No. _____

In the Supreme Court of the United States

KELVIN JONES, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment prohibits the search of a home pursuant to a search warrant based solely on anonymous complaints of short-term traffic and evidence found during a single trash pull that was consistent with marijuana use?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kelvin Jones respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of South Carolina.

OPINIONS BELOW

The opinion of the Supreme Court of South Carolina is reported at 866 S.E.2d 558. (S.C. 2021). App. 1-6. The opinion of the Court of Appeals of South Carolina is unpublished. State v. Jones, No. 2016-001835, 2020 WL 469371 (S.C. Ct. App. Jan. 29, 2020). App. 7-10. The decision of the circuit court denying the motion to suppress on Fourth Amendment grounds was first issued from the bench and relevant portions are reprinted at App. 51-52. The circuit court then denied the motion to suppress in a written order. App. 79-81.

JURISDICTION

The Supreme Court of South Carolina issued its opinion on December 8, 2021. Petitioner filed a timely petition for rehearing that was denied on February 3, 2022. App. 11. This Court has jurisdiction pursuant to 28 U.S.C §1257(a), because Petitioner is asserting the deprivation of a right guaranteed by the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourth and Fourteenth Amendments to the United States Constitution. The Fourth Amendment provides, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated." U.S. Const. amend IV. The Fourteenth Amendment provides, in relevant part, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV.

STATEMENT OF THE CASE

I. Facts

The facts are undisputed. On April 19, 2011, Detective John C. Medlin of the Aiken Department of Public Safety requested a search warrant from a magistrate for a residence located at 462 Morgan Street NW, in Aiken, South Carolina. App. 73. The affidavit in support of the search warrant in the case was based on items found during a trash pull after officers received anonymous complaints of short-term traffic. Based solely on the affidavit, the magistrate signed the search warrant. App. 74. On April 21, 2011, officers executed the search warrant. Prior to entering the house Captain Sawyer observed Petitioner enter the house carrying a blue "sling" backpack. App. 2. Soon after officers entered the house to execute the search warrant. App. 2. Inside the house officers found a handgun, a pickle jar with a green leafy substance in it, and cash. App. 2. The officers found a blue string bag under the couch. App. 2. Inside the blue string bag officers found cocaine. App. 2. The State indicted Petitioner for trafficking cocaine, and possession with intent to distribute cocaine within proximity of a park. App. 83-86.

II. Trial Proceedings.

On August 11, 2014, Petitioner moved to suppress drugs seized in violation of the Fourth Amendment. App. 44-57; 62-70. The Circuit Court denied the motion to suppress. App. 51-56; 79-81. In the order denying the motion to suppress the judge wrote, "Although the reliability of the tipsters was never established, the officers corroborated the tip by finding twisted, torn baggies and the remnants of marijuana cigars in the trash. See State v. Rutledge, 644 S.E.2d 789 (Ct.App. 2007)(Finding probable cause for search warrant where a trash pull corroborated a tip). Therefore, probable cause existed for the magistrate to issue the warrant." App. 80-81. At trial the jury returned verdicts of guilty and the judge sentenced Petitioner to twenty-five (25) years for

trafficking, and ten (10) years concurrent for the proximity charge. Petitioner appealed.

III. Appellate Proceedings

The failure to suppress drugs found in violation of the Fourth Amendment was challenged on appeal. The South Carolina Court of Appeals, in an unpublished opinion, affirmed. State v. Jones, No. 2016-001835, 2020 WL 469371 (S.C. Ct. App. Jan. 29, 2020). App. 7-10. The South Carolina Supreme Court granted the petition for writ of certiorari. The court found no Fourth Amendment violation writing:

