 27th 2022, he and approximately 9 of his friends were hanging out at 1864 Middle Ave building H. Nathanuel and his friend walked outside and "dude" shot his friend in the head. Nathanuel couldn't remember what he was wearing, who was shooting, or who drove him from the scene. Nathanuel identified as his friend that was killed and described him as wearing a bubble coat, black shoes and jeans. Nathanuel denied knowing anyone else in the hallway but eventually admitted that his brother; Antwon President was also there.

While inside the apartment with Jordan and Antwon as well as a few other friends, a few people knocked on the door and asked if they wanted to take the party outside and drink. Nathanuel, Antwon, Jordan and a few other friends go outside into the hallway. At some point while in the hallway, some of his friends including Jordan started walking outside. Nathanuel was under the impression that they were all going to the building across the parking lot.

Shortly after getting outside, Henry Spooner shot — in the face. Nathanuel doesn't know Henry Spooner and has never seen him prior to this incident. Nathanuel doesn't believe that Henry Spooner knew — or Antwon. Nathanuel stated he did not hear — and Spooner talking or arguing and no words were exchanged prior to the shooting.

While they were walking out of the door, Henry was already holding a gun in his hand. When asked if Jordan was holding a gun, Nathanuel stated, "I don't know." Nathanuel maintained that he didn't remember if Jordan had his gun. Nathanuel described Henry's gun as having a "long clip."

Nathanuel stated prior to the shooting, — was walking past Henry Spooner then Henry shot — After the shooting, Nathanuel stated he took off running. Nathanuel initially denied shooting Henry and denied having a gun but eventually admitted that after Henry shot — , he shot Henry.

Detectives then ended the interview as Nathanuel's attorney; Stepanik arrived on station. Nathanuel was then transported to the Lorain County Detention Home.

Henry Spooner IV Interview:

On Monday, November 7th 2022; Detectives Kasperovich and Wise went to 2500 Metro Health Drive in Cleveland, OH to interview Henry Spooner.

Synopsis of recorded audio/video interview with Henry Spooner IV Conducted at the Glick Medical Building (Metro Hospital) Monday, November 7th 2022:

Detectives arrived at Metro Hospital ICU (Glick Building) and spoke with Henry Spooner's nursing staff. Detectives learned that Spooner's jaw is wired shut and a tracheotomy tube was inserted into his throat, leaving him unable to speak. Spooner is capable of writing and communicating via notepad and text message.

Detectives entered Henry Spooner's room, 507, and observed him sitting upright in a chair, watching television. Spooner's sister; Armanie Wilson was also in the room. Detectives explained the reason for the interview and began the interview by advising Spooner of his Miranda Rights. While communicating with Spooner, Detective asked him questions out loud and he would write his response on a piece of paper. Detectives asked Spooner if he understood

his rights to which he wrote down, "yes." It should be noted this entire interview was video recorded.

- Q. Detective first asked Spooner to write his name birthday and address
- A. "Henry Spooner 08/25/01"

 "We actually in the middle of eviction so no address, phone # 440-739-0595
- Q. Detective then asked Spooner to explain the evening of October 27th.
- A. "IDK I was jus caught in the crossfire wrong place wrong time
- Q. Detective asked if he brought a gun with him
- A. Spooner shook his head "no"
- Q. Detective then asked who Jordan was to him and how he knew him
- A. Spooner wrote down, "Who's Jordan"
- Q. Detective again asked what happened the night of October 27th
- A. "jus drinking normal yougin stuff I was drunk idk
- Q. Detective asked who was shooting that night
- A. "I was drunk idk"
- Q. Detective asked why he pulled a gun out
- A. "I never pulled a gun on nobody wtf I was drinkin w sum females
- Q. Detectives again asked what happened
- A. "I never pulled a gun on no one"
- Q. Detective asked who he was hanging out with the night of the shooting
- A. "Sum girls I was finna leave to get sum pussy den dat happened"
- Q. Detective reiterated what Spooner previously stated that he was caught in crossfire
- A. "Exactly only thing that was on my mind is which one of the hos im fucking
- Q. Did you see anybody shoot?
- A. "I heard em and took off running"
- Q. Who did you leave with?
- A. "I honestly cant even remember who brought me to the hospital it happened so fast"

Spooner repeatedly asked to see the video surveillance from that night. Eventually, Spooner asked for his attorney.

During the course of the entire interview, Spooner maintained that he did not have a gun and did not shoot ——— Spooner denied all his involvement.

Below is the handwritten notes from Henry Spooner's interview.

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City of Elyria Police Department

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have read this statement) fficor(s) etail, and I will repeat it unde	(This statement has been read to me) which I have (dictated) (writter and I find it to be as stated. This statement is true ar oath in any court of law.	n) before in every
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	Phone:	
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On Thursday, November 10th 2022; Detective Kasperovich obtained two DNA search warrants for Nathanuel and Antwon President. Antwon President's search warrant was signed by the Honorable Judge James Miraldi. Being a juvenile, Nathanuel President's search warrant was signed by the Honorable Judge Glass.

On Thursday, November 10th 2022; Detectives Kasperovich and T. Loesch went to the Lorain County Detention Home and executed the DNA search warrant on Nathanuel President. Detectives executed the search warrant by inserting a long Q-tip into Nathanuel's mouth and swabbing the inside of both cheeks. The q-tip was then placed into an evidence box, which was then placed into an evelope and sealed per department policy. Nathanuel was provided with a copy of the search warrant.

On Thursday, November 10th 2022; Detectives Kasperovich and T. Loesch then went to LCSO (9896 Murray Ridge Road) and executed the search warrant on Antwon President. Detectives executed the search warrant by inserting a long Q-tip into Antwon's mouth and swabbing the inside of both cheeks. The q-tip was then placed into an evidence box, which was then placed into an envelope and sealed per department policy. Antwon was provided with a copy of the search warrant.

On Friday, November 11th 2022; Detective obtained a search warrant for DNA via buccal swabs for Henry Spooner IV. Due to Henry Spooner being admitted into Metro ICU in Cleveland, the search warrant was signed by the Honorable Judge Corrigan (Cleveland Judge).

On above date, Detectives Kasperovich and Homoki went to Metro ICU and executed the DNA search warrant on Henry Spooner IV. Detectives executed the search warrant by inserting a long q-tip into Henry's mouth and swabbing the inside of both cheeks. The q-tip was then placed into an evidence box, which was then placed into an envelope and sealed per department policy. Spooner was provided with his copy of the search warrant.

BCI Lab Results:

The firearm recovered from 1508 Middle Ave (9mm Taurus G2C with extended magazine, covered in blood) was sent to BCI for DNA analysis. The following results were returned by BCI:

Item	DNA Conclusions
1.1 Swab from casing	No DNA analysis
2.1 Swab from (3) casings	No DNA analysis
3.1 Swab from (2) casings	No DNA analysis
4.1 Swab from (5) casings	No DNA analysis
5.1 DNA standard from Henry Spooner, IV	Profile used for comparison purposes
6.1 DNA standard from Antwon President	Profile used for comparison purposes
7.1 DNA standard from Nathanuel President	Profile used for comparison purposes
8 Firearm	Presumptive positive for blood
8.1 Swab of stain	DNA profile consistent with Henry Spooner, IV – The estimated frequency of occurrence of the DNA profile is rarer than 1 in 1 trillion unrelated individuals. Antwon President and Nathanuel President – excluded
8.1A Swab of stain	No DNA analysis
8.2 Swab of trigger/guard	No DNA analysis
8.3 Swab of grip	No DNA analysis
8.4 Swab of back area of slide	No DNA analysis

The casings recovered from the scene were also sent to BCI and entered into NIBIN. Detective is awaiting NIBIN results. The firearm was test fired by BCI and determined to be operational.

The firearm recovered from 1023 Garden Street (Springfield XD-9, S/N: AT204479) was also sent to BCI for DNA analysis. BCI returned the following results:

Item	DNA Conclusions		
1.1 Swab from trigger/guard 1.2 Swab from grip 1.5 Swab from front sight area	 Mixture (1 major contributor) Major – consistent with: Antwon President – The estimated frequency of occurrence of the major DNA profile is rarer than 1 in 1 trillion[®] unrelated individuals. Henry Spooner IV, Nathanuel President – not the major contributor The remainder of the mixture contains DNA that is not of sufficient quality for comparison to a standard from any individual. 		

Antwon President's DNA was located on the firearm. The firearm was also test fired and determined to be operational. The two BCI supplied cartridges were entered into NIBIN and Detective is awaiting results.

The firearm recovered from 1508 Middle Ave (blood stained) was sent to BCI and determined to be operational. The blood on the firearm returned to Henry Spooner IV. Detective is still awaiting any NIBIN results.

The firearm recovered from 1023 Garden Street was sent to BCI and determined to be operational. A DNA test was completed on the firearm and the DNA was determined to be Antwon President's. Detective is still awaiting any NIBIN results.

As of 12/22/2022; Detective is still awaiting NIBIN results and medical records for Henry Spooner IV.

Disposition

This case is now being closed and referred to the Lorain County Grand Jury for further review and consideration for criminal prosecution.

REPORT#: 22-29876

NARRATIVE BY: Kasperovich REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: PC NARRATIVE NATHANUEL PRESIDENT

NARRATIVE:

On Thursday, October 27th 2022 at approximately 1946hrs; All available EPD Officers responded to 1864 Middle Ave H building for a report of shots fired. As Officers were en route, Dispatch advised that several vehicles were leaving the area and a man was lying on the ground.

Upon arrival, Officers located a male victim, later identified as lying face down in the grass outside of building H with a suspected gunshot wound to the head. Officers attempted life saving measures until Lifecare and EFD arrived on scene. At approximately 1955hrs Lifecare medics pronounced deceased on scene. Members from the Elyria Police Detective Bureau arrived on scene and began investigating the incident.

During the course of the investigation, it was learned that the homicide was captured on video surveillance cameras which were affixed to the exterior and interior of building H.

After reviewing the videos and through investigation Detectives identified (deceased), Henry Spooner IV, Nathanuel President and Jamarye Rhea standing outside H building. At one point in the footage Henry Spooner IV brandishes a handgun and fires the handgun at ______ immediately falls to the ground dropping a handgun onto the sidewalk.

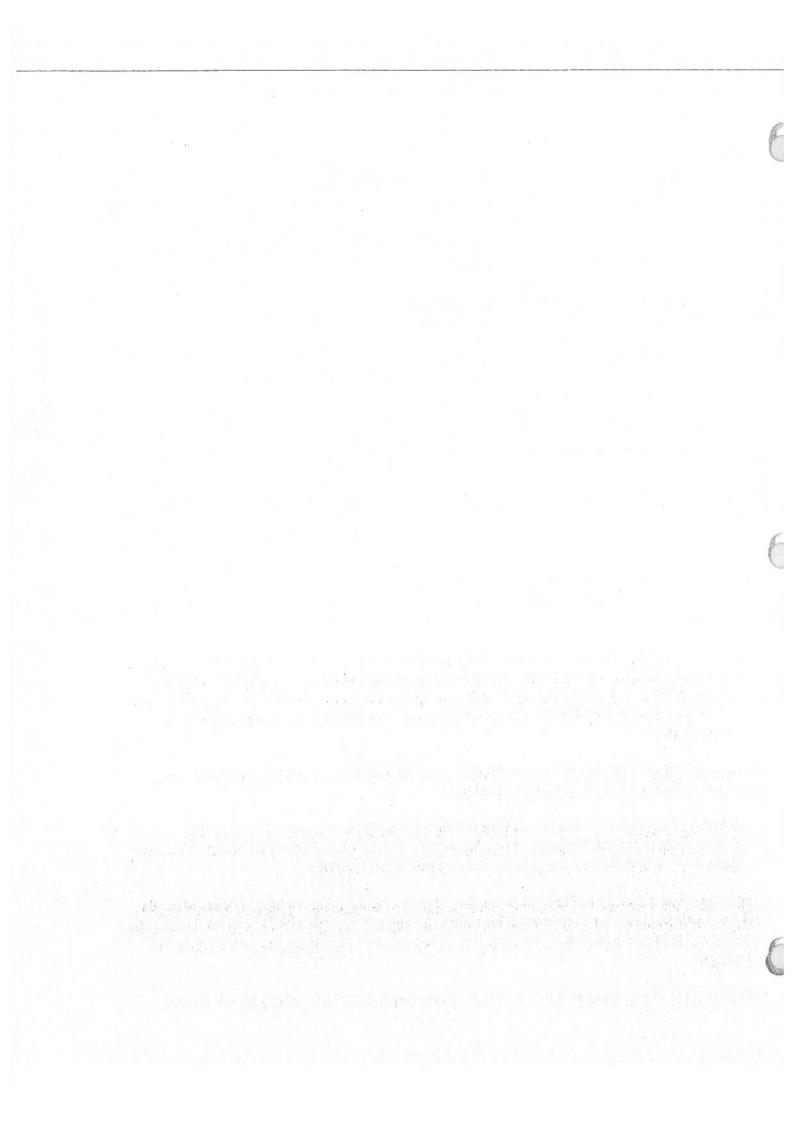
As this is going on, Nathanuel President produces a handgun and begins firing at Henry Spooner IV, ultimately striking Henry Spooner in the face and lower abdomen. Spooner and Nathaniel President fled the scene. Spooner was transported by private party to UH Elyria for medical care. (As of November 4th 2022; Henry Spoon IV is alive and recovering at Metro Health ICU in Cleveland, OH.)

Detectives issued a juvenile arrest warrant for Nathanuel President for felonious assault. The warrants were signed and entered into LEADS.

On Friday, November 4th 2022 at 1225hrs; The US Marshals, LCSO and Elyria Police Detective Bureau arrested Nathanuel President at the intersection of Broad and Water Street after a traffic stop. Nathanuel was transported back to EPD for an interview.

Detectives Kasperovich and Homoki began the interview by advising Nathanuel of his Miranda Rights. Nathanuel stated he understood his rights and agreed to speak with Detectives. During the interview, Nathanuel admitted to shooting Henry Spooner IV after Henry Spooner shot

Nathanuel was then transported to the Lorain County Detention Home where he will remain.



