[Cite as *State v. Thompson*, 2021-Ohio-3390.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. 19CA3696
v.	:	
CARLOS[1] D. THOMPSON,	:	DECISION & JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Derek A. Farmer, Gahanna, Ohio, for appellant.

Jeffrey C. Marks, Ross County Prosecuting Attorney, and Pamela C. Wells, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:9-15-21
ABELE, J.

{¶1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. Carlos D. Thompson, defendant below and appellant herein, assigns the following errors for review:

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[1] The record contains inconsistent spellings of appellant's first name. This opinion uses the spelling that appears on the trial court's judgment of conviction and sentence unless directly quoting from the record.

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRORED [SIC] TO THE PREJUDICE OF MR. THOMPSON WHEN IT FAILED TO SUPPRESS ALL EVIDENCE INCLUDING STATEMENTS WHICH RESULTED FROM THE SEARCH OF HIS ARCH STREET RESIDENCE WHERE BOTH THE SEARCH WARRANT AFFIDAVIT AND SEARCH WARRANT ITSELF WERE DEFECTIVE IN THAT THEY DID NOT MEET PARTICULARITY OR PROBABLE CAUSE REQUIREMENTS OF THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION AND ART. I, SECTION 14 OF THE OHIO CONSTITUTION."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRORED [SIC] TO THE PREJUDICE OF MR. THOMPSON WHEN IT FAILED TO DISCLOSE THE NAMES OF ALLEGED INFORMANTS MENTIONED IN THE SEARCH WARRANT AFFIDAVIT IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES' [SIC] CONSTITUTION AND ARTICLE I, SECTION 10 AND 16 OF THE OHIO CONSTITUTION."

THIRD ASSIGNMENT OF ERROR:

"MR. THOMPSON'S CONVICTION WAS MADE AGAINST THE MANIFEST WEIGHT IN VIOLATION OF THE 14TH AMENDMENT TO THE U.S. CONSTITUTION AND ITS OHIO COUNTERPART."

{¶2} On May 16, 2018, Chillicothe Police Detective Derek Wallace applied for a warrant to search appellant's residence. Wallace averred the following in an affidavit attached to the search warrant:

> Over the past several months, Detectives with the Chillicothe Police Department have been conducting an investigation involving Carlo D. Thompson. Detectives received information that Carlo

> Thompson was bringing in drugs into the City of Chillicothe and distributing the drugs to different dealers throughout the City of Chillicothe and Ross County.
>
> Detectives first received information from a reliable confidential informant, who has proved [sic] information in the past that was proven truthful. This CI also was able to make several cases for detectives that lead [sic] to successful prosecuted cases in the Ross County Courts. This CI proved [sic] information to detectives that Carlo Thompson was bringing in drugs from Dayton, Cincinnatti [sic] and Columbus areas, to his home on Arch St. This CI provided information that the CI assisted in helping Carlo Thompson acquire a "Kilo Press" that was delivered to his home by the CI after it was made. The CI advised this was to assist Carlo Thompson in "cutting" his dope and then pressing it back into "Kilos" to distribute. The CI was also able to provide information that Carlo Thompson was using "rental" cars to drive and pick up the dope and bring it back to Chillicothe. The CI also advised they [sic] had purchased drugs from Carlo Thompson in the past but currently owed money to Carlo Thompson from a prior deal. The CI advised Carlo Thompson always has drugs in the home.
>
> Detectives were able to obtain Wire Money Transfer records involving Carlo Thompson, and noticed a large amount of money transfers to different persons in both Dayton and Cincinnatti [sic]. This confirmed the information provided by the CI. Detectives know this is a common way for drug traffickers to transfer money back and fourth [sic].
>
> Detectives were able to speak with another reliable confidential source, who has proved [sic] information in the past that was proven truthful. This CS advised that Carlo Thompson and his wife, Adrian Thompson, just picked up a shipment of

> Cocaine and Crack, on 05/11/2018. The CS advised that Adrian Thompson traveled to Dayton and meet [sic] with her supplier to pick up the Cocaine and Crack. This CS was able to provide information about a sale that was made on 5/12/18 to a known dealer that was supplied by Carlo and Adrian Thompson. The CS was able to make a phone call to the suspect, who confirmed the purchase of drugs from Carlo and Adrian. The CS advised there is always drugs inside the home and that Carlo and Adrian never go with out [sic] having drugs inside the home. The CS advised Carlo Thompson has a large K9 in the home along with guns.
>
> Detectives noted there is a Black Dodge Magnum that is at the home, that is driven and owned by Adrian and Carlo Thompson. Detectives noticed there is a detached garage at the rear of the home. There is also surveillance cameras around the home. There is also a blue van that belongs to the Thompson's [sic] and has Carlo's painting company emblem on it.
>
> A check of Carlo Thompson CCH found the following: Trafficking in Drugs, Agg [sic] Trafficking in Drugs, Robbery, Kidnapping, Felonious Assault.

{¶3} The affidavit stated that all of the foregoing circumstances gave officers probable cause to believe that a search of appellant's residence would uncover evidence of drug trafficking, drug possession, drug paraphernalia involving cocaine, crack, or any other controlled substance or drug of abuse.

{¶4} A judge granted the application for a search warrant. The search warrant authorized a search for

> evidence of the commission of the criminal offenses of Trafficking in Drugs, * * * Possession of Controlled Substances, * * * Drug Paraphernalia Offenses * * * Cocaine and Crack, or any other controlled substance of abuse, * * * including residue thereof; drug abuse instrument * * * ; drug paraphernalia * * * ; [and] any records, ledgers, or documents, or records of the same representing the proceeds from the commission of such criminal offenses.

{¶5} When executing the search warrant, law enforcement officers discovered cash, heroin, and psilocyn in the master bedroom, along with financial documents and mail bearing appellant's name. Officers also discovered weapons in the basement of the residence.

{¶6} A Ross County Grand Jury subsequently returned an indictment that charged appellant with four felony offenses: (1) possession of heroin in an amount equal to or exceeding one hundred grams, in violation of R.C. 2925.11, with a major drug offender specification;[2] (2) aggravated possession of drugs (psilocyn), in violation of R.C. 2925.11; and (3) two counts of having weapons while under disability, in violation of R.C. 2923.13.

{¶7} On January 4, 2019, appellant filed a motion to suppress the evidence uncovered during the search of his

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[2] R.C. 2925.03(C)(6)(g) states that an "offender is a major drug offender" "[i]f the amount of [heroin] involved equals or exceeds * * * one hundred grams."

residence. Appellant contended that (1) the search warrant was overbroad and failed to be sufficiently particularized, (2) the search-warrant affidavit failed to provide a basis of knowledge for the confidential informant and the confidential source, and (3) the affidavit did not provide a time frame for the allegations.

{¶8} On February 27, 2019, the trial court held a hearing to consider appellant's suppression motion. Shortly after the hearing, the trial court overruled appellant's motion.

{¶9} On September 24 and 25, 2019, the trial court held a jury trial. Chillicothe Police Detective Ben Rhoads testified that he searched the master bedroom in appellant's residence and the first item he discovered was a mason jar sitting beside the bed that appeared to have a "dried substance that looked like mushrooms." He suspected the jar contained psychedelic mushrooms. Rhoads also located several documents in the bedroom, such as bank statements, that contained appellant's and his wife's names.

{¶10} Detective Jason Gannon testified that he searched the basement and bedroom and found a small caliber handgun in the basement.

{¶11} Detective Wallace testified that he helped search the master bedroom and inside the bedroom, he found a safe bolted to

the floor. Inside the safe, Wallace recovered a black bag that contained (1) clear bags that held a brown, powdery substance, (2) a digital scale, and (3) mail addressed to appellant. Detective Wallace indicated that the safe also contained Ziploc bags and approximately $3,000 in cash. Wallace stated that, in addition to the items discovered in the safe, he found two more bags of brown powder in a drawer that contained men's underwear. Wallace further explained that while he searched the bedroom, Detective Gannon called him to the basement. Wallace reported that Gannon discovered another safe that contained two handguns and ammunition.

{¶12} Detective Wallace also testified that, during the search of the house, appellant arrived on the scene and "basically said that everything in the house was his." Wallace stated that before appellant's statement, the detective had not informed appellant about the items that the officers had discovered during the search. The detective explained that, after appellant made the statement, the detective advised appellant of his *Miranda* rights. Afterwards, appellant and the detective spoke. The detective informed appellant that he "had to be more specific than everything is mine." Appellant then stated that "there was * * the bag of heroin, two bags of heroin in his underwear drawer," and cash. The detective asked

appellant about the weapons found in the residence, and appellant indicated that appellant's wife "had purchased them for [appellant] as protection."

{¶13} Pamela Farley, a forensic scientist with the Bureau of Criminal Investigation, stated that she tested the items suspected to be controlled substances found in appellant's residence. Farley's testing revealed that the items consisted of (1) 5.8 grams of psilocin, (2) 71.82 grams of heroin and fentanyl, and (3) 37.99 grams of heroin and fentanyl. After Farley's testimony, the state rested.

{¶14} Appellant presented testimony from one witness: his son, Donte Thompson. Donte stated that appellant drives a blue van with a sticker on the side that contains appellant's name and phone number. Donte explained that appellant works as a painter. After Donte's testimony, appellant rested.

{¶15} After deliberation, the jury found appellant guilty of count one, but could not reach a verdict on the remaining counts. After the court declared a mistrial on counts two, three, and four, the state dismissed those counts.

{¶16} On October 10, 2019, the trial court sentenced appellant to serve 11 years in prison.[3] This appeal followed.

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[3] We note that although the trial court's judgment entry does not mention the major drug offender specification, the

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{¶17} In his first assignment of error, appellant asserts that the trial court erred by denying his motion to suppress the evidence discovered during the search of his residence. Appellant contends that the trial court should have suppressed the evidence for two primary reasons: (1) the search warrant failed to particularly describe the items to be searched and seized; and (2) the search-warrant affidavit failed to establish probable cause to believe that a search of appellant's residence would uncover the evidence sought.

{¶18} Appellant first argues that the search warrant fails to describe the items to be searched and seized with adequate particularity. In particular, appellant claims that the search warrant contains a "laundry list" that allowed "an unlimited search for not just crack or cocaine, but heroin and any controlled substances or paraphernalia along with any evidence

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jury's verdict form finding appellant guilty of count one includes the language of the specification, i.e., "we do * * * find that the amount of heroin possessed equaled or exceeded 100 grams." Furthermore, as we recently determined in *State v. Barnes*, 4th Dist. Ross No. 19CA3687, 2020-Ohio-3943, 2020 WL 4476609, ¶ 38, "nothing [appears to] require[] the trial court to include a specific determination in the sentencing entry regarding a defendant's classification as a major drug offender."

of other violations of Ohio drug laws." Appellant thus contends that because the search warrant failed to describe the items with particularity and is overbroad, the search warrant is constitutionally defective.

{¶19} Next, appellant claims that the search-warrant affidavit fails to establish probable cause to search appellant's residence. In particular, appellant asserts that the allegations set forth in the search-warrant affidavit are too conclusory, too stale, or too unreliable to establish probable cause.

