In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Fall Term, 2002
No. 02-0875

JENNIFER HANSEL,
Appellant
V.
UNITED STATES OF AMERICA
Appellee.

Appeal from Order denying Defendant's Motion to Suppress Evidence
From the United States District Court for the Southern District of Ohio.

Brief for the Appellant

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STATEMENT OF JURISDICTION AND STANDARD OF REVIEW

This is an appeal of the United States District Court for the Southern District of Ohio's decision to deny Jennifer Hansel's motion to suppress. The Southern District Court of Ohio had proper jurisdiction over this case pursuant to 18 U.S.C. § 3231, which grants original jurisdiction against all offenses to the district courts of the United States. 18 U.S.C. § 3231 (West 2000). Defendant, Jennifer Hansel, was arrested and indicted for possession with intent to distribute metamphetamines, pursuant to 21 U.S.C. § 841. *U.S. v. Hansel*, Judgm. Case No. 02-00140 (July 29, 2002). Therefore, because she committed an offense under the laws of the United States, the District Court had proper jurisdiction to hear the case.

The United States Court of Appeals for the Sixth Circuit has proper jurisdiction to hear the appeal from the United States District Court for the Southern District of Ohio. Pursuant to 28 U.S.C. § 1291, United States Courts of Appeals have jurisdiction to hear appeals from all final decisions of the District Courts of the United States. 28 U.S.C. § 1291 (West 1993). The District Court entered its judgment on July 29, 2002. *U.S. v. Hansel*, Judgm. Case No. 02-00140 (July 29, 2002). The Final Notice of Appeal to the United States Court of Appeals for the Sixth Circuit from the judgment entered was timely filed on August 5, 2002. Notice of Appeal (Aug. 5, 2002).

The District Court for the Southern District of Ohio's legal conclusions is reviewed *de novo* on appeal. *U. S. v. Rohrig*, 98 F.3d 1506, 1511 (6th Cir.1996); *U. S. v. Johnson*, 9 F.3d 506, 508 (6th Cir.1993); *U. S. v. Sangineto-Miranda*, 859 F.2d 1501, 1512 (6th Cir.1988). This court owes no deference to District Court's conclusions of law, therefore, will review all legal conclusions in this appeal *de novo*. The District Court's factual findings are reviewed under the

"clearly erroneous" standard. *U. S. v. Morgan*, 743 F.2d 1158, 1162 (6th Cir.1984); *U. S. v. Sangineto-Miranda*, 859 F.2d at 1512; *U. S. v. Rohrig*, 98 F.3d at 1511.

STATEMENT OF THE ISSUES

1. Whether society is willing to recognize the Fourth Amendment's protection to an expectation of privacy as reasonable against unreasonable searches of a faculty secretary's office when there is limited entry by faculty, staff and the public, when at least one secretary is usually present in the office during the majority of the day, when a secretary has an area designated for her exclusive use and when confidentiality and security are key policies of the office?

2. Whether a Drug Enforcement Agency Agent has probable cause based on the facts presented by a citizen informant with no training or education in identifying illegal drugs, a brief look at the evidence and rely on life experience from twenty years ago to distinguish illegal drugs, suggested evidence of a crime would be found.

3. Whether exigent circumstances are present justifying a warrantless search by a federal agent to prevent the imminent destruction of evidence when the agent did not have a reasonable belief third parties are inside and has not corroborated the information before engaging in covert video surveillance.

STATEMENT OF THE CASE

On April 30, 2002, Jennifer Hansel was viewed in her office, by a covert video surveillance, making a transaction with students at 5:11 in the morning. Rpt. Of Drug Enforcement Administration Agent Kenneth J. Kandaras 1. ("Ex. D"). Subsequently, Mrs. Hansel was arrested in her office and indicted for possession with intent to distribute methamphetamines, pursuant to 18 U.S.C. § 841. *U.S. v. Hansel*, No. 02-00140 (S.D. Ohio July 15, 2002). Mrs. Hansel filed a motion to suppress evidence seized by the Government without a search warrant. *Hansel*, slip op. at 1. On July 15, 2002, at the suppression hearing, the District Court denied Mrs. Hansel's motion to suppress evidence. *Id.* Mrs. Hansel pleads guilty, reserving her right to appeal. The District Court entered judgment on July 29, 2002. *U.S. v. Hansel*, Judgm. Case No. 02-00140 (July 29, 2002). On August 5, 2002, Mrs. Hansel filed a timely appeal to the United States Court of Appeals for the Sixth Circuit from the judgment entered by the District Court. Notice of Appeal (Aug. 5, 2002).

STATEMENT OF FACTS

At 2:00 in the morning on April 30, 2002, a hidden, no sound video camera was installed in record time by a Drug Enforcement Agency agent ("DEA") and a Ohio Southern University College of Law ("COL") technology director, behind the office wall clock, hanging 80 inches from the floor, facing Jennifer Hansel's ("Mrs. Hansel") desk. *U.S. v. Hansel*, No. 02-00140 (S.D. Ohio July 15, 2002); Diagram of Wilber Wright Hall Room 425. ("Ex. B"). The office clock was the best location for the clock to be installed on short notice. Rpt. Of Drug Enforcement Administration Agent Kenneth J. Kandaras. ("Ex. D").

Mrs. Hansel began her employment as a faculty secretary at the COL when her husband, William Hansel, began law school there, two years ago. *Hansel,* slip op. at 1. Mrs. Hansel, when she began her work for the COL, received and signed a copy of her job description, which described specific information relating to security and confidential aspects expected of her. Mrs. Hansel shares her office with the senior secretary, forty-year old Nancy Matlock ("Informant"), who has worked in the office for ten years. *Id.*

The job description stated that the faculty secretaries' office hours are from 8:30a.m. until 5:00 p.m. Ohio S.U. College of Law Admin. Asst. Duties and Resps., 1: 2-3 (Aug. 15, 2000). ("Ex A"). The secretaries are expected to be in the office during office hours. *Id.* During the first three days of each term, at noon, the secretary is to take cash and checks to the Bursar's Office for deposit. Ex. A, 1:5. The faculty orders approximately five hundred supplements to serve the 450 students. *Id.* A one-hour lunch break is suggested to be coordinated with a co-worker so the office is not understaffed for an excessive time. Ex. A, 2:8. Secretaries are also responsible for, to ensure confidentiality, administering faculty evaluation forms to the students and therefore, both may be absent from the office. Ex. A, 2:11. When both secretaries are gone,

they leave the door slightly ajar, with a post-it note indicating when the office will be staffed again. *Hansel*, slip op. at 2.

