No. 122761

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JORGE MANZO, JR. Defendant-Appellant	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-15-0264. There on appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 09-CF-1345. Honorable Edward A. Burmila, Jr., Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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The trial court erred in finding probable cause to search Jorge Manzo's home where he was not the target of the search warrant, there was no direct evidence that criminal activity was ongoing in his home, and the totality of the circumstances established only that Ruben Casillas, the target, had driven a car which was registered to a third person using Manzo's home address, to and from a single drug transaction conducted in public, and Casillas was seen leaving the home before one other such transaction.

Jorge Manzo has argued that the warrant application to search his home was bare bones because the totality of the circumstances did not establish probable cause that evidence of Ruben Casillas's drug dealing in public would be found there (Def. Br. at 21-28). Manzo has further argued that the State cannot meet its burden to prove that the good-faith exception applies to the impermissible search of his home because the officers could not have reasonably relied on the warrant, given the lack of information connecting the home to Casillas's drug dealing (Def. Br. at 34-41). The State in its responsive brief asserts that the warrant application established a substantial basis to search Manzo's home (St. Br. at 9-19), and that alternatively, the good-faith exception should apply (St. Br. at 19-25). But the State's analysis is based on unreasonable inferences and therefore not supported by the warrant application (Def. Br. at 23-28).

A. The State's inferences that evidence of Casillas's criminal activity would be found in Manzo's home are unreasonable because they are based on suspicions and conjecture.

Probable Cause Analysis

The State's contention that, in the absence of direct evidence of criminal activity in Manzo's home, the totality of the circumstances established a sufficient nexus to search it, is based on a series on unreasonable inferences (St. Br. at 9-19), which discount the special protections afforded to the home under Fourth Amendment jurisprudence that Manzo cited in his brief (Def. Br. at 21-22). The

State first posits that the nature of the offense and the reasonable likelihood of where evidence would be found indicate that Casillas was an established drug dealer who would likely store evidence of his criminal activity in a private place like Manzo's home (St. Br. at 11-12). The State cites as examples cases where the home was a reasonable place to store illicit evidence of child pornography and incriminating evidence of murder (St. Br. at 11). These examples are patently distinct from the instant case, since the nature of the offense here is manifestly different—Casillas sold 9.2 grams total of cocaine in public grocery stores, in amounts small enough for Casillas to carry on his person, and was seen at Manzo's house only once (C31-34; Def. Br. at 24-26). The State also asserts that drug dealers sometimes use "stash houses," and cites as an example a case wherein organized crime was observed frequenting a house that they referred to as the place where they met to retrieve drugs (St. Br. at 11). *United States v. Garcia-Villalba*, 585 F.3d 1223, 1234 (9th Cir. 2009). This hyperbolic reference is unreasonable as there was no indication that Manzo's home was frequented by Casillas, or anyone else, involved in a criminal enterprise.

The State then contends that Casillas was "more than a casual acquaintance" of Leticia Hernandez because he used her car once, and that this relationship supported the inference that it was fairly probable he would keep evidence of his drug dealing at her house (St. Br. at 12). These inferences are based on suspicions and conjecture (Def. Br. at 23-25). *People v. Rojas,* 2013 IL App (1st) 113780, ¶ 20. The quality and character of a relationship in which a person drives another's car is circumstantial. This is demonstrated in *People v. Harmon*, 826 N.E.2d 761 (Mass. App. Ct. 2005), which the State cites in support (St. Br. at 12). The

Harmon defendant was charged with murder, and the court held there was probable cause to search the apartment of a man who had arranged a ride so the defendant could buy a disguise and leave the area. *Id*. at 766–67. The warrant application here provides no such detail of why Casillas drove Hernandez's car (C31-34; Def. Br. at 24-25). The only other information in the warrant application about Hernandez was that Casillas visited her house once before another drug transaction nineteen days later, as well as a vague, conclusory statement that they were "associates" according to "law enforcement records"(C34; Def. Br. at 25). As the dissenting justice in the appellate court found, this information without more does not provide a basis to infer anything more than that they knew each other (Def. Br. at 32).