A

STANDARD OF REVIEW

{¶20} Appellate review of a trial court's ruling on a motion to suppress evidence involves a mixed question of law and fact. *E.g., State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, ¶ 32; *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8; *State v. Moore*, 2013-Ohio-5506, 5 N.E.3d 41 (4th Dist.), ¶ 7. Appellate courts thus "'must accept the trial court's findings of fact if they are supported by competent, credible evidence.'" *State v. Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, ¶ 12, quoting *Burnside* at ¶ 8. Accepting those facts as true, reviewing courts "'independently determine as a matter of law, without deference

to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.'" *Id.*, quoting *Burnside* at ¶ 8.

B

FOURTH AMENDMENT PRINCIPLES

{¶21} The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

{¶22} Article I, Section 14 of the Ohio Constitution contains nearly identical language and provides the same protection as the Fourth Amendment. *E.g., State v. Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201, 96 N.E.3d 262, ¶ 16, citing *State v. Jones*, 143 Ohio St.3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 12; *accord State v. Taylor*, 4th Dist. Lawrence No. 15CA12, 2016-Ohio-2781, 2016 WL 1734084, ¶ 31; *State v. Eatmon*, 4th Dist. Scioto No. 12CA3498, 2013-Ohio-4812, 2013 WL 5914938, ¶ 11.

{¶23} "The 'basic purpose of [the Fourth] Amendment' * * * 'is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.'" *Carpenter v.*

United States, ___ U.S. ___, 138 S.Ct. 2206, 2213, 201 L.Ed.2d 507 (2018); *accord Castagnola* at ¶ 33, quoting *Wolf v. Colorado*, 338 U.S. 25, 27, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949), overruled on other grounds, *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) ("'The security of one's privacy against arbitrary intrusion by the police * * * is at the core of the Fourth Amendment.'"). Moreover, "[i]n none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home." *Payton v. New York*, 445 U.S. 573, 589, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); *accord Florida v. Jardines*, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."). "'At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."'" *Collins v. Virginia*, ___ U.S. ___, 138 S.Ct. 1663, 1670, 201 L.Ed.2d 9 (2018), quoting *Jardines*, 569 U.S. at 6, quoting *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961)). Accordingly, "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton*, 445 U.S. at 590; *accord State v. Maranger*, 2018-Ohio-1425, 110 N.Ed.3d 895,

¶ 20 (2d Dist.) (citations omitted) ("[u]nless a recognized exception applies, the Fourth Amendment * * * mandates that police obtain a warrant based on probable cause in order to effectuate a lawful search.").[4]

C

STANDARD FOR ISSUING SEARCH WARRANT

{¶24} A search warrant may only be issued (1) upon probable cause, (2) supported by oath or affirmation, and (3) particularly describing the place to be searched and the person and/or things to be seized. *See King*, 563 U.S. at 459 (explaining that the Fourth Amendment allows warrant to issue only when "probable cause is properly established and the scope of the authorized search is set out with particularity"); *accord* R.C. 2933.23; Crim.R. 41. "The essential protection of the warrant requirement of the Fourth Amendment * * * is in 'requiring that [the usual inferences which reasonable men draw from evidence] be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often

[4] We hasten to add that "a police officer not armed with a warrant may approach a home and knock, precisely because that is 'no more than any private citizen might do.'" *Jardines*, 569 U.S. at 8, 133 S.Ct. 1409, quoting *Kentucky v. King*, 563 U.S. 452, 469, 131 S.Ct. 1849, 1862, 179 L.Ed.2d 865 (2011) (holding that although officers entitled to approach home as any ordinary citizen might, officers may not approach home armed with trained narcotics dog for doing so constitutes an unreasonable search).

competitive enterprise of ferreting out crime.'" *Illinois v. Gates*, 462 U.S. 213, 240, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), quoting *Johnson v. United States*, 333 U.S. 10, 13-14, 68 S.Ct. 367, 92 L.Ed. 436 (1948). Accordingly, a search-warrant "affidavit must set forth particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation of the matter." *Franks v. Delaware*, 438 U.S. 154, 165, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). Moreover, the facts and circumstances set forth in the "affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause." *Gates*, 462 U.S. at 239. A search-warrant affidavit need not, however, comply with any "'[t]echnical requirements of elaborate specificity.'" *Id.* at 235, quoting *Ventresca*, 380 U.S. 102, 108, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965). Instead,

> [i]n determining the sufficiency of probable cause in an affidavit submitted in support of a search warrant, "[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."

State v. George, 45 Ohio St.3d 325, 544 N.E.2d 640 (1989), paragraph one of the syllabus, quoting *Gates*, 462 U.S. at 238-

239; *accord Castagnola* at ¶ 35 ("[T]he evidence must be sufficient for the magistrate to conclude that there is a fair probability that evidence of a crime will be found in a particular place.").

{¶25} A search-warrant affidavit thus must contain "[s]ufficient information" to allow a magistrate or judge to conclude that probable cause to search exists. *Gates*, 462 U.S. at 239. A magistrate or a judge cannot simply ratify "the bare conclusions of others." *Id.* Therefore, "[i]n order to ensure that such an abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued." *Id.*

{¶26} A search warrant issued after a magistrate or judge has independently determined that probable cause to search exists will enjoy a presumption of validity. *State v. Jones*, 90 Ohio St.3d 403, 412, 739 N.E.2d 300 (2000), citing *State v. Roberts*, 62 Ohio St.2d 170, 178, 405 N.E.2d 247 (1980); *State v. Parks*, 4th Dist. Ross No. 1306, 1987 WL 16567 (Sept. 3, 1987), *4; *accord Franks v. Delaware*, 438 U.S. 154, 171, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) (noting that search-warrant affidavit presumed valid). Thus, "'the burden is on a defendant who seeks to suppress evidence obtained under a regularly issued warrant to show the want of probable cause.'" *United States v. de la*

Fuente, 548 F.2d 528, 534 (5th Cir.1977), quoting *Batten v. United States*, 188 F.2d 75, 77 (5 Cir.1951); *accord Xenia v. Wallace*, 37 Ohio St.3d 216, 218, 524 N.E.2d 889 (1988), citing *de la Fuente* (stating that "[t]he burden of initially establishing whether a search or seizure was authorized by a warrant is on the party challenging the legality of the search or seizure"); *State v. Hobbs*, 4th Dist. Adams No. 17CA1054, 2018-Ohio-4059, 2018 WL 4868743, ¶ 32 ; *State v. Wallace*, 2012-Ohio-6270, 986 N.E.2d 498, ¶ 27 (7th Dist.) (explaining that a defendant who "attacks the validity of a search conducted under a warrant" carries "the burden of proof * * * to establish that evidence obtained pursuant to the warrant should be suppressed").

{¶27} A court that is reviewing a defendant's challenge to a probable-cause determination in a search warrant must "accord great deference to the magistrate's" probable-cause determination and must resolve "doubtful or marginal cases" "in favor of upholding the warrant." *George*, paragraph two of the syllabus. Indeed, any "after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of de novo review." *Gates*, 462 U.S. at 236. Thus, a reviewing court may not "substitute its judgment for that of the magistrate by conducting a de novo determination as to whether the affidavit

contains sufficient probable cause upon which that court would issue the search warrant." *George* at paragraph two of the syllabus. Instead, a reviewing court's duty "is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." *Id.*; *accord Gates*, 462 U.S. at 238-39; *Castagnola* at ¶ 35. Additionally, reviewing courts must refrain from interpreting search-warrant affidavits "'in a hypertechnical, rather than a commonsense, manner.'" *Gates*, 462 U.S. at 236, quoting *United State v. Ventresca*, 380 U.S. 102, 109, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965). Nevertheless, "a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable-cause determination reflected an improper analysis of the totality of the circumstances, or because the form of the warrant was improper in some respect." *United States v. Leon*, 468 U.S. 897, 915, 104 S.Ct. 3405, 3416-17, 82 L.Ed.2d 677 (1984), citing *Gates*, 462 U.S. at 238-239; *accord State v. Jones*, 143 Ohio St.3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 13 (stating that "reviewing courts must examine the totality of the circumstances").

1

Particularity

{¶28} The Fourth Amendment requires a search warrant to particularly describe "'the place to be searched' and 'the persons or things to be seized.'" *United States v. Grubbs*, 547 U.S. 90, 97, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006). A search is "clearly 'unreasonable' under the Fourth Amendment" when the search warrant fails to particularly describe the place to be searched or the persons or things to be seized. *Groh v. Ramirez*, 540 U.S. 551, 563, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004); *accord Castagnola* at ¶ 89, quoting *Massachusetts v. Sheppard*, 468 U.S. 981, 988, 104 S.Ct. 3424, 82 L.Ed.2d 737, fn. 5 (1984) (stating that "'a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional'").

{¶29} The purpose of requiring search warrants to "particularly describe the place to be searched and the persons or things to be seized" is to prevent "wide-ranging exploratory searches." *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987); *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 91 S.Ct. 2022, 2038, 29 L.Ed.2d 564 (1971) (explaining that search warrant must be sufficiently particular in describing the items to be seized to prevent a "general, exploratory rummaging in a person's belongings"). Furthermore, "'[t]he requirement that warrants shall particularly describe

the things to be seized * * * prevents the seizure of one thing under a warrant describing another.'" *Stanford v. Texas*, 379 U.S. 476, 485, 85 S.Ct. 506, 13 L.Ed.2d 431 (1965), quoting *Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 72 L.Ed.2d 231 (1927). "'[L]imiting the authorization to search to the specific * * * things for which there is probable cause to search * * * ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.'" *State v. Kinney*, 83 Ohio St.3d 85, 91, 698 N.E.2d 49 (1998), quoting *Garrison*, 480 U.S. at 84. Accordingly, a search warrant must be limited "'to the specific areas and things for which there is probable cause to search'" and "'carefully tailored to its justifications.'" *Id.*, quoting *Garrison*, 480 U.S. at 84.

{¶30} Courts have identified two primary considerations when evaluating whether a search warrant particularly describes the place to be searched and the person or items to be seized. "The first issue is whether the warrant provides sufficient information to 'guide and control' the judgment of the executing officer in what to seize." *Castagnola* at ¶ 79, quoting *United States v. Upham*, 168 F.3d 532, 535 (1st Cir.1999). "Warrants that fail to describe the items to be seized with as much

specificity as the government's knowledge and the circumstances allow are 'invalidated by their substantial failure to specify as nearly as possible the distinguishing characteristics of the goods to be seized.'" *Id.* at ¶ 80, quoting *United States v. Fuccillo*, 808 F.2d 173, 176 (1st Cir.1987). A search warrant must, therefore, clearly state "the specific evidence sought" and must leave "'nothing * * * to the discretion of the officer executing the warrant.'" *Id.* at ¶ 89, quoting *Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 72 L.Ed.2d 231 (1927).