> In order for a search to violate the Fourth Amendment, it must be an arbitrary invasion by government actors. See Camara v. Mun. Ct. of City & Cty. of San Francisco, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967). "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). For a search to be unreasonable, generally it must lack probable cause. See State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). Further, "[p]robable cause, we have often told litigants, is not a high bar ...." See Kaley v. United States, 571 U.S. 320, 338, 134 S.Ct. 1090, 188 L.Ed.2d 46 (2014) (explaining further that probable cause is defined as a "fair probability" upon which "reasonable and prudent people ... act").
>
> In State v. Kinloch, this Court held that short-term traffic and subsequent surveillance constituted probable cause for the issuance of a warrant. See 410 S.C. 612, 618, 767 S.E.2d 153, 156 (2014). Similarly, in State v. Rutledge, the court of appeals affirmed the magistrate's probable cause finding after reviewing a tip of drug sales combined with a trash pull that yielded marijuana. See 373 S.C. 312, 315, 644 S.E.2d 789, 791 (Ct. App. 2007). Even if distinguishable, the facts of Jones's case are *more* supportive of a probable cause finding, not less. Not only did the trash pull at Jones's home yield marijuana residue, but also baggies indicative of narcotics resale, which was consistent with and corroborated by the tips of short-term traffic. Thus, the magistrate's issuance of the search warrant was supported by probable cause.

State v. Jones, 435 S.C. 138, 145–46, 866 S.E.2d 558, 561–62 (2021). App. 5-6.

REASONS FOR GRANTING THE PETITION

Millions of people in the United States take their trash to the curb for pickup every week. In California v. Greenwood[1], 486 U.S. 35, 37 (1988), this Court held that the Fourth Amendment did not prohibit the warrantless search and seizure of garbage left for collection outside the curtilage of a home. The issue in this case is whether and under what circumstances items found pursuant to a single warrantless trash pull establish probable cause to search a home. In United States v. Lyles, 910 F.3d 787, 792 (4th Cir. 2018), the Fourth Circuit Court of Appeals noted the potential for abuse with the use of trash pulls writing:

> Precisely because curbside trash is so readily accessible, trash pulls can be subject to abuse. Trash cans provide an easy way for anyone so moved to plant evidence. Guests leave their own residue which often ends up in the trash. None of this means that items pulled from trash lack evidentiary value. It is only to suggest that the open and sundry nature of trash requires that it be viewed with at least modest circumspection. Moreover, it is anything but clear that a scintilla of marijuana residue or hint of marijuana use in a trash can should support a sweeping search of a residence. The Supreme Court recognized similar dangers in searches incident to traffic stops, where allowing comprehensive searches following minor infractions would create "a serious and recurring threat to the privacy of countless individuals." Arizona v. Gant, 556 U.S. 332, 345, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). That threat, like the threat posed by indiscriminate trash pulls, "implicates

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[1] This Court's 1988 holding in California v. Greenwood has been questioned following the Court's decisions in United States v. Jones, 565 U.S. 400, 404-05 (2012) and Florida v. Jardines, 569 U.S. 1, 3-5 (2013). See Tanner M. Russo, *Garbage Pulls Under the Physical Trespass Test*, 105 Va. L. Rev. 1217, 1280 (2019)(n. 20)(" A few scholars have suggested in passing that Jones might mean police commit an unlicensed trespass on an "effect" by touching garbage bins with an investigatory purpose. See Fabio Arcila, Jr., GPS Tracking Out of Fourth Amendment Dead Ends: *United States v. Jones* and the *Katz* Conundrum, 91 N.C. L. Rev. 1, 32 (2012); Stephen E. Henderson, After *United States v. Jones*, After the Fourth Amendment Third Party Doctrine, 14 N.C. J.L. & Tech. 431, 450 n.105 (2013); Lance Polivy, Note, *Jones*, Drones and Homes: How Ancient Property Doctrine Can Expand Notions of Privacy (2012), https://ssrn.com/abstract=2154249 [https://perma.cc/6BXJ-NXSW]. At least one scholar has briefly suggested that Jardines could mean police execute a search when they enter the curtilage to inspect or confiscate garbage. See, e.g., Kit Kinports, The Dog Days of Fourth Amendment Jurisprudence, 108 Nw. U. L. Rev. Colloquy 64, 74-75 (2013))".