Office keys are issued only to the two secretaries, the Dean, Associate Dean, Dean of Students, and maintenance staff. Ex. A, 1:3. Office and supply room keys are signed out for personal use only. *Id.* In addition, each secretary has the keys to her own 28-inch high/ 30-inch deep/ 80-inch long desk and 17 inch wide/ 65-inch high/ 16-inch deep filing cabinet located between the secretaries workspaces. *Hansel,* slip op. at 2; Ex. B. The two secretaries cannot see each other when sitting at their desks. Mot. To Suppress Hrg. Tr. p. 1:6 (July 1, 2002). ("Ex. C"). The L-shaped nature divides the office into two separate personal work areas. *Hansel,* slip op. at 1.

In the secretary office, each secretarial station is provided with a small desktop printer for use when the shared printer is unavailable. Ex. A, 2:9. Occasionally, a secretary will go behind the other's desk if her own printer is not working and the short document needs to be printed quickly. *Hansel,* slip op. at 2. The twenty faculty members perform their own word processing and correspond with the secretaries via e-mail, voicemail, or infrequently through coming into the office to use the drop box in front of each secretary's desk. *Hansel,* slip op. at 2; Ex. A, 1:4.

During the lunch hour on April 29, 2002, informant needed to print a letter and decided to use Mrs. Hansel's printer, although she was due back from lunch shortly. *Hansel,* slip op. at 2. Because the toner was low, informant opened the file cabinet door where she though she would find the printer toner and noticed about a half a dozen plastic bags stacked on top of the cartridge. Ex. C, 2:11. Informant, looked at the bags and saw pills inside of them and also noticed a post-it note stuck inside the drawer with five, colon, zero, zero, four, slash, three, zero written in pencil. *Id.* at 2:13. Twenty years ago, in 1970, informant's brother was treated with

methamphetamines for ADD. *Id*.at 2:11. Informant thought her discovery appeared to be the same size, color and shape pills as the ones her brother took. *Id*. The plastic bags of pills confiscated contained 55 grams of what later tested positive as methamphetamine. Informant has an associate's degree in office management and has never taken a course or been trained in any way to identify drugs of any kind. *Id*. at 3-4: 21-22.

Informant left for the day at 4:30p.m.without mentioning her discovery to Mrs. Hansel. *Id*. at 2:13. When informant left, Mrs. Hansel was typing a letter for a professor and joked it would take her all night to finish. *Id*. Later that evening, informant became worried Mrs. Hansel would think she was on to her and dispose of the bags if she saw the toner cartridge was new. *Id*. at 2:15. Informant called Dean Butler at 1:00 in the morning, because she had his home phone number, to report her findings. *Id*.

At 4:30 a.m., on April 30, 2002 a DEA began videotaping Mrs. Hansel's office based on a belief that evidence of criminal activity would be destroyed. Ex. D. The covert video surveillance recorded Mrs. Hansel enter, write something down on a post-it note at 5:01 a.m. and then go out of camera range as she walked towards the office door. *Id*. She then returned to her chair and turned on her computer. *Id*. At 5:11 a.m., Mrs. Hansel entered the camera view with three other individuals and subsequently opened the file cabinet drawer and exchanged bags for cash from the three individuals. *Id*. As those three individuals exited, five others entered camera range. *Id*.

The DEA posted down the hallway approached the faculty secretaries' office after viewing the exchange from the recording. *Id*. Upon approaching, DEA found the door was closed with a post-it note on it with the words "be back soon." *Id*. When the door opened for the individuals to leave, the agent was outside the door. *Id*. Mrs. Hansel was then arrested and

indicted for possession with intent to distribute methamphetamines, in violation of 21 U.S.C. § 841 (a) (1). *Hansel*, slip op. at 3.

SUMMARY OF ARGUMENT

The Fourth Amendment protects citizens against unreasonable search and seizures to ensure their personal privacy. Mrs. Hansel has a privacy right, as guaranteed by the Fourth Amendment, against covert video surveillance in her office; therefore, the District Court's order should be reversed. First, Mrs. Hansel has exhibited, through her daily activities, an actual, subjective expectation to privacy and this expectation is one society is ready to recognize as reasonable. Second, the DEA did not have probable cause to conduct the warrantless search of Mrs. Hansel's office. Lastly, the DEA should have reasonably obtained a warrant prior to covertly searching Mrs. Hansel's office because the circumstances were not exigent and a warrant was procedurally feasible. For the foregoing reasons, and because the government interest in conducting the search did not outweigh Mrs. Hansel's expectation to privacy, the District Court's order should be reversed.

Mrs. Hansel's overt activities in her workplace establish she had an actual subjective expectation to privacy in her workplace. She took reasonable measures to ensure her privacy through entering the office with her key, closing the door behind her and knowingly placing her private items in a closed cabinet. What Mrs. Hansel did not voluntarily expose to the public is what she wanted to keep private. Mrs. Hansel's activities of ensuring her privacy establish that she did not know or have reason to know she would be under covert video surveillance in her workplace.

Mrs. Hansel's expectation to privacy in the workplace is one that society is willing to recognize as reasonable. While other employees, students and the public had accessibility to her office, it was not so open all the time that others have unfettered access. Mrs. Hansel's expectation to privacy reasonably can extend to the personal spaces designated for her exclusive

use. Furthermore, the office is not a typical setting in which society would expect to be under surveillance. Society is ready to recognize the excessively intrusive means of surveillance, covert videotaping, as violating a reasonable person's expectation to privacy.

The DEA did not have probable cause to engage in a warrantless search of Mrs. Hansel's office. The lacked a substantial basis for believing that evidence of criminal activity would be found through a search. Furthermore, the information provided to the officer was not sufficient to form a reasonable belief; therefore, the DEA is not justified in engaging in the warrantless, covert search of Mrs. Hansel's office. Instead, the DEA was acting on the mere conclusions of others. Moreover, the informant lacked reliability because she had no previous experience with identifying narcotics or providing accurate data to officers in the past. Therefore, the DEA should have engaged in an independent investigation to substantiate the information provided before engaging in a warrantless search.