The State further posits that the distance between Manzo's home and two of the grocery stores where Casillas conducted drug transactions strengthen the inference that Casillas kept evidence of his drug dealing in Manzo's home (St. Br. at 12-13). But those distances were not revealed in the warrant application, which contained only the conclusory statement that two of the stores were "in the vicinity" of Manzo's home (C32; Def. Br. at 25). The State asks this Court to take judicial notice of the Google Maps estimated walking and driving distances between Manzo's home and the stores (St. Br. at 12, n.4), despite the fact that this request repudiates the State's assertion that this Court should consider only "the information known to the magistrate when issuing the warrant" (St. Br. at 7). Nonetheless, the State claims these distances support the inference that Manzo's home was a "logical and convenient" place for Casillas to store and access evidence of his drug dealing, then cites to case law wherein the court considered proximity

in its assessment of whether probable cause existed to search *the suspect's own residence* (St. Br. at 12-13). *United States v. Stearn*, 597 F.3d 540, 560 (3d Cir. 2010) (considering "the proximity of the defendant's residence to the location of criminal activity" as a factor); *Holmes v. State*, 796 A.2d 90, 101 (Md. 2002) (same); *Commonwealth v. Young*, 931 N.E.2d 494, 499 (Mass. App. Ct. 2010) (same); *State v. Harris*, 589 N.W.2d 782, 788 (Minn. 1999) (same). Here, there was no basis to establish this connection between Casillas's criminal activity and Manzo's home.

Even if this Court considers the actual distances, it was still unreasonable to infer that Casillas kept evidence of his drug dealing in Manzo's home. The State unreasonably compares Casillas's single visit to Manzo's home to the *Young* defendant's routine of coming and going to his own home (St. Br. at 13). The State's contention that the police officers' "uninterrupted surveillance" of Casillas leaving Manzo's home and walking to a store was "telling" also was based on conjecture (St. Br. at 13). The 3.6 grams of cocaine Casillas sold was an amount easily concealed on his person (C33-34; Def. Br. at 25). It is unreasonable to infer that Casillas retrieved it from Manzo's home where he was seen there only once, nineteen days after he drove a car registered there, and the warrant application did not indicate how long he had been at the residence, how much time had passed between the affiant's call and when he left, and whether he made any other stops along the way (Def. Br. at 24-28).

The State also insists that "it makes no difference" that Casillas did not live at Manzo's home (St. Br. at 14). This contention contravenes established case law, which affords the home special protections under the Fourth Amendment (Def. Br. at 21-22). The nature of the place to be searched is a relevant, important

circumstance considered by the magistrate and reviewing courts in probable cause determinations. This is borne out by the majority of the case law the State cites for analogous examples, which concerned searches of the suspects' residences. In addition to the cases cited above, four of the five cases the State cites in support of the unreasonable inference that Casillas kept evidence of drug dealing at Manzo's home because he was present there before one drug sale, also concerned *the suspect's own residence* (St. Br. at 14). *United States v. Aguirre*, 664 F.3d 606, 613 (5th Cir. 2011) (search of defendant's residence); *United States v. Dessesaure*, 429 F.3d 359, 368-69 (1st Cir. 2005) (same); *State v. Saine*, 297 S.W.3d 199, 206 (Tenn. 2009) (same); *Holmes*, 796 A.2d at 101 (same).[1]

The State also points out that there was no requirement that Casillas live in Manzo's home (St. Br. at 15). Manzo has not argued that Casillas was required to live there, but instead asserts that it was reasonable to infer only that Casillas did not live there, since his driver's license did not list Manzo's address (C34; Def. Br. at 25). Moreover, while the issue of Casillas's residence is not fatal, the State's citation of *Commonwealth v. Clagon*, 465 Mass. 1004 (Mass. 2013), is distinguishable because that defendant twice left the residence and went directly to deliver drugs, returned there after a third buy, and his father was observed coming and going using a key (St. Br. at 11). *Clagon*, 465 Mass. at 1006. The remaining cases the State cites in support of probable cause to search residences where the suspect did not reside concern circumstances wherein the suspects were seen at the homes

[1]The warrant in the remaining case did not concern the suspect's own residence but contained police corroboration of a cooperating individual's account that drugs were sold from the house to be searched. *People v. Montes-Medina*, 570 F.3d 1052, 1060 (8th Cir. 2009).

more than once, or both entering and exiting the home (St. Br. at 14). Here, Casillas did not live at Manzo's home, which makes it less likely that evidence of his drug dealing could be found there, since the warrant application otherwise stated only that he made a single visit there and used a car registered there (Def. Br. at 25-28).