> the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." Id.

Federal courts of appeals differ on whether and under what circumstances items found pursuant to a warrantless trash pull establish probable cause to search a home. One scholar discusses a split among the federal circuits as to whether narcotics found during a trash pull can, standing alone, establish probable cause to search a home writing:

> A split among the circuits regarding whether narcotics discovered in a trash pull, standing alone, are sufficient to establish probable cause to search the home is significant for two main reasons. First, it exposes the federal courts' varying interpretations of the Warrants Clause. For example, currently, the Eighth Circuit and the Tenth Circuit have determined that narcotics found in a trash pull, standing alone, can establish probable cause to search a home, and therefore, the search would be reasonable. Probable cause is found whether or not the narcotics are discovered with any items connecting the trash to the place being searched. Similarly, the Seventh Circuit has held that narcotics found in a trash pull can establish probable cause to search a home as long as the "drugs were contained in trash bags bearing sufficient indicia of residency." So the search would be reasonable only under certain circumstances. In contrast, the Sixth Circuit has held the discovery of narcotics, standing alone, does not necessarily establish probable cause to search a home. In the Sixth Circuit, a search following discovery of narcotics in a trash pull, standing alone, would likely be unreasonable under the Fourth Amendment.
>
> Second, this split is significant because it directly contradicts two central purposes of the Constitution--equality and consistency. Varying interpretations of this issue have led to disparate treatment of citizens solely dependent on where they live. For instance, a person living in the states that comprise the Eighth or Tenth Circuits could have his or her house searched merely based on the police finding any amount of narcotics in that person's trash. This same person would not have his or her home subject to a search if he or she lived in the Seventh Circuit. This same person would not necessarily have his or her home subject to search in the Sixth Circuit.

Jackson Jones, *Whether Narcotics Discovered in A Trash Pull, Standing Alone, Can Form Probable Cause to Search A Home*, 42 U. Ark. Little Rock L. Rev. 231, 241–42 (2020)(footnotes 86-93 omitted). See also Jeremy E. Koehler, *If It Looks Like Garbage and Smells Like Garbage:*

The Weakness of Trash-Pull Evidence in Establishing Probable Cause for Search Warrants of Homes, 58 Washburn L.J. 769, 806 (n. 67)(2019) "*Current Circuit Splits*, 14 SETON HALL CIR. REV. 275, 287 (2017) (arguing that a circuit split exists between the Sixth and Eighth Circuit as to whether trash-pull evidence alone can establish probable cause necessary for a search warrant of a residence)."

The Sixth Circuit Court of Appeals in United States v. Abernathy, 843 F.3d 243 (6th Cir. 2016), found that a single trash pull revealing several marijuana roaches with marijuana residue inside, several plastic vacuumed packed heat sealed bags consistent to those used to package marijuana for resale containing marijuana residue with T2 markings (T2 is a known strain of marijuana), a USPS certified mail receipts addressed to Jimmy Jail Abernathy [the Defendant] 5809 Tru Long Ct. Antioch TN [sic], a USPS certified mail receipts addressed to [Defendant's girlfriend], and one additional piece of mail addressed to 'current resident' at 5809 Tru Long Ct. Antioch, TN 37013 Davidson County was insufficient, standing alone, to create probable cause to search the defendant's residence.

In contrast, the Eighth Circuit Court of Appeals in United States v. Briscoe, 317 F.3d 906 (8th Cir. 2003), found that a single trash pull revealing forty marijuana seeds and twenty-five marijuana stems that tested positive for tetrahydrocannabinol, the active component of marijuana, were independently adequate to establish probable cause for a search warrant for the house. See also United States v. Allebach, 526 F.3d 385 (8th Cir.2008); United States v. Thurmond, 782 F.3d 1042, 1044 (8th Cir. 2015).