REPORT#: 2022-31401

NARRATIVE BY: Detective Larson 199

REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Aggravated Robbery

NARRATIVE:

On Wednesday, December 21, 2022 Detective Larson certified D hrough the Lorain County Juvenile Court for Aggravated Robbery ORC (2911.01) F-1. D is currently being held at the Lorain County DH on a parole violation.

On Monday, November 14, 2022 Lt. Lantz assigned this case to Detective Larson.

Initial Report/Szymanski Narrative

On 11-13-2022 at approximately 1333 Hrs. Officers Szymanski, Ligas and other Elyria Police Department units responded to Convenient Food Mart (905 East River St.) for a reported robbery. While in route to the location, dispatch advised the suspect, whom was wearing a dark hooded sweatshirt with reflective material and dark pants, was armed with a firearm and had fled on foot. Officer Hume was the first unit to arrive on scene and advised the suspect ran towards Charles Ct.

Upon arrival, Officers Szymanski, Ligas, Hume and Sergeant Pool secured the scene. Officer Szymanski spoke to the clerk whom witnessed the robbery, Vanessa Lisk. Lisk advised she had worked the morning shift at the Convenient Food Mart. Throughout the day Lisk observed a black male pacing around the outside of the store, in the parking lot, for a long duration of time. The male was observed near Harvard Ave, all of the businesses surrounding the Convenient Food Mart and Espresso Bakery (100 4th St.) prior to the incident.

Lisk described the male as a thin, dark complexion black male, approximately 20 YOA, 5' 9" in height wearing a blue and grey hooded sweatshirt and dark sweat pants.

The suspect male entered the store and walked to Lisk. Lisk stated the male drew a silver semi-automatic handgun from his right pocket and demanded money from the Convenient Food Mart's cash register. Lisk stated she looked at the firearm and noticed there was "green on the aiming piece." List stated she then looked at the male suspect and stated, "I'm not gonna do that." List stated the suspect looked at her before she instructed him to leave the store. Lisk advised the male ran out of the store and left in the direction of Charles Ct. behind the Convenient Food Mart building.

Other officers in the area canvased the area for security footage and witnesses. Sergeant Pool located Convenient store employee Amy Brady in the rear of the store. Brady was in the back of the store frying chicken and listening to music at the time of the incident. Brady advised she did not hear or witness the incident.

Lisk called the store owner, Vishal Patel, and inquired about security footage. Officer Szymanski coordinated with Patel and obtained security footage and still images of the incident. The video footage of the incident and the still photographs have been uploaded to this case file.

As of 11-13-2022 the identity of the suspect is unknown.

Hume Narrative

During the initial investigation on scene at 905 East River Street, Officer Hume spoke with employees at the Expresso Bakery (100 4th St), who advised the surveillance camera on the building that faces the south-east was inoperable. Employees advised they would review their other cameras to see if the suspect was visible on the property at any point. Employees were provided with the suspect description and business card.

Officer Hume spoke with employees at Subway (907 E River St) and N The Cut Barbershop (909 E River St), and learned both businesses have an interior camera that faces their entrance doors. Officer Hume reviewed some motion-activated video from N The Cut Barbershop; however, it did not reveal the suspect and would only show the sidewalk in front of the barbershop. The video from Subway only shows a portion of the sidewalk and the employees were unable to access the DVR portion. Subway employees advised they observed the suspect walking around in the parking lot and stated he made several trips to and from the nearby laundry mat. It's unknown if the suspect was physically inside the laundry mat at any point.

Officer Hume spoke with the residents of 916 E River St, who had a ring doorbell camera. After reviewing their app, it was determined that the ring camera did not pick up any motion and activate. The distance from the front door to the street is short therefore, the motion zone on the camera is minimal to prevent the camera from activating every time a vehicle drives past.

Follow Up

On Tuesday, November 15, 2022 Detective Larson forwarded photos of the suspects clothing to Officer Figula (Elyria High School Resource Officer) to see if any students walk into school wearing similar clothing, specifically the distinctive jacket.

Detective Larson went and reviewed the cameras located on the exterior of 100 4th St. (Expresso Bakery) but did not observe the suspect outside of the store. It should be noted none of the cameras cover the parking lot for Convenient.

Detective Larson then reviewed the cameras at 919 E. River St. (Coin Laundry) with the owner identified as Vishal Patel. Detective Larson observed the suspect appear on the sidewalk in

front of the Coin Laundry and walk north bound at 1028hrs (camera time). It should be noted the cameras at the Coin Laundry are slow one hour and thirteen minutes. At the time Detective Larson was unable to copy the camera footage for evidence but will obtain it at a later date.

Vishal is also the owner of the Convenient Food Mart which was robbed and advised the following to Detective Larson. At approximately 1030hrs on the day of the robbery, Vishal, was in the parking lot when he noticed the suspect on one side of him and two other male subjects near Harvard Ave. the three were yelling back and forth as if they knew each other and the suspect even told the others to get his bike. Vishal last observed the subjects walking east bound on Harvard Ave. and could only describe one of them as a black male wearing a leather jacket.

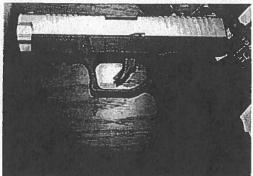
On Thursday, November 17, 2022 Detective Larson drafted a bulletin which was sent out to all EPD and local agencies. Detectives Garvin and Larson went to Coin Laundry and copied the footage from interior camera channel 4 which is faces the front entrance door and E. River St. Detective Larson later submitted this to evidence labeled (199-1).

Detectives canvassed the 100 block of Harvard Ave. for cameras that may have captured the two other males that the suspect was talking to prior to the robbery but was unable to locate anything of evidentiary value.

On Wednesday, December 21, 2022 at approximately 0100hrs Detectives Larson and Wise were called out in reference to EPD case#2022-34597. Officers were detailed to 317 Harvard Ave. in reference to shots fired at the house. While investigating this incident, officers arrested D _____ who had an active warrant for a parole violation through Lorain County Juvenile Court. D _____ had been identified as a possible suspect for this robbery as well as the aggravated robbery of Subway (907 E. River St.) EPD case#2022-34379 and felonious assault case 2022-34051.

D ____ was transported to EPD were he was later interviewed by Detectives Larson and Wise. Prior to interviewing Deondre, officers obtained consent to search 317 Harvard Ave. Located in the house was the silver and black handgun which was observed in the surveillance footage and pictured below. The left picture is D ____ while in Convenient committing the robbery and left picture is item number (142-17).





Detectives Larson and Wise interviewed D ——in room 2C, the following is a synopsis of that interview. A copy of the interview was later submitted to evidence under EPD case#2022-34051 as (199-1).

D. Interview

Detective Larson began the interview and advised De — of his Miranda Rights which he advised he understood. Detective Larson asked D — if he knew why detectives wanted to talk with him which he stated he didn't know. D — then advised his house got "shot up." D — went down stars and observed the damage to his house at which point he called his "baby mom." Detective Larson asked D — why he went into the basement which he explained he went to get clothes to find out who shot his house. Located in the basement was a loaded Springfield XD-9 handgun and two BB guns which appeared to be real handguns until further observation. Detective Larson showed D — photos from the robbery of Subway and Convenient and D — denied that it was him in the photo.

Detective Wise then told D — that officers had recovered the real handgun and the two BB guns in his house as well as the clothing that he wore while robbing Subway. D — then admitted that he was short on money and that's why he robbed both Convenient and Subway. E — states that he spent the money he got from the Subway robbery on food and that his mother only feeds him sometimes.

Detectives asked D where he obtained the Springfield handgun which he stated he stole it from a back pack at a house on West Ave. near 11th St. in Elyria from a male he only knows as "Bryce." D denied breaking into the house and stated he and Bryce use to be friends but he stole the gun from his bag. D was able to clarify that he used the silver and black BB gun to rob Convenient and used the Springfield handgun to rob Subway.

D—hid the Springfield in the basement of his house in a basket because he got nervous that the police were coming. Detective Larson showed D—the following photo which was observed by Detectives posted to his Instagram story (account tdg.drako) the previous day where Γ —was attempting to sell the handgun.



It should be noted that the sleeve of the jacket visible in the photo where he was attempting to sell the handgun was the same jacket Γ was wearing during the interview. Detective Larson later collected the jacket and Γ 's belt as evidence labeled (199-2).

After Γ — left subway he ran down Harvard Ave. towards his house, Γ — stopped and stole a bicycle from a house in order to get away faster and rode the bike home where he stated the bike is currently located.

Detectives asked D — ; why he walked around outside of Convenient for so long prior to entering and he agreed that he was nervous and was trying to talk himself into entering and committing the robbery.

At this point in the interview, detectives transitioned and began asking about the shooting (EPD case#2022-34051) involving Marius Harrell and Exodus Payne. D —— seemed familiar with the shooting but stated he was at his "baby moms" house. D—— continued denying being involved with this shooting and asked for an attorney at which point detectives asked no further questions.

D — was later transported to the Lorain County DH at the request of the magistrate for an active warrant for a parole violation.

REPORT#: 2022-34051

NARRATIVE BY: Detective Larson 199 REVIEWED BY: not finalized

INCIDENT TYPE: Shooting

NARRATIVE:

On Wednesday, December 14, 2022 Detective Larson was assigned this case by Lt. Lantz.

On Wednesday, December 14, 2022 at approximately 1610hrs, Detective Larson was traveling south bound on West River Rd. near Russia Rd. when an alert tone came over the radio for a male who had been shot in the roadway at the intersection of 16th St. and Infirmary Rd.

Detective Larson and Officer Lenz arrived on scene and observed a male lying on his back, later identified as M ______, with a gunshot wound to his upper chest area. Detective Larson retrieved a chest seal which was applied to M:—— Seated next to M ——was E:——who was missing part of his left pinky finger which was bleeding. Additional officers and medics arrived and took over medical treatment for the two victims who were eventually transported to University Hospital - Elyria.

Also on scene was Giles Harrell and Cameron Edwards. It was learned that Giles and Cameron arrived on scene after they received a call from E — stating that he and M — had been shot. Giles and Cameron arrived driving a silver Nissan Rogue Ohio registration (HBZ 4202) which was parked in the grass on the side of 16th St. Giles was interviewed by Detective Wise and provided consent to search the Nissan. Detective Larson searched the Nissan locating no items of evidentiary value. Giles was interviewed on scene by Detective Wise which was recorded and later submitted to evidence labeled (333-1), Detective Kasperovich interviewed Cameron which was recorded and submitted to evidence labeled (173-1).

Giles Harrell Audio Interview

Giles advised that he and Cameron Edwards were at his residence 234 Lake Ave when his grandmother got a call from "X" [E: ______] that he was shot. Giles was able to figure out where he was at, so him and Cameron drove right there. Once they got there, he observed X and his brother M ___ were both shot, with several unknown people around them. Giles stated that he had no clue why they were at that location and that neither X or M ___ sell marijuana. Giles was unaware of why this occurred and neither of those two have any problems with anyone.

Detective Wise later placed this interview onto a DVD then into evidence [333-1].

Cameron Edwards Audio Interview

Synopsis of recorded audio interview with Cameron Edwards Conducted at 16th Street and Infirmary Road Wednesday, December 14th 2022:

Cameron identified himself as Cameron Edwards. Cameron resides at 234 Lake Ave. On above date, he and his team mates arrived at 234 Lake Ave and began eating. Shortly after, arriving home, his grandmother called M — who was screaming into the phone. The phone disconnected and she called M — back. She then gave the phone to Cameron who heard him screaming. Cameron then spoke with E> — who gave his location of 16th and Infirmary Road. E — told him that they were shot. Upon their arrival, they observed M laying on the ground. E — didn't say much about the shooting but told Cameron to calm down.

Cameron advised that neither E — nor M: __ were "beefing" with anyone and he was unsure why E __ and M — were over in this area. Detective then asked about the black vehicle. Cameron advised that the black Ford Fusion is M — car and identified it as a newer style Ford Fusion, black in color. Detective then ended the interview as no other pertinent information was learned.

Detective Wise conducted two additional audio interviews with Rodney Thomas and Jessica Woytus who were on scene upon arrival, these interviews were submitted to evidence as (333-1).

Rodney Thomas Audio Interview

Rodney advised that his fiancée Jessica and him were traveling down Infirmary Rd coming up to 16th St. They had to stop due to a school bus unloading when they noticed a male hunched over on 16th St and another male with him that appeared to be helping him. Jessica exited from the vehicle and began walking over to the males. Shortly after, Rodney exited the vehicle as well and approached the males. As that happened, Rodney observed a black in color Ford Fusion on 16th St near the males. The white male driver, in his twenties with shorter hair, looked toward the males then drove away southbound on 16th St. Rodney noticed the males were struck by gun fire, with medical staff showing up at that time.

Rodney could not recall anyone else on scene, other than a Hispanic male who made mention of a marijuana baggie. Rodney stated that he did not know the males that were shot and unaware of how / when they were shot. Detectives then spoke to Jessica, she advised the following occurred.

Jessica Woytus Audio Interview

Jessica was driving down Infirmary Rd with her fiancé Rodney. Jessica noticed a male injured on 16th St, so as an STNA, she got out of her vehicle to help. Once she approached the males, she observed the one male was struck by gunfire. Jessica observed a plastic baggie with "a good amount" of marijuana inside of it near the injured male. Jessica stood by and helped treat the male until medical staff arrived.

Jessica advised that she did not see anyone else around the males because she was focused on helping the male. Jessica did advise that once medical staff and police were on scene, she noticed that someone's cell phone was placed inside of the side pocket of her purse. Jessica was unsure how it got there, later providing that cell phone to the police on scene. Jessica did advise that the two males who arrived in the silver SUV, arrived after she was near the males. Jessica described them as causing a scene, more then helping once they arrived.

Officer Kelly notified Detective Larson that he was handed a cell phone by a bystander who was later identified a Myra Walker. Myra arrived and began rendering aid to M— and left her purse on the ground. Myra later found a white in color iPhone in her purse which did not belong to her. This phone was placed on air plane made and secured as evidence as (114-1). It was later determined that phone belonged to E——. Detectives removed the phone from air plane mode and called the number which E—— provided as his and the phone rang.