{¶31} "The second issue is whether the category as specified is too broad in that it includes items that should not be seized." *Id.* at ¶ 79, citing *United States v. Kow*, 58 F.3d 423, 427 (9th Cir.1995). A search warrant that includes broad categories of items to be seized may nevertheless be valid when the description is "'"as specific as the circumstances and the nature of the activity under investigation permit."'" *Guest v. Leis*, 255 F.3d 325, 336 (6th Cir.2001), quoting *United States v. Henson*, 848 F.2d 1374, 1383 (6th Cir.1988), quoting *United States v. Blum*, 753 F.2d 999, 1001 (11th Cir.1985); *accord Castagnola* at ¶ 80.

{¶32} We hasten to add, however, that "[n]ot all broad and generic descriptions of things to be seized are invalid under the Fourth Amendment." *State v. Armstead*, 9th Dist. Medina No.

06CA0050-M, 2007-Ohio-1898, 2007 WL 1174655, ¶ 10. Broad and generic descriptions are valid if they are "'as specific as circumstances and nature of the activity under investigation permit' and enables the searchers to identify what they are authorized to seize." *Id.*, quoting *United States v. Harris*, 903 F.2d 770, 775 (10th Cir.1990). "[T]he key inquiry is whether the warrants could reasonably have described the items to be seized more precisely than they did." *State v. Benner*, 40 Ohio St.3d 301, 307, 533 N.E.2d 701 (1988).

{¶33} Moreover, even if a court determines that the list of items to be searched and seized pursuant to a warrant is overbroad, "[t]he parts of a warrant are severable." Katz, Ohio Practice Criminal Law, Section 9:17 (3d ed.). Thus, courts need not necessarily invalidate a search warrant that fails to describe all items with sufficient particularity, or that includes an overly-broad category of items, when other parts of the warrant describe the remaining items to be searched with sufficient particularity. *State v. Clark*, 4th Dist. Vinton No. 92 CA 485, 1993 WL 216319 (June 22, 1993), *6, citing 2 LaFave, Search and Seizure (2 Ed.1987) 257 et seq., Section 4.6(f), and quoting *Aday v. Superior Court*, 55 Cal.2d 789, 796, 363 P.2d 47 (1961); *accord* Katz, supra (stating that "overbroad language will not result in suppression of items properly specified or

found in plain view while searching for items properly specified"). Instead, "'"[t]he invalid portions of the warrant are severable from"'" the invalid portions. *Clark* at *6, quoting 2 LaFave, Search and Seizure 257 et seq., Section 4.6(f) (2 Ed.1987), quoting *Aday*, 55 Cal.2d at 796. "'[I]t would be harsh medicine indeed if a warrant which was issued on probable cause and which did particularly describe certain items were to be invalidated in toto merely because the affiant and magistrate erred in seeking and permitting a search for other items as well.'" *Id.* at *6, quoting 2 LaFave, Search and Seizure 257 et seq., Section 4.6(f) (2 Ed.1987); *see generally Cassady v. Goering*, 567 F.3d 628, 649 (10th Cir.2009) (McConnell, J., dissenting), quoting *United States v. Sells*, 463 F.3d 1148, 1155 (10th Cir.2006) (stating that "'every federal court to consider the issue has adopted the doctrine of severance, whereby valid portions of a warrant are severed from the invalid portions and only materials seized under the authority of the valid portions, or lawfully seized while executing the valid portions, are admissible'"). Thus, "[i]tems that were not described with the requisite particularity in the warrant should be suppressed, but suppression of all of the fruits of the search is hardly consistent with the purposes underlying exclusion." *United States v. Cook*, 657 F.2d 730, 735 (5th Cir.1981). Suppressing

"only the items improperly described prohibits the Government from profiting from its own wrong and removes the court from considering illegally obtained evidence." *Id.* Additionally, suppressing "only those items that were not particularly described serves as an effective deterrent to those in the Government who would be tempted to secure a warrant without the necessary description." *Id.*

{¶34} Additionally, Ohio courts have been unwilling to invalidate a search warrant in toto when the warrant includes a "catch-all provision" such as "any other controlled substance or drug of abuse." Katz, Ohio Practice Criminal Law, Section 9:17 (3d ed.); *accord Benner*, 40 Ohio St.3d at 307 (stating that "a catchall phrase does not necessarily invalidate a warrant especially when accompanied by an enumeration of specific items within the general category"). Rather, "[a] catchall provision in a warrant 'must be read in conjunction with the list of particularly described items which preceded it pertaining to the crimes alleged.'" *State v. Dillard*, 173 Ohio App.3d 373, 2007-Ohio-5651, 878 N.E.2d 694, ¶ 43 (2nd Dist.), quoting *State v. Napier*, 2d Dist. Montgomery No. 17326, 1999 WL 249174, *2 (Apr. 16, 1999); *accord State v. Terrell*, 2017-Ohio-7097, 95 N.E.3d 870, ¶ 66 (2nd Dist.); *State v. Hale*, 2d Dist. Montgomery No. 23582, 2010-Ohio-2389, 2010 WL 2160873, ¶ 43.

{¶35} In *Clark*, *supra*, for example, this court concluded that the trial court was not required to suppress all evidence obtained as a result of a search warrant that included an overly-broad list of items to be searched and seized. In *Clark*, officers obtained a warrant to search the defendant's property for evidence of "[m]arijuana for use or for sale, and any books of record or monies, or currency involved in the sale of Marijuana or other controlled substances" along with the following items:

> 1. Documents, papers and handwritten lists containing the amounts of marijuana received and distributed, monies received and owed, and the names, either in full or by alias and nickname, of persons to whom marijuana was disbersed [sic].
> 2. Documents, papers and handwritten lists containing notations on the amounts of other controlled substances received and distributed, monies received and owed, and the names, either in full or by nickname and alias, of persons to whom controlled substances were disbersed [sic].
> 3. Address books, telephone bills, rolodexes, electronic telephone directories, papers and documents containing telephone numbers of possible sources of supply, co-conspirators and customers.
> 4. Cash, money orders, cashier's checks, bearer bonds, stock certificates, mutual fund records, savings account passbooks, safety deposit box keys and records, checkbooks, deeds, mortgages, trust papers and all other documentation and negotiable instruments that record monies received and disbersed [sic].
> 5. Computers, computer programs, disks, prinouts [sic] and other devices capable of storing and retrieving documents, records and financial data on the sale and distribution of controlled substances and the acquisition of assets and proceeds from the sale of controlled substances.

> 6. Passports, airline tickets and receipts, automobile rental agreements, bus tickets, toll receipts, gasoline credit card receipts, automobile titles and registrations, and other documents and records pertaining to the travel and movement of co-conspirators and others.
> 7. Photographs, photograph albums, films, slides, movies and videotapes with pictures of primary suspects, co-conspirators, sources of supply and others.
> 8. Purchase agreements, receipts, credit card slips and receipts, monthly installment statements, bills and records pertaining to the purchase and acquisition of assets and proceeds derived from the sale of controlled substances, i.e. real estate, vehicles, jewelry, stocks, bonds, mutual funds, boats and other property.
> 9. Electronic scanners, portable transmitter/receivers, walkie-talkies, telephone scramblers and "debugging" devices, and other electronic equipment used for countersurveillance and detection.
> 10. Income tax records and returns, W-2 forms, wage earning and statements, receipts and documentation pertaining to sources of income."

Id. at *1 and fn.1.

{¶36} The facts set forth in the affidavit indicated that a confidential informant had advised the requesting officer that the informant had observed "the possession, use, preparation for sale and sale of Marijuana" upon the premises to be searched. *Id.* at *1. After the search of the defendant's property, the state charged the defendant with attempted trafficking in marijuana. The defendant filed a motion to suppress the evidence discovered during the search of her residence and the

trial court overruled the defendant's motion. Following a no-contest plea, the defendant appealed.

{¶37} On appeal, the defendant claimed, in part, that probable cause did not exist to support a search of many of the items of property described in the warrant and that "the descriptions are so broadly set forth that it is in effect a prohibited general warrant." *Id.* at *5. The defendant thus asserted that the trial court should have suppressed all of the evidence obtained during the search of her residence.

{¶38} This court agreed with the defendant that "no showing of a probability of many of the enumerated items existed * * * and that it is simply speculation, unsupported by probable cause, that such items would be located in or near the described premises." *Id*. at *6. This court determined, however, that the search-warrant affidavit did, in fact, set forth probable cause to search the premises for marijuana and related items. Because the invalid portion of the warrant did not taint the entire search warrant so as to invalidate the search, we disagreed with the defendant that the trial court should have suppressed the evidence that the search warrant particularly described.

{¶39} The Ninth District Court of Appeals reached a similar conclusion in *State v. Armstead*, 9th Dist. Medina No. 06CA0050-M, 2007-Ohio-1898, 2007 WL 1174655, when the search warrant

authorized officers to search premises for "Cocaine, Crack Cocaine, and any other controlled substances or dangerous drugs," and "[a]ny other contraband" among other things. *Id.* at ¶ 5. Although the defendant asserted that including the broad categories of "any other controlled substances or dangerous drugs" and "any other contraband" invalidated the entire warrant, the appellate court disagreed. Instead, the court determined that the portions that contained the overly-broad descriptions could be severed from the remainder of the warrant that particularly described cocaine and crack cocaine. The court further noted that, during the search of the defendant's home, the officers did not discover drugs other than crack cocaine. The court thus rejected the defendant's argument that the trial court should have invalidated the entire warrant and suppressed the evidence.

{¶40} Likewise, in *State v. Casey*, 7th Dist. Mahoning No. 03-MA-159, 2004-Ohio-5789, 2004 WL 2438971, the court rejected the defendant's argument that a partially overbroad warrant invalidated the entire warrant and required the court to suppress the evidence obtained while executing the warrant. In *Casey*, the warrant authorized officers to search for, among other things, "Crack Cocaine and other drugs of abuse as defined by O.R.C. 3710.011(A)." *Id.* at ¶ 3. During the search officers

discovered crack cocaine and marijuana. After his indictment, the defendant filed a motion to suppress the evidence discovered pursuant to the search warrant. The trial court found that the warrant failed to particularly describe the items to be seized and was overbroad, thus the court suppressed the evidence. The state appealed.

{¶41} On appeal, the state asserted that the trial court wrongly determined that the search warrant failed to particularly describe the items to be seized. The appellate court concluded that "the warrant could have described the items to be seized more precisely than it did." *Id.* at ¶ 12. The court observed that the officers "only had evidence of trafficking in one type of drug, crack cocaine, yet the warrant allowed for the search of all 'drugs of abuse as defined by O.R.C. 3719.011(A).'" *Id.* at ¶ 15. The court noted that Revised Code defines the term "drugs of abuse" to include "intoxicants such as plastic cement, gasoline, anesthetic gas, and prescription medications" in addition to crack cocaine and marijuana. *Id.* Because the court believed that adding the term "drugs of abuse" transformed that part of the search warrant into "a broad and vague 'laundry list' of items to be searched for," the court concluded that the state "should have been more

particular in describing the items to be seized in the affidavit and search warrant." *Id.*

{¶42} The state alternatively argued that, even if part of the warrant did not sufficiently describe the items to be seized or was overbroad, the remainder of the warrant was valid. The state asserted that the search warrant particularly described crack cocaine and that the seizure of crack cocaine was, therefore, within the scope of the warrant. The state thus contended that the trial court should have admitted the crack cocaine into evidence as a valid seizure of an item particularly described in the warrant. The state also claimed that the trial court should have admitted the marijuana discovered while executing the search under the plain-view doctrine.