The State goes on to misrepresent Manzo's assertions about the information the warrant application lacked (St. Br. at 15-16). The State argues that there was no requirement that criminal activity occur in the residence (St. Br. at 15), but Manzo contends only that without such direct evidence, more was required to search his home (Def. Br. at 25-28). Indeed, if the warrant application had included information about where Casillas lived, or who owned the home, it would have been further weakened as to Manzo's home (Def. Br. at 23-28, 37). The State also incorrectly asserts that Manzo "[got] it wrong" when he criticized the appellate court for failing to articulate why it was reasonable to infer criminal activity was ongoing in Manzo's home (St. Br. at 15). Manzo has argued that both the trial court's and appellate court's failure to articulate the inferences on which the alleged substantial basis for probable cause was based further demonstrated that the warrant was bare bones as to Manzo's home (Def. Br. at 30-32). The State also contends that Manzo's assertion that he was not the target was based on a misnomer because warrants are not directed at persons but at the search of places and the seizure of things (St. Br. at 15).[2] This argument is a diversion from the issue at hand, and also belies the fact that the search warrant here named "the person of Ruben Casillas" (C31).

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[2]The State cites *Zurcher v. Stanford Daily*, 436 U.S. 547, 555 (1978), a civil law case, for the proposition that warrants are not directed at persons but at the search of places and the seizure of things.

A practical, common sense assessment of the totality of the circumstances indicates that it was unreasonable for the magistrate to conclude that there was a sufficient connection between Casillas's drug dealing and Manzo's home (Def. Br. at 21-28). The State infers that "a level of trust" existed between Casillas and Hernandez because he drove her car once, but does not state what that level was (St. Br. at 17). The State also infers that there was a connection between Manzo's home and Casillas's drug dealing because two of the stores were within walking distance of the home, but that information was not before the magistrate (St. Br. at 17). Moreover, the State infers that Casillas's single visit to Manzo's home was somehow part of a routine in his drug dealing without any information on whether he was there at any other time (St. Br. at 13). If these inferences are reasonable, then any "level of trust" is sufficient to connect a drug dealer's activity to another's home where he is seen in their car once before a drug deal, and visit the house where the car is registered once, nineteen days later before another drug deal. The State cites no case law wherein a warrant was upheld on such little detail as to the place to be searched, particularly when the suspect did not live there.[3]

The State further fails to distinguish the instant case from *Commonwealth v. Smith*, 57 Mass. App. Ct. 907 (2003), *People v. Rojas*, 2013 IL App (1st) 113780, and *People v. Lenyoun*, 402 Ill. App. 3d 787 (1st Dist. 2010), on which Manzo has

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[3]The State cites *Commonwealth v. Escalera*, 970 N.E.2d 319, 322-26 (Mass. 2012), for the proposition that a single observation of the defendant leaving a residence can establish probable cause to search the residence along with other information (St. Br. at 17). But the case is distinguishable because the "other information" was "statements from credible informants,"which described the suspect, as well as police surveillance of the suspect going home after controlled buys several times. No such analogous information was listed here.

relied (Def. Br. at 26-27, 32-34; St. Br. at 18). The State contends that *Smith* was confined to the facts of that case (St. Br. at 18). Not only is this true of every probable cause determination, but the State does not even attempt to address the circumstances from *Smith* that are analogous to the instant case (Def. Br. at 26-27). Nor does the State acknowledge that the case it cites in support, *Commonwealth v. Tapia*, 978 N.E.2d 534, 541, n.11 (Mass. 2012), also held what Manzo has asserted—that *Smith* "stands for the proposition that police observations of a defendant driving from home to a drug transaction on one occasion, without more, do not suffice to establish probable cause to search the home" (Def. Br. at 26-27).