The warrantless search was not justified by exigent circumstances. The DEA agent had no reasonable basis to believe Mrs. Hansel was destroying the evidence. Moreover, the destruction of the evidence was not imminent. The officer only had a mere possibility that the evidence would be destroyed, therefore had no affirmative proof of the likelihood of destruction. The DEA could have reasonably attempted to secure a warrant over the telephone. The government's interest in the search is not greater than Mrs. Hansel's expectation to privacy; therefore, the warrant requirement remains.

Mrs. Hansel's privacy protection by the Fourth Amendment is greater than the unreasonable, intrusive covert video surveillance conducted by the government. For the forgoing reasons, the District Court's order should be reversed.

ARGUMENT

I. THE DISTRICT COURT ERRED TO DENY MRS. HANSEL'S MOTION TO SUPPRESS BECAUSE SHE EXHIBITED AN EXPECTATION OF PRIVACY IN HER WORKPLACE AGAINST INTRUSIVE, COVERT VIDEO SURVEILLANCE BY GOVERNMENT OFFICIALS AND THIS EXPECTATION IS CONSIDERED REASONABLE BY SOCIETY.

The Fourth Amendment protects Mrs. Hansel's expectation of privacy at her workplace, against warrantless covert video surveillance by government officials. The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures." U.S. CONST. amend. IV. As with the expectation of privacy in one's home, such an expectation of privacy in one's place of work is based upon "social expectations that has deep roots in the history of the Fourth Amendment." *O'Connor v. Ortega*, 480 U.S. 709, 716 (1987); *U.S. v. Oliver*, 466 U.S. 85, 178 (6th Cir.1981). Therefore, a search is unreasonable when a person has a reasonable expectation of privacy in the area searched. *Katz v. U.S.*, 389 U.S. 347, 351 (1967). A person has a reasonable expectation of privacy against electronic surveillance when they: (1) exhibit an "actual (subjective) expectation of privacy," and (2) that expectation to privacy is one "society is prepared to recognize it as reasonable." *Katz* 389 U.S. at 361 (Harlan, J. concurring); *U.S. v. King*, 227 F.3d 732, 744 (6th Cir.2000). Mrs. Hansel's expectation of privacy against covert video surveillance was exhibited through her conduct and her expectation is one society would recognize as reasonable.

A. Mrs. Hansel's overt activities established that she had a subjective expectation of privacy at her workplace against covert video surveillance.

Mrs. Hansel's activities in the workplace exhibited a subjective expectation of privacy; therefore, the District Court correctly in concluded she did not know or have reason to know her private activities were being covertly videotaped. A legitimate expectation of privacy exists when the person has exhibited, by his conduct, an actual, subjective expectation of privacy.

Katz, 389 U.S. at 361. A person has met this first requirement through demonstrating by their actions, they sought to preserve something as private. *King,* 227 F.3d at 744.

Because an employee's actions exhibited that he thought he would be alone and undisturbed, the court held he had a subjective expectation of privacy in the room. *U.S. v. Anderson*, 154 F.3d 1225, 1229 (10th Cir.1998). Specifically, the employee entered his office building over a holiday weekend when no other employees were in the building. *Id.* He entered through using his corporate key card and locked the door behind him. *Id.* Once inside, he closed the door. *Id.* Although the blinds and curtains were closed, the employee attached a towel over the window to prevent any view so that his privacy would be maintained. *Id.*

Personal conduct provided support for the courts determination of an actual, subjective expectation of privacy in a personal hotel room. *U.S. v. Nerber*, 222 F.3d 597, 603 (9th Cir.2000). Particularly, the court noted the acts of closing the door, drawing the blinds, and exercising dominion over the room to support its finding. *Id.* Furthermore, defendants subsequently engaged in activity in a way they clearly would not have had they thought outsiders would have seen them justified an actual subjective expectation to privacy. *Id.*

Mrs. Hansel came into the office at 5:01 in the morning before the office opened at 8:30 a.m. Ex. D. She entered the office through a key, designated for her use only. Ex. A, 1:3. The morning of the surveillance, although she was alone, Mrs. Hansel placed a post-it-note with "be back soon" on the door the DEA found to be closed. Ex. D; *Hansel*, slip op. at 2. Shortly after she returned in camera view, Mrs. Hansel engaged in activity she would not have had she been aware of the video surveillance. Ex. D.

The narcotics were discovered in a closed file cabinet door behind Mrs. Hansel's personal desk. Ex. C, 2:8. Mrs. Hansel entered her locked office, closed the door and engaged in

activities because she thought she was alone and would be left undisturbed. Therefore, Mrs. Hansel, through engaging in private, secure actions, exhibited that she did not know or have reason to know that her activities would be covertly videotaped.

B. Mrs. Hansel's expectation of privacy from covert video surveillance can be considered reasonable by society because such an expectation is rooted in the Framers of the Fourth Amendment intent that the workplace deserves protection from unnecessary government intrusion.

Society is prepared to consider Mrs. Hansel's expectation to privacy in her workplace as reasonable. It is understood by society that certain areas deserve the most scrupulous protection from government intrusion. *State v. Bonnell, et al.*, 856 P.2d 1265, 1277 (Haw. 1993). The court should consider factors to decide a privacy expectation is one that society is prepared to accept as reasonable. *O'Connor,* 480 U.S. at 715; *Oliver*, 466 U.S. at 178; *U.S. v. Elmore*, 2002 WL 31055399 (6th Cir.(Ohio)). Many courts rely on the following factors in holding a defendant had an objectively reasonable expectation of privacy expectation they would not be videotaped by government agents including: (1) the nature of the area under video surveillance and its impact on an individual's sense of security, and (2) the nature of the government invasion employed as a possible utility of law enforcement. *U.S. v. White*, 401 U.S. 745, 787 (1971) (Harlan, J., dissenting); *Cowles v. State*, 23 P.3d 1168, 1171 (Alaska 2001); *Bonnell*, 856 P.2d at 1277; *U.S. v. Taketa*, 923 F.2d 665, 677 (9th Cir.1991). Mrs. Hansel was protected in the workplace by the Fourth Amendment's protection against covert video surveillance, and society is prepared to view this expectation as reasonable.

