

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN MITCHELL LIETZAU,

Petitioner,

vs.

STATE OF ARIZONA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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EXHIBIT 1

State v. Lietzau, 439 P.3d
839 (Ariz. Ct. App. 2019)

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellant,

v.

BRYAN MITCHELL LIETZAU,
Appellee.

No. 2 CA-CR 2018-0011
Filed March 25, 2019

Appeal from the Superior Court in Pima County
No. CR20162952001
The Honorable Howard Fell, Judge Pro Tempore

REVERSED AND REMANDED

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OPINION

Judge Espinosa authored the opinion of the Court, in which Presiding Judge Eppich and Chief Judge Eckerstrom concurred.

ESPINOZA, Judge:

¶1 The state appeals the trial court's suppression of evidence taken from Bryan Lietzau's cell phone, arguing the court erred in denying its request to present testimony from Lietzau's probation officer at the suppression hearing and in granting Lietzau's motion to suppress. For the following reasons, we reverse and remand.

Factual and Procedural Background

¶2 "We discuss only those facts relevant to the suppression ruling challenged on appeal," *State v. Navarro*, 241 Ariz. 19, ¶ 2 (App. 2016), viewing them "in the light most favorable to sustaining the trial court's ruling," *State v. Gonzalez*, 235 Ariz. 212, ¶ 2 (App. 2014). Because no testimony was taken at the suppression hearing under review, we draw the facts from the record of the hearing, including the materials appended to the motions, and non-disputed facts presented in the parties' briefs.¹ See *Navarro*, 241 Ariz. 19, n.1.

¶3 In August 2014, Lietzau was placed on probation for aggravated harassment. In accordance with the terms of his written conditions of supervised probation, Lietzau agreed to submit to "search and seizure of person and property" by the Adult Probation Department "without a search warrant." He also agreed to grant safe access to his residence and property, submit to searches and seizures of "person and property by any probation officer," and provide probation officers with truthful answers to inquiries.

¶4 In early December 2014, a woman contacted Lietzau's probation officer to report "an inappropriate relationship" she believed Lietzau was having with her thirteen-year-old daughter, S.E. A few weeks later, a probation surveillance officer arrested Lietzau for violating

¹At the hearing, the state repeatedly asked that Lietzau's probation officer be permitted to testify, but the trial court declined its request, stating it had read the parties' "responses," and did not "need any testimony."

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conditions of his probation based on his failure to provide access to his residence, participate in counseling programs, comply with drug testing, and perform community restitution. On the way to the jail, the surveillance officer examined Lietzau's cell phone and saw numerous text messages between Lietzau and S.E. The probation department reported these findings to the Tucson Police Department ("TPD"); a police detective then obtained a search warrant² and discovered incriminating photos and text messages in the phone. Lietzau was subsequently indicted on charges of sexual conduct with a minor.

¶5 Lietzau filed a motion to suppress all evidence gleaned from his cell phone, citing *Riley v. California*, 573 U.S. 373 (2014), and arguing the initial search violated his Fourth Amendment rights because warrants "are required for searches of cell phones incident to arrest." He also contended, in the alternative, that the search was unreasonable under the totality of the circumstances, citing *State v. Adair*, 241 Ariz. 58 (2016). The state countered that no constitutional violation occurs when a warrantless search is expressly authorized in a probationer's terms of probation, and maintained that the search of Lietzau's phone fell within the scope of the search conditions in his probation orders, and therefore was "within the probation search exception to the warrant requirement." The state further argued that *Riley* was "inapposite" because the defendants there were not on probation, and the search here was in compliance with *Adair*. The trial court granted Lietzau's motion to suppress, reasoning that the surveillance officer's search of the phone had not been related to Lietzau's "administrative" violations of probation, and was therefore "arbitrary," and impermissible. The state appealed; we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4032(6).

Discussion

¶6 The state contends the trial court erred by suppressing the cell phone evidence because the surveillance officer's examination of Lietzau's phone "was reasonable," and therefore "constitutional" under *Adair*. It also

²The warrant application stated that S.E.'s mother was aware her minor daughter was "possibly sexually active" with an adult, impliedly identified as Lietzau, S.E. had told a doctor she had been sexually active with a twenty-one-year-old male "on previous occasions," and the probation department had informed TPD they had reviewed Lietzau's cell phone and found "information on that phone that pertained to that relationship."

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suggests the search was consensual pursuant to Lietzau's conditions of probation, in which he "agreed and acknowledged" that his personal property could be searched without a warrant. We review a trial court's ruling on a motion to suppress for abuse of discretion, *Adair*, 241 Ariz. 58, ¶ 9, but review *de novo* the court's ultimate legal determination whether the search complied with the Fourth Amendment, *State v. Davolt*, 207 Ariz. 191, ¶ 21 (2004).