The State further contends that in *Rojas*, there was even less information to establish probable cause (St. Br. at 18). Again, the State does not otherwise address the analogous circumstances to the instant case, wherein the warrant contained sufficient detail of criminal activity, but lacked the same detail as to the defendant's family home, and was thus "bare bones as to the defendant" (Def. Br. at 26, 39). *Rojas*, 2013 IL App (1st) 113780, ¶¶ 17-22. The *Rojas* court rejected the idea of "adding layers of conjecture upon conjecture" in order to make reasonable inferences, which also occurred in the instant case. *Id.* at ¶ 20. A bare bones warrant thus need not be devoid of any information whatsoever, but can contain great detail of criminal activity while also lacking the same detail as to a specific location to be searched. This proposition is applicable here, where the noticeable absence of facts connecting Casillas's criminal activity to Manzo's home contrasts with the specificity of Casillas's criminal activity (C31-34; Def. Br. at 25-26).

The State also attempts to distinguish *Lenyoun* because in that case, the single drug transaction conducted away from the home did not provide the police

with reason to conclude that he was an established drug dealer who needed to access a large drug supply or tools (St. Br. at 18). The State misrepresents the *Lenyoun* court's reasoning. The court did not discuss the likelihood of whether Lenyoun was an established dealer in concluding that his single drug deal conducted in public did not provide probable cause to search his home (Def. Br. at 26, 32-34). *Lenyoun*, 402 Ill. App. 3d at 794–99. Instead, the court reasoned that upholding the warrant "would undermine the sanctity of a citizen's home 'upon the mere commission of a crime and an affidavit of a law enforcement officer.'" *Id*. at 797, *citing People v. Beck*, 306 Ill. App. 3d 172, 181 (1st Dist. 1999).

The State asserts further substantive and alternative analysis in a lengthy footnote based on the *Lenyoun* dissent, which opined that the majority omitted details from its analysis that supported probable cause to search the defendant's home (St. Br. at 18-19, n.6). *Lenyoun*, 402 Ill. App. 3d at 803–06 (Lampkin, J., dissenting). But those details amounted to no more than suspicious activity of suspected drug deals, as well as information about a man who lived in another place where the defendant had a lease, was arrested while in possession of a large amount of money, and had previously been arrested for cocaine possession three years prior. *Id*. at 802–06. As the *Lenyoun* court held, these details did not establish probable cause to search Lenyoun's home (Def. Br. at 26, 33). *Id*. at 793-801.

The State also posits that the *Lenyoun* court harbored "an erroneous belief that an inference of criminal activity occurring *in the apartment* was required to justify a search of the apartment" (emphasis in original) (St. Br. at 19, n.6). But the *Lenyoun* court reasoned that such criminal activity must be present in the home "[w]here the clear intent . . . was to recover contraband."*Lenyoun*, 402

Ill. App. 3d at 797. The State also contends that the *Lenyoun* court's holding was based on its mistaken application of a *de novo* standard of review (St. Br. at 19, n.6). The State is wrong, because regardless of the standard of review, the warrant in *Lenyoun* was bare bones and did not establish a substantial basis to find probable cause (Def. Br. at 26, 33).

Standard of Review

This attempted distinction of *Lenyoun* is based on the State's assertion that *de novo* review does not apply, and that Manzo has advocated for *de novo* review (St. Br. at 6-7). The State asserts that the applicable standard of review is deference to the magistrate's legal determination (St. Br. at 6-7). But the State fails to recognize this Court's precedent of applying *de novo* review to the legal determination of whether evidence seized pursuant to a warrant should be suppressed (St. Br. at 7, n.3; Def. Br. at 19). *See People v. Sutherland*, 223 Ill. 2d 187, 196–97 (2006) (applying bifurcated standard of deference to trial court's findings of fact and *de novo* review of "the ultimate question of the defendant's legal challenge to the denial of his motion to suppress"); *see also People v McCarty*, 223 Ill. 2d 109, 148 (2006) (same); *People v. Chambers*, 2016 IL 117911, ¶ 76 ("[W]e review a trial court's ruling on a motion to suppress under a two-part standard: the trial court's factual findings will be reversed only if they are against the manifest weight of the evidence, but the trial court's ultimate ruling on whether suppression is warranted is reviewed *de novo*.").