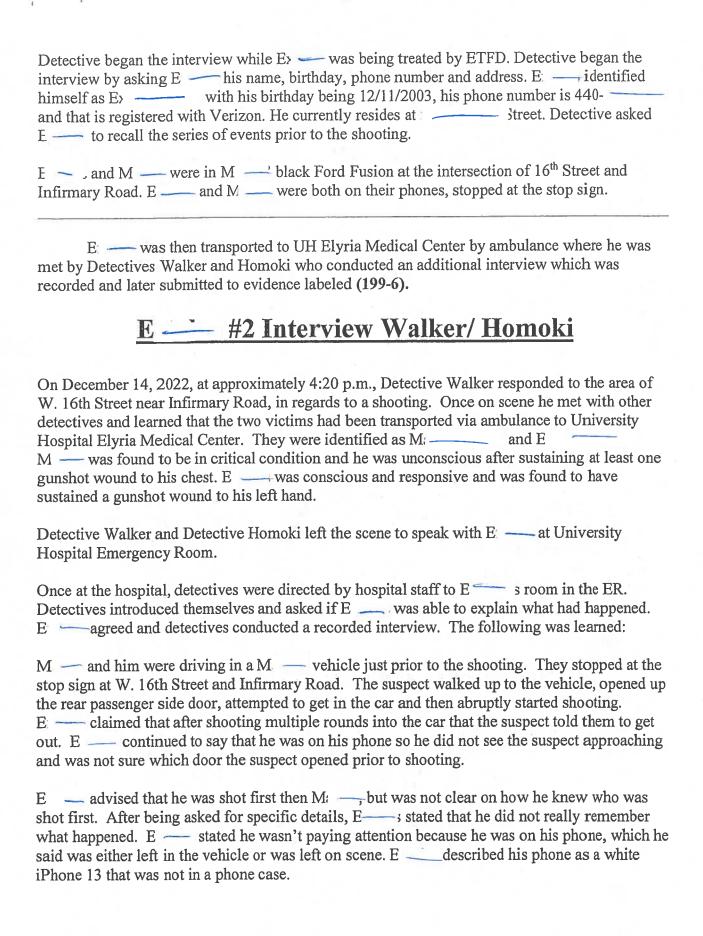
Detective Larson began canvassing the scene and was unable to locate any expended casings or the portion of F — finger which had been shot off. Additional detectives arrived on scene as well as the hospital were M — had been transported to. As M_i — was moved from the roadway where he was initially found there was a bag of suspected marijuana (12.2g) underneath him which was collected by Officer Lenz as item (192-1). M— was flown immediately to Metro Health medical center in Cleveland for further treatment in critical condition. Detective Kasperovich arrived on scene and interviewed F — and learned the following.

E Audio Interview

The below is not intended to be a verbatim account and does not memorialize all statements made during the interviews. Communications by the parties in the interview room were electronically recorded. The recordings capture the actual words spoken and are maintained by EPD.

Synopsis of recorded audio interview with E

Conducted in an Elyria Township Fire Department Squad
Wednesday, December 14th 2022:



Detective Homoki asked E_____ if there was a code to get into the phone and if there was what the code would be. E> ____ stated that he didn't have to provide the code for the phone and refused to provide it. He stated that if police find a white iPhone, that it belongs to him, but he is not giving them the code.

Detective Homoki asked why they were sitting at the stop sign long enough for the suspect to approach their vehicle. He stated that they were listening to music, M — was talking on the phone with his grandmother, and he was on his phone. Once again E: — was unable to explain where the suspect came from, stating he had no idea. E — claimed that he did not see the suspect approach, nor did he see him while he was shooting into the vehicle. However, E stated that he believed the suspect had on a gray hooded sweatshirt and black pants.

After the suspect shot both M— and E—s, they both exited the vehicle and somehow the suspect got into the car and sped off. M:—told E—to call his grandmother, even though he had just told detectives that M—was already on the phone with his grandmother.

Detectives asked E sto describe M cellular phone and he stated that it was an iPhone 12, which he believed was left on the seat of the car. Detective Homoki asked E if they had anything in their possession prior to the shooting that they may have discarded or hidden because they were afraid of getting caught with it. E denied hiding, concealing or discarding anything.

Detectives explained to E — that officers had already conducted a gun shot residue swab (GSR) on his hand to determine if he had recently fired a gun. After he explained this process, E — asked if detectives were asking if he shot M — . E — , denied shooting M E — ; was then confronted with the fact that officers had recovered his phone from the female passerby who stopped to help them. She had located E — ' phone inside of her purse and turned it over to police. The woman stated that someone had slid this phone into her purse. This appeared to be an attempt by E — to discard the phone. E — stated he did not know how his phone got into the passerby's purse. E — then remembered that he saw his phone in the woman's purse at one point and asked her if it was his. F — ; was unable to explain exactly how the phone got into her purse.

Detectives explained to E—3 that this appeared to be an accidental shooting. This was based on the facts and evidence that detectives had at that time. Detective Walker once again spoke with E—about the gun shot residue test that officers had performed. E—claimed that he had gone to a shooting range two days ago and shot a rifle, which would explain if he had gunshot residue on his hand.

Detectives explained to E — that it was apparent that he was not being honest and forthcoming about what had happened, and asked him to tell them the truth. F—— s said ok and gave a completely different story then the story he had just provided. He stated the following occurred:

paused for approximately 20 seconds when trying to recall the subjects name, then stated that he believed his name may possibly be "James". E _____; and M ___ were giving "James" a ride to Ely Village housing complex, located off of Infirmary Road, near where the shooting occurred. As they drove, James instructed them to take the back way, meaning W. 16th to Infirmary Road. James then began "shooting in the back of the car". James exclaimed "this for that", as if the shooting were some type of retaliation.

Detectives then once again confronted E ____; about the obvious lies and the fabricated story. F ____ said "I swear to god I'm being completely honest". Detective Homoki noted that E had already claimed that he was being honest during the last story he provided. Detectives asked

Detectives then once again confronted E — sabout the obvious lies and the fabricated story.

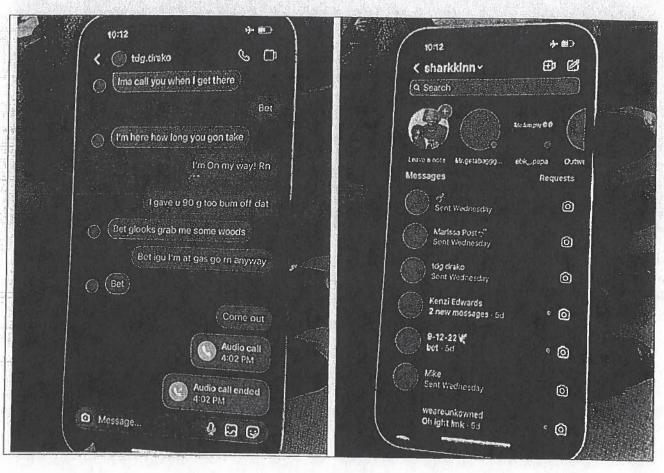
E — said "I swear to god I'm being completely honest". Detective Homoki noted that E had already claimed that he was being honest during the last story he provided. Detectives asked E — about having a firearm and he denied it. When describing the incident further F said "you know how a gun is...like it shoots...like it's everywhere". He then stated that he didn't know how gun powder got on his hand, even though detectives were not discussing that he had gun powder on his hands at that time.

Detective Walker once again confronted E:— about how he was not making sense and that detectives believed that he was lying. E—then paused, put his head back and told detectives that he was about to tell them the truth. He claimed that he really didn't shoot M— but he knew the suspect, stating his name was "Draco". He did not know this subject's actual name and only knew that he went by the street name "Draco". E—then provided the following story:

E — and M — were speaking with several friends at the corner of 9th Street and they picked up "Draco" and gave him a ride to "the village". They took the back route to get to the village, which is how they ended up on W. 16th Street. Detective Homoki asked E — to describe "Draco". He stated that he believed "Draco" was young enough to attend school and that he believes he goes to Lorain High School. E — could not explain why he would give "Draco" a ride when he had no idea who he was.

It was later determined that the black Ford Fusion in which E — and M— were driving was registered to Ivan Harrell whom is M — grandfather. The vehicle is a 2013 Ford Fusion, black in color bearing Ohio registration (JXY 1327). This vehicle was entered into LEADS as stolen and a BOLO was sent to all local agencies.

On Thursday, December 15, 2022, Detective Garvin swore to three search warrants for the following cell phones (114-1/E) (192-2/M.) (324-8/Rodney Thomas) in the presence of the Honorable Judge C. Rothgery of the Lorain County Court of Common Pleas. Rodney Thomas's cell phone was reviewed and determined that there was no information pertinent to this investigation. Detective Larson then began reviewing E phone and found that he was on a call through Instagram on December 14, 2022 with account "tdg.drako" which ended at "4:02PM". A preservation request was completed for this Instagram account and it was later determined that the subject in photos on the account was Deondre Hague. It should be noted that while E was being interviewed he provided the name "drako" as the subject in the car when the shooting occurred. Below are photos of the communications on E phone.

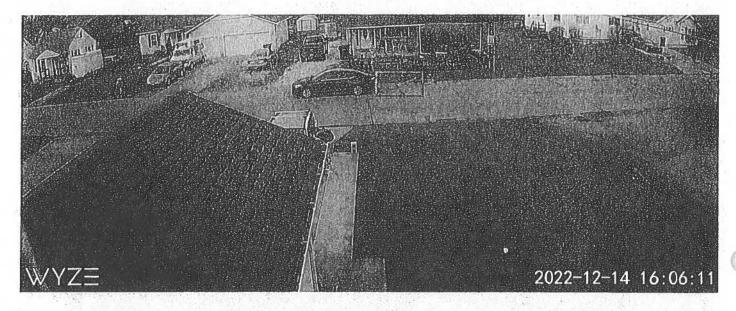


Video Surveillance

On Thursday, December 15th 2022, Detective Wise and Lieutenant Lantz arrived in the area of 16th St and Infirmary Rd in attempt to locate video surveillance. Detectives observed the residence of 748 16th St, to have video surveillances mounted on the outside of the residence. Detectives made contact with the homeowner, Cheryl Adkins, who provided Detectives access to the video, the following was observed.

12/14/22

16:06 Hours – The Ford Fusion is observed traveling westbound on 16th St heading toward Infirmary Rd. The Ford appears to be driving at a normal pace, the vehicle does not stop, then eventually goes out of camera view.



Detective Wise did not observe anything noteworthy when observing video surveillance twenty minutes before and after the Ford drove by. Detective Wise collected that video surveillance, later placing it onto a DVD then into evidence [333-2].

On Friday, December 16, 2022 at approximately 1500hrs, Lorain Police Department located the Ford Fusion (OH Reg. JXY 1327) near the intersection of W. 12th St. and Long Ave. The vehicle was parked/unoccupied on city property, see LPD case#2022-42060. Officers Constantino and Diffenbacher arrived and later had the vehicle towed by Sugar Ridge Towing to the Elyria Police Department. Officers did locate items around the exterior of the vehicle which were collected as evidence, see Officer Diffenbacher narrative.

Ford Fusion Recovery/ Diffenbacher Narrative

On Friday 12/16/2022, at approximately 1515 hours, Officers Diffenbacher and Constantino were detailed to W.12th St. and Long Ave. in Lorain, Ohio for a recovery of a stolen motor vehicle (Black Ford Fusion Ohio Registration JXY1327).

The vehicle was recovered by Lorain Police Department. Upon arrival, Officers spoke with Lorain police officers who reported that the vehicle was parked and unoccupied in a field at 1200 Long Ave. Lorain, Ohio when it was located.

At 1200 Long Ave. in Lorain, Ohio, officers observed a black case that contained the vehicle owner's manual approximately twenty feet in front of the vehicle. Officers also observed a pair of scissors, a white disposable facemask, and white latex glove on the ground in the area where the owner's manual was located. Officer Diffenbacher took photos of the items and collected the items as evidence. The photos were added into the case file.

Officers looked inside the vehicle through the passenger side window and observed a bullet hole on the passenger side of the center console. Officers also observed suspected blood on the passenger seat. Officers took photos of the vehicle and the photos were added into the case file as evidence.

The vehicle was towed by Sugar Ridge Towing to the Elyria Police Department for investigative purposes.

Officer Diffenbacher spoke with the owner of the vehicle, Ivan Harrell on the telephone and advised him of the recovery process and the location of the vehicle.

The Ford Fusion was removed from LEADS.

The black case with the vehicle owner's manual for Ford Fusion (082-1), white disposable facemask (082-2), pair of scissors (082-3), black TV remote (082-4), white latex glove (082-5) were entered into evidence.

On Monday, December 19, 2022 at approximately 1400hrs Detectives Larson and Wise went to 389 S. Professor St. in Oberlin Ohio and met with Ivan Harrell. Ivan signed the EPD consent to search form giving detectives permission to search the Ford Fusion. Detective Larson submitted this form as item (199-2) to evidence. Detective Whiting later processed the Ford Fusion; SEE Whiting ET narrative.

On Tuesday, December 20, 2022 at approximately 1050hrs Detectives Larson and Campana arrived at 2500 Metrohealth Dr. Cleveland Ohio, 44109 and met with M — in room 204. An audio interview was conducted with M — which was later submitted to evidence labeled (199-7). The following is synopsis of that interview.

Detective Larson gathered M______ information and asked him to explain what happened.

M_____ picked up F ____ at his house on Furnace St. or 234 Lake Ave. in his vehicle because he

needed a ride, then was asked by E — to pick up someone else. M — and E — drove to a house on Middle Ave. in Elyria and picked up the male who ended up shooting him and E — M — did not remember where exactly they picked the male up but was just driving for E — When the male got into the car he was seated behind E — who was in the front passenger's seat. M — felt that something was off when the male entered his car and M — introduced himself but the male didn't introduce himself back. The unknown male asked M — to take him to his grandma's house by "The Village" which is what Westway Gardens housing area is referred to as.

M drives towards The Village arriving on 16th St. at Infirmary Rd. where he stopped and asked which way to turn as it's a two-way intersection but the male didn't say anything.

M could tell the "vibe" was off and was watching the male in the review mirror when he heard the first gun shot. M observed E get shot in his hand and described debris hitting the dash of the car which is suspected to be E is blood and fragments of his finger. M then opens his door and is jumping from the car when he gets shots multiple times in his back.

M believes he was shot four times in his back and at the time of the interview couldn't feel or move his legs.