{¶43} The appellate court agreed with the state and held that the trial court should have severed the invalid part of the warrant from the valid part and admitted into evidence both the crack cocaine and marijuana. The court explained that the officers "had probable cause to expect that crack cocaine would be found on the premises," even though they "did not have the same requisite probable cause to expect to find all other drugs of abuse." *Id.* at ¶ 30. The court thus determined that the trial court "should have severed the warrant and admitted the crack cocaine." *Id.* The court additionally concluded that the

trial court should not have suppressed the marijuana because "even if the officers had only executed the valid portion of the warrant, they still would have discovered the marijuana since they would have searched for crack cocaine in the same place that the marijuana was ultimately discovered." *Id.* Consequently, the court reversed the trial court's judgment.

{¶44} In *Napier*, *supra*, the court similarly concluded that a "catch-all" provision does not invalidate a search warrant. In that case, the search warrant authorized officers to "search for various items relating to the illegal sale of alcohol, including money, records and receipts, including computer disks, documents or other items showing a possessory interest in [the residence], and any other contraband found on the premises." *Id.* at *1. While searching the residence, officers discovered cocaine inside a gym bag. The defendant filed a motion to suppress the cocaine evidence and the trial court overruled his motion. A jury later found the defendant guilty.

{¶45} The defendant appealed and asserted that "the warrant did not describe with sufficient particularity the items to be seized." *Id.* at *2. The defendant claimed that "the catch-all provision included in th[e] warrant, 'any other contraband found on the premises,' fails to provide sufficient guidance to officers executing the warrant as to what they may seize, and

permits those officers to exercise unlimited discretion in that regard." *Id.* The defendant thus asserted that the "warrant authorized a general exploratory search which is overbroad and violative of his Fourth Amendment rights." *Id.*

{¶46} The appellate court disagreed and noted that before the phrase, "any other contraband found on the premises," the warrant outlined "a list of specific, particularly described items relating to the illegal sale of alcohol." *Id.* The court determined that the "catch-all provision 'any other contraband ...' must be read in conjunction with the list of particularly described items which preceded it pertaining to the crimes alleged." *Id.* The court concluded that reading the warrant with the understanding that a list of enumerated items preceded the catch-all phrase shows that "the discretion of the officers executing this search warrant was reasonably guided and limited, and that the search warrant provided sufficient specificity regarding the items sought." *Id.* Thus the court disagreed with the defendant that the catch-all phrase "invalidate[d] the entire warrant by authorizing a constitutionally overbroad, general exploratory search which permitted officers to rummage through anything and everything and seize whatever they wanted." *Id.* Instead, the court determined that "the officers executing this warrant could identify the property being sought with

reasonable certainty." *Id.* The court additionally concluded that even if "the catch-all provision is impermissibly broad, that invalid portion of the warrant is clearly severable from the remaining valid portions." *Id.* at *3, citing LaFave, Search and Seizure, Section 4.6(f), 580–583 (1996). The court explained:

> At the time the police officers discovered the cocaine in a zippered compartment of a gym bag inside a bedroom closet, they were searching pursuant to the warrant for money and records and receipts, including computer disks, associated with the illegal sale of alcohol. They were also searching for documents or other items showing a possessory interest in [the residence]. Any of these items could have easily been hidden inside the zippered compartment of the gym bag in which the cocaine was found. Thus, at the time the officers discovered the cocaine, they were searching well within the scope of the search authorized by the warrant. Under these circumstances the officers were permitted to seize the cocaine they discovered pursuant to the plain view doctrine. *Cooledge v. New Hampshire* (1971), 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564; *State v. Waddy* (1992), 63 Ohio St.3d 424, 588 N.E.2d 819.

Id.

{¶47} Likewise, in the case at bar, even if we assume for purposes of argument that the search warrant impermissibly authorized a search for all drugs of abuse, the officers were searching a location in which the specifically enumerated items, cocaine and crack cocaine, were likely to be when they discovered the heroin. The search warrant authorized the officers to search for cocaine and crack cocaine, both of which

are capable of being secreted in various locations throughout an individual's house. *See State v. Hobbs*, 4th Dist. Adams No. 17CA1054, 2018-Ohio-4059, 2018 WL 4868743, ¶¶ 68-69 (observing that some of the places where drugs might be found include closets, chests, drawers, and containers; *State v. Workman*, 12th Dist. Clermont No. CA2016-10-065, 2017-Ohio-2802, 2017 WL 2241590, ¶ 12 (noting that small items may be "located in a multitude of spaces throughout the home"); *United States v. Garcia*, 496 F.3d 495, 498 (6th Cir.2007) (explaining that when a warrant authorizes officers to search "property for a small, easy-to-conceal item, it would be extremely difficult for [a defendant] to establish that the officers searched in places not authorized"). Thus, when officers discovered the heroin in the case sub judice, the search was well within the scope of the search authorized by the warrant. Consequently, the officers were thus authorized to seize the heroin under the plain-view doctrine. *State v. Spencer*, 4th Dist. Scioto No. 97CA2536, 1998 WL 799249, *12 (Nov. 4, 1998) (concluding that even though warrant described items to be seized too broadly, officer's seizure of item valid under plain-view doctrine).

{¶48} Moreover, we believe that the cases upon which appellant relies are distinguishable from the case at bar. *State v. Young*, 146 Ohio App.3d 245, 765 N.E.2d 938 (11th

Dist.2001), and *State v. Dalpiaz*, 151 Ohio App.3d 257, 2002-Ohio-7346, 783 N.E.2d 976 (11th Dist.).

{¶49} In *Young*, officers applied for an administrative warrant to search the defendant's home when they could not gain entry to inspect the premises to verify compliance with the Ashtabula Minimum Standards Housing Ordinance. During the administrative search, officers observed, in plain view, a plastic bag that contained .426 grams of marijuana. Based upon this discovery, officers applied for a more extensive search warrant. The search-warrant affidavit stated that, based upon the discovery of the bag of marijuana, the officer believed that the premises contained "illicit controlled substances, including * * * marijuana, cocaine, crack cocaine, heroin, * * * and/or any other controlled substance," along with "paraphernalia or pieces of equipment used for purpose(s) of drug consumption, drug packaging * * * of illicit drugs/substances," as well as cash, firearms, and other contraband. *Id.* at 250. A judge issued a search warrant that authorized a search of the premises for the items requested. A search of the premises uncovered "[n]umerous packages of marijuana * * * along with $480 in cash and cocaine." *Id.*

{¶50} The defendant filed a motion to suppress the evidence and the trial court granted appellant's motion. The court

determined that the marijuana discovered during the administrative search did not give the officers probable cause to search the premises for evidence of more extensive illegal drug activity. The state then appealed.

{¶51} On appeal, the state asserted that the officers' discovery of marijuana during the administrative search gave them probable cause to believe that additional drug-related crimes were occurring on the premises and authorized the second search. The court of appeals, however, did not agree. Instead, the court determined that the officer "used his observation of a single baggy of marijuana in an effort to go on a fishing expedition for controlled substances including cocaine, crack cocaine, heroin, LSD, and PCP." *Id.* at 255. The court further noted that, at the suppression hearing, the officer indicated that when executing a "search warrant on a drug house, it's possible to turn up one or maybe all of these items in a search of a drug house. And that's why these items are listed as they are. Because you don't find more or see more in the dining room doesn't mean you're not going to find crack cocaine or some other substance in the house." *Id.* at 255.

{¶52} The court found the officer's testimony troubling and explained:

> The implication of [the officer's] testimony is that on the basis of his observation of a single baggy of marijuana, he had determined that [the defendant's] residence was a "drug house," which conclusion was reinforced by his erroneous assumption that a "laundry list" affidavit and search warrant form had universal and omnipotent application regardless of the substantive scope of probable cause existing in a specific case.

Id. The court stated that the officer's "assumption that [the defendant's] residence was a 'drug house' was not supported by any other evidence." *Id.* The court noted that the evidence did not show that the officer had received a tip from an informant, that he had received any complaints from neighbors, that the police had observed the house, or that the police had attempted to make a controlled buy. *Id.* The court found that the officer "treated his observation of a small baggy of marijuana in [the defendant's] home as evidence of trafficking." *Id.* The court stated, however, that without any "other indicia of trafficking," the search violated the defendant's right "to be free from unreasonable searches." *Id.* at 255-256. The court determined that the search warrant thus "should have been narrowly tailored to include those items which the police could have reasonably anticipated finding on the basis of observing a single baggy of marijuana, which would have included marijuana and marijuana-related paraphernalia." *Id.* at 256. The court concluded that, without any evidence of drug trafficking, the

officers did not have probable cause to search the defendant's residence for evidence of drug trafficking. The court thus affirmed the trial court's decision to grant the motion to suppress evidence.

{¶53} In *Dalpiaz*, officers executed a search warrant and discovered 43 large bags of marijuana, one small bag of marijuana, and a large quantity of weapons and ammunition. The officers later sought a second search warrant and discovered 123 pounds of marijuana and more weapons. The trial court overruled the defendant's motion to suppress evidence and the defendant pleaded no-contest to the charges. The trial court found the defendant guilty and he appealed.

{¶54} On appeal, the defendant argued, in part, that the search warrants failed to describe the property to be seized with sufficient particularity. The appellate court agreed and noted that officers had reason to believe that the defendant cultivated marijuana, yet the warrant did not list marijuana as an item to be seized. Instead, the warrant authorized officers "to seize '[a]ny drug processing, making, manufacturing, producing, transporting, delivering, processing, storing, distributing, selling, using, or other-wise dealing with a controlled substance, and all other fruits and instrumentalities of the crime at the present time unknown.'" *Id.* at ¶ 29. The

warrant further authorized officers to seize "'any and all evidence pertaining to violations of the drug laws of the State of Ohio; Ohio Revised Code, and all other fruits and instrumentalities of the crime at the present time unknown.'" *Id.* The court determined that the search warrant "could reasonably have described the items to be seized more precisely than it did." *Id.* at ¶ 30. The court noted that rather than "narrowly tailoring the search warrants to provide for the seizure of items related to the cultivation and sale of marijuana, the scope of the warrant was so broad that it permitted police officers to seize any evidence relating to a violation of the drug laws of Ohio." *Id.* The court concluded that "this laundry list approach to search warrants [is] an unacceptable impingement upon an individual's Fourth Amendment rights." *Id.* The court thus determined that the trial court erred by failing to suppress the evidence.

{¶55} We believe that the facts in the case at bar significantly differ from *Young* and *Dalpiaz*. In the case sub judice, the search-warrant affidavit contains numerous facts to support the officer's belief that appellant engaged in drug-related activity, including drug trafficking. The affidavit states that a reliable confidential informant informed officers that appellant "was bringing in drugs" from Dayton, Cincinnati,

and Columbus. The CI also stated that the CI helped appellant obtain a "Kilo Press" to help cut "his dope and then press[] it back into 'Kilos' to distribute." The affidavit does not indicate that the CI referenced a specific drug. Additionally, the affidavit recited that a confidential source advised officers that appellant and his wife picked up a shipment of cocaine and crack.