Manzo has recognized that this Court determines whether there was a substantial basis for probable cause and affords deference to the magistrate's determination (Def. Br. at 19). *See Sutherland*, 223 Ill. 2d at 219 (stating that

Court would not "substitute . . . judgment for that of the issuing magistrate but, rather, to ensure that the magistrate had a substantial basis for concluding that probable cause existed."); *see also McCarty*, 223 Ill. 2d at 153 (same). This Court has thus evaluated whether there was a substantial basis for probable cause as the applicable legal standard or analytical rule for warrant-based searches (Def. Br. at 22). *See*, *e.g.*, *McCarty*, 223 Ill. 2d at 153 (referring to substantial basis review as one of "the principles relevant to evaluating probable cause").[4] "[D]eference is reflected most prominently in close cases." *Lenyoun*, 402 Ill. App. 3d at 792, *citing United States v. Leon*, 468 U.S. 897, 914 (1984). This Court otherwise has assessed probable cause using the same principles utilized in warrantless searches. *Compare McCarty*, 223 Ill. 2d at 153 (probable cause means totality of the circumstances "within the affiant's knowledge at that time 'was sufficient to warrant a person of reasonable caution to believe that the law was violated and evidence of it is on the premises to be searched'"), *with People v. Mitchell*, 165 Ill. 2d 211, 232–33 (1995) (probable cause"exists when police 'have knowledge of facts which would lead a reasonable man to believe that a crime has occurred and that it has been committed by the defendant'").

The State also contends that in deferring to the magistrate's legal determination, this Court should consider only the information before the magistrate and disregard the trial court proceedings on Manzo's motion to suppress (St. Br.

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[4]Appellate courts have likewise applied a *de novo* standard of review to the legal determination of whether evidence seized pursuant to warrant should be suppressed, with deference afforded to the issuing magistrate's determination of probable cause. *See*, *e.g.*, *Rojas*, 2013 IL App (1st) 113780, ¶ 16; *Lenyoun*, 402 Ill. App. 3d at 791-92 (applying *de novo* review to the trial court's decision and deference to the magistrate's decision).

at 7). But Manzo has simply reviewed the trial court's findings of fact on the order denying his motion to suppress, which the trial court is directed to enter. *See* 725 ILCS 5/114-12(e) (2009) ("The order or judgment granting or denying the motion [to suppress] shall state the findings of facts and conclusions of law upon which the order or judgment is based."). The trial court did not make findings of fact in its final order denying Manzo's motion, but did so throughout the lengthy proceedings and related filings submitted by both parties (Def. Br. at 28-31). These findings contradicted the court's final order and indicated that the court struggled to interpret the bare bones information as to Manzo's home, which invited multiple interpretations and stated only suspicions and conclusions (Def. Br. at 28-31). Deference to the magistrate's legal determination would completely disregard these proceedings *in toto*.

What is more, two of the cases that the State cites in support also failed to acknowledge this Court's application of *de novo* review and cited only its substantial basis analysis (St. Br. at 6-7). *People v. Pettis*, 2015 IL App (4th) 140176, ¶¶ 15-19; *People v. Bryant*, 389 Ill. App. 3d 500, 511-16 (4th Dist. 2009). The *Bryant* court further asserted that the trial court should also defer to the magistrate's legal determination when hearing a defendant's challenge to the warrant. *Id*. at 512-16. Pure deference was premised on incentivizing law enforcement to obtain search warrants. *Id*. at 513.