M was asked to describe the shooter and remembered him to be wearing a "colorful hoodie" with the hood up and a "covid mask" similar to the one Detective Larson was wearing during the interview. It should be noted there was a surgical mask recovered near the Ford fusion in Lorain which was collected and submitted to evidence labeled (082-2).

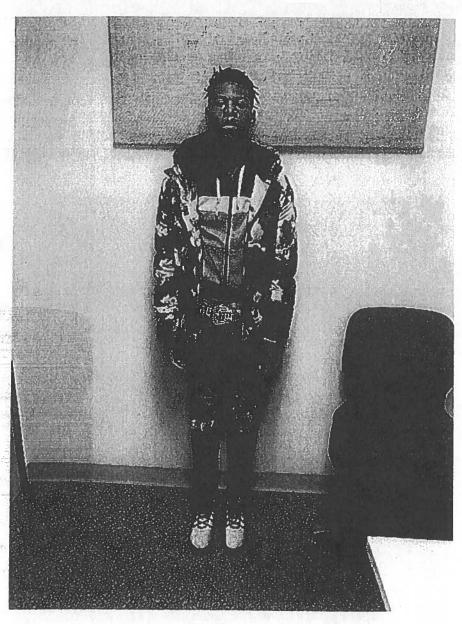
M — did not know why this happened and didn't know of any issues that could have caused someone to do this.

M — then signed the consent forms for his medical records for UH Elyria and Metro Health. M — was also read and singed the EPD consent to search form to collect his known DNA standards. These documents were submitted to evidence labeled (199-4) and M — DNA as (199-5).

Detectives exited the room and met with Sgt. M. Starr with Metro Police whom had no knowledge of this case. Sgt. Starr was provided with a photo lineup containing Deondre Hague's photo. Sgt. Starr presented the lineup to Marius while Detectives Larson ad Campana remained outside of the room. Sgt. Starr exited the room and pointed to Deondre's photo and explained that M — picked Deondre's photo with 100% certainty as the suspect who shot him. Sgt. Starr asked M — to circle and initial next to the photo but M — fell asleep as he was just administered more medication by hospital staff. The photo lineup was submitted to evidence labeled (199-3).

Detective Larson applied for and was granted a search warrant by the Honorable Judge C. Rothgery for Instagram account "https://www.instagram.com/tdg.drako/" which a preservation request was previously submitted for. This search warrant was then submitted to Meta.

On Wednesday, December 21, 2022 at approximately 0100hrs, Deondre Hague AKA "drako" was arrested at his home (317 Harvard Ave.) EPD case#2022-34597 on unrelated charges from this case. Deondre was interviewed at EPD by Detectives Larson and Wise where he admitted to other crimes he had committed. Deondre was asked about the shooting of M and E which he was familiar with but stated he was at a residence in Lorain when the shooting took place. Deondre asked for his attorney after additional questions were asked about this case and no further questions were asked. A copy of the interview was submitted to evidence labeled (199-1). Prior to Deondre being transported to the Lorain County Detention Home, Detective Larson seized a multi-colored jacket that Deondre was wearing during the interview as well as his belt which are pictured below, these items were submitted as (199-8). This jacket matches "colorful hoodie" description provided by M — and will be sent out for testing.



DNA Search Warrant

On Wednesday, December 28th 2022 at 1045 hours, Honorable Lorain County Common Pleas Judge Sherry Glass signed a search warrant for Deondre Hague's DNA [Buccal Swab].

On Wednesday, December 28th 2022 at 1615 hours, Detective Wise executed that search warrant by completing a buccal swab on Deondre Hague at the Lorain County Detention Center. Hague was given a copy of the search warrant at the completion.

Detective Wise returned to Elyria Police Department and placed the buccal swab into evidence per department policy [333-3].

On Tuesday, January 3, 2023 Detective Larson began reviewing Deondre's cell phone extraction after a search warrant was obtained as well as the returned Instagram search warrant which was later received. Detective Larson located messages between Deondre (tdg.drako) and E — (sharkkinn) on the day of shooting beginning at 1422hrs sent through Instagram. Deondre and F — appear to be communicating to meet with each other to do a drug transaction and are agreeing on prices. At 1400hrs E —, sends Deondre a message to "come out" which is minutes before the shooting took place. The original messages can be seen below in their original format.

Meta Platforms Business Record

Page 1037

Photo ID

1525584341276044

Author marsss.ek (Instagram: 56379082793)
Sent 2022-12-10 17:57:37 UTC
Body Marrill. sent a video.
Attachments video-50d8cf00-8814-4cff-ba2a-5da105f73b7e-1670695056.mp4
(841602223560026)

Type video/mp4 Size 747853

URL https://interncache-eag.fbcdn.net/v/t42.3356-2/
319119199_5210454065723504_869118707113
6534637_n.mp4?ccb=1-7&_nc_sid=a2c536&efg
=eyJlcmxnZW4iOiJwaHBfdXJsZ2VuX2NsaWVudC
9EWUINZXNzYWdIRGF0YUFkYXBOZXiifO%3D%3
D&_nc_ht=interncache-eag&oh=03_AdQUgngU
4dsBfMWzC8vAl8diBtJ77y7b0QpmJoZ8-cgvw&ce
=639BB4B0

Author marsss.ek (Instagram: 56379082793)
Sent 2022-12-10 17:59:28 UTC
Body Marray, shared a story.

Author marsss.ek (Instagram: 56379082793) Sent 2022-12-10 18:23:03 UTC Body Post my shi Nigga

Author marsss.ek (Instagram: 56379082793)
Sent 2022-12-12 20:59:13 UTC
Body U recorded dat Nigga talkn?

Author marsss.ek (Instagram: 56379082793)
Sent 2022-12-14 21:53:07 UTC
Body Yo P.O finna be on yo ass again [[[[i]]]]

Thread (17956460876275113)

Current 2022-12-15 21:56:54 UTC

Participants sharkkinn (Instagram: 55358471718) tdg.drako (Instagram: 38260891112)

> Author tdg.drako (Instagram: 38260891112) Sent 2022-12-14 19:22:38 UTC Body 3 z for 275 ?

> Author tdg.drako (Instagram; 38260891112) Sent 2022-12-14 19:23:03 UTC Body Or what's da most I can get wit dat

> Author sharkkinn (Instagram: 55358471718)
> Sent 2022-12-14 19:25:24 UTC
> Body sharkkinn started a video chat

Author sharkkinn (Instagram: 55358471718) Sent 2022-12-14 19:26:24 UTC

Detective Larson located a text thread between Deondre (owner) and phone number 440-657-8212 which is saved under the contact name "Big Brother." Detective Larson was unable to determine who "Big Brother" is however the messages appear to be "Big Brother" telling Deondre how clean gunshot residue (GSR) or DNA from his hands. The messages begin on Monday, December 19, 2022 at 11:05 PM UTC (page 34) with Deondre sending "Big Brother" a photo of what appears to be a message thread. The photo is to small to read the messages and the photo was unable to be located in the extraction. Big Brother responds "what she was talkin bout" then goes on to explain to Deondre how to thoroughly clean his hands with messages of interest ending on page 37. Conversation continues between Deondre and Big Brother with what appears to be unrelated content until page 49 where Big Brother sends a picture of Deondre in a social media post, see below photo.



Big Brother asks Deondre if he was wearing gloves which Deondre confirms he was. Big Brother tells Deondre additional ways to clean his hands and instructs Deondre to delete their messages, the conversation ends shortly after. Detective Larson attached the entire message thread to the case documents where they can be viewed in their original format and with time stamps.

On Tuesday, January 10, 2023 Detective Larson obtained M— 's medical information from UH Elyria (630 East River St.), these documents were later submitted to evidence labeled (199-9). Detective Larson reviewed the records which show that M— had three gunshot wounds with bleeding located on his right upper chest area, right upper back area and left lower back area. M— told Detective Larson as explained above that he was shot four times, it is unknown exactly how many times M— was shot as Detective Larson is still awaiting medical records from Metro Health where he received the majority of his medical care.

On Friday, February 10, 2023 Detective Larson was granted a search warrant by the Honorable Judge C. Rothgery of the Lorain County Court of Common Pleas to obtain E known DNA standard.

127 Brace Ave. Shooting

It should be noted that on Thursday, December 15, 2022 at approximately 2218hrs, officers responded to the area of Brace Ave. and found that 123 and 127 Brace Ave. had been struck by gunfire (EPD Case#2022-34167). 127 Brace Ave. is the residence of Enrique Hintz (intended target) whom was involved in the homicide of Shayne Edwards on September 12, 2022. Detective Wise was able to determine through his investigation of this shooting that the two suspects arrived on Brace Ave. and fled the scene in a dark colored Ford fusion which closely resembled the Ford fusion stolen after M — and E — had been shot. Detective Wise learned through his investigation that Deondre Hague and Narvarryon McAfee communicated prior to the shooting through Instagram asking were a stolen car was as well as Deondre sending a photograph of Enrique's residence to Narvarryon. Detective Wise's case is currently being reviewed for possible charges.

On Monday, March 13, 2023, Detectives Larson and DeMarco went to Metro Health Medical Center (2500 MetroHealth Dr. Cleveland, Ohio 44109) and obtained copies of M medical records. These records were later submitted to evidence on a CD labeled (199-11). Detective Larson reviewed the records which do not show any additional injuries as shown by the records from UH Elyria.

On Tuesday, August 29, 2023, Detective DeMarco was able to obtain a partial extraction from M.— iPhone. Detective Larson reviewed the extraction but didn't locate any communications between Deondre and F.——. Detectives will attempt another extraction at a later date.

BCI DNA Results

Disposition

This case is being sent to the Lorain County Domestic Relations Court – Juvenile Division for review and consideration of criminal charges.

REPORT#: 2022-34167

NARRATIVE BY: Detective Wise #333

REVIEWED BY: Lt. Lantz 198

INCIDENT TYPE: Shots Fired

NARRATIVE:

On Thursday, December 16th 2022, Lieutenant Lantz assigned this case to Detective Wise. It should be noted, the intended target at 127 Brace Ave, Enrique Hintz, is a subject involved in the homicide of Shayne Edwards on September 12th 2022. Enrique was not arrested in that investigation, but several of his close friends were directly involved in the death of Shayne.

Initial Investigation

Officer Homan's Narrative

On Thursday December 15th 2022, at approximately 2218 hours, Ptl. Homan and Ptl. Kubas were detailed to 123 Brace Ave. for shots fired. Upon arrival, officers met with the victim later identified as T: ______ who stays at 127 Brace Ave. and learned the following.

At approximately 2220 hours, T— arrived at his residence and found his grey in color Ford Expedition bearing Ohio registration PML-5885 to have its rear window shattered. Tat first thought someone broke his window to break into his vehicle, and then observed his bottom floor living room window to be broken with an apparent bullet hole sustained. Tolooked up towards his second story northwest bedroom window and observed an additional 4 bullet holes to have struck the home.

T— entered his residence to check on his children inside and found them to be unharmed. T— stated he believes the incident involves his son, identified as Enrique Hintz. Hintz has an ongoing issue with another juvenile known only as "Fleet". T—e moved from Lorain Ohio due to his home being shot approximately five separate times prior to this. T stated this incident is not related to the prior shootings. T—e believes "Fleet" to be a black male juvenile approximately 17 or 18 years old. T——: stated "Fleet" is friends with Shane Edwards brother and was allegedly involved with the incident on 3rd St (Case #2022-25213) according to T——: T—— did not know Shane's brothers name but officers were familiar that Shane's brother is Cameron Thacker. T——: stated "Fleet" believes Enrique was involved in the shooting of Shane Edwards which is the cause of the issues between them.

T .— : stated "Fleet" has been posting photos of T — 's residence of 127 Brace Ave. on Instagram with threatening messages. "Fleet" discovered where Enrique lives due to a female telling "Fleet" after door dashing food to 127 Brace Ave. and interacting with Enrique. T did not know the name of the female door dasher.

Ptl. Homan spoke with one juvenile, later identified as Marcello Smith and learned the following. Marcello was upstairs when he heard a loud banging noise come from down stairs. Marcello came downstairs and found the living room window to be broken with an apparent bullet hole. Marcello went back upstairs and hid in his room. Marcello stated he did not see or hear anything else other than the initial loud bang when he was upstairs. Ptl. Homan spoke with the other juveniles inside the residence who were identified as the following: Malaya Marshall, Tyrese Smith, Tyren Smith, and Tyland Smith. All of these juveniles stated they did not see or hear anything at the time of the shooting.

Ptl. Kubas conducted an area canvas and located five (5) 9mm shell casings on the road near 127 Brace Ave. The casings were labeled placard #1-#5. The casings were scattered across the street in front of 131, and 127 Brace Ave. Ptl. Kubas photographed the shell casings and Ptl. Homan secured the shell casings into evidence.

Ptl. Kubas provided T — with a consent to search form for the vehicle and home struck by gunfire. T — agreed and signed the consent to search form, a copy was scanned and attached to this case file. While inspecting the Ford Expedition, Ptl. Kubas observed one (1) bullet entry hole to the trunk of the vehicle. Ptl. Kubas did not observe an exit hole for the bullet and believed the fragment to be lodged in the trunk door to the vehicle. The bullet fragment was unable to be located or recovered.

Ptl. Kubas and Ptl. Homan entered the residence of 127 brace and began photographing the inside of the residence. Officers located the broken glass window to the downstairs living room window which appeared to be struck by gunfire. Officers attempted to locate the involved bullet fragment, but were unable to locate it.

Officers then went to the northwest upstairs bedroom and observed multiple bullet holes. Two (2) bullet holes appeared to enter through upstairs area of the home, strike and travel through a dresser, and then continue through the dresser, striking the northwest bedroom wall of the residence. A third bullet hole was observed to strike the home, and then strike a fridge found in the bedroom. The fourth bullet hole observed from the outside of the residence was never found from the inside, and it was believed to strike the home and continue through the home, striking the next-door residence of 123 brace. Ptl. Homan observed one bullet fragment underneath the dresser which was secured into evidence after being labeled under placard #6.

Ptl. Witthuhn while at the residence of 123 brace located one bullet fragment in the kitchen of this residence (See Witthuhn narrative). The residents were identified as Russell Baldwin, and April Baldwin who both were unharmed.