1. *Mrs. Hansel has an objective expectation of privacy that society will recognize because covert video surveillance provides police with more information than she would knowingly expose to public observation.*

Mrs. Hansel's expectation of privacy was violated by the government's covert video surveillance because it provided police with more information than she would expect to expose

to public observers. An employee's expectation of privacy must be assessed "in the context of the employment relation." *O'Connor,* 480 U.S. at 717. A subjective expectation of privacy can be objectively reasonable, although it is accessible to others, in private business offices given over to an employee for their exclusive use. *Id.* at 716-718 (finding that a person has a reasonable expectation of privacy in their desk and file cabinets when not shared by other employees); *Taketa,* 923 F.2d at 672 (finding that private business offices are often subject to the legitimate visits of coworkers, supervisors, and the public, without defeating the expectation of privacy). Therefore, even in areas other access, the Fourth Amendment protects what a person seeks to preserve as private although it may be unknowingly exposed to public view. *Katz,* 389 U.S. at 351-352.

Furthermore, an employee's expectation of privacy in a government office is only unreasonable when it is so open to fellow employees or the public. *O'Connor,* 480 U.S. at 718; *State v. McLellan,* 744 A.2d 611, 614 (N.H.1999) (finding that an expectation of privacy will be decreased in a work area that is less private because that employee has less control over it). Therefore, an employee's expectation of privacy from video surveillance is reasonable when they exercise a certain dominion and control over the time and place where the videotaping occurred. *Taketa,* 923 F.2d at 673 (finding that a reasonable expectation to privacy existed because the videotaping occurred on a Sunday morning when other people would not normally be present, the office was not open to the public and only three people had regular access to it). Ultimately, privacy does not require solitude. *Id.* at 672.

Employees did not have a reasonable expectation of privacy in their break room because other employees had "unfettered access" to the area. *Brannen v. King Loc. Sch. Dist. Bd. of Ed.,* 761 N.E.2d 84, 91 (Ct. of Appeals, Ohio 2001). Teachers could access the room whenever they

needed something contained inside because the room was "open all the time." *Id.* Therefore, because the break room was so open all the time, employees could not have a reasonable expectation of privacy in the area. *Id.*

The nature of the office atmosphere decreased an employee's expectation of privacy in her office because the personal desk was observable though the open door and fellow employees walked continuously throughout the videotape. *Cowles,* 23 P.3d at 1174. Furthermore, other employees had regular access to the office, thereby eliminating the reasonable expectation to privacy. *Id.* Therefore, an office where tickets are sold to the public is not a private office designated for an employee's exclusive use. *Id.*

Mrs. Hansel shares her office with the senior secretary. *Hansel,* slip op. at 1. Occasionally, they go behind each other's desk if their personal printer is not working or a short document needs to be printed quickly. *Hansel*, slip op. at 2. Nevertheless, a seventeen (17) inch wide by sixty-five (65) inch high by sixteen (16) inch deep filing cabinet separates the secretaries own twenty- eight (28) inch high by thirty (30) inch deep by eighty (80) inch long desk. Ex. B. Therefore, the two secretaries cannot see each other when sitting at their desks. Ex. C, 1:6. The L-shaped nature of the workspace separates the office into two personal areas. *Hansel*, slip op. at 2. While others may access the office, only the secretaries, Dean, the Associate Dean, the Dean of Students, and the cleaning staff have a key, for their exclusive use, to the office. Ex. A, 1:3. Furthermore, each secretary also has a key to her own desk, filing cabinet and locked supply room. *Hansel*, slip op. at 1; Ex. A, 1-2:7.

The public, students and other faculty members have limited need to access the secretaries' office. Ex. A. When visitors plan on coming to the office, the secretaries inform them that there is a directory located by the elevators to direct them to the office on the fourth

floor. Ex. A,1:1. The students mainly access the office the first three days of every term to purchase supplements. Ex. A, 1:5. Combined, the faculty orders five hundred supplements to serve 450 students. Ex. A, 2:8. A student may come alone to the secretaries' office to have a secretary let them see a past exam. Ex. A, 2:7.

The other twenty faculty members rarely correspond with the secretaries by coming to the office to use the drop box in front of each secretary desk. Other methods of communication are available such as e-mail or voicemail. Ex. A, 1:4. Furthermore, the faculty members use a printer that is located down the hall in room 415 from the office room 425. Ex. A, 1-2: 1,19.

The office hours are from 8:30a.m. to 5:00p.m. however, the office policy indicates the need for a secretary to be present at all times. Ex. A, 1:2. Occasionally, when job responsibilities require both secretaries to be out of the office, the secretaries leave the door slightly open. *Hansel*, slip op. at 2. The secretaries leave a post-it-note with the door mainly closed to inform all that they will be back shortly. Id.

Therefore, while others may have access to the office, the area under surveillance is under the exclusive control of Mrs. Hansel. While Mrs. Hansel may expect occasional people entering or walking by the office, the surveillance exposed her activities that would not have normally been seen from a passing by of the doorway. Mrs. Hansel's privacy expectation against video surveillance in an area she exercised dominion and control over is therefore recognized by society.

2. *Mrs. Hansel has an objective expectation of privacy that is recognized by society because covert video surveillance is not expected in her workplace and is an unnecessary and intrusive means of surveillance.*

Mrs. Hansel's expectation of privacy is reasonable because society does not expect to be subjected to unnecessary video surveillance in her workplace. Provided the circumstances, video

surveillance is not reasonable when a greater intrusion of privacy is conducted than is necessary. *Katz*, 389 U.S. at 355. Furthermore, government agents usually are only authorized to employ concealed electronic devices for the narrow purpose of ascertaining the truth of allegations from a "detailed factual affidavit" alleging commission of a "specific criminal offense." *Katz*, 389 U.S. at 355. Thus, the legitimate needs of law enforcement are accomplished through limited use of electronic surveillance. *Id.* at 356. The DEA's needs could have been accomplished through less invasive means of surveillance.

a. Mrs. Hansel did not expect to be subjected to covert observation from an overhead vantage point.

Mrs. Hansel's expectation of privacy is reasonable because members of society do not expect to be subjected to covert video surveillance from an overhead vantage point. An employee's reasonable expectation of privacy in an area given over for their exclusive use can be reduced by actual office procedures, work procedure or regulation. *O'Connor*, 480 U.S. at 671. An employee entering a security employment situation has a decreased expectation that their conduct will remain private. *Cowles*, 23 P.3d at 1175; *National Treasury Employee's Union v. Von Raab*, 489 U.S. 656, 671 (1989)(stating that employees working in stores and commercial offices where money is exchanged, such as the United States Mint, should expect to be subjected to video surveillance).