Such pure deference is in discord with this Court's precedent of applying *de novo* review to other legal determinations. *See*, *e.g.*, *People v. Radojcic*, 2013 IL 114197, ¶¶ 34–36 (*de novo* review of grand jury transcripts where facts not in dispute); *People v. Coleman*, 183 Ill. 2d 366, 388–89 (1998) (*de novo* review of

petition where reviewing court was in same position as circuit court); *People v. Foskey*, 136 Ill. 2d 66, 76 (1990) (*de novo* review of exigent circumstances in warrantless search "[w]hen neither the facts nor the credibility of the witnesses [was] questioned"). The court in *People v. Brown*, 2014 IL App (2d) 121167, ¶¶ 22–24, which the State also cites, acknowledged this Court's application of *de novo* review to other legal determinations, but declined to further assess this discordance and held that under either standard, the warrant there contained probable cause. *See Brown*, 2014 IL App (2d) 121167, ¶ 24 ("[O]ther cases have stated that, where the facts and credibility of witnesses are not contested, whether probable cause exists is a legal question reviewed *de novo*.").

The Wyoming Supreme Court recognized a contradiction between *de novo* review and deference to the magistrate as an inherent conflict. *See TJS v. State*, 113 P.3d 1054, 1057, n.1 (Wyo. 2005) ("Simply stated, there cannot be a *de novo* review if the reviewing court affords deference to the issuing magistrate."). The Court in *TJS* resolved this conflict in favor of *de novo* review because "[t]he reasons which normally underlie deferring to the district court's denial of a motion to suppress—its ability to assess the credibility of the witnesses, weigh the evidence, and make the necessary inferences, deductions, and conclusions at the hearing on the motion—are absent when reviewing the sufficiency of an affidavit to support a determination of probable cause." *TJS*, 113 P.3d at 1057. *De novo* review was also supported by the Wyoming State Constitution's requirement that "all information the issuing officer relied upon to make the determination be included within the affidavit." *Id.* Here, the Illinois State Constitution likewise requires that, "No warrant shall issue without probable cause, supported by affidavit

particularly describing the place to be searched and the persons or things to be seized." Ill. Const.1970, art. I, § 6.[5] Thus, to the extent this Court finds a conflict between *de novo* review of the legal determination of whether the evidence should be suppressed and deference to the magistrate's probable cause determination, this Court should explicitly apply *de novo* review.

The Supreme Court in *Ornelas v. United States*, 517 U.S. 690 (1996), held such review maintains clarity and unity in legal precedent to guide both lower courts and law enforcement in determining probable cause in warrantless searches. *Ornelas*, 517 U.S. at 697–98. *De novo* review allows reviewing courts to control and clarify the legal rules of what constitutes probable cause because the rules "acquire content only through application." *Id.* at 697. This provides law enforcement with a defined set of rules in "reach[ing] a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." *Id.* at 697–98. However, the *Ornelas* Court distinguished a magistrate's probable cause determination of a warrant-based search, which was subject to deference in order to incentivize law enforcement to obtain warrants. *Id.* at 699. The Court was silent as to why the preference for search warrants overrides the same need for reviewing courts to control and clarify legal principles to guide law enforcement in seeking search warrants that comply with the Fourth Amendment's privacy protections. Without such guidance, a diffuse body of law would result from *ex parte* proceedings before the magistrate, "frequently . . . marked by haste." *See*

[5] *See also State v. Navas*, 913 P.2d 39, 48–49 (1996) (applying *de novo* review to probable cause determinations in warrant-based searches in part because Hawai'i State Constitution provides greater privacy protection against unreasonable searches and seizures than the United States Constitution).

Chambers, 2016 IL 117911, ¶¶ 62-63 (discussing nature of warrant application hearing with respect to *Franks* hearing).

Deferential review also frustrates deterring officer misconduct in warrant applications, since deference implies that the legal determination below would seldom be overturned: "The hallmark of deferential review is that although the reviewing court might have viewed the matter differently, it lacks the authority to change the result on appeal." *Coleman*, 183 Ill. 2d at 388. Reviewing courts would thus rarely consider whether the good-faith exception or the exclusionary rule would apply, since those doctrines are invoked only where there was not a substantial basis for probable cause to search. *Leon*, 468 U.S. at 922–24. However, the exclusionary rule "deter[s] officers from recklessly preparing search warrant affidavits and from obtaining warrants based on false or misleading information . . . ." *Rojas*, 2013 IL App (1st) 113780, ¶ 15, *citing Leon*, 468 U.S. at 907–08. If the exclusionary rule is necessary to deter law enforcement from misleading magistrates, deferential review removes the restraint and incentivizes officers to procure warrants in part because any wrongdoing is subject to less scrutiny.