Ptl. Homan entered the following into evidence at EPD:

142-1 spent 9mm Winchester shell casing

142-2 spent 9mm Winchester shell casing

142-3 spent 9mm Winchester shell casing

142-4 spent 9mm Winchester shell casing

142-5 spent 9mm Winchester shell casing

142-6 bullet fragment located in bedroom dresser at 127 Brace Ave.

- 142-7 bullet fragment located in kitchen of 123 Brace Ave.
- 142-8 photographs from 127 Brace Ave.

Ptl. Homan advised T — to contact police if he had any further issues or located any other property damaged from this incident.

Officer Leeper's Narrative

On 12-15-2022 at approximately 2220 hours, officers Leeper, Homan, Kubas, Walland, Witthuhn and Sgt. McArthur responded to the area of 123 Brace Ave. for a report of shots fired. Upon arrival officers learned that shots had been fired into 123 Brace Ave. and 127 Brace Ave.

Ptl. Witthuhn spoke to the residents at 123 Brace Ave., Russel Baldwin and April Baldwin, who advised that they were sitting on their couch when a bullet shot through their walls. A bullet hole can be observed on the east side of the residence. The bullet then traveled through three interior walls and became embedded in a cabinet in the kitchen. Photos were taken and attached to this report. The bullet was recovered and entered into evidence.

Officers Witthuhn and Walland then checked the neighborhood for cameras. The following addresses were observed to have cameras:

- -1601 Lake Ave. (spoke to resident, nothing observed on video)
- -126 Brace Ave. (spoke to resident, nothing observed on video)
- -142 Brace Ave. (resident Melissa Pilarsh P/S 440-506-5109 observed male wearing red jacket with white sleeves walking eastbound on Brace Ave.)
 - -160 Brace Ave. (Ring doorbell camera)
 - -172 Brace Ave. (suspect vehicle and suspects observed on camera)
 - -176 Brace Ave.
 - -184 Brace Ave.
 - -188 Brace Ave.
 - -192 Brace Ave.
 - -189 (Ring doorbell camera)
 - -185 Brace Ave.
 - -159 Brace Ave. (Ring doorbell camera)

The resident of 172 Brace Ave., David Ashley (P/S 440-453-5619) advised that he had video of the suspect vehicle and suspects. A dark in color four-door car is observed traveling eastbound on Brace and parks in front of 172 Brace Ave. Two occupants exit the vehicle, one from the driver's side and one from the front passenger seat. The suspects are then seen walking west on Brace Ave. It should be noted that the video file sent by David Ashley is of poor quality, however, David Ashley retains a clear copy of the video. The video and stills of the video have been attached to this report.

Follow Up

On Friday, December 16th 2022 at 1500 hours, several Elyria Detectives arrived on Brace Ave in attempt to locate video surveillance. Detective Wise met with the resident at 172 Brace Ave, Cheryl Adkins, who provided a four minute and ten second video from their video camera that was pointed toward street. Detective Wise maintained that video, later documenting and placing the video onto a DVD then into evidence.

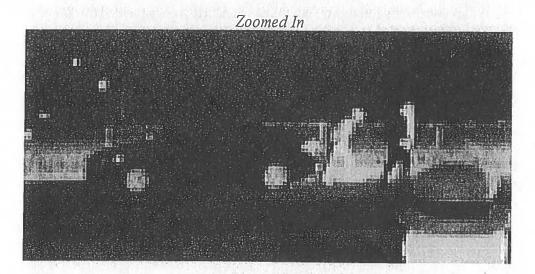
Detective Wise and Lieutenant Lantz then went to 127 Brace Ave. Upon arrival, Detectives observed Enrique Hintz standing outside the residence. Enrique was hesitant to talk to Detectives but advised that he thinks the reason his residence was shot up was probably because someone thought he was involved in the shooting on Infirmary Rd the day before. Enrique then walked inside of the residence.

Enrique's mother and father, Priscilla and Tyrone, then came outside. Priscilla advised that she believes the Uber Eats driver is responsible for giving up the location of where Enrique now lives. Priscilla advised that on November 29th 2022 at 10:15 PM, Enrique ordered Uber Eats then the order was canceled before the food arrived. Priscilla showed Detective Wise the cancelled order, Detective Wise took a photograph. Priscilla informed Detective Wise that she will continue speaking with Enrique about what he knows, then update Detective Wise with what she finds out. Detectives cleared from the area and returned to Elyria Police Department to view the video surveillance from 172 Brace Ave.

172 Brace Ave Video Surveillance

22:14 hours: A black in color Ford Fusion drives eastbound on Brace Ave and parks in front of 172 Brace Ave. This Ford Fusion is believed to be the same stolen black in color 2017 Ford Fusion from Inc # 2022-34051. That incident took place the day prior and the suspect is Deondre Hague.

<u>22:14 hours:</u> One male exited from the driver seat and one male exited from the front passenger seat. Both males walked westbound on Brace Ave out of camera view (towards 127 Brace Ave).



22:15 hours: The same male that exited the driver seat, returned to the Ford Fusion and entered the driver seat. That male then drove the vehicle in reverse, westbound, on Brace Ave, out of camera view.

<u>22:17 hours:</u> Approximately eleven (11) gunshots can be heard in rapid succession. A few seconds later, the Ford Fusion can be seen traveling westbound on Brace Ave passed 172 Brace Ave.

That video surveillance was placed onto a CD then into evidence [333-1].

Ford Fusion Recovered

On Friday, December 16th at approximately 1515 hours, Officers Diffenbacher and Constantino were detailed to W.12th St. and Long Ave. in Lorain, Ohio for a recovery of a stolen motor vehicle (Black Ford Fusion Ohio Registration JXY1327). That vehicle was transported to Elyria Police Department by Sugar Ridge Towing. Detective Kasperovich completed a Berla extraction (infotainment system) on the Ford Fusion. As of 01/17/23, the information extracted did not provide any additional leads or information that can be utilized in this investigation.

Uber Eats Court Subpoena

On December 22nd 2023, Detective Wise completed a Lorain County Grand Jury Subpoena titled to Uber Eats. The information obtained for Enrique's food order was detailed in that subpoena. Once the court subpoena was returned to Detective Wise, it was forwarded to Uber Eats Law Enforcement Portal.

On December 27th 2023, Detective Wise received a response from Uber Eats advising their staff was unable to find any accounts that correspond to the specific information provided. *That response was uploaded into this case.*

Elliot Guzman GPS Location

Detective Wise contacted Lorain County Juvenile Probation Officer Bigrigg regarding Elliot Guzman's GPS location during the time of this offense. Officer Bigrigg advised that Elliot was at 407 Colgate Ave (home) during the timeframe of this incident.

Narvarryon McAfee Identified

On Tuesday, December 27th 2022, Priscilla Bibler contacted Detective Wise regarding information that she was told by Enrique Hintz. Enrique told her that Narvarryon McAfee "seventeen-year-old" went "live" on his Instagram page (Ebk_varro) yesterday and was screaming that the he shot the back window out of Enrique's vehicle first, so that everyone will know that if the vehicle is on the roadway, everyone will know its Enrique's vehicle and that he's inside of it. Tyrone Smith later forwarded a screenshot from Enrique, in which he took a screenshot of when Narvarryon was "live" on Instagram talking about the shooting. Detective Wise later uploaded that screenshot into this case. On December 29th 2022, Priscilla advised that Enrique will not be providing anymore information about the shooting. Detective Wise completed an Instagram preservation request for Narvarryon's Instagram page, Ebk_varro.

Detective Wise contacted Lorain County Juvenile Probation regarding Narvarryon. Detective Wise was informed that Narvarryon was currently on probation, assigned to Probation Officer Emily Hawkins. Detective Wise contacted Emily who provided Narvarryon's phone number of (440) 506-2447. Emily advised that she spoke to Narvarryon yesterday on that phone number and eventually met up with him at 311 Idaho Ave, Lorain.

Search Warrants

On Thursday, December 29th 2022, Honorable Lorain County Common Pleas Judge Chris Cook signed a search warrant for Narvarryon's phone number (440) 506-2447 and Instagram page (Ebk_varro). The phone number search warrant was titled to T-Mobile.

On Friday, December 30th 2022, Detective Wise executed both search warrants. The Instagram search warrant was entered into Facebook's law enforcement portal. The T-Mobile search warrant was emailed to their law enforcement response team.

Deondre Hague's Cell Phone Extraction

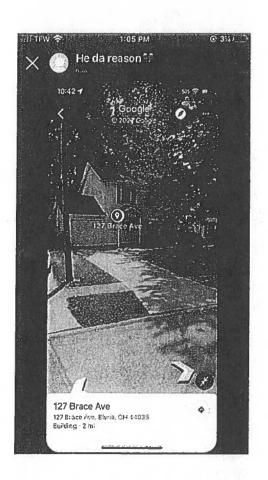
On Tuesday, December 27, 2022 Detective Larson applied for and was granted a search warrant by the Honorable Judge J. Miraldi of the Lorain County Common Pleas Court authorizing the search of Deondre's cellular phone. Deondre's phone was collected as evidence for EPD case#2022-34597 item (142-15).

That search warrant was then executed by completing forensic extraction. Detective Wise was then provided that extraction, the following was located.

On December 15th 2022 (day of the shooting) Deondre Hague and Narvarryon McAfee began texting each other:

Text Messages:

- 1:22 PM: "Yo" Deondre
- 1:25 PM "Yo phone tweakin" Narvarryon
- 1:27 PM "Ion got bit on da gram" Deondre
- 1:40 PM "sgrice" Narvarryon
- 1:41 PM "Match" Deondre
- 1:41 PM "Wya" Narvarryon
- 1:41 PM "Finna be ina steel rn" Deondre
- 6:10 PM "Bet" "Wya" Narvarryon
- 7:40 PM Deondre sent a screenshot of 127 Brace Ave on Google



December 16th 2022:

2:02 PM "We're dat striker ag" [Striker is a street term for stolen vehicle- aka the Ford Fusion] Deondre

2:02 PM "at" Deondre

7:23 PM "I got another dollar for yhu" Narvarryon

7:24 PM "My mom out side im finna slide to da e ima be back in da city" Deondre

7:24 PM "See if she can drop me off at the game rq" Narvarryon

Phone Calls Between Deondre and Narvarryon

December 15th 2022:

1:23 PM Deondre called Narvarryon

1:23 PM Narvarryon called Deondre (missed)

1:25 PM Deondre called Narvarryon

6:11 PM Deondre called Narvarryon

6:12 PM Narvarryon called Deondre

December 16th 2022:

2:01 PM Deondre called Narvarryon (missed)

3:18 PM Deondre called Narvarryon (missed) 7:22 PM Narvarryon called Deondre

Deondre Hague's Instagram: TDG.Drako

On December 20th 2022, Honorable Lorain County Common Pleas Judge Rothgery signed a search warrant for Deondre's Instagram page, Tdg.Drako. That search warrant was entered into the law enforcement portal. Detectives later received the returned information from Deondre's Instagram page. Below is a conversation observed the day of the shooting. Deondre advises that he is at "Kams" [Kamron Thacker / brother to deceased Shayne Edwards] before the shooting then follows up with "Mission completed" at 10:52 PM.

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 02:15:27 UTC

Body I'm finna call you u at cam shit ima just pop up

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 02:15:53 UTC

Body Love

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 02:16:26 UTC

Body Yeaaa Alr call me when you here love boi

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 02:20:47 UTC

Body You know where he live fuzz

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 03:10:29 UTC

Body Cuzz

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 03:52:15 UTC

Body Mission completed

a 🔽

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 03:54:10 UTC

Body Wym fuzz

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 03:57:56 UTC

Body U gon see

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 03:58:09 UTC

Body Show me

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 05:07:07 UTC

Body Lil Troy trying to click up boii □

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 05:08:43 UTC

Body Who dat

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 05:09:07 UTC

Body \$kino (\$\overline{\state}\) sent an attachment.

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 15:28:49 UTC

Body Aye fuzz u gotta spin again they dropping disses

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 15:54:01 UTC

Body What happened

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 15:54:26 UTC

Body \$kino (\$) sent a video.

Attac video-fd800dbc-a5a5-47ba-9f1d-eb450ce0c911-1671206065.mp4 (744983790536341)

hment

Type video/mp4

Size 349285

U https://interncache-prn.fbcdn.net/v/t42.3356
R 2/320126681_6160401670688469_4459909240731239400_n.mp4?ccb=1L 7&_nc_sid=a2c536&efg=eyJ1cmxnZW4iOiJwaHBfdXJsZ2VuX2NsaWVudC9EW
UINZXNzYWdlRGF0YUFkYXB0ZXIifQ%3D%3D&_nc_ht=interncacheprn&oh=03_AdT6DnRrQGS7ocDdoV_8uvdohgDMswOcW_OnMrV6oLK7g&oe=63C82F8B

Linked
Media linked_media/unified_message_744983790536341.mp4
File:

Author tdg.drako (Instagram: 38260891112)
Sent 2022-12-16 15:55:14 UTC
Body Mann say less

Author 824.skino (Instagram: 43857026686)
Sent 2022-12-16 15:55:36 UTC
Body Liked a message

Author 824.skino (Instagram: 43857026686)
Sent 2022-12-16 15:55:47 UTC
Body Wya drake

Author tdg.drako (Instagram: 38260891112)
Sent 2022-12-16 15:56:03 UTC
Body Yo cousin

Author tdg.drako (Instagram: 38260891112) **Sent** 2022-12-16 15:56:07 UTC **Body** My bm

Author 824.skino (Instagram: 43857026686)
Sent 2022-12-16 15:56:17 UTC
Body Alr I'm finna slide later match dead's

Author tdg.drako (Instagram: 38260891112) **Sent** 2022-12-16 15:57:03 UTC

Body Bet lmk I sum sum more gas to buy I need sum shells

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 15:57:14 UTC

Body I got*

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 15:57:55 UTC

Body Alr fuzz stay dangerous love boii

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 15:58:31 UTC

Body Love boii my mom finna drop me off on da 9

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 15:58:49 UTC

Body Who on da 9

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 15:59:05 UTC

Body You not there

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 15:59:09 UTC

Body Nahh

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 15:59:20 UTC

Body Kam shii

Author tdg.drako (Instagram: 38260891112)

Sent 2022-12-16 15:59:37 UTC

Body Oh alr see if I can slide

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 16:00:34 UTC

Body Alr cuzz he finna ask his mom

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 16:01:38 UTC

Body She said not rtn kam said you can come when she go to work fuzz

Author 824.skino (Instagram: 43857026686)

Sent 2022-12-16 16:01:55 UTC

Body We can push up to 9

NIBIN Lead Notification

On December 29th 2022, Detective Wise received a NIBIN lead notification regarding the casings located during this investigation. The 9mm casings located "a lead was developed through a correlation review of your ballistic evidence by ATF and has not been yet confirmed by microscopic comparison. However, the potential that the same firearm was involved in your investigation is significant enough that investigative follow up is warranted at this time should an investigator choose to pursue it.