However, where video surveillance is not commonly conducted, overhead surveillance exposing an activity is reasonable only when the public can be expected to occupy the same vantage point. *State v. Thomas*, 642 N.E.2d 240, 245 (1st Dist. Ct. Appeals 1995). Moreover, under certain circumstances, prolonged government observation from an overhead vantage point is considered "grossly intrusive." *Id.*

Videotaping was reasonable when an employee was acting in a fiduciary capacity. The employee worked in an office where money was regularly handled and stored in a safe to which she had access. *Cowles*, 23 P.3d at 1175. Because video surveillance is commonly conducted in offices where money is exchanged, it was less reasonable for the employee to assume her conduct would remain private. *Id.*

The employees and postal employees were the only ones allowed in the area under surveillance; thus, were in a position to regulate their conduct "as a function of present company." *Bonnell*, 856 P.2d at 1276. Moreover, within the break room, they could see anyone approaching and therefore avoid being surprised by an intruder. *Id.* Employees' expectation of privacy was objectively reasonable because video surveillance was conducted from a smoke detector-obscured "seeing eye" occupying an intrusive vantage point and targeted activity that was not knowingly exposed to the public. *Id*.

A court stated: "Lazarus had created an atmosphere of privacy" with respect to the fitting rooms because of the nature of the area and precautions taken to ensure customers expectation of privacy. *State v. McDaniel, et al.* 44 Ohio App. 2d 163, 165 (1975). Customers use fitting rooms because of the societal understanding that they are not being viewed from a "surreptitious vantage point." *Id.* Thus, although a Lazarus department store is a public place, its customers had a reasonable expectation of privacy within fitting rooms designated for their use. *Id.*

The COL is an educational institution that maintains the need for privacy and security due to the nature of the work that is conducted. Ex. A,1-2:6,7,11. Mrs. Hansel, as a secretary for the COL has the responsibility to effectively provide for the school so that its students can further their education. Ex. A, 2:8. To carry out her responsibilities, Mrs. Hansel is required to supply the students with supplements at the beginning of each term. Ex. A, 1:5. The sale of the

supplements requires Mrs. Hansel to collect money from the students and deposit it at the Bursar's office every day at noon. *Id.* This secretarial task is included in the job description describing her duties and responsibilities given to Mrs. Hansel when she began.

The video camera was placed in a clock located eighty (80) inches above the door in the secretaries' office. Ex. B. The surveillance was directed over Mrs. Hansel's personal, private space that she demonstrated control over. Ex. D.

Although the COL created an atmosphere of privacy and security, the COL is not an area where surveillance is normally expected, such as the United States Mint. Mrs. Hansel did not regularly handle money or have access to the safe. Therefore, Mrs. Hansel's expectation of privacy is reasonable because surveillance is not commonly conducted in secretaries' office. Also, Mrs. Hansel's expectation of privacy is reasonable because the DEA conducted the video surveillance from a vantage point where no member of the public could reasonably view the private activity.

b. Mrs. Hansel's expectation of privacy is accepted as reasonable because the covert video surveillance was more intrusive than any search of the office could have been.

The covert video surveillance was not a necessary means to accomplish the government's purpose for the warrantless search. Personal privacy, as understood in modern Western nations, is disrupted by "exceedingly intrusive and inherently indiscriminate" television surveillance. *U.S. v. Torres,* 751 F.2d 875, 882 (N.D. Ill. 1984). Moreover, because hidden surveillance is considered an extraordinarily intrusive investigative mechanism available to law enforcement, the government's showing of necessity must be high to justify its use. *Bonnell,* 856 P.2d at1277; *Nerber,* 222 F.3d at 603 (stating that society's expectation to be protected from the severe

intrusion of having the government monitor private activities through hidden video cameras remains).

Furthermore, video surveillance is unreasonable because the silent, unblinking lens of the camera is intrusive in a way that no temporary search of the office could have been. *Bonnell*, 856 P.2d at 1277, *Thomas*, 642 N.E.2d at 246 (stating that a person can expect occasional and incidental looks by the public without consenting to police surveillance).

Electronic surveillance was appropriate when government agents limited the use, in scope and duration, to the specific purpose of determining the contents of the petitioner's unlawful telephone communications. *Katz*, 389 U.S. at 354. Furthermore, the surveillance was not begun until after an investigation had established a strong probability that the suspect was violating federal law. *Id.* Moreover, the suspect was only subjected to the electronic surveillance during predetermined periods where the government agents knew the booth was being used. *Id.* Therefore, the surveillance was acceptable because the agents specifically only listened to the activities in which the suspect was part of rather than general surveillance. *Id.*

When Mrs. Hansel was in view, all of private activities were recorded by the constant, unblinking nature of the video surveillance. Ex. D. The DEA entered the office at 2:00 am and was ready to begin videotaping by 5:00 when Mrs. Hansel entered the office at 5:01. *Id.* Furthermore, the video camera recorded eight other people enter and exit the camera view. *Id.*

The DEA did not limit the scope and use so to decrease the intrusiveness. Mrs. Hansel was subjected to surveillance during a time before she was expected to be in the office. The surveillance began before the DEA had a strong probability she was violating federal law. Moreover the camera, although directed over Mrs. Hansel's office, was used for general surveillance therefore, was not focused directly on the alleged criminal activity taking place.

Furthermore, the video surveillance exposed more than Mrs. Hansel would expect occasional passer-bys would see. The government did not establish that the covert surveillance was necessary; therefore, Mrs. Hansel's expectation of privacy is considered reasonable by society.

II. THE DISTRICT COURT ERRED TO DENY MRS. HANSEL'S MOTION TO SUPPRESS BECAUSE THE OFFICER DID NOT HAVE PROBABLE CAUSE TO SEARCH HER OFFICE WITH COVERT VIDEO SURVEILLANCE.

The officer was not provided with any information that would suggest more than a mere suspicion, not probable cause, to believe he would discover evidence of criminal activity. The Fourth Amendment requires that before law enforcement can conduct a search, both 1) probable cause and 2) a warrant are required. U.S. Const. amend. IV; *U.S. v. Murphy*, 241 F.3d 477, 457 (6th Cir.2001). When there is an investigation of possible criminal activity from the beginning, not for work-related wrong doing purposes, both requirements must be satisfied. *O'Connor*, 480 U.S. at 722, 723, 725-726. The DEA officer did not have probable cause to justify the warrantless search of Mrs. Hansel's office.

A. The warrantless, covert video surveillance of Mrs. Hansel's office was unreasonable because the DEA lacked an objective basis for believing evidence would be discovered.