But here, under either standard of review, the warrant application was bare bones as to Manzo's home because there was not enough information for the magistrate to make reasonable inferences that there was a fair probability evidence of Casillas's drug dealing would be found in Manzo's home (Def. Br. at 21-34).

B. The good-faith exception should not apply and the evidence should be suppressed because the officers executing the search warrant could not have reasonably believed it was valid given the noticeable absence of facts upon which a determination of probable cause to search Manzo's home could be found.

The State has argued that the good-faith exception should apply because

the officers executing the search warrant reasonably relied on it (St. Br. at 22). The State contends that Manzo cannot "clear [the] high threshold" of "demonstrating [a] basis to refuse to apply the good-faith exception" (St. Br. at 22). But Manzo does not have to prove that good-faith exception does not apply because it is the State's burden to prove that it does (Def. Br. at 35). *Leon*, 468 U.S. at 924; *see also People v. Turnage*, 162 Ill. 2d 299, 313 (1994) ("As the defendant has satisfied his burden of proving a violation of his fourth amendment rights . . . the burden shifts to the prosecution to prove that exclusion of the evidence is not necessary because of the good-faith exception."). The State thus attempts to "burden shift" to Manzo. Moreover, the State cites *Messerschmidt v. Millender*, 565 U.S. 535, 547 (2012), wherein the Court discussed good faith in consideration of whether officers were entitled to qualified immunity where they were sued for damages for a search based on a warrant lacking probable cause (St. Br. at 22). *Millender*, 565 U.S. at 546. These circumstances are clearly inapplicable to the instant case.

The State otherwise asserts that the officers executing the warrant could rely on it because it was not bare bones, and because the magistrate and two appellate justices found probable cause in the warrant application (St. Br. at 22-23). However, when considering whether the good-faith exception applies, this Court does not assess the magistrate or appellate court's conclusion, but applies *de novo* review in assessing the reasonableness of the officer who obtained and executed the warrant (Def. Br. at 35).

The State also discounts that the kind of bare bones warrant in *Rojas* is analogous to the warrant application here (St. Br. at 23). As Manzo has argued, in both cases, the officers attempted to "bootstrap" probable cause to search other

locations to the home to be searched, where the warrant application contained "extensive details" of criminal activity but insufficient detail as to the home to be searched (Def. Br. at 39-41). *See* discussion *supra* Part A. Such "bootstrapp[ing]" of probable cause, "and by implication, good faith," results in searches based on suspicions, which is less than the Fourth Amendment requires. *Rojas*, 2013 IL App (1st) 113780, ¶ 22.[6]

The State also submits that the instant case is analogous to *Lenyoun*, but again asserts that the *Lenyoun* dissent's faulty reasoning was correct (St. Br. at 23). Here, as in *Lenyoun*, the warrant was bare bones, and the probable cause and good-faith exception inquiries are intertwined since an officer could not have reasonably relied on a bare bones warrant that did not provide a substantial basis to find probable cause (Def. Br. at 36). Excluding the evidence has "real application" in deterring police misconduct, since the affiant both procured and executed the warrant with other officers (Def. Br. at 36). *Lenyoun*, 402 Ill. App. 3d at 799.

The State dismisses Manzo's argument that affiant Officer Harrison could not have reasonably relied on the warrant where he procured it and then relied on officers ignorant of the circumstances in executing it (Def. Br. at 36-38). The State claims that consideration of the affiant officer is irrelevant because the State has not argued that ignorance of the officers was the basis for applying the good-faith analysis (St. Br. at 24). But a reviewing court considers both the affiant officer and the officers executing the warrant in its *de novo* review of whether a reasonable

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[6]The State also argues that the warrant was not overbroad under *People v. Reed*, 202 Ill. App. 3d 760 (3d Dist. 1990) (St. Br. at 24). Manzo has not argued that the warrant application was facially overbroad, but cited *Reed* for the legal principle that the officers could not rely on the warrant where it did not present a substantial basis for probable cause (Def. Br. at 35-36).