Requiring more than a single trash pull, the Seventh Circuit Court of Appeals in United States v. Leonard, 884 F.3d 730, 734-35 (7th Cir. 2018), found that, "two trash pulls taken a week apart, both testing positive for cannabis, are sufficient standing alone to establish probable cause

for a search warrant." The Eleventh Circuit Court of Appeals in United States v. Morales, 987 F.3d 966, 972 (11th Cir.), cert. denied, 142 S. Ct. 500 (2021), wrote:

> On the other hand, some courts have concluded that trash pull evidence can on its own support probable cause when a single pull yields a great volume of evidence that clearly indicates illegal drug activity or when police find a smaller quantity of (perhaps less inculpatory) evidence over the course of two successive trash pulls, thereby establishing a trend. See United States v. Briscoe, 317 F.3d 906, 907–09 (8th Cir. 2003) (single trash pull found "forty marijuana seeds and twenty-five marijuana stems"); United States v. Leonard, 884 F.3d 730, 734–35 (7th Cir. 2018) ("two trash pulls taken a week apart, both testing positive for cannabis, [were] sufficient standing alone to establish probable cause" where the trash contained "sufficient indicia of residency").

In Morales police found a small amount of marijuana in Morales's trash, like in Leonard, on two separate occasions, three days apart. The Eleventh Circuit Court of Appeals, in Morales, did not decide whether the affidavit in support of the search warrant based on law enforcement finding a small amount of marijuana in two separate trash pulls lacked probable cause and instead found that, ". . . suppression of the fruits of the search would be inappropriate under the good faith exception to the exclusionary rule. See United States v. Leon, 468 U.S. 897, 922, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984)." Morales, 987 F.3d at 969.

The Fourth Circuit Court of Appeals found the good faith exception inapplicable in United States v. Lyles, 910 F.3d 787, 796–97 (4th Cir. 2018), writing:

> We decline, however, to apply the good faith exception in the present case. We do not at all impugn the subjective good faith of the officer who ran the warrant application through review, including by his superior and a state prosecutor, before submitting it to the magistrate. The prosecutor's and supervisor's review of an application is often helpful in determining good faith. But those reviewers, unlike a neutral magistrate, share the officer's incentives "in the often competitive enterprise of ferreting out crime." Riley[2], 134 S.Ct. at 2482 (internal quotation marks omitted). The prosecutor's and supervisor's review, while unquestionably useful, "cannot be regarded as dispositive" of the good faith inquiry. Messerschmidt v. Millender, 565 U.S. 535, 554, 132 S.Ct. 1235, 182 L.Ed.2d 47 (2012). If it were,

[2] Riley v. California, 573 U.S. 373, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014).

> police departments might be tempted to immunize warrants through perfunctory superior review, thereby displacing the need for "a neutral and detached magistrate" to make an independent assessment of an affidavit's probable cause, Riley, 134 S.Ct. at 2482 (internal quotation marks omitted).

In Lyles, with facts very similar to the present case, the Fourth Circuit Court of Appeals found that a single trash pull revealing three empty packs of rolling papers, a piece of mail addressed to the home, and three marijuana stems was insufficient to provide the probable cause needed for issuance of a search warrant for the home. A federal district court in United States v. Elliott, 576 F. Supp. 1579, 1581 (S.D. Ohio 1984), found that items found during a trash pull were insufficient to establish probable cause writing:

> We conclude that the discovery of the discarded contraband, standing alone, is insufficient to support a determination of probable cause. Despite the prompt action of the agent in seeking the warrant the day after the garbage was examined, the evidence in the garbage did not render the continued presence of marijuana probable. The affidavit does not indicate a large quantity of discarded contraband which might indicate its continued presence in the house. Instead, all we can ascertain is that at least two partially smoked marijuana cigarettes and several stems had left the home at some point in time.