The case the NIBIN lead is cross referencing is Lorain PD case 2021-15719. That case involves shots fired within the 1400 block of West 22nd St, Lorain. No suspects were identified in that case. As of 01/24/22 a NIBIN hit has not been received yet. Detective Wise is additionally awaiting results for the 9mm firearm that was seized from Deondre Hague's residence during his arrest. That firearm was test fired and will be compared to the casings in this case as well.

T- Mobile Records

On January 6th 2023, Detective Wise received the T-Mobile cell records for Narvarryon McAfee phone number. During the timeframe of the shooting, there is no cell phone locations. As for an explanation for that, in the above Instagram messages, Narvarryon advises "our phones off" at 11:46 PM, the night of the shooting. Detective Wise later entered the cell records onto a CD then into evidence.

Narvarryon Instagram: Ebk varro

On January 17th 2023, Detective Wise received the records for Narvarryon's Instagram, Ebk varro. Below are messages observed the evening of this investigation. Narvarryon's speaks about going to get bullets at 11:43 PM (after the shooting). Sgricc asked Narvarryon to watch over his crib (house), with Narvarryon advising that he will.

> Author sgrice (Instagram: 52255335513) Sent 2022-12-16 04:43:42 UTC Body what y'all finna go get

Author ebk_varro (Instagram: 51338632750) Sent 2022-12-16 04:43:55 UTC

Meta Platforms Business Record

Sum bullets rg

Author sgricc (Instagram: 52255335513) Sent 2022-12-16 04:44:09 UTC Body Sincere got sum over here

Author sgrice (Instagram: 52255335513) Sent 2022-12-16 04:44:11 UTC Body Sum 9 ong

Author sgricc (Instagram: 52255335513) Sent 2022-12-16 04:44:13 UTC **Body** Whole box

Author ebk_varro (Instagram: 51338632750) Sent 2022-12-16 04:44:39 UTC Body Bet we finna be dat way m

Author sgrice (Instagram: 52255335513) Sent 2022-12-16 04:44:48 UTC Body Nvm he said he gave me away my fault Author sgrice (Instagram: 52255335513)

Sent 2022-12-16 04:45:08 UTC

Body aye I need y'all doe to be watching around the crib

Author sgrice (Instagram: 52255335513)

Sent 2022-12-16 04:45:15 UTC

Body When I go to this lil bitch crib

Author ebk_varro (Instagram: 51338632750) Sent 2022-12-16 04:45:18 UTC

Body Igu

Author sgrice (Instagram: 52255335513)

Sent 2022-12-16 04:45:35 UTC

Body Liked a message

Author sgricc (Instagram: 52255335513)

Sent 2022-12-16 04:45:37 UTC

Body fr bro

Author ebk_varro (Instagram: 51338632750)

Sent 2022-12-16 04:46:20 UTC

Body Igh igu

Author sgricc (Instagram: 52255335513)

Sent 2022-12-16 04:46:31 UTC

Body Imk when y'all outside

Author ebk varro (Instagram: 51338632750)

Sent 2022-12-16 04:46:52 UTC

Body Our phones off

Author sgricc (Instagram: 52255335513)

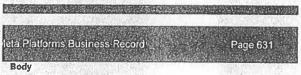
Sent 2022-12-16 04:47:02 UTC

Body Hank the hom when you outside

Author ebk_varro (Instagram: 51338632750)
Sont 2022-12-16 05:32:34 UTC
Body We finna be on are way ask sin do he got like 5 bullets we can hold

Author sgricc (Instagram: 52255335513) Sent 2022-12-16 05:32:58 UTC Body he said he ain't got none

Author sgricc (Instagram: 52255335513) Sent 2022-12-16 05:33:05 UTC



I think zay got sum

Author ebk_varro (Instagram: 51338632750)
Sent 2022-12-16 05:33:13 UTC
Body Ask em

Author sgricc (Instagram: 52255335513)
Sent 2022-12-16 05:33:21 UTC
Body I'm about to

Author sgricc (Instagram: 52255335513)
Sent 2022-12-16 05:36:39 UTC
Body my cuz prolly got sum doe

Detective Wise also observed Enrique Hintz (Instagram account: Reekgotem_) messaging Narvarryon around 2AM on December 25th 2022. It should be noted, Narvarryon's address 1229 West 9th St, Lorain, was struck by gunfire at 02:34 AM (Lorain Police Report 22-42937).

01:42 AM "11th or 9th?"

01:48 AM "drop a address and stay on this live"

01:49 AM "on zg imma pull thru you drop a addy"

01:52 AM "I'm finna send you a gift for Christmas young"

01:57 AM "That black charger with the tents"

01:59 AM "Man varro drop the addy and on zell grave imma push up"

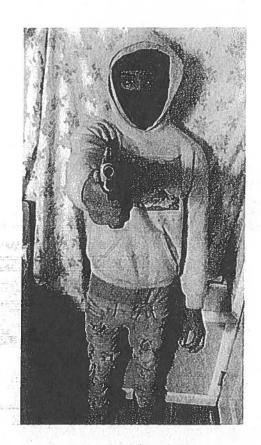
02:05 AM "I'm omw to 9th bro"

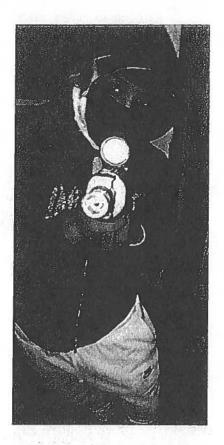
02:08 AM "Here I come on zell grave I'm coming rn"

2:17 AM "Down the street" "Stay on live" [Enrique telling Narvarryon to stay on Instagram live]

At 02:32 Hours Enrique stated "step out" "go outside"

Several photographs of Narvarryon holding firearms:





Narvarryon's Instagram PDF file was later placed onto DVD then into evidence. Narvarryon's Instagram return was additional sent to Detective Kovach (LPD) who is investigating the shooting of Narvarryon's residence.

Disposition

This case will be forwarded to the Lorain County Juvenile Court for review of criminal charges against Deondre Hague and Narvarryon McAfee. It should be noted, Narvarryon was seventeen years old during the time of the offense, but has since turned eighteen years old.

The recovered spent casings have been submitted to BCI Richfield for entry into NIBINS. Any additional information regarding these will be detailed in a supplement.

Larry Crooks Jr. was named as a suspect due to a previous incident in which he accused Narvarryon McAfee of stealing a handgun from him. I have found no documentation that Crooks reported having a handgun stolen.

Detective Wise from Elyria PD is currently investigating a shooting from 12-15-22 in which Narvarryon McAfee is named as a suspect. Enrique Hintz and Tyrone Smith reside at the residence which was shot up. Detective Wise will forward any pertinent information from his investigation. The Lorain shooting could be in retaliation.

Officer Shawver was recently contacted by Yolanda Sullivan; she did not provide any new information. I reached out to Samantha Mechling but she has not responded.

This investigation is suspended pending any new information or evidence.

Report by: Detective Christopher Kovach #958 / 01-05-23 @ 1150 hours

REPORT#: 2022-34379

NARRATIVE BY: Detective Larson 199 REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Robbery

NARRATIVE:

On Wednesday, December 21, 2022 Detective Larson certified Deondre Hague through the Lorain County Juvenile Court for Aggravated Robbery ORC (2911.01) F-1. Deondre is currently being held at the Lorain County DH on a parole violation.

On Monday, December 19, 2022 Detective Larson was assigned this case by Lt. Lantz.

Initial Report/ Catalano Narrative

On 12/18/22, around 0940 hours, Officer Catalano was driving S/B in a marked patrol vehicle on East River St. approaching Eastern Heights Blvd. As Officer Catalano continued S/B through the intersection, Officer Catalano observed a B/M wearing a bright green jacket with a grey hoodie, and blue jeans running E/B across E River St. onto Harvard Ave. Officer Catalano turned left (E/B) onto Cornell Ave. in attempt to see where the B/M was running to.

As Officer Catalano approached the intersection of Cornell Ave. and Sherman St., Officer Catalano observed the same B/M suspect to continue to run E/B on Harvard across Sherman St. EPD dispatch then sent out an alert tone in reference to an aggravated robbery that had just occurred at 907 East River St. (Subway). EPD dispatch confirmed with Officer Catalano that the suspect was the B/M that officer had observed running E/B on Harvard Ave. Officer Catalano traveled N/B to the intersection of Sherman St. and Harvard Ave., but was unable to locate the B/M suspect. Other EPD units had started arriving in the area at that time. Officer Catalano then observed the B/M suspect to be traveling on a bike on Harvard Ave. near Park Ave. Officer Catalano advised other EPD officers of the same. See Officer Hume's investigative narrative in reference to tracking the bicycle trail (#22-34379) and the bicycle theft report (#22-34383) for further.

It should be noted, none of the surrounding agencies had a K-9 available at that time for tracking.

Officer Catalano later went to 907 East River St. (Subway) and made contact with employee, Evelyn Sayers, and the following was learned. Evelyn stated she was the only employee working this morning at Subway when she observed a B/M walk through the front doors. Evelyn was standing behind the counter at this point. Evelyn described the B/M to be wearing a bright green hoodie, blue jeans, black tennis shoes, maroon underpants, have a grey hoodie over his head, and wearing a ski mask that covered his forehead and his mouth. Evelyn

described the B/M to be approximately 5'10", have an athletic build, to be approximately 20-25 years old, and have dark eyes.

The B/M walked up to the counter near the cash register and stared straight at Evelyn. Evelyn asked the B/M how she could help him. The B/M then pulled an all-black handgun out of his right hoodie pocket and pointed it at Evelyn and told her to give him all of the money out of the register. As Evelyn was working on getting the register open, the B/M told Evelyn she was not going fast enough and needed to hurry up. Evelyn then handed the B/M all of the cash she had in her drawer (\$68 total) as he still pointed the handgun at her. The B/M then stated she needed to give him more money, but Evelyn told him that the money she gave him was all that she had. Seconds later, the B/M ran out of Subway and turned right (S/B) towards the East River Coin Laundry (919 East River St.). Evelyn was able to capture a picture of the suspect running away (attached to case).

Officer Catalano made contact with the owner of the Subway, Lisa Redding, who was able to show Officer Catalano video surveillance of the incident. A screenshot from the video surveillance of the suspect has been uploaded to the case. A recording of the video surveillance has been uploaded to evidence.com.

Officer Catalano was unable to process the scene due to the suspect not touching anything inside the store. Officers checked the area, but were unable to locate the B/M suspect at that time.

Hume Narrative

On 12/18/2022, Officer Hume was assisting with locating an aggravated robbery suspect who had just robbed Subway (907 East River Road) at gunpoint. Officer Catalano had advised over the radio that she observed the male running EB on Harvard Avenue and then moments later, last observed him riding a bicycle, turning south on Park Avenue from Harvard Avenue.

Officers had initially set a perimeter in hopes another local agency would be able to assist with a track by use of their canine team; however, there were no available teams. Once it was determined that there was not going to be a canine track, Officer Hume drove to Harvard and began following the suspects footprints in the snow. Officer Hume began following the footprints EB from Sherman Street until they went north behind 206 Harvard. The footprints were tracked to the backyard of 210 Harvard where it appeared the suspect got onto a bicycle and rode out to the sidewalk. The bicycle tire tracks were visible on the north side of the street, EB, until Park Avenue, where it appeared the suspect began riding in the street. The streets did not have snow on them.

Officer Hume spoke with the resident at 210 Harvard, David Carroll, who advised the suspect did in fact steal his daughter's bicycle. The bicycle was a metallic silver mountain bike (unknown make, model, speed). An additional theft report was generated for the bicycle theft (22-34383).

David was advised of the robbery situation and the suspect information at which time he stated he saw the suspect walking WB on Harvard Avenue in the morning, prior to officers arriving in the area. David explained the suspect was seen walking down the driveway of 218 Harvard Avenue, which he described as a drug house. David stated the suspect came from the back of the house, where the drug activity usually takes place. David advised the suspect was wearing a bright green jacket that "you couldn't miss". He further stated he believes he's seen the male around 218 Harvard multiple times in the past.

Officer Szymanski spoke with the resident from 218 Harvard, Christopher Abbe, who denied having anyone else at the residence and stated he lived alone. Officer Szymanski advised that an unidentified neighbor told him Christopher always has visitors over at the back of the residence.

Officer Hume photographed a footprint in the snow from behind 206 Harvard that was left by the suspect. The photograph was uploaded into evidence com.

Officer Hume spoke with other pedestrians in the surrounding neighborhood reference the suspect however, no one had observed him or had any information. Officer Hume checked 407 Colgate Avenue for prints due to Elliot Guzman residing there and it being within the proximity of this incident. No prints from a bicycle or person were located on the front or sides of the property.

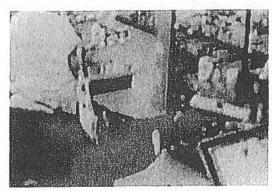
This concludes my involvement in the listed incident. See the other officer's narratives for further.

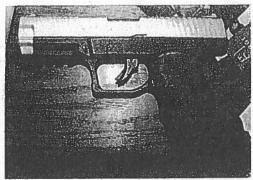
Follow Up

On Monday, December 19, 2022 at approximately 1230hrs Detectives Larson and Wise arrived at Subway (907 E. River St.) and met with Jeffrey Barbee who works for Subway but was not working during the robbery. Detectives interviewed Jeffrey and learned the following which was recorded and later submitted to evidence labeled (199-1).

On Wednesday, December 21, 2022 at approximately 0100hrs Detectives Larson and Wise were called out in reference to EPD case#2022-34597. Officers were detailed to 317 Harvard Ave. in reference to shots fired at the house. While investigating this incident, officers arrested Deondre Hague who had an active warrant for a parole violation through Lorain County Juvenile Court. Deondre had been identified as a possible suspect for this robbery as well as the aggravated robbery of Subway (907 E. River St.) EPD case#2022-34379 and felonious assault case 2022-34051.

