# CAPTION: STATE V. JOHNSON

**03-27-24**

APPEAL NO.: C-230221

TRIAL NO.: B-2101292

KEY WORDS: EVIDENCE — SEARCH AND SEIZURE — CONSTITUTIONAL LAW/CRIMINAL — PROBABLE CAUSE — EVID.R. 612

SUMMARY:

The trial court erred in denying defendant’s motion to suppress evidence of drugs and a firearm obtained during a search of defendant’s residence pursuant to a search warrant where the affidavit supporting the warrant application failed to establish a nexus between the evidence of illegal drug activity that police sought to seize and the place they sought to search, and therefore, issuance of the search warrant was without a substantial basis for probable cause and violated the Fourth Amendment to the United States Constitution. [*But see* DISSENT: There was probable cause to issue the search warrant for defendant’s residence because the affidavit in support of the warrant contained sufficient nexus linking the defendant’s residence with the drug transactions with confidential informants that were verified by police officers.]

Although the trial court erred under Evid.R. 612 in failing to preserve notes used to refresh a state’s witness’s recollection after it withheld the notes from review by defendant’s counsel, the error was harmless regarding defendant’s conviction for failing to comply with a signal of a police officer because the conviction was supported by sufficient evidence apart from the witness’s testimony.

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED

JUDGES: OPINION by BERGERON, P.J.; CROUSE, J., CONCURS and WINKLER, J., CONCURS IN PART AND DISSENTS IN PART.