officer could believe the warrant was valid. *Leon*, 468 U.S. at 923, n.24 ("It is necessary to consider the objective reasonableness, not only of the officers who eventually executed a warrant, but also of the officers who originally obtained it or who provided information material to the probable-cause determination."); *see also Turnage*, 162 Ill. 2d at 312 ("Therefore, the appropriate focus for determining whether to suppress the evidence is at the source of the warrant."). Moreover, the *Leon* court described the situation in the instant case: "Nothing in our opinion suggests, for example, that an officer could obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search." *Leon*, 468 U.S. at 923, n.24.

The State does not address Manzo's contentions as to why the officer conduct in this case should be deterred (Def. Br at 36-41). Harrison did not list Casillas's address or state who owned the home, which was easily verifiable, public information (Def. Br. at 37). This information would have weakened the warrant application and made the connection between Casillas's drug dealing and Manzo's home even more tenuous. And as argued in the previous section, Harrison also did not provide any detail with regard to Casillas's visit, even though Casillas was under "uninterrupted surveillance" (C33-34). *See* discussion *supra* Part A.

Harrison also failed to list exactly what the "association" between Casillas and Hernandez was, except that he drove her car; at worst, Harrison unreasonably inferred an illegal enterprise by stating that the association was based on "law enforcement records" (C34; Def. Br. at 37-38). The State acknowledges that the trial court considered whether this statement was a misrepresentation, but dismisses

it because the court ultimately found it "immaterial" (St. Br. at 21, n.7). Again, the State argues this in contradiction to its assertion that this Court should disregard the trial court proceedings (St. Br. at 7). But as Manzo has argued, the trial court's struggle indicated that the information Harrison supplied was bare bones as to Manzo's home (Def. Br. at 28-31). An officer could not reasonably rely on this information (Def. Br. at 37-38).

As a result, the "real application" of excluding the evidence would deter officers from submitting warrant applications that unreasonably "bootstrap" probable cause of criminal activity, or to search other locations, to a private home (Def. Br. at 36-41). More investigation was needed to establish the requisite fair probability that evidence of Casillas's drug dealing would be found in Manzo's home. Upholding warrants based on such suspicion and conjecture would erode the long-established protection of the sanctity of home under the Fourth Amendment (Def. Br. at 21, 41). *Florida v. Jardines*, 569 U.S. 1, 6 (2013); *Payton v. New York*, 445 U.S. 573, 585 (1980); *United States v. United States Dist. Ct. for the E.D.*, 407 U.S. 297, 313 (1972); *Silverman v. United States*, 365 U.S. 505, 511 (1961). Moreover, warrants premised on such incomplete police investigations can result in the failure to hold anyone responsible for the contraband (Def. Br. at 40). Deterring such police conduct and preserving the sanctity of the home under these circumstances thus outweighs the cost of excluding the evidence (Def. Br. at 40-41).

Consequently, the trial court erred in denying Jorge Manzo's motion to quash search warrant and suppress evidence, and the evidence should have been suppressed (Def. Br. at 41). Given that the motion should have been granted, and the State cannot proceed without the evidence obtained pursuant to the unconstitutional search of his home, Manzo respectfully asks that this Court reverse his conviction for unlawful possession of a weapon by a felon (Def. Br. at 41).

CONCLUSION

For the foregoing reasons, Jorge Manzo, defendant-appellant, respectfully requests that this Honorable Court reverse his conviction for unlawful possession of a weapon by a felon outright where the evidence of the offense was seized pursuant to search warrant for his home not supported by probable cause.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Editha Rosario-Moore, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is 20 pages.

/s/Editha Rosario-Moore
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No. 122761

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 3-15-0264.
Plaintiff-Appellee,	)	There on appeal from the Circuit Court of the Twelfth Judicial
-vs-	)	Circuit, Will County, Illinois, No. 09-CF-1345.
JORGE MANZO, JR.	)	Honorable Edward A. Burmila, Jr.,
Defendant-Appellant	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 6, 2018, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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