{¶56} We observe that the search-warrant affidavit in the case at bar specifically references cocaine and crack, as well as generally references "drugs" and "dope." Unlike the officers in *Young* and *Dalpiaz*, the officer in the case at bar did not request permission to search for and seize items not included in the search-warrant affidavit. The officer did not base his request to search appellant's residence solely upon the discovery of a single bag of marijuana or solely upon a belief that appellant was engaged in cultivating marijuana. Instead, the officer recited information gained from a confidential informant and a confidential source that indicated appellant engaged in drug-related crimes, including trafficking in cocaine or crack cocaine. *See generally State v. Pustelnik*, 8th Dist. Cuyahoga No. 91779, 2009-Ohio-3458, 2009 WL 2054313, ¶ 44 (determining that search warrant not overbroad for including "[m]arijuana, or other illegal drugs and/or controlled

substances, instruments and paraphernalia" when search-warrant "affidavit indicated that defendant sold marijuana, cocaine, and Oxycontin, not just a single drug"); *State v. Brown*, 9th Dist. Summit No. 23076, 2006-Ohio-6749, 2006 WL 3734300, ¶ 15 (rejecting defendant's argument that search warrant invalid for authorizing search and seizure of "[a]ny and all narcotics including but not limited to marijuana, a schedule 1 controlled substance" when search-warrant affidavit indicated that defendant involved in drug activity but the type or types of drugs involved were not known).

{¶57} Appellant also appears to assert that the search-warrant affidavit did not mention most of the items listed in the warrant and that the search warrant is unduly overbroad. However, the items listed in the search-warrant affidavit closely mirrors the items listed in the warrant. The search-warrant affidavit stated that the officer "has good cause to believe and does believe that" appellant's residence contains "Cocaine and Crack, or any other controlled substance or drug of abuse." The warrant authorized officers to search for "Cocaine and Crack, or any other controlled substance or drug of abuse."

{¶58} Therefore, we disagree with appellant that the search warrant is invalid due to lack of particularity.

2

Probable Cause

{¶59} Appellant next asserts that the search-warrant affidavit fails to establish that officers possessed probable cause to search appellant's residence. Appellant raises a hodgepodge of arguments, but essentially contends that the facts set forth in the affidavit are too conclusory, too stale, or too unreliable to establish probable cause to search.

{¶60} "Probable cause [to search] exists when 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *United States v. Grubbs*, 547 U.S. 90, 95, 126 S.Ct. 1494, 1499, 164 L.Ed.2d 195 (2006), quoting *Gates*, 462 U.S. at 238. While the term "probable cause" may elude "precise definition," it generally means "'"a reasonable ground for belief * * *."'" *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S.Ct. 795, 800, 157 L.Ed.2d 769, (2003), quoting *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 93 L.Ed. 1879, 93 L.Ed.2d 1879 (1949), quoting *Carroll v. United States*, 267 U.S. 132, 161, 45 S.Ct. 280, 69 L.Ed. 543 (1925); *State v. Moore*, 90 Ohio St.3d 47, 49, 734 N.E.2d 804 (2000).

{¶61} "'Probable cause does not require the same type of specific evidence of each element of the offense as would be

needed to support a conviction.'" *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104, ¶ 73, quoting *Adams v. Williams*, 407 U.S. 143, 149, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972). Instead, probable cause requires "'only the probability, and not a prima facie showing, of criminal activity.'" *Gates*, 462 U.S. at 235, quoting *Spinelli v. United States*, 393 U.S. 410, 419, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). Consequently, "[p]robable cause 'is not a high bar.'" *District of Columbia v. Wesby*, ___ U.S. ___, 138 S.Ct. 577, 199 L.Ed.2d 453, quoting *Kaley v. United States*, 571 U.S. 320, 338, 134 S.Ct. 1090, 188 L.Ed.2d 46 (2014).

{¶62} Furthermore, "probable cause is a fluid concept-turning on the assessment of probabilities in particular factual contexts-not readily, or even usefully, reduced to a neat set of legal rules." *Gates*, 462 U.S. at 232. Courts must eschew "rigid rules, bright-line tests, and mechanistic inquiries" and instead employ "a more flexible, all-things-considered approach." *Florida v. Harris*, 568 U.S. 237, 243-44, 133 S.Ct. 1050, 185 L.Ed.2d 61 (2013). Thus, the existence of probable cause depends upon the totality of the circumstances and "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Gates*, 462 U.S. at 231, quoting *Brinegar v. United States*, 338

U.S. 160, 175, 69 S.Ct. 1302, 93 L.Ed. 1879, 93 L.Ed.2d 1879 (1949). In other words, probable cause "'must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'" *Id.* at 232, quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

{¶63} Furthermore, "[s]pecial considerations to be taken into account when determining whether to issue a search warrant include how stale the information relied upon is, when the facts relied upon occurred, and whether there is a nexus between the alleged crime, the object to be seized, and the place to be searched." *Castagnola* at ¶ 34 (citation omitted).

a

Too Conclusory

{¶64} In the case at bar, appellant challenges the following statement contained in the search-warrant affidavit as too conclusory to give rise to probable cause:

> Over the past several months Detectives and the Chillicothe Police Department have been conducting an investigation involving Carlo D. Thompson. Detectives received information that Carlo Thompson was bringing in drugs into the City of Chillicothe and distributing the drugs throughout the City of Chillicothe and Ross County.

Appellant contends that these statements "contribute[] nothing to support a finding of probable cause to search [appellant's]

residence." He alleges that the statements merely "make[] a conclusory allegation that detectives 'received information' about some widespread drug distribution operation [appellant] was supposedly engaged in."

{¶65} We recognize that "conclusory statements do not provide an issuing judge with a substantial basis for determining the existence of probable cause, and instead 'provid[e] virtually no basis at all for making a judgment regarding probable cause.'" *State v. Henderson*, 2019-Ohio-1974, 136 N.E.3d 848, ¶ 32 (9th Dist.), quoting *Gates*, 462 U.S. at 239. For example, "'[a] sworn statement of an affiant that 'he has cause to suspect and does believe that' liquor illegally brought into the United States is located on certain premises will not do.'" *Gates*, 462 U.S. at 239, quoting *Nathanson v. United States*, 290 U.S. 41, 54 S.Ct. 11, 78 L.Ed. 159 (1933). "An officer's statement that 'affiants have received reliable information from a credible person and believe' that heroin is stored in a home, is likewise inadequate." *Id.*, quoting *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964).

{¶66} In the case sub judice, appellant argues that some statements in the search-warrant affidavit are too conclusory to support a finding of probable cause to search his residence. Appellant's parsing of the affidavit, however, contravenes well-

established precedent that requires courts to examine the totality of the circumstances when evaluating whether a search-warrant affidavit sets forth specific facts giving rise to probable cause. *E.g., Wesby*, 138 S.Ct. at 588, quoting *United States v. Arvizu*, 534 U.S. 266, 274, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) (stating that "[t]he totality-of-the-circumstances test 'precludes this sort of divide-and-conquer analysis'"); *United States v. Carswell*, ___ F.3d. ___, 2021 WL 1811542, *4 (7th Cir.2021) (explaining that when courts "evaluate a probable cause finding, [courts] do not view the individual facts in isolation," but instead "consider the totality of the circumstances presented to the judge"); *State v. Jones*, 143 Ohio St.3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 15 (recognizing that probable cause determined by examining the totality of the circumstances and not facts in isolation); *State v. Johnson*, 4th Dist. Highland No. 06CA36, 2007-Ohio-4158, 2007 WL 2318690, ¶ 12 (noting that courts of appeal "do not review portions of the affidavit in isolation but, rather, consider the affidavit as a whole and employ a totality of the circumstances approach").

{¶67} Accordingly, rather than review the statements in isolation as appellant suggests, we must review the totality of the circumstances set forth in the affidavit to determine

whether the issuing judge had a substantial basis to determine that probable cause existed to search appellant's residence.

{¶68} Here, the totality of the circumstances set forth in the affidavit supports the issuing judge's probable-cause determination. The affidavit (1) explains how detectives acquired information that appellant was bringing drugs into Chillicothe, and (2) states that both a reliable confidential informant and a reliable confidential source gave detectives information that appellant was involved in drug dealing and drug possession. The CI informed detectives that appellant transported drugs from Dayton, Cincinnati, and Columbus to appellant's residence. The CI further stated that the CI helped appellant acquire a "Kilo Press" and that the CI delivered the "Kilo Press" to appellant's house. The CI indicated that appellant used the "Kilo Press" to "'cut[]' his dope" and "press[] it back into 'Kilos' to distribute." The CI further related that the CI purchased drugs from appellant in the past and currently owes money to appellant from a prior deal. The CI also stated that appellant "always has drugs in the home."

{¶69} Additionally, the CS (another reliable source) informed detectives that appellant and his wife "picked up a shipment of Cocaine and Crack, on 05/11/2018." The CS stated that appellant's wife traveled to Dayton to meet with her

supplier and pick up the cocaine and crack. The CS also "provide[d] information about a sale that was made on 5/12/2018 to a known dealer that was supplied by [appellant and his wife]." The CS made a phone call to "the suspect, who confirmed the purchase of drugs from" appellant and his wife. The CS also stated that drugs are "always * * * inside the home and that [appellant and his wife] never go without having drugs inside the home."

{¶70} The affidavit additionally stated that detectives obtained wire money transfer records "involving" appellant and "noticed a large amount of money transfers to different persons in both Dayton and Cincinnati." The affidavit indicated that these wire transfers "confirmed the information provided by the CI." It also averred that detectives "know" that large wire transfers are "a common way for drug traffickers to transfer money back and forth."

{¶71} Based upon the totality of the circumstances, we do not believe that the allegations contained in the search-warrant affidavit are too conclusory to support the issuing judge's finding of probable cause to search appellant's residence. Instead, the search-warrant affidavit sets forth specific allegations that support the officer's belief that a search of

appellant's residence would uncover evidence of drug-related activity.

b

Too Stale

{¶72} Appellant also argues that the facts contained in the search-warrant affidavit are too stale to establish probable cause to search appellant's residence. In particular, appellant contends that the CI failed to specify when the events allegedly occurred or even a general time frame.

{¶73} "Probable cause must be determined as of the date the warrant is requested." *State v. Goble*, 2014-Ohio-3967, 20 N.E.3d 280, ¶ 11 (6th Dist.), citing *State v. Sautter*, 6th Dist. Lucas No. L-88-324, 1989 WL 90630, *3 (Aug. 11, 1989). Thus, "probable cause to search cannot be based on stale information that no longer suggests that the item sought will be found in the place to be searched." *United States v. Shomo*, 786 F.2d 981, 983 (10th Cir.1986) (citation omitted); *accord United States v. Wagner*, 951 F.3d 1232, 1246 (10th Cir.2020); *United States v. Knox*, 883 F.3d 1262, 1273, 1276 (10th Cir.2018).