There is a split between the Sixth Circuit Court of Appeals and the Eighth Circuit Court of Appeals regarding whether drugs found in a trash pull, standing alone, are sufficient to establish probable cause to search the home. Other Circuit Courts of Appeals differ in their treatment of trash pull evidence as to what is required to establish probable cause and when to apply the good faith exception with regard to trash pull evidence. The split and differing treatment create confusion and uncertainty with regard to trash pull evidence. This case presents the Court with an opportunity to address the split and establish clear guidelines for the use of evidence found during a trash pull. Given the unreliable nature of a trash pull, as discussed in Lyles, this Court should decide that the Fourth Amendment prohibits the search of a home pursuant to a search warrant based solely on anonymous complaints of short-term traffic and evidence found during a single trash pull

that was consistent with marijuana use.

The state courts of appeals, like the federal courts of appeals, differ on whether and under what circumstances items found pursuant to a warrantless trash pull establish probable cause to search a home.[3] In Raulerson v. State, 714 So. 2d 536, 537 (Fla. Dist. Ct. App. 1998) and Gesell v. State, 751 So. 2d 104, 105 (Fla. Dist. Ct. App. 1999), the Florida Court of Appeals found that a single trash pull revealing a residual amount of marijuana and an anonymous tip of suspected drug activity that was uncorroborated was insufficient to establish probable cause for the issuance of a search warrant for the home. In both Raulerson and Gesell the courts noted that the officers failed to conduct additional surveillance or independent investigation to corroborate the anonymous tips or perform additional trash pulls to show "a pattern of continuous drug activity" and establish a "fair probability" that cannabis would be found in the home.

In Baker v. State, 762 So. 2d 977 (Fla. Dist. Ct. App. 2000), the police received an anonymous phone call that cocaine was being sold at the defendant's home in small clear plastic baggies tied with green twisties. Police met with the caller who was an acquaintance of the defendant. The police had received anonymous tips about drugs being sold at the defendant's house months earlier but a trash pull at that time did not reveal any evidence. This time the trash pull revealed an envelope addressed to the defendant, a two inch plastic straw containing traces of

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[3] "Several states, including New Hampshire, New Jersey, Hawaii, New Mexico, Vermont, and Washington, ruled that warrantless trash searches violate their respective state constitutions. Most states, however, have followed the Supreme Court's logic in Greenwood, holding that warrantless trash searches on public streets do not violate their states' constitutions."
Jeremy E. Koehler, *If It Looks Like Garbage and Smells Like Garbage: The Weakness of Trash-Pull Evidence in Establishing Probable Cause for Search Warrants of Homes*, 58 Washburn L.J. 769, 775 (2019)(footnotes omitted). See also State v. Wright, 961 N.W.2d 396, 418–19 (Iowa 2021).

white powder, two cone shaped plastic baggies with cut edges, and two cone shaped plastic baggies which had green twisties and in which the bottoms had been ripped out. One or more of the baggies field tested positive for cocaine. In distinguishing the Raulerson case the court in Baker wrote, "First, the baggies were stronger evidence of continuous activity, i.e., sales, than the cannabis found in Raulerson. Second, the items found in the trash pull, clear baggies and green twisty ties, were consistent with the specific information from the caller that this was how appellant was packaging cocaine for sale. There was, accordingly, probable cause." 762 So. 2d at 978.

In Bowles v. State, 820 N.E.2d 739, 748 (Ind. Ct. App. 2005), a detective received information that Bowles was dealing cocaine from his residence. The detective pulled the trash and found marijuana seeds and stems, numerous plastic baggies with corners torn off, approximately twenty-five baggies that had been ripped open and contained a powdery cocaine residue, a piece of mail bearing Bowles' address, and a sales receipt bearing Bowles' name. The Indiana Court of Appeals found the Florida cases discussed above, Raulerson and Gesell, factually distinct because, "[i]n this case, in addition to finding marijuana seeds and stems in Bowles' trash, Detective Schwomeyer also discovered items, i.e. numerous plastic baggies with the corners torn off and approximately twenty-five baggies containing a powdery cocaine residue, leading him to conclude that Bowles was dealing illegal narcotics." Bowles, 820 N.E.2d at 748.