Deondre was transported to EPD were he was later interviewed by Detectives Larson and Wise. Prior to interviewing Deondre, officers obtained consent to search 317 Harvard Ave. Located in the house was the silver and black handgun which was observed in the surveillance footage and pictured below. The left picture is Deondre while in Convenient committing the robbery and left picture is item number (142-17).

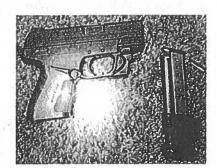




Also located in the house was a black Springfield XD-9 (142-16) which matches the handgun in the video from Subway as pictured below as well as the green jacket worn during the robbery (142-19).







Detectives Larson and Wise interviewed Deondre in room 2C, the following is a synopsis of that interview. A copy of the interview was later submitted to evidence under EPD case#2022-34051 as (199-1).

Deondre Hague Interview

Detective Larson began the interview and advised Deondre of his Miranda Rights which he advised he understood. Detective Larson asked Deondre if he knew why detectives wanted to talk with him which he stated he didn't know. Deondre then advised his house got "shot up." Dondre went down stars and observed the damage to his house at which point he called his "baby mom." Detective Larson asked Deondre why he went into the basement which he explained he went to get clothes to find out who shot his house. Located in the basement was a loaded Springfield XD-9 handgun and two BB guns which appeared to be real handguns until further observation.

Detective Larson showed Deondre photos from the robbery of Subway and Convenient and Deondre denied that it was him in the photo.

Detective Wise then told Deondre that officers had recovered the real handgun and the two BB guns in his house as well as the clothing that he wore while robbing Subway. Deondre then admitted that he was short on money and that's why he robbed both Convenient and Subway. Deondre states that he spent the money he got from the Subway robbery on food and that his mother only feeds him sometimes.

Detectives asked Deondre where he obtained the Springfield handgun which he stated he stole it from a back pack at a house on West Ave. near 11th St. in Elyria from a male he only knows as "Bryce." Deondre denied breaking into the house and stated he and Bryce use to be friends but he stole the gun from his bag. Deondre was able to clarify that he used the silver and black BB gun to rob Convenient and used the Springfield handgun to rob Subway.

Deondre hid the Springfield in the basement of his house in a basket because he got nervous that the police were coming. Detective Larson showed Deondre the following photo which was observed by Detectives posted to his Instagram story (account tdg.drako) the previous day where Deondre was attempting to sell the handgun.



It should be noted that the sleeve of the jacket visible in the photo where he was attempting to sell the handgun was the same jacket Deondre was wearing during the interview. Detective Larson later collected the jacket and Deondre's belt as evidence labeled (199-2).

After Deondre left subway he ran down Harvard Ave. towards his house, Deondre stopped and stole a bicycle from a house in order to get away faster and rode the bike home where he stated the bike is currently located.

Detectives asked Deondre why he walked around outside of Convenient for so long prior to entering and he agreed that he was nervous and was trying to talk himself into entering and committing the robbery.

(EPD	At this point in the interview, detectives transitioned and began asking about the shooting case#2022-34051) involving M and E Deondre seemed familia	ar
	the shooting but stated he was at his "baby moms" house. Deondre continued denying bei lved with this shooting and asked for an attorney at which point detectives asked no furthe tions.	_
	Deondre was later transported to the Lorain County DH at the request of the magistrate f	or

Deondre was later transported to the Lorain County DH at the request of the magistrate for an active warrant for a parole violation.

On Tuesday, December 27, 2022 Detective Larson applied for and was granted a search warrant by the Honorable Judge J. Miraldi of the Lorain County Common Pleas Court authorizing the search of Deondre's cellular phone. Deondre's phone was collected as evidence for EPD case#2022-34597 item (142-15).

REPORT#: 2023-33790

NARRATIVE BY: Ptl. Paige Mitchell #229

REVIEWED BY: Lt. Frank

INCIDENT TYPE: Death Investigation

NARRATIVE:

On 10/24/2023 at approximately 0426 hours, Officers P. Mitchell and Tucker were dispatched to 1057 Melvyn Lane in reference to an unresponsive juvenile. Upon arrival, Officers were met by Sahvannah Smarr, who was kneeling at the bottom of the staircase of her residence. On the bottom stair in front of Smarr was her 13-day old infant, ________. Smarr was stating ______ was not breathing and was asking for help.

Officer P. Mitchell had Smarr move to the side and Officer P. Mitchell checked —— I for a pulse but was unable to locate one. It should be noted, —— I was cold to the touch, had no visible signs of breathing and was not moving. Officer P. Mitchell opened —— 's mouth to ensure she was not choking on something and observed nothing out of the ordinary in her mouth. At that time, Elyria Fire Department arrived on scene and were advised Officer P. Mitchell was unable to find a pulse. Elyria Fire personnel took over —— s care at that time. Officer P. Mitchell later spoke with Life Care Personnel Robert Owsiak who advised —— was deceased.

Officer P. Mitchell then spoke with —— s mother, Sahvannah Smarr who advised the following:

Smarr had put ______ to bed at approximately 1130/midnight in a baby swing in her bedroom. was not strapped into the swing with the seatbelts attached, but had a blanket covering and tucked in around her legs. She was wearing a onesie underneath of a thicker sleeper body suit. Just prior to calling 911, Smarr woke up to feed ______ l. Smarr found ______ I was not breathing, she was cold to the touch and her lips were blue. Smarr observed something coming from ______ 's nose, so Smarr wiped her nose and discovered it was blood. Smarr carried ______ downstairs and placed her on the bottom step. Smarr ran next door and began knocking on the door asking her neighbor to contact 911 as her baby was not breathing.

Sgt. Ross arrived on scene and requested the Detective Bureau; the Lorain County Coroner's Officer and Lorain County Child Protective Services respond to the scene. Life Care was requested to transport ______'s body to UH Elyria for the Coroner.

Officer P. Mitchell took overall photographs of the entire residence of 1057 Melvyn Lane. While doing so, Officer P. Mitchell observed the master bedroom upstairs. In the master bedroom Officer P. Mitchell observed there to be a large wet spot on the edge of the bed, a bassinet next to the bed full of dirty, empty baby bottles, new and dirty diapers, formula cans, food, trash and clothing, multiple baby blankets both in the bed and on the floor next to the bed, dirty empty baby bottles on the floor under the bassinet, a dirty diaper on the floor next to the bassinet, and multiple sippy cups in the bed. On the opposite side of the room from the bed, by the dresser's was a baby swing. It should be noted, the master bedroom is the northeast most room of the upstairs.

Next to the master bedroom, to the west is an empty bedroom. Located in the closet was a large amount of baby clothing and diapers.

On the other side of the master bedroom, to the south, was another child's room. Inside of this room was a crib filled with miscellaneous items and toys on the floor.

The photographs were later placed into evidence.

REPORT#: 2023-33790

NARRATIVE BY: Homoki #152

REVIEWED BY:

INCIDENT TYPE: Infant Death (Suidi)

NARRATIVE:

On Tuesday, October 24, 2023, Det. Homoki and several members of the detective bureau were called out regarding an infant death investigation which occurred at 1057 Melvyn Ln, in Elyria, OH.

Detectives responded and learned the following:

On Tuesday, October 24, 2023, at approximately 0426 hours, Officers P. Mitchell and Tucker were dispatched to 1057 Melvyn Lane in reference to an unresponsive juvenile. Upon arrival, Officers were met by Sahvannah Smarr, who was kneeling at the bottom of the staircase of her residence. On the bottom stair in front of Sahvannah was her 11-day old infant, Smarr was stating — was not breathing and was asking for help.

Officer P. Mitchell had Sahvannah move to the side and Officer P. Mitchell checked ______ for a pulse but was unable to locate one. It should be noted, _____ was cold to the touch, had no visible signs of breathing and was not moving. Officer P. Mitchell opened _____ s mouth to ensure she was not choking on something and observed nothing out of the ordinary in her mouth. At that time, Elyria Fire Department arrived on scene and were advised Officer P. Mitchell was unable to find a pulse. Elyria Fire personnel took over _____ s care at that time. Officer P. Mitchell later spoke with Life Care Personnel Robert Owsiak who advised ____ was deceased.

Officer P. Mitchell then spoke with —— s mother, Sahvannah Smarr who advised the following:

Sahvannah had put ______ to bed at approximately 1130/midnight in a baby swing in her bedroom. _____ was not strapped into the swing with the seatbelts attached, but had a blanket covering and tucked in around her legs. She was wearing a onesie underneath of a thicker sleeper body suit. Just prior to calling 911, Sahvannah woke up to feed ______ i. Sahvannah found was not breathing, she was cold to the touch and her lips were blue. Sahvannah observed something coming from ______ s nose, so Sahvannah wiped her nose and discovered it was blood. Sahvannah carried _____ i downstairs and placed her on the bottom step. Sahvannah ran next door and began knocking on the door asking her neighbor to contact 911 as her baby was not breathing.

Sgt. Ross arrived on scene and requested the Detective Bureau; the Lorain County Coroner's Officer and Lorain County Child Protective Services respond to the scene. Life Care was requested to transport ——s body to UH Elyria for the Coroner.

Officer P. Mitchell took overall photographs of the entire residence of 1057 Melvyn Lane. While doing so, Officer P. Mitchell observed the master bedroom upstairs. In the master bedroom

Officer P. Mitchell observed there to be a large wet spot on the edge of the bed, a bassinet next to the bed full of dirty, empty baby bottles, new and dirty diapers, formula cans, food, trash and clothing, multiple baby blankets both in the bed and on the floor next to the bed, dirty empty baby bottles on the floor under the bassinet, a dirty diaper on the floor next to the bassinet, and multiple sippy cups in the bed. On the opposite side of the room from the bed, by the dresser's was a baby swing. It should be noted; the master bedroom is the northeast most room of the upstairs.

Next to the master bedroom, to the west is an empty bedroom. Located in the closet was a large amount of baby clothing and diapers.

On the other side of the master bedroom, to the south, was another child's room. Inside of this room was a crib filled with miscellaneous items and toys on the floor.

The photographs were later placed into evidence.

Follow-up:

Detectives completed the SUIDI reporting form and obtained as much information as possible regarding the reported incident prior to Lorain County Coroner Parsons arriving. Detectives told Sahvannah that a re-enactment was needed once Dr. Parsons arrived to help with the investigation. Sahvannah understood and once Dr. Parsons arrived and was briefed by detectives Sahvannah assisted with the re-enactment.

Sahvannah refused to use any type of doll or figure to represent her infant child
Sahvannah told the detectives, Dr. Parsons, and Lorain County Children Services that she arrived home after visiting with her mother, Courtney Hollis, around 2300 hours. Once inside,
Sahvannah, her son, Morgan, and entered the home.

Sahvannah was carrying the diaper bag, the carrier/car seat with inside, and hold Morgan. After entering the house, she put the carrier down, removed from the carrier, and started to walk upstairs followed by Morgan who crawled his way up the stairs. It should be noted that while walking upstairs, Sahvannah removed the snowsuit that was wearing.

Once upstairs, Sahvannah placed on the master bed, placing her head in the middle and her feet towards the edge of the bed. Sahvannah covered her with a infant blanket and walked back downstairs with Morgan to place the bag, the snowsuit, and other items downstairs.

Sahvannah and Morgan returned and played with for a short period of time. Sahvannah said that Morgan tried to feed with the bottle but she did not appear to be hungry so Sahvannah placed her in the swing located on the floor. Sahvannah demonstrated and placed shead on the white pillow and tucked Iranna into the swing and wrapped her legs with the infant blanket.

Sahvannah and Morgan got food and laid down for the night. It should be noted that Morgan slept in the same bed as Sahvannah. Morgan laid sideways on the bed and Sahvannah laid next to him.

Prior to calling 911, Sahvannah woke up to feed — . Sahvannah found — was not breathing, she was cold to the touch and her lips were blue. She moved — from the swing to the bed and observed something coming from — ; nose. Sahvannah noticed her nose was bleeding and realized that she was not breathing. Sahvannah grabbed her phone but realized it was dead due to not being charged. Sahvannah started to yell for her neighbor and carried downstairs and placed her on the bottom step. Sahvannah ran next door and began knocking on the door asking her neighbor to contact 911 as her baby was not breathing.

During the re-enactment, Det. Larson and Loesch went next door and spoke with ----- about the incident.

After the re-enactment, Detectives and Dr. Parsons cleared the scene and patrol officers and children service remained for an additional short period of time.

REPORT#: 2022-34597

NARRATIVE BY: Detective Larson 199

REVIEWED BY: Lt Lantz 198

INCIDENT TYPE: Shooting

NARRATIVE:

On Wednesday, December 21, 2022 Lt. Lantz assigned this case to Detective Larson.

Initial Report/ Miller Narrative

On 12/21/2022 at approximately 0108 hours at 317 Harvard Ave, Officer Vacha arrested Deondre W.M. Hague (DOB: 02-17-2006) for a Parole Violation/Standing Orders through Lorain County Juvenile Court.

On 12/21/2022 at approximately 0057 hours, Officers Miller, Thacker, Mason, Vacha, Colon, Kubas, Homan, DeMarco, and Sergeants Ross and McArthur, were detailed to 317 Harvard Ave. in reference to complaint of shots fired.

On arrival Officer Vacha was admitted to the residence by Clarissa White. Officer Vacha had knowledge that Deondre W.M. Hague was a resident of 317 Harvard and has active standing orders/parole violation. Deondre was observed by officers near the basement stairs and they placed him into custody.

Officers secured Deondre in a cruiser and spoke with the original caller who was also the mother of Deondre, Clarissa White. Clarissa stated that she had been upstairs sleeping in her bedroom when she was awoken by "fireworks that sounded like they were coming from my front porch." Clarissa immediately walked down the stairs to see what was going on. Clarissa noticed that Deondre was also awake, but wasn't sure if he had been sleeping prior to the noise. Clarissa saw that her living room had glass shattered on the floor. It was discovered that bullets had entered the living room area. Clarissa advised that no one in the home had been injured and that she had three other children in the home that had all remained asleep in their second floor bedrooms through the incident: Amari Ellington (DOB: 09/30/2014) Malayiah White (DOB: 11-27-2017) and Messiah White (DOB: 11/27/2017).