{¶74} "[T]he timeliness of the information contained in the affidavit is an important variable." *Shomo*, 786 F.2d at 984. However, "probable cause is not determined simply by counting the number of days between the facts relied on and the issuance

of the warrant." *Id.* at 983–84 (citation omitted). Instead, "[w]hether facts are 'too stale' to be of probative value must be decided on a case-by-case basis." *Goble* at ¶ 11, citing *Sautter* at *3.

{¶75} "'While there is no arbitrary time limit on how old information can be, the alleged facts must justify the conclusion that the subject contraband is probably on the person or premises to be searched.'" *State v. Jones*, 72 Ohio App.3d 522, 526, 595 N.E.2d 485 (6th Dist.1991); *accord State v. Proffit*, 5th Dist. Fairfield App. No. 07CA36, 2008-Ohio-2912, 2008 WL 2573265, ¶ 20 ("Although specific references to dates and times are best, there is no hard and fast rule as to the staleness issue"). "The affidavit must * * * contain some information that would allow the magistrate to independently determine that probable cause presently exists-not merely that it existed at some time in the past." *State v. Lauderdale*, 1st Dist. Hamilton No. C-990294, 2000 WL 209395, *1 (Feb. 18, 2000), citing *Sgro v. United States*, 287 U.S. 206, 210, 53 S.Ct. 138, 77 L.Ed. 260 (1932).

{¶76} When reviewing whether information is too stale to establish probable cause, courts may consider "the nature of the criminal activity, the length of the activity, and the nature of the property to be seized." *Shomo*, 786 F.2d at 983–84

(citations omitted); *accord State v. Reece*, 3d Dist. Marion No. 9-17-27, 2017-Ohio-8789, 2017 WL 5989077, ¶ 15, *and State v. Jendrusik*, 7th Dist. Belmont No. 06-BE-06, 2006-Ohio-7062, 2006 WL 3849290, ¶ 21 (listing factors more specifically as "(1) the nature of the crime; (2) the criminal; (2) the thing to be seized, as in whether it is perishable and easily transferable or of enduring utility to its holder; (4) the place to be searched; and (5) whether the information in the affidavit relates to a single isolated incident or protracted ongoing criminal activity").

{¶77} For example, when "the property sought is likely to remain in one place for a long time, probable cause may be found even though there was a substantial delay between the occurrence of the event relied on and the issuance of the warrant." *Shomo*, 786 F.2d at 984 (citations omitted). "By the same token, where the affidavit recites facts indicating ongoing, continuous criminal activity, the passage of time becomes less critical." *Id.* (citations omitted). Thus, "[a]n 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." *State v. Morales*, 2018-Ohio-3687, 118 N.E.3d 1183, ¶ 21 (10th

Dist.), citing *United States v. Ortiz*, 143 F.3d 728, 733 (2d Cir. 1998) ("[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.'"), quoting *United States v. Martino*, 664 F.2d 860, 867 (2d Cir. 1981), and *State v. Ridgeway*, 4th Dist. Washington No. 00CA19, 2001 WL 1710397, *4 (Nov. 21, 2001) ("'[A]n affidavit which establishes a pattern of conduct or indicates an ongoing investigation can justify the granting of a search warrant based on old information.'"), quoting *State v. McKenzie*, 6th Dist. Erie No. E-97-040, 1998 WL 636784, *5 (Sept. 18, 1998).

{¶78} In *Morales*, for example, the court determined that a one-month delay "between the drug activity stated in the affidavit and the application for the search warrant" did not mean that the search warrant failed to establish probable cause at the time of its issuance. *Id.* at ¶ 24. In *Morales*, the search-warrant affidavit stated that in January 2016, the officer "received information" that two individuals were selling drugs at a residence where the defendant also lived. Between January 28 to April 1, 2016, the officer "conducted stationary and mobile surveillance of the residence" and "[a] confidential informant made two controlled buys from the residence during the

weeks of March 13 and March 27, 2016." *Id.* at ¶ 23. One month after the second controlled buy, on April 27, 2016, the officer applied for and obtained a search warrant. During the subsequent search, officers discovered, among other things, 29 marijuana plants.

{¶79} Following his indictment for possession of marijuana, the defendant filed a motion to suppress the evidence discovered during the search of the residence. The defendant argued, in part, that the information contained in the search-warrant affidavit was too stale to establish probable cause. The trial court overruled the defendant's motion.

{¶80} On appeal, the defendant argued that the information contained in the search-warrant affidavit was too stale to establish probable cause to search the property. The defendant asserted that the one-month delay "between the last investigative action indicated in the [search-warrant] affidavit and issuance of the warrant is 'far too long' to create a fair probability that drugs or the targets of the investigation would be present at the residence on the date and time of the search given the perishable and easily transferable nature of the contraband sought and the absence of any intervening police work such as surveillance or controlled buys to provide recent corroboration." *Id.* at ¶ 18.

{¶81} The appellate court, however, did not agree. Instead, the court determined that the facts set forth in the search-warrant affidavit showed that the search-warrant application resulted from a "three-month long investigation into ongoing criminal drug activity" allegedly occurring on the property. *Id.* at ¶ 25. The court thus affirmed the trial court's decision that overruled the defendant's motion to suppress evidence.

{¶82} In *State v. Latham*, 5th Dist. Coshocton No. 01-CA-1, 2001 WL 1251649, *1 (Oct. 15, 2001), the court determined that a one-week lapse between a controlled drug buy and the search-warrant application did not demonstrate that the search warrant relied upon stale information. The court explained:

> We do not find that the lapse of one week is substantial. The standard for determining whether probable cause to believe evidence exists in a particular location is "whether, given all the circumstances set forth in the affidavit * * * there is a fair probability that contraband or evidence will be found in a particular place." *Illinois v. Gates* (1983), 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527. Here, the affidavit was based on ongoing criminal activity. We therefore find that there was evidence to support the magistrate's conclusion that a fair probability existed that drugs were located at Appellant's premises.

Id.; *accord State v. Bailey*, 12th Dist. Butler No. CA2002-03-057, 2003-Ohio-5280, 2003 WL 22283440, ¶ 12 (determining that drug buy that occurred three days before search-warrant application did not render probable cause too stale).

{¶83} Additionally, in *State v. Yanowitz*, 67 Ohio App.2d 141, 147, 426 N.E.2d 190 (8th Dist.1980), the court rejected the defendant's argument that the search-warrant affidavit's failure to specify the dates that the informant observed marijuana in the defendant's residence meant that probable cause was lacking at the time the search warrant was issued. In *Yanowitz*, the search-warrant affidavit recited that the informant had advised officers that the defendant "always had marijuana in plain view in the house." *Id.* at 143. The affidavit further stated that the informant had been to the defendant's residence on "numerous occasions." The affidavit did not, however, indicate "when the informant visited [the defendant']s residence, and when the contraband was viewed by the informant." *Id.* at 147.

{¶84} The defendant asserted that the facts failed to establish that "the subject contraband was probably at [the defendant's] home at the time the warrant was issued." *Id.* The defendant argued that "narcotics are frequently moved or destroyed," and that a search-warrant affidavit must therefore provide a time frame when an informant observed drugs in a residence.

{¶85} The court of appeals, however, did not agree with the defendant. Instead, the court determined that the information contained in the affidavit suggested "a continuing pattern of

behavior." The court thus concluded that the facts adequately established that contraband "probably" was in the defendant's home at the time search warrant was issued. *Id.* The court further noted that "the determination of probable cause in the case at bar is a close one. As the appellant correctly points out, the affidavit does not aver specific dates or that the marijuana, which the informant alleged he had always seen during his visits, was still in [the defendant's] residence at the time of the warrant." *Id.* at 148. The court further recognized, that "'the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.'" *Id.*, quoting *Ventresca, supra,* 380 U.S. at 109, and citing *Jones v. United States*, 362 U.S. 257, 270-271, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960). The court thus concluded that "the affidavit contained sufficient underlying facts which, in their totality, would justify a conclusion that there was marijuana in [the defendant's] residence at the time the warrant was issued." *Id.*

{¶86} In the case sub judice, our review reveals that the search-warrant affidavit contains a mixture of facts with a time line, and facts without a time line. The confidential source identified a specific date, May 11, 2018, on which appellant and his wife picked up a shipment of cocaine and crack cocaine. The

CS also identified a specific date, May 12, 2018, on which a drug sale occurred. The confidential informant, on the other hand, did not identify specific dates for any of the activities in which appellant was engaged. Both the CI and the CS stated that appellant "always" had drugs in the house. We believe that the totality of the circumstances set forth in the affidavit show that drugs probably were present in appellant's home at the time the judge issued the search warrant. The judge issued the warrant on May 16, 2018–four days after the CS indicated that appellant had been involved in a drug sale. *See State v. Clark*, 4th Dist. Vinton No. 92 CA 485, 1993 WL 216319, *4 (June 22, 1993) (concluding that a statement that events occurred in the "very immediate past" is "sufficient for the magistrate to find the information was sufficiently fresh, justifying issuance of the warrant"). Moreover, both informants stated that appellant "always" had drugs in the home.

{¶87} Furthermore, the affidavit indicates that "[o]ver the past several months," detectives "have been conducting an investigation" involving appellant. These facts suggest that appellant had been involved in a continuing pattern of criminal activity, and that appellant's behavior did not have a clear starting point and end point after which contraband no longer likely would be found at his residence. We therefore disagree

with appellant that the information contained in the search-warrant affidavit is either too stale or too generalized to support a finding of probable cause to believe that contraband would be present in appellant's residence at the time that the judge issued the search warrant.

c

Too Unreliable

{¶88} Appellant also claims that the statements from the confidential informant and the confidential source were not reliable. Appellant argues that the CI's statement that appellant transported "drugs" from Dayton, Cincinnati, and Columbus to appellant's house is too conclusory to be reliable. Appellant asserts that the affidavit fails to indicate when appellant allegedly transported the drugs, fails to identify the type of drugs involved, and fails to provide a general time frame for events. Appellant argues that without these additional facts, the CI's statement "is nothing but a bare bones allegation" and "calls into question the veracity of the CI." Appellant also challenges the statements in the search-warrant affidavit concerning the confidential source's information and argues that the affidavit fails to outline the CS's basis of knowledge.

{¶89} To support his argument, appellant relies upon *State v. Young*, 6th Dist. Erie No. E-13-011, 2015-Ohio-398, 2015 WL 447666. In *Young*, the defendant argued, in part, that the search-warrant affidavit was deficient because the affidavit did not indicate when the confidential informant contacted detectives, or how the CI became aware of the information.

{¶90} The appellate court agreed with the defendant that the magistrate should not have relied upon the information obtained from the CI when it decided whether probable cause to search existed. In doing so, however, the *Young* court may have relied upon an outdated probable-cause analysis. The *Young* court relied upon two Ohio Supreme Court cases decided before *Illinois v. Gates* established the totality-of-the-circumstances approach for reviewing the validity of a search-warrant affidavit that contains hearsay statements from a confidential informant: *State v. Gill*, 49 Ohio St.2d 177, 179, 390 N.E.2d 693 (1977), and *State v. Graddy*, 55 Ohio St.2d 132, 139, 378 N.E.2d 723 (1978).