In Bowles the Indiana Court of Appeals wrote:

> Moreover, other courts have held that evidence obtained from a single trash search may be sufficient to establish probable cause. See e.g. U.S. v. Briscoe, 317 F.3d 906 (8th Cir.2003) (Marijuana seeds and stems found in the defendant's trash after a single trash search "were independently adequate to establish probable cause for the search warrant."); Missouri v. Bordner, 53 S.W.3d 179, 182 (Mo. Ct. App. 2001), *trans. denied;* State v. Johnson, 531 N.W.2d 275, 278 (N.D.1995); State v. Brown, 20 Ohio App.3d 36, 20 OBR 38, 484 N.E.2d 215, 219 (1984) (Marijuana found in an number of smaller plastic bags as a result of a single trash search was sufficient to establish probable cause to believe that

marijuana would be found in the defendant's apartment.).

820 N.E.2d at 748. The Indiana Court of Appeals found the trial court properly denied the motion to suppress because the search warrant was supported by probable cause.

In State v. Martin, 175 N.E.3d 1004 (Ct. App. Ohio, 2021), the Ohio Court of Appeals excised the stale portion of the affidavit in support of the search warrant and considered only the evidence found during the trash pull in its probable cause determination. During the trash pull the police found "loose marijuana leaves, a marijuana cigar, 'multiple' empty vacuum-sealed plastic bags, and two cut straws—with one of those straws containing white powder residue. The detective believed that the interior of the plastic bags smelled like raw marijuana, but chose not to test the bags or straws for drug residue. He later acknowledged that all of the trash pull evidence was consistent with personal drug use and that he did not know how long the trash lingered on the curb." 175 N.E.3d at 1008. In finding that the affidavit lacked probable cause the Ohio Court of Appeals wrote:

> Ohio courts and the Sixth Circuit have repeatedly held that evidence of personal drug use recovered from a trash pull is insufficient, standing alone, to establish probable cause. See, *e.g.*, Goble, 2014-Ohio-3967, 20 N.E.3d 280, at ¶ 10, 16 (finding evidence of "several" marijuana stems and marijuana "roaches" in trash pull insufficient to establish probable cause); State v. Kelly, 8th Dist. Cuyahoga No. 91137, 2009-Ohio-957, 2009 WL 545996, ¶ 20 (finding clear plastic bag with "suspected marijuana residue" insufficient to support probable cause); Abernathy, 843 F.3d at 251 (holding that affidavit did not support probable cause where "the only proper evidence the [a]ffidavit contained * * * was the 'several' marijuana roaches and T2–laced plastic bags the police recovered from the trash pull"). "The waste products of marijuana use do not, of themselves, indicate any continuing presence of contraband in the home." United States v. Elliott, 576 F.Supp. 1579, 1581 (S.D. Ohio 1984).

Martin, 175 N.E.3d at 1013. The Ohio Court of Appeals found that the good faith exception to the exclusionary rule did not apply. As in Martin, the good faith exception to the warrant requirement,

found in United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.ed.2d 677 (1984), does not apply under the facts of this case where the affidavit lacks any indicia of probable to cause to believe that contraband would be found inside the home.

In People v. Humphrey, 202 A.D.3d 1451, 1452, 158 N.Y.S.3d 907, 908 (2022), involving an anonymous tip and two trash pulls, the Appellate Court of New York wrote:

> Even assuming, arguendo, that the information obtained from the anonymous source was not reliable, we conclude that "the evidence in defendant's trash of illegal activity, *even standing alone*, was sufficient to support a reasonable belief that drugs and/or evidence of drug sales might be found in defendant's [residence]" (Harris, 83 A.D.3d at 1222, 920 N.Y.S.2d 850 [emphasis added]; see United States v. Leonard, 884 F.3d 730, 734-735 [7th Cir. 2018]) and to support the issuance of the search warrant. "While one search turning up [narcotics] in the trash might be a fluke, two indicate a trend. Whether it be a particularly large quantity of drugs ... or multiple positive tests of different trash pulls within a fairly short time, both tend to 'suggest[ ] repeated and ongoing drug activity in the residence' " (Leonard, 884 F.3d at 734, quoting United States v. Abernathy, 843 F.3d 243, 255 [6th Cir. 2016]).