Informant's vague tip did not provide explicit and detailed information sufficient to form a reasonable belief to justify a warrantless, covert intrusion of Mrs. Hansel's office. Probable cause requires a "fair probability" that contraband or evidence of a crime at a particular location would be discovered. *Illinois v. Gates*, 462 U.S. 213, 238 (1983) ("*Gates*"); *Miggins* at 2002 WL 1877151 (6th Cir.(Tenn.)). Moreover, "reasonable grounds for belief" does not require an actual showing of criminal activity but must be supported by proof more than "mere suspicion." *Gates*, 462 U.S. at 244 n. 13; *U.S. v. Haynes*, 2002 WL 1877159 (6th Cir. (Tenn.)) (finding that the officers had been informed defendant was suspected for theft, however they had not been

given any information that would indicate a fair probability that the stolen articles were in defendant's car; therefore, probable cause was lacking).

Only when an officer has reasonable ground, based on his own knowledge or on facts disclosed by others, that a person is guilty of felony, does probable cause exists. *Carroll v. U.S.*, 267 U.S. 132, 161-2 (1925) (finding that the facts and circumstances within an officer's knowledge and based on reasonable trustworthy information were sufficient to justify a person of "reasonable caution" that a crime was to be discovered through their search). Moreover, officers, in deciding that probable cause may exist, can draw reasonable inferences based on their own experience; however, ultimately, officers need a "substantial basis" to believe through the search they will uncover evidence of wrongdoing. *Ornelas v. U.S.*, 517 U.S. 690, 700 (1996); *Miggins* 2002 WL (finding that probable cause existed because of the reasonable inference about where evidence is likely to be kept). Therefore, a court will look to the objective facts known to the officer at the time of the search to decide probable cause is lacking. *U.S. v. Ferguson,* 8 F.3d 385, 391-92 (6th Cir.1993).

Before Mrs. Hansel returned from her lunch break, informant, in her search for a toner cartridge, found in Mrs. Hansel's personal desk approximately a half dozen plastic bags with pills inside of them. *Hansel*, slip op. at 2; Ex. C, 2:11. In the minutes before Mrs. Hansel was expected to return, informant saw a small yellow post-it stuck to the inside of the drawer stating in pencil: "five, colon, zero, zero, then four, slash, three, zero." Ex. C, 2:13. Informant subsequently dug through the bags, took the toner cartridge and replaced the old one. *Id.* It is not reasonable to infer that drugs would be stored in a law school secretaries' office. Therefore, the District Court's decision should be reversed because on the objective facts known to the officer, a fair probability did not exist that contraband would be found.

B. Informant's tip is not sufficient to form a reasonable belief in the DEA officer to justify a warrantless, covert intrusion of Mrs. Hansel's office.

Informant's tip did not provide the DEA a sufficient basis to justify a warrantless entry. Officers lack probable cause for their search when an informant fails to provide sufficient information. *U.S. v. Weaver*, 99 F.3d 1372, 1379 (6th Cir.1996). Moreover, to find an informant's tip constitutes a "substantial basis" that forms a reasonable belief in officers two factors are required. *Gates*, 462 U.S. at 244; *Weaver*, 99 F.3d at 1377. First, an informant's tip is entitled to greater weight when it provides an explicit, first hand observation, and detailed description of the alleged wrongdoing. *Id.*; *U.S. v. Pasquarille*, 20 F.3d 682, 686 (6th Cir.1994). Second, the officer must conduct an independent investigation to corroborate the informer's tip. *Gates*, 462 U.S. at 244; *Pasquarille*, 20 F.3d at 686. The DEA's mere conclusion of the informant's tip does not form a substantial basis for concluding that the criminal activity would be discovered.

1. *The tip provided to the DEA, from an unreliable informant, was insufficient because it did not relay explicit, detailed information.*

Informant's ambiguous description of alleged wrongdoing is not sufficient to justify DEA's warrantless covert surveillance search. An informant's "reliability" or "basis of knowledge" is a contributing inquiry into the validity of an informant's tip to officers. *Gates*, 462 U.S. at 227, 233 (finding that a tip from an anonymous person who provided no personal knowledge for the information provided was not a reasonable basis); *Pasquarille*, 20 F.3d at 687 (finding that a tip where the informant identified themselves and personally observed the attempted sale provided probable cause for an officer to believe that contraband was in defendant's van). Therefore, the weight of an informant's tip must be weighed on all indicators of reliability and unreliability, or the "totality of the circumstances." *Gates*, 462 U.S. at 233-38.

However, another indicator of reliability may compensate for a deficiency in the overall reliability of a tip. *Gates,* 462 U.S. at 233; *U.S. v. Leake,* 998 F.2d 1359, 1364 (6th Cir.1993) (stating that probable cause was lacking because nothing establish informant's reliability because the informer's call did not state explicit details, such as a name, date when they saw drugs or any plans of future activity); *Weaver*, 99 F.3d at 1379 (finding that although the informant could identify the marijuana, there was no indication that the informant had provided reliable information in the past that lead to drug-related arrests or prosecutions).

A note was found inside the cabinet with the plastic bags. Ex. C, 2:13. Informant speculated the note meant Mrs. Hansel was going to distribute the bags at 5:00 the next morning. *Id.* Subsequently, informant called Dean Butler at 1:00 a.m. and provided him with Mrs. Hansel's name and location of the finding being in a closed cabinet. *Id.* at 3:15. The DEA received the information from the Dean, who had no personal knowledge of the suspected criminal activity. *Hansel*, slip op. at 2.

Informant, a forty year old with an associate's degree in office management is the senior secretary at the COL. Ex. C, 3: 17,19. She has been at the COL for ten years and was recently promoted to her senior status because of her perfect attendance record and dedication to detail. *Id.* She has received further training in new word processing programs, etc. but has never taken a course or been trained in any way to identify drugs of any kind. *Id.* The informant's only contact with the pills that she found was from twenty years ago. Ex. C, 3-4:21-22. Despite the fact informant followed medical reports about the medication, she nevertheless has spent and been trained the last ten years to be a secretary, not a drug specialist. *Id*. During those twenty years, the informant has encountered many different drugs and surely, time had an impact on her memory. Ex. C, 3:17.