{¶91} Specifically, the *Young* court wrote:

> Turning to the information from the CI, the Ohio Supreme Court has held that although a magistrate may consider information provided by hearsay statements of a CI, it may do so only if there is a substantial basis for crediting the statements. *State v. Gill*, 49 Ohio St.2d 177, 179, 390 N.E.2d 693 (1977). "[T]hat substantial basis must include (1) information about

> the facts upon which the informant based his allegations of criminal activity, and (2) some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable." (Internal quotations and citations omitted.) *Id.*
>
> Although the affidavit submitted by [the officer] details instances which tend to show that the CI is credible, there is nothing in the affidavit detailing the source of the CI's information that [the defendant] would be cooking crack cocaine. Without these details, "[t]he magistrate in this situation would not know whether the informant's conclusion rested upon first-hand knowledge gained through his own observation, whether it rested upon information given the informant by a third person and, if so, how that person, even if reliable, acquired his information, or, whether the informant's conclusion rested upon rumor or gossip circulating in the neighborhood." *State v. Graddy*, 55 Ohio St.2d 132, 139, 378 N.E.2d 723 (1978).

Id. at ¶¶ 47-48.

{¶92} Applying these two cases led the *Young* court to conclude that the magistrate "improperly considered" the information obtained from the CI when determining whether probable cause to search existed. *Id.* at ¶ 48.

{¶93} However, a few years after *Gill* and *Grady* the United States Supreme Court abandoned this "rigid" approach for evaluating informants' tips that had been derived from *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969), and *Aguilar v. Texas*, 378 U.S. 108, 109, n. 1, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). *Gates*, 462 U.S. at 232–33; *George*, 45 Ohio St.3d at 328, (recognizing that *Gates* abandoned the

"two-pronged test" for evaluating informants' tips). The *Gates* court, instead, adopted the totality-of-the-circumstances approach that continues to this day. As we noted earlier, under the totality-of-the-circumstances approach:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Id. at 238-39; accord Crim.R. 41(C)(2) ("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.").

{¶94} We therefore believe that appellant's reliance on *Young* is completely unpersuasive. Instead, we must review the totality of the circumstances set forth in the affidavit, including the veracity and the basis of knowledge of the CI and the CS, to determine whether the issuing judge had a substantial basis for concluding that probable cause existed. *See State v. Urdiales*, 2015-Ohio-3632, 38 N.E.3d 907, ¶ 20 (3rd Dist.), citing *State v. Gibler*, 3d Dist. Defiance No. 4-2000-06, 2000 WL 1344545, *6 (Sept. 19, 2000) (noting that after *Gates*, courts

review search-warrant affidavits containing informants' tips using a totality-of-circumstances test and do not separately analyze elements of informants' tips).

{¶95} In the case at bar, we believe that the totality of the circumstances established in the search-warrant affidavit gave the issuing judge a substantial basis to conclude that probable cause existed. The search-warrant affidavit stated that both the CI and the CS had provided reliable information in the past "that was proven truthful." The CI and the CS advised officers that appellant "always" has drugs inside appellant's residence. Furthermore, the affidavit indicated that the CI "was able to make several cases for detectives that [led] to successful prosecuted cases." The CI implicated himself by stating that the CI had assisted appellant in obtaining a kilo press that appellant used to package drugs for distribution and by admitting that he had purchased drugs from appellant. The facts suggest that the CI personally witnessed some of the activities set forth in the affidavit.

{¶96} The CS did not indicate how the CS learned that appellant and his wife had "just picked up a shipment of Cocaine and Crack," but the CS made a phone call to a drug dealer who confirmed that the drug dealer purchased drugs from appellant and his wife.

{¶97} In addition to the information obtained from the CS and the CI, the affidavit stated that detectives discovered that appellant was involved in "a large amount of money transfers" to different individuals in Dayton and Cincinnati. The affidavit indicated that large money transfers are "a common way for drug traffickers to transfer money back and forth."

D

SUMMARY

{¶98} For all of the reasons outlined above, we believe that the totality of the facts and circumstances set forth in the search-warrant affidavit provided the issuing judge a substantial basis to believe that a search of appellant's residence would uncover evidence of criminal drug activity. We thus decline appellant's request to parse the affidavit and read each statement in isolation to determine whether each statement individually, and without context, establishes probable cause to search appellant's residence.

{¶99} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

II

{¶100} In his second assignment of error, appellant argues that the trial court erred by denying his motion to disclose the identity of the CI and the CS. Appellant contends that he

needed the identity of the CI and the CS to "produce testimony that they may have been in the house and planted evidence."

{¶101} We initially observe that reviewing courts will not reverse a trial court's decision to deny a request for the disclosure of an informant's identity unless the court abused its discretion. *State v. Taylor*, 4th Dist. Ross No. 98CA2451, 1999 WL 359720, *6 (June 2, 1999), citing *State v. Feltner*, 87 Ohio App.3d 279, 282, 622 N.E.2d 15 (12th Dist.1993), and *State v. Robinette*, 4th Dist. Jackson No. 669, 1992 WL 129383 (June 10, 1992); *accord State v. Holt*, 6th Dist. Lucas No. L-19-1226, 2020-Ohio-6649, 2020 WL 7311187, ¶ 31. In general, a court does not abuse its discretion unless it acts in an unreasonable, arbitrary, or unconscionable manner. *E.g., State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶102} "The state has a privilege to withhold from disclosure" the identity of an informant. *State v. Bays*, 87 Ohio St.3d 15, 24, 716 N.E.2d 1126 (1999). In certain circumstances, however, "the privilege must give way." *Id.* at 25. Courts typically hold that the privilege must give way if the informant "'helped to set up the commission of the crime'" and "'was present at its occurrence.'" *Id.*, quoting *Roviaro v. United States*, 353 U.S. 53, 61, 77 S.Ct. 623, 1 L.Ed.2d 639

(1957). Additionally, the state must disclose an informant's identity "'when the testimony of the informant is vital to establishing an element of the crime or would be helpful or beneficial to the accused in preparing or making a defense to criminal charges.'" *State v. Williams*, 73 Ohio St.3d 153, 172, 652 N.E.2d 721 (1995), quoting *State v. Williams*, 4 Ohio St.3d 74, 446 N.E.2d 779 (1983), syllabus. In general, when the informant's "degree of participation * * * is such that the informant virtually becomes a state's witness, the balance swings in favor of requiring disclosure of the informant's identity." *Williams*, 4 Ohio St.3d at 76.

{¶103} On the other hand, when "'the informant merely provided information concerning the offense,' the courts 'have quite consistently held that disclosure is not required.'" *Bays*, 87 Ohio St.3d at 25, quoting 3 LaFave & Israel, Criminal Procedure, 19, Section 23.3 (1984). Moreover, if "disclosure would not be helpful or beneficial to the accused, the identity of the informant need not be revealed." *Williams*, 4 Ohio St.3d at 76. Thus, "[w]hen an informant has acted merely as a tipster or where the informant's involvement is limited to providing information relevant to a probable cause determination, disclosure is generally not required." *Taylor* at *6, citing

State v. Parsons, 64 Ohio App.3d 63, 67-69, 580 N.E.2d 800 (4th Dist.1989); *accord Holt* at ¶ 34.

{¶104} We further note that a defendant bears the burden to establish the need to discuss an informant's identity. *Taylor* at *6, citing *Parsons*, 64 Ohio App.3d at 69. To satisfy this burden, the defendant must present "[s]omething more than speculation about the possible usefulness of an informant's testimony." *Parsons*, 64 Ohio App.3d at 69. Accordingly, "[t]he mere possibility that the informer might somehow be of some assistance in preparing the case is not sufficient to satisfy the test that the testimony of the informant would be helpful or beneficial to the accused in preparing or making a defense to criminal charges." *Id.*

{¶105} For example, in *Williams* (the 1995 decision), the Ohio Supreme Court determined that disclosing an informant's identity is unwarranted when the informant's "only apparent involvement * * * was that [the informant] overheard the appellant telling another person that he (the appellant) shot the cab driver." *Williams*, 73 Ohio St.3d at 172. The court observed that "[t]he informant was not an eyewitness to or participant in the crimes; the state did not intend to call the informant as a witness; and the informant would not have helped to establish appellant's alibi defense." *Id.* The court thus reasoned that the

informant's testimony was not "vital to establishing an element of the crime." *Id.* The court additionally determined that disclosing the informant's identity would not "have been beneficial to appellant in preparing or making a defense." *Id.* Consequently, the court concluded that "the trial court did not err in refusing to compel the prosecutor to reveal the identity of the confidential informant." *Id.*

{¶106} In *Taylor*, this court likewise concluded that the defendant was not entitled to learn the informant's identity. In *Taylor*, the information that the informant provided did not play any "part in the offense for which the appellant was convicted." *Id.* at *6. Instead, "the informant made a controlled purchase of drugs, which formed the basis of [the officer's search-warrant] affidavit, which led to the search warrant and ultimate discovery of cocaine in the [defendant's] apartment." *Id.* The defendant's criminal charges were not based upon the controlled buy that the informant made, but rather for drug possession after officers discovered cocaine in the defendant's apartment. This court observed that "the informant was not involved in any essential element of the crime" of drug possession and that the criminal charges rested "solely on evidence found during the police's execution of the search warrant." *Id.* In fact, "the informant's role was

limited to that of providing the basis for probable cause." *Id.* Therefore, the defendant failed to establish her entitlement to learn the informant's identity.

{¶107} Other courts have concluded that when an informant helps law enforcement officers establish probable cause to obtain a search warrant, but does not help to establish any elements of the charged offenses, the defendant is not entitled to learn the informant's identity. *Holt* at ¶ 34, quoting *Jordan*, 1st Dist. Hamilton No. C-060336, 2007-Ohio-3449, 2007 WL 1953607, ¶ 21 ("'While the informant's testimony was helpful in establishing probable cause for the issuance of the search warrant, the testimony was not necessary to establish any of the elements of [the] offenses.'").

{¶108} In the case at bar, neither the CI nor the CS provided evidence or testimony used at trial to establish the essential elements of the charged offenses. Instead, detectives used the information from the CI and the CS to establish probable cause to obtain a warrant to search appellant's residence. Appellant's criminal charges were based upon evidence discovered during the search of his residence, not upon any evidence that the CI or CS disclosed. In short, the CI and the CS acted as tipsters, not as vital witnesses. Consequently, we do not believe that the trial court's denial of appellant's motion to

compel the state to disclose the CI's and CS's identities constitutes an abuse of discretion.

{¶109} Appellant nevertheless contends that disclosing the identities would have helped him to show that someone planted the drugs that officers discovered inside his residence. Appellant can only speculate, however. Speculation is insufficient to be entitled to disclosure of an informant's identity. *E.g., Bays*, 87 Ohio St.3d at 25 (concluding that defendant's argument that "informant must have been either a witness, the perpetrator, or an accomplice because he gave such detailed information" was "speculation" that did not entitle defendant to disclosure of informant's identity); *State v. Griffith*, 2015-Ohio-4112, 43 N.E.3d 821, ¶ 42 (2nd Dist.), quoting *State v. Daniels*, 1st Dist. Hamilton No. C-990549, 2000 WL 282437, *1 (Mar. 17, 2000) ("'Mere speculation or the possibility that the informant might be of some assistance is not enough to show that the testimony of the informant would be helpful in preparing a defense.'"); *Taylor* at *7. Therefore, we do not believe that appellant satisfied his burden to show that disclosing the CI's and the CS's identities was vital to establishing an essential element of the offenses or that disclosure would have been helpful or beneficial to his defense.