Although the federal and state courts differ on whether and under what circumstances items found pursuant to a warrantless trash pull establish probable cause to issue a search warrant for the home, the decision in the present case by the South Carolina Supreme Court on this important Fourth Amendment issue conflicts even with the cases that appear to stand for the proposition that evidence obtained from a single trash pull can, standing alone, establish probable cause to search the home. The majority of courts addressing the trash pull issue require some combination of bare minimum common factors in order to find probable cause to support a search warrant of a home. These bare minimum factors include a great volume of evidence found in the trash including drug residue and packaging that clearly indicates illegal drug activity or a smaller amount of evidence found during multiple trash pulls or a smaller amount of evidence found during a single trash pull combined with some other additional corroboration or indication that drugs would be found inside

the home. The affidavit in support of the search warrant in the present case fails to include the bare minimum common factors required by the majority of state and federal courts.

The affidavit provides:

> Det. Sawyer received complaints of short-term traffic at 462 Morgan St NW that is consistent with the sale of narcotics. On April 18, 2011 Det. Medlin coordinated with Bill Martin, Solid Waste Supervisor with the Aiken Department of Public Works, to collect trash from 462 Morgan St NW. Mr. Martin did so on Monday, April 18, 2011, which is the normal trash collection day for that residence. Mr. Martin found the can and contents at the curb beside the driveway in a manner consistent with the trash being ready for collection. Mr. Martin brought the can and the contents to Det. Medlin at the ADPS headquarters. Det. Medlin and Det. Sawyer searched the contents of the can and found the following items: 1 – the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2- numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3 – empty cigar tube wrappers; 4 – cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly;) 5 – mail addressed to 462 Morgan St. NW Aiken SC. Based on my experience and training, the items listed indicate the use and repackaging of narcotics for resale. Detective Royster, a certified marijuana analyst, tested the plant material found in the trash and confirmed it to be marijuana. This officer verily believes that probable cause exists as to the presence of narcotics at this residence. See Attachment B for photographs of the items found. (Exhibit #3 attached).

App. 73.

The single trash pull in the present case was done after officers received, "complaints of short-term traffic at 462 Morgan St. NW that is consistent with the sale of narcotics." The complaints were anonymous and not corroborated by an independent investigation other than the single trash pull. In seeking the search warrant the officer failed to provide the magistrate with a time frame for the anonymous complaints of short-term traffic. The affidavit in support of the search warrant does not include information about a tip that drugs were inside the home or that drugs were being sold from the home or any specific information about what kind of drugs, how

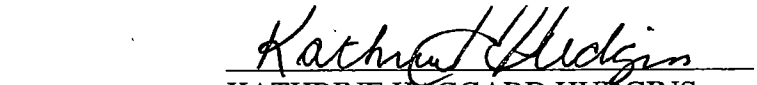
any other drug would be found in the home. The affidavit in support of the search warrant lacked probable cause.

The federal circuit courts of appeals are split on whether drugs found in a trash pull, standing alone, are sufficient to establish probable cause to search the home. The state courts of appeals, like the federal courts of appeals, differ on whether and under what circumstances items found pursuant to a warrantless trash pull establish probable cause to search a home. The present case presents this Court with the opportunity to address the split and clarify what the Fourth Amendment requires for probable cause to search a home based on a trash pull.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that copies of the petition for writ of certiorari and appendix in this case have been served upon opposing counsel for Respondent, the State of South Carolina, William M. Blitch, Jr., by mailing copies in envelopes properly addressed with postage prepaid to the Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211 on this 29th day of April, 2022.

Kathrine H. Hudgins
Counsel of Record

SUBSCRIBED AND SWORN TO before me
this 29th day of April, 2022.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: September 30, 2029.