Therefore, the information provided from the Dean, taken from an informant, is not sufficient proof beyond mere suspicion that evidence would be found by the search. The government fails to provide evidence that the informant has demonstrated that she has provided DEA officers in the past with reliable information that lead to the discovery of any criminal activity. Furthermore, the record does not suggest informant had any preexisting knowledge of any occurrence of prior attempted sales by Mrs. Hansel.

Moreover, although informant correctly identified what later tested as methamphetamines, the record does not indicate that informant had any way of knowing if Mrs. Hansel was being treated for ADD. The informant's unreliability prevents the DEA from forming a sufficient basis to conclude evidence of criminal activity would be discovered. Therefore, the officer did not have a substantial basis that the covert video surveillance search would undercover any evidence of alleged wrongdoing.

2. *The DEA failed to engage in independent investigations corroborating informant's tip therefore weakening a claim of probable cause.*

DEA weakened their claim of probable cause through not corroborating an informant's vague tip. An officer, in finding probable cause, cannot base his decision on a ratification of the "bare conclusions of others." *Gates*, 462 U.S. at 239. Therefore, unless probable cause is shown, an officer acts at his peril and unlawfully where seizure is impossible except without a warrant. *Carroll*, 267 U.S. at 156.

However, undertaking an independent investigation to corroborate an informant's substantial details or vague information can bolster their claim of probable cause. *Gates*, 462 U.S. at 242-245 (finding that the investigation was essential because the informer's letter contained details not just regarding facts existing at the time of the tip but to future action of third parties typically not easily predicted); *Weaver*, 99 F.3d at 1379; (finding that the officer's

only link to the defendant was through the informant's tip, because the officers did not conduct surveillance of the home for unusual traffic or viewing another purchase).

An investigation was essential because the tip provided to the officer lacked quality and quantity of information. *Leake*, 998 F.2d at 1365. Specifically, no individual names were mentioned, no dates upon which he saw the drugs were given, and no planned future activity was described. *Id.* Therefore, because little established the caller's reliability, surveillance was necessary to verify important elements of the anonymous caller's information. *Id.*

A known informant's tip that marijuana was being produced would not have been sufficient to find probable cause. *U.S. v. Smith*, 783 F.2d 648, 649-50 (6th Cir.1986). However, independent investigations by detectives corroborated the accuracy of the tip and the informant's reliability had been established in a prior case. *Id.* at 651. Therefore, the officer's own observation of marijuana growing at the site provided a "fair probability" that further evidence of criminal activity would be found inside the house. *Smith*, 783 F.2d at 652.

The DEA entered Mrs. Hansel's office at 2:00a.m. to begin preparing for surveillance after informant relayed the information to the Dean at 1:00a.m. Ex. D. The DEA officer did not conduct an investigation before undertaking the covert video surveillance search because there was limited time before Mrs. Hansel was expected to enter the office. *Id.* Rather the DEA worked hard and fast to install the surveillance in record time. *Id.*

Therefore, the DEA did not confirm important elements in the tip nor notice any narcotics in the office prior to engaging in video surveillance. The DEA acted unlawfully and at his peril through conducting a warrantless search. Because little established the informant's reliability, the DEA lacked probable cause for a warrant to issue when he failed to investigate the facts relating to Mrs. Hansel's alleged criminal activity.

III. THE FOURTH AMENDMENT'S REQUIREMENT REMAINS BECAUSE THE WARRANT WAS PROCEDURALLY PRACTICABLE AND EXIGENT CIRCUMSTANCES DO NOT EXIST TO JUSTIFY THE WARRANTLESS SEARCH OF MRS. HANSEL'S OFFICE.

The warrant requirement remains because one was procedurally practicable and no exigent circumstances existed at the time of the search. Absent exigent circumstances, even if a felony has been committed and probable cause exists to believe incriminating evidence will be found, a warrantless invasion is presumptively unreasonable. *Payton v. U.S.*, 445 U.S. 573, 588 (1979). To conclude exigent circumstances cease to exist at the beginning of the warrantless search, the gravity of the underlying offense must be weighed against the governmental interest being served by the intrusion. *Welsh v. Wisconsin*, 466 U.S. 740, 750-753 (1984). Reasonableness is the ultimate standard because the warrant procedure is designed to guarantee that the intrusion is justified by a reasonable government interest. *U.S. v. Rohrig*, 98 F.3d 1506, 1516-1517 (6th Cir.1996). The District Court decision should be reversed because the government did not demonstrate the existence of exigent circumstances or that a warrant was not feasible.

A. The warrant requirement remains because the DEA is unable to produce evidence that exigent circumstances existed to justify the warrantless search of Mrs. Hansel's office.

The government fails to establish exigent circumstances were not present; therefore, the warrant requirement remains. In the 6th Circuit, *U.S. v. Morgan*'s three situations justifying a warrantless intrusion under the exigent circumstance doctrine is controlling. *U.S. v. Haddix*, 239 F.3d 766 (6th Cir.2001); *U.S. v. Johnson*, 22 F.3d 674, 680 (6th Cir.1994). The "hot pursuit" exception to the warrant requirement exists only when speed is "essential to protect a compelling government interest." *U.S. v. Morgan*, 743 F.2d 1158, 1162 (6th Cir. 1984). However, when

there is no continuous period of pursuit, rather the arrest is part of a planned occurrence the hot pursuit exception is rejected. *Welsh v. Wisconsin*, 466 U.S. at 1515; *Morgan*, 743 F.2d at 1163.

To justify a warrantless intrusion, officers have the burden to prove the facts and reasonable inferences show a serious and expressed potential for danger to permit the intrusion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Morgan*, 743 F.2d at 1162-1163. There is no risk to justify a warrantless entry absent substantial evidence that a suspect is dangerous or that a grave crime occurred or is about to occur. *Morgan*, 743 F.2d at 1163 (finding that because occupants posed no risk to anyone, defendant's prior contact had been friendly and cooperative, and officers only had unconfirmed information from an anonymous person no immediate threat or security risk to the officers existed to justify the warrantless intrusion).

Therefore, a warrant is required absent evidence suggesting the defendant was engaged in the destruction of the evidence or about to remove the contraband to another jurisdiction. *Morgan*, 743 F.2d at 1163. The government must demonstrate, to justify the warrantless entry (1) a reasonable belief third parties are inside and (2) an "objectively reasonable basis" for concluding the destruction of evidence is imminent. *Sangineto-Miranda*, 859 F.2d at 1512. The mere fact narcotics are involved does not excuse the warrant requirement. *Id.* Exigent circumstances did not exist to justify a warrantless entry.