Clarissa did not see any cars or individuals leaving the scene. A second caller (unknown name), called 911 around the same time that Clarissa had and reported that a "blacked out" vehicle "took off on Harvard westbound." Officers received this information while responding to the scene and were unable to locate a vehicle matching this description.

Officers found multiple 9mm shell casings in the street in front of 317 Harvard and observed damage from bullets to the home in multiple areas entering from the north into the living room. Two bullet fragments were located inside of the home.

Clarissa agreed to sign a consent to search the residence of 317 Harvard Avenue (#142-23) and signed with officers Miller and Thacker as witnesses. Officers located a black BB gun (#142-18) and a Springfield 9mm handgun serial #HE904224 (#142-16) in the basement of the home. A second BB gun, black and silver in color (#142-17) was located in Deondre's bedroom in a tote of clothing. A total of (12) 9mm spent shell casings were located as well as (2) bullet fragments throughout the entire scene. A blue/green jacket (#142-19), grey hoodie (#142-22), Zero Xposure coat (#142-22), and a pair of black Nike shoes(#142-20) were discovered that were collected as evidence in relation to another, pending investigations. Deondre's iPhone (#142-15) was collected and placed into evidence.

Officer Kubas documented the interior of the scene and exterior of the scene with photographs which were placed onto a CD (#142-24). Officer Kubas completed an evidence narrative (see ET narrative in case) and was also responsible for all evidence collection.

Deondre was transported to station and interviewed by Elyria Police Detectives before being transported to Lorain County Juvenile Detention Home.

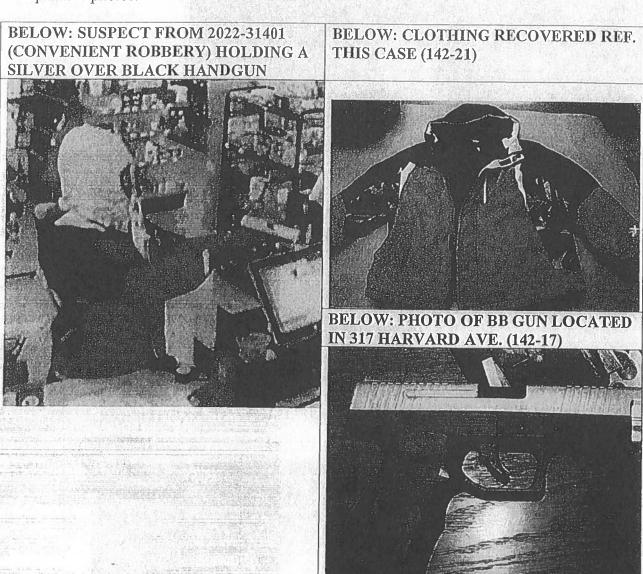
Sgt. McArthur Narrative

On 12/21/2022 at approximately 0100 hours, Sgt. McArthur responded to 317 Harvard Ave to assist patrol units at the scene of a shooting. During the course of the investigation, a wanted juvenile, Deandre Hogue, was located in the kitchen area of the residence. Deandre was taken into custody without incident prior to Sgt. McArthur's arrival.

While assisting with the shooting investigation, Sgt. McArthur located a coat that was hanging in plain view of the kitchen area where Deandre was apprehended. Sgt. McArthur believed the coat to be the coat that was worn during the commission of an attempted robbery at the convenient on East River (EPD Case #2022-31401). Sgt. McArthur compared the coat to surveillance footage taken from the robbery attempt to confirm his belief. Sgt. McArthur collected the coat and provided it to Officers Kubas and Homan to be placed into evidence with other property.

Due to there being evidence of another violent crime present at the residence, Sgt. McArthur spoke with Clarissa White. Clarissa is the homeowner and mother of Deandre. Sgt. McArthur learned during this time that Clarissa had already signed a consent to search form for the residence with Officer Thacker. It was during a conversation between Sgt. McArthur and Clarissa that Sgt. McArthur confirmed with Clarissa, the scope of her consent to search the residence included the upstairs bedroom she identified as belonging to Deandre. This clarification was captured on Sgt. McArthur's BWC for future reference.

Detective Larson compared the items collected as evidence from 317 Harvard Ave. with the surveillance footage from robbery cases 2022-34379 and 2022-31401. See the below comparative photos.



BELOW: SUSPECT FROM 2022-34379 (SUBWAY ROBBERY)



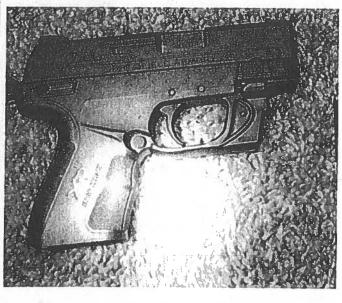


BELOW: SUSPECT FROM 2022-34379 (SUBWAY ROBBERY) BLACK HANDGUN



BELOW: PHOTO OF BLACK HANDGUN LOCATED IN 317 HARVARD AVE. (142-16)

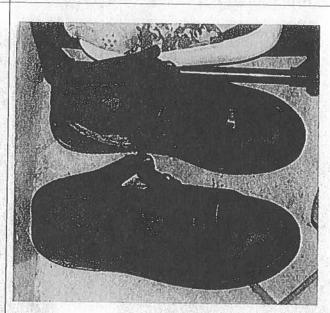


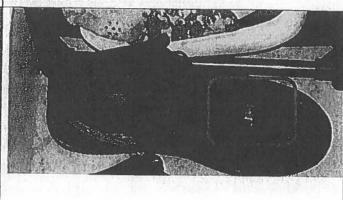


BELOW: SUSPECT FROM 2022-34379 (SUBWAY ROBBERY) NOTES BLACK SHOES

BELOW: PHOTO OF BLACK HANDGUN LOCATED IN 317 HARVARD AVE. (142-20)

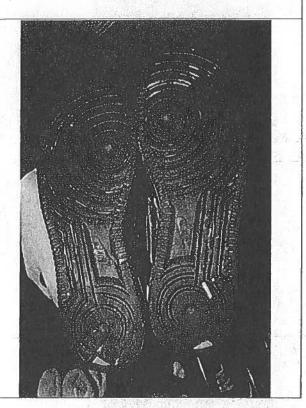






BELOW: PHOTO OF SHOE IMPRINT BEHIND 206 HARVARD AVE. WHERE SUSPECT STOLE A BELOW: PHOTO OF NIKE AIR FORCE SHOES LOCATED IN 317 HARVARD AVE. (142-20)





Deondre Hague Interview

On 12-21-22, Detective Larson began the interview and advised Deondre of his Miranda Rights which he advised he understood. Detective Larson asked Deondre if he knew why detectives wanted to talk with him which he stated he didn't know. Deondre then advised his house got "shot up." Dondre went down stars and observed the damage to his house at which point he called his "baby mom." Detective Larson asked Deondre why he went into the basement which he explained he went to get clothes to find out who shot his house. Deondre had no idea who was responsible for shooting up his house and wouldn't provide any explanation on why someone would shoot at his residence.

Located in the basement was a loaded Springfield XD-9 handgun and two BB guns which appeared to be real handguns until further observation. Detective Larson showed Deondre photos from the robbery of Subway and Convenient and Deondre denied that it was him in the photo.

Detective Wise then told Deondre that officers had recovered the real handgun and the two BB guns in his house as well as the clothing that he wore while robbing Subway. Deondre then admitted that he was short on money and that's why he robbed both Convenient and Subway.

Deondre states that he spent the money he got from the Subway robbery on food and that his mother only feeds him sometimes.

Detectives asked Deondre where he obtained the Springfield handgun which he stated he stole it from a back pack at a house on West Ave. near 11th St. in Elyria from a male he only knows as "Bryce." Deondre denied breaking into the house and stated he and Bryce use to be friends but he stole the gun from his bag. Deondre was able to clarify that he used the silver and black BB gun to rob Convenient and used the Springfield handgun to rob Subway.

Deondre hid the Springfield in the basement of his house in a basket because he got nervous that the police were coming. Detective Larson showed Deondre the following photo which was observed by Detectives posted to his Instagram story (account tdg.drako) the previous day where Deondre was attempting to sell the handgun.

It should be noted that the sleeve of the jacket visible in the photo where he was attempting to sell the handgun was the same jacket Deondre was wearing during the interview. Detective Larson later collected the jacket and Deondre's belt as evidence labeled (199-2).

After Deondre left subway he ran down Harvard Ave. towards his house, Deondre stopped and stole a bicycle from a house in order to get away faster and rode the bike home where he stated the bike is currently located.

Detectives asked Deondre why he walked around outside of Convenient for so long prior to entering and he agreed that he was nervous and was trying to talk himself into entering and committing the robbery.

Deondre was later transported to the Lorain County DH at the request of the magistrate for an active warrant for a parole violation.

ADDITIONAL FOLLOW-UP

Detective Larson reviewed video provided by Allen Crawford whom has cameras on his residence of 334 Cornell Ave. which is the next street south of 317 Harvard Ave. The first video is time stamped 12/21/2022 12:52:17AM and you can hear approximately 15 gunshots. Detective Larson reviewed multiple other videos which show a dark colored sedan driving down Cornell Ave. multiple times. This vehicle appears to be circling the block multiple times moments prior to the shooting however the video is not clear enough to tell the make, model or license plate.

Lt. Lantz submitted a RING video request for available footage that yielded no investigative leads.

Detective Larson submitted this video to evidence labeled (199-1). No other video was located and the vehicle or suspects were unable to be identified.

NIBIN LEAD

On 1-3-23, Det. Larson received a NIBIN LEAD Notification. Det. Larson reviewed the notification and determined that the link was to the firearm found in Hague's possession and not from any casings recovered outside the residence that would assist in identifying the shooter(s) in this case. The casing recovered outside were submitted for entry in NIBIN.

DISPOSITION

During the investigation Det. Larson made contact with Clarissa White (Deondre's Mom). Clarissa did not have any ideas who was responsible for shooting at her residence. On 1-16-23, Det. Larson closed this case due to a lack of evidence. If additional information or evidence is discovered the case may be reopened.

REPORT#: 2023-34992

NARRATIVE BY: Officer Laurendeau #186 REVIEWED BY: Lt Ligas 204

INCIDENT TYPE: CCW

NARRATIVE:

On 11/04/2023 at approximately 0205 Hrs, Officer Laurendeau arrested **John** (16 y/o) for Garrying Concealed Weapons (ORC 2923.12)(M1), Possession of Marijuana (ORC 2925.11C3)(MM), Curfew (ORD 509.09). Carter was arrested at 404 East Avenue while investigating a suspicious condition.

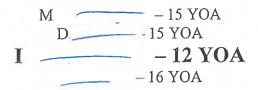
On 11/04/2023 at approximately 0153 Hrs, Officer Laurendeau was traveling northbound on Middle Avenue near 5th Street. Officer Laurendeau observed a group of approximately 7 juveniles walking eastbound across Middle Avenue. Officer Laurendeau observed all of the juveniles were either wearing ski-masks or had the hoods on their jackets pulled over their faces. As Officer Laurendeau drove past, all the juveniles took notice of his marked police vehicle and appeared to become uneasy in the presence of police. The juveniles had their hands tucked into the front of their waistbands, and bladed their bodies from Officer Laurendeau. Officer Laurendeau also observed most of the juveniles turn their faces away and downward in an attempt to potentially conceal their identities further. Officer Laurendeau also observed one or more of the juveniles were wearing backpacks, as well as very heavy coats.

Officer Laurendeau is aware there have been several vehicle break-ins, armed robberies, shootings, and other crimes of violence and property crimes occurring in the Eastern Heights neighborhood. Officer Laurendeau is also familiar these crimes are reportedly committed by juveniles.

Officer Laurendeau followed the juveniles, attempting to see if the juveniles would continue eastbound towards the neighborhood where there had been a spike in crime. Officer Laurendeau observed the group of juveniles cross over East Avenue, and the juveniles observed Officer Laurendeau again. The juveniles then went into the Valero gas station located at 404 East Avenue.

Officer Laurendeau radioed for back-up units at this time, and advised he would be out with the group of juveniles. Officer Laurendeau located the juveniles inside the store, where they were ordered outside and sat down on the curb. Officer Laurendeau advised the juveniles they were being detained for curfew, as well as the suspicion criminal activity may be afoot.

Officers Taylor, Kelly, and Lewis arrived on scene to assist. Officers identified each individual. The following juveniles were detained:



Officer Laurendeau then conducted a pat down on each juvenile. Prior conducting patting down each juvenile, Officer Laurendeau advised them if they were in possession of any weapons or other illegal items, to advise Officers. While patting down John ——, Officer Laurendeau felt a large, hard object in his front left jacket pocket. Officer Laurendeau, suspecting it may be a handgun, manipulated the pocket feeling it was in fact a handgun. Officer Laurendeau controlled the firearm through John's _____, with Officer Laurendeau's left hand and controlled John's left wrist with Officer Laurendeau's right hand. Officer Lewis then controlled John's right hand and Officer Laurendeau safely removed the handgun.

John — vas placed under arrest at this time and placed into the rear seat of Officer Taylor's marked police vehicle. Officer Laurendeau observed the handgun was a Springfield Hellcat 9MM handgun. The handgun was loaded with one round in the chamber, and six rounds in the magazine. Officers ran the handgun's serial number, BA104224, through LEADS finding it was not entered stolen. Officers also located a plastic bag of Marijuana in John's jacket pocket. Officers collected these items as evidence.

Officers were able to contact Cynthia Woods, the grandmother of John—— and his legal guardian. Cynthia advised all the juveniles were spending the night at her residence at 824 West Avenue. Officers Lewis and Kelly transported the remaining 6 juveniles to this residence where they were left in the care of Cynthia.

Officer Taylor then transported John — to the Lorain County Juvenile Detention Home where his custody was transferred to the staff there.

Officer Laurendeau returned to the Elyria Police Department where he completed a juvenile certification for John — for Carrying Concealed Weapons (ORC 2923.12)(M1), Possession of Marijuana (ORC 2925.11C3)(MM), Curfew (ORD 509.09).

Officer Laurendeau also entered the Springfield Hellcat 9MM handgun w/ magazine and 7 rounds (186-1) and the 20.3g of Marijuana into Evidence Locker #21 per policy.