{¶110} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error.

III

{¶111} In his third assignment of error, appellant asserts that his conviction is against the manifest weight of the evidence. In particular, appellant asserts that the evidence fails to show that he constructively possessed the heroin discovered in the master bedroom of his house. Appellant claims that the jury found him guilty "solely because drugs were found in a bedroom in his house." We do not agree with appellant.

{¶112} We observe that the "question to be answered when a manifest-weight issue is raised is whether 'there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt.'" *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 81, quoting *State v. Getsy*, 84 Ohio St.3d 180, 193–194, 702 N.E.2d 866 (1998), citing *State v. Eley*, 56 Ohio St.2d 169, 383 N.E.2d 132 (1978), syllabus. A court that is considering a manifest-weight challenge must "'review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses.'" *State v. Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028, ¶ 208, quoting *State v. McKelton*, 148 Ohio St.3d 261, 2016-Ohio-5735, 70 N.E.3d 508, ¶

328; *accord State v. Hundley*, 162 Ohio St.3d 509, 2020-Ohio-3775, 166 N.E.3d 1066, ¶ 80. The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *State v. Issa*, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); *State v. Murphy*, 4th Dist. Ross No. 07CA2953, 2008-Ohio-1744, 2008 WL 1061793, ¶ 31. "'Because the trier of fact sees and hears the witnesses and is particularly competent to decide "whether, and to what extent, to credit the testimony of particular witnesses," we must afford substantial deference to its determinations of credibility.'" *Barberton v. Jenney*, 126 Ohio St.3d 5, 2010-Ohio-2420, 929 N.E.2d 1047, ¶ 20, quoting *State v. Konya*, 2nd Dist. Montgomery No. 21434, 2006-Ohio-6312, 2006 WL 3462119, ¶ 6, quoting *State v. Lawson*, 2nd Dist. Montgomery No. 16288 (Aug. 22, 1997). As the court in *Eastley v. Volkman,* 2012 -Ohio-2179, ¶21, 132 Ohio St. 3d 328, 334-35, 972 N.E.2d 517, 525, explained:

> "'[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts.
> * * *
> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'"

Id. at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978). Thus, an appellate court will leave the issues of weight and credibility of the evidence to the fact finder, as long as a rational basis exists in the record for its decision. *State v. Picklesimer*, 4th Dist. Pickaway No. 11CA9, 2012-Ohio-1282, 2012 WL 1029466, ¶ 24; *accord State v. Howard*, 4th Dist. Ross No. 07CA2948, 2007-Ohio-6331, 2007 WL 4201355, ¶ 6 ("We will not intercede as long as the trier of fact has some factual and rational basis for its determination of credibility and weight.").

{¶113} Accordingly, if the prosecution presented substantial credible evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. *E.g., Eley*; *accord Eastley* at ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting Black's Law Dictionary 1594 (6th ed.1990) (explaining that a judgment is not against the manifest weight of the evidence when "'"the greater amount of credible evidence"'" supports it). A court may reverse a judgment of conviction only if it appears that the fact-finder, when it resolved the

conflicts in evidence, "'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983); *accord McKelton* at ¶ 328. A reviewing court should find a conviction against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175; *accord State v. Clinton*, 153 Ohio St.3d 422, 2017-Ohio-9423, 108 N.E.3d 1, ¶ 166; *State v. Lindsey*, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶114} In the case sub judice, R.C. 2925.11(A) contains the essential elements of the offense at issue, possession of drugs. The statute states: "No person shall knowingly obtain, possess, or use a controlled substance * * *." Appellant contends that the manifest weight of the evidence fails to establish that he possessed the heroin discovered in the master bedroom of his house. "Possession" is generally defined as "having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K).

{¶115} Possession may be actual or constructive. *State v. Butler* (1989), 42 Ohio St.3d 174, 176, 538 N.E.2d 98; *State v. Fry*, Jackson App. No. 03CA26, 2004-Ohio-5747, 2004 WL 2428439, at ¶ 39. "'Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession.'" *State v. Kingsland*, 177 Ohio App.3d 655, 2008-Ohio-4148, 895 N.E.2d 633, ¶ 13 (4th Dist.), quoting *Fry* at ¶ 39. "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982), syllabus; *State v. Brown*, 4th Dist. Athens No. 09CA3, 2009-Ohio-5390, 2009 WL 3236206, ¶ 19. For constructive possession to exist, the state must show that the defendant was conscious of the object's presence. *Hankerson*, 70 Ohio St.2d at 91; *Kingsland* at ¶ 13; *accord State v. Huckleberry*, 4th Dist. Scioto No. 07CA3142, 2008-Ohio-1007, 2008 WL 623342, ¶ 34; *State v. Harrington*, 4th Dist. Scioto No. 05CA3038, 2006-Ohio-4388, 2006 WL 2457218, ¶ 15. Both dominion and control, and whether a person was conscious of the object's presence, may be established through circumstantial evidence. *E.g., Brown* at ¶ 19; *see, e.g., State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph one of the syllabus

(stating that "[c]ircumstantial evidence and direct evidence inherently possess the same probative value"). "Circumstantial evidence is defined as '[t]estimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved. * * * '" *State v. Nicely*, 39 Ohio St.3d 147, 150, 529 N.E.2d 1236 (1988), quoting Black's Law Dictionary (5 Ed.1979) 221.

{¶116} To establish constructive possession, the state need not show that the defendant had "[e]xclusive control over the premises." *State v. Tyler*, 8th Dist. Cuyahoga No. 99402, 2013-Ohio-5242, 2013 WL 6221104, ¶ 24, citing *State v. Howard*, 8th Dist. Cuyahoga No. 85034, 2005-Ohio-4007, ¶ 15, citing *In re Farr*, 10th Dist. Franklin No. 93AP-201, 1993 WL 464632, *6 (Nov. 9, 1993) (noting that nothing in R.C. 2925.11 or 2925.01 "states that illegal drugs must be in the sole or exclusive possession of the accused at the time of the offense"). Instead, "'[a]ll that is required for constructive possession is some measure of dominion or control over the drugs in question, beyond mere access to them.'" *Howard* at ¶ 15, quoting *Farr* at *6. Thus, simply because others may have access to the premises in addition to the defendant does not mean that the defendant "could not exercise dominion or control over the drugs." *Tyler*

at ¶ 24; *accord State v. Walker*, 10th Dist. Franklin No. 14AP-905, 2016-Ohio-3185, 2016 WL 3018811, ¶ 75.

{¶117} In the case sub judice, after our review we do not believe that the jury's guilty verdict constitutes a manifest miscarriage of justice for possessing heroin. Instead, the state presented ample evidence to show that appellant constructively possessed the heroin. Officers discovered heroin in a safe located in the master bedroom, contained inside a black bag that also contained mail addressed to appellant. The officers found additional heroin in the bedroom, in the same dresser drawer as men's underwear. In this same bedroom, the officers recovered documents that bore both appellant's and his wife's names. Moreover, appellant informed Detective Wallace that the items belonged to appellant. These facts and circumstances allowed the jury to conclude that appellant exercised dominion and control over the heroin, and that he was conscious of its presence. Thus, the evidence allowed the jury to find that appellant constructively possessed the heroin. We do not believe that the jury's conclusion is against the manifest weight of the evidence. *See State v. Bradford*, 4th Dist. Adams No. 20CA1109, 2020-Ohio-4563, 2020 WL 5653491, ¶ 43 (determining that conviction for possessing weapon under disability not against the manifest weight of the evidence when

weapon discovered inside a room along with several items containing defendant's name and men's clothing); *State v. Smith*, 3d Dist. Paulding No. 11-95-7, 1995 WL 684861 (Nov. 17, 1995) (concluding that large quantity of narcotics found throughout house, including defendant's bedroom, constituted circumstantial evidence of defendant's knowledge of and control over those narcotics); *State v. Walker*, 10th Dist. Franklin No. 14AP-905, 2016-Ohio-3185, 2016 WL 3018811, ¶¶ 73-74 (determining that sufficient evidence supported conviction when drugs located in defendant's bedroom that also contained mail addressed to defendant).

{¶118} Simply because appellant was not found on the premises when officers arrived to execute the warrant does not require a conclusion that the evidence fails to show that appellant constructively possessed the heroin. A person need not be physically near an item in order to have the ability to exercise dominion and control over the item. *See generally State v. Wickersham*, 4th Dist. Meigs No. 13CA10, 2015-Ohio-2756, 2015 WL 4113316, ¶¶ 39-40 (rejecting appellant's argument that illegal manufacture of methamphetamine conviction against the manifest weight of the evidence when defendant not on the premises when contraband discovered); *State v. Wilkins*, 12th Dist. Clinton No. CA2007-03-007, 2008-Ohio-2739, 2008 WL 2331367, ¶ 27 (concluding

that jury did not lose its way in convicting defendant of gun specification, even though "gun was not carried on his person or even immediately accessible to him when the search warrant was executed or during his arrest," when evidence showed defendant lived in residence where drugs and firearm were found in dresser drawer with other items belonging to him).

{¶119} Moreover, "this is not a case in which the only evidence of appellant's guilt is his status as a resident of the premises." *Wickersham* at ¶ 36, citing *State v. Haynes*, 25 Ohio St.2d 264, 270, 267 N.E.2d 787 (1971) (concluding that when law enforcement officers seize narcotics from jointly occupied premises the defendant's status as a resident or lessee, standing alone, creates no inference of guilt). Rather, evidence showed appellant's belongings located in the same room as the heroin. More importantly, appellant admitted to Detective Wallace that the items belonged to him.

{¶120} Upon review, we believe that the state presented ample evidence that, if believed, permitted the trier of fact to conclude that appellant had dominion and control over the drugs located in the master bedroom. As such, appellant's conviction is not against the manifest weight of the evidence.

{¶121} Accordingly, based upon the foregoing reasons, we overrule appellant's third assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of 60 days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the 60-day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the 45-day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

TOPICS & ISSUES

Fourth Amendment–search warrant–probable cause–officers had probable cause to search appellant's house; search-warrant affidavit described information learned from confidential informant and confidential source regarding appellant's recent and ongoing involvement in drug-related activity, including transporting drugs from other locations in Ohio to his residence; facts presented in search-warrant affidavit were not too conclusory, too stale, or too unreliable to establish probable cause; search warrant described items to be searched and seized with particularity-disclosure of confidential sources; appellant failed to establish that trial court abused its discretion by overruling his request for disclosure of confidential informant's and confidential source's identities when neither helped state establish an element of the criminal charges against appellant–manifest weight; appellant's heroin possession conviction not against the manifest weight of the evidence when heroin located in master bedroom of appellant's residence that also contained document bearing appellant's name and when appellant admitted that items discovered in residence belonged to him