1. *Exigent circumstances do not exist because the DEA did not have a reasonable belief Mrs. Hansel would be present when he engaged in a warrantless entry.*

The DEA made a warrantless entry into Mrs. Hansel's office before she was supposed to arrive at work when the office opened. Before engaging in a warrantless search, officers must have a reasonable belief they will find third parties within. *Sangineto-Miranda*, 859 F.2d at 1512 (stating that the heightened level of transient activity supports officers' reasonable belief third

parties are within; therefore actual knowledge is not required). When police observe drugs on the premises and police know suspects are aware of their presence, exigent circumstances exist. *U.S. v. Elkins*, 2002 WL 1777790 (6th Cir. (Tenn.)).

Office hours for the COL are from 8:30 am till 5:00 pm. Ex. A, 1:2. The DEA entered the COL at 2:00 a.m. Ex. D. The DEA engaged in the warrantless intrusion before office hours thus, they lacked a reasonable belief that Mrs. Hansel would be in her office at the time of the warrantless entry. Moreover, because Mrs. Hansel has a privacy expectation in her office area, she would not be aware or expect DEA's presence.

2. *The DEA did not have an objective reason to believe destruction of the evidence was imminent.*

The information provided to the DEA was not sufficient to suggest that destruction of the evidence was imminent. Even under the assumption or belief drugs are being destroyed, a search is not permissible because the "mere possibility" is not a sufficient basis to forgo the warrant requirement. *Haddix,* 239 F.3d at 768. Although narcotics can be easily destroyed, a warrantless entry without an objectively reasonable basis for concluding destruction of evidence is imminent is not sufficient to forgo the warrant requirement. *U.S. v. Radka,* 904 F.2d 357, 361 (6th Cir.1990) (stating that targets of drug investigations deserve the same protection as a target in a criminal investigation). While officers do not need to demonstrate actual knowledge, affirmative proof of the likelihood of the destruction of evidence is required. *Radka*, 904 F.2d at 362; *U.S. v. Socey,* 846 F.2d 1439, 1442 (D.C. Cir.1988) (stating that a possibility, not a factual basis to conclude evidence would be destroyed, is insufficient).

Exigent circumstances were present under the circumstances because police were lead to believe the suspect would be prompted to destroy the narcotics before police could obtain a warrant. *Elkins,* 2002 WL. Specifically, exigent circumstances justified the warrantless entry

because the continued absence of the suspect's colleague would alert the suspect that police were on their trail. *Id.*

DEA relies on a yellow post-it note that states "five, colon, zero, zero, then four, slash, three, zero" to believe destruction of the evidence is imminent. *Hansel*, slip op. at 2. However, Mrs. Hansel was joking and friendly with the informant when she left before the office closed for the day of the alleged sighting of narcotics. Ex. C, 2:13. Mrs. Hansel began working for the COL two years ago when her husband began school there. *Hansel*, slip op. at 1. After the arrest, the bags were determined to contain 55 grams of methamphetamines. *Hansel*, slip op. at 3.

While drug prevention is important, the DEA had no reason to suspect Mrs. Hansel would believe police were suspicious. There was no am/pm indicated on the note therefore a reasonable officer could not have, based on the evidence provided, suspected the destruction of evidence was imminent. Moreover, it is unlikely Mrs. Hansel would be able to quickly dispose of the 55 grams of pills in a short time before the DEA would find her.

Furthermore, the government has not offered affirmative proof indicating Mrs. Hansel engages in criminal activity or exhibited any suspicion that informant was on to her. Therefore, the fact the officer was in search of narcotics does not excuse the warrantless entry because Mrs. Hansel deserves the same constitutional protection as any suspect in a criminal investigation.

B. A warrant was procedurally available before the DEA engaged in covert video surveillance; therefore, the warrant requirement remains.

It was procedurally practicable for the DEA to secure a warrant prior to engaging in a warrantless search of Mrs. Hansel's office. The moment a warrantless entry is made is the critical time for determining an exigency does not exist. *Morgan*, 743 F.2d at 1160. Therefore, the length in time to secure a warrant is a factor in determining whether circumstances are exigent. *Radka*, 904 F.2d at 363. Moreover, police officers cannot create exigent circumstances

to justify their warrantless intrusion, therefore, cannot ignore the fourth amendment's warrant requirement if it is inconvenient. *Johnson v. U.S.,* 333 U.S. 10, 15 (1948); *Morgan,* 743 F.2d at 1164.

Thus, the justification of a procedural delay in getting the warrant is not sufficient for negating the fourth amendment's warrant requirement; inadequate preparation by officers does not justify a warrantless entry. *Radka,* 904 F.2d at 363; *U.S. v. Ogbuh,* 982 F.2d 1000, 1004 (6th Cir.1993) (finding that it takes approximately 45 minutes to one hour to obtain a telephonic warrant, therefore, the question is one of motivation and incentive). Therefore, absent any of the limited exceptions to the warrant requirement, police may not engage in a warrantless entry although they plan to subsequently get one. *Katz,* 389 U.S. at 357; *U.S. v. Griffin,* 502 F.2d 959, 961 (6th Cir.1974).

Prior to the warrantless entry, officers did not attempt to contact a magistrate for a telephonic search warrant although they were equipped with mobile telephones. *Radka,* 904 F.2d at 363. Instead, they spent nearly four hours preparing the application for a warrant and then contacted the magistrate after the entry. *Id.* Thus, a state of exigency did not exist because officers had time to secure a warrant prior to their entry. *Id.*

The DEA entered Mrs. Hansel's office at 2:00a.m. Ex. D. The DEA spent from 2:00 am until 4:30 am preparing the video surveillance. *Id.* A state of exigency did not exist because the DEA could have reasonably tried to secure a warrant prior to engaging in the warrantless search of Mrs. Hansel's office with the telephones at the COL. Moreover, though a warrant would not have been issued due to the lack of probable cause, the DEA could have been issued a telephonic warrant in the early morning. Therefore warrant requirement remains and the District Court's judgment should be reversed.

CONCLUSION

For the forgoing reasons, the judgment of the United States District Court for the Southern District of Ohio should be reversed. The Plaintiff's motion to suppress the evidence should be affirmed.

Respectfully Submitted,

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ATTACHMENT

Amendment IV

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.

18 U.S.C. §3231

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

28 U.S.C. §1291

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States…except where a direct review may be had in the Supreme Court.

21 U.S.C. §841

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

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