¶7 The United States and Arizona Constitutions protect against unreasonable searches and seizures, U.S. Const. amend. IV; Ariz. Const. art. II, § 8, and a search conducted without a warrant is presumed unreasonable, absent certain exceptions to this rule, *State v. Gant*, 216 Ariz. 1, ¶ 8 (2007). A search incident to arrest is one such exception, *see Davis v. United States*, 564 U.S. 229, 234-35 (2011), which the United States Supreme Court justified because of "the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime," *Chimel v. California*, 395 U.S. 752, 764 (1969). The exception, however, does not extend to the search of data contained on cell phones. *Riley*, 573 U.S. at 386. In *Riley*, the Court recognized the significant information stored on cell phones that "implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse." *Id.* at 393. Thus, a warrant is generally required before a cell phone is searched, even if the search is incident to arrest. *Id.* at 401; *see also State v. Peoples*, 240 Ariz. 244, ¶ 13 (2016) ("[C]ell phones contain 'the privacies of life' and are therefore worthy of Fourth Amendment protection." (quoting *Riley*, 573 U.S. at 403)).

¶8 Here, the trial court considered *Riley* because the surveillance officer searched Lietzau's cell phone a short time after arresting him for probation violations, but correctly noted that *Riley* did not "deal with the issue of when someone's on probation, and they've agreed to allow the Probation Department to search their property." The court then considered *United States v. Lara*, a Ninth Circuit case reversing the denial of a suppression motion based on a warrantless and suspicionless search of a probationer's cell phone, in part because his terms of probation did not clearly encompass such a search. 815 F.3d 605, 607, 610, 614 (9th Cir. 2016). The trial court lastly discussed *Adair* and concluded the search of Lietzau's phone was improper. The state contends the court erroneously relied on *Lara* because it is significantly distinguishable from Lietzau's case, and, in any event, not binding on Arizona courts, and argues the court misapplied *Adair*.

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Probationary Search

¶9 Our supreme court has held that when a defendant is on probation, "his expectations of privacy are less than those of other citizens not so categorized." *State v. Montgomery*, 115 Ariz. 583, 584 (1977). More recently in *Adair*, the court described a probationer's privacy interests as "significantly diminished." 241 Ariz. 58, ¶ 23 (quoting *United States v. Knights*, 534 U.S. 112, 121 (2001)). The court then balanced those interests against the state's substantial interests in public safety and reducing recidivism and, rejecting the argument that some level of founded suspicion was required to conduct a warrantless search, held that a "search of [a] residence pursuant to the probation conditions complied with the Fourth Amendment if it was reasonable under the totality of the circumstances." *Id.* ¶¶ 15-23. The court went on to identify factors to consider when determining the reasonableness of a search. *Id.* ¶ 25. For example, as this court had previously noted, "[t]he target of the search must be a known probationer subject to a valid, enforceable probation condition allowing a warrantless search," "[t]he search must be conducted by a probation officer in a proper manner and for the proper purpose of determining whether the probationer was complying with probation obligations," and "the search must not be arbitrary, capricious[,] or harassing." *Id.* (quoting *State v. Adair*, 238 Ariz. 193, ¶ 21 (App. 2015)). Other factors bearing on reasonableness include

the nature and severity of the probationer's prior conviction(s) for which he is on probation; the content and scope of the probation conditions; the nature and severity of the suspected criminal offenses or probation violations giving rise to the search; whether the suspected crimes or violations are the same as or similar to the crimes of which the probationer was previously convicted; and the nature, source, and plausibility of any extraneous information supporting the search.

Id. The trial court here cited these factors and concluded the search was unreasonable, finding it "arbitrary" and therefore in violation of Lietzau's constitutional rights. As stated earlier, we review its legal conclusion de novo. *Davolt*, 207 Ariz. 191, ¶ 21.

¶10 At the outset, we note that the facts of Lietzau's case may be viewed as falling somewhere on a spectrum between *Lara*, to the extent that

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case may be persuasive, and *Adair*, the binding precedent of our supreme court. As in *Lara*, the search here involved a cell phone and its data, for which the Supreme Court has afforded heightened protection. *See Riley*, 573 U.S. at 403 (“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans ‘the privacies of life.’” (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886))). And while the search terms of Lietzau’s probation broadly include “property,” Lietzau argues they do not expressly or unambiguously include a cell phone. *See Lara*, 815 F.3d at 610 (terms of probation, “including any residence, premises, container or vehicle” under defendant’s control did not “clearly or unambiguously encompass” defendant’s cell phone).

¶11 Looking to *Adair*, however, Lietzau was under active probation supervision and subject to a valid, enforceable condition of his probation expressly authorizing warrantless searches by probation officers. *Adair*, 241 Ariz. 58, ¶ 12; *see Knights*, 534 U.S. at 121 (warrantless search upheld where authorized by terms of probation and new offense suspected). And, unlike *Lara*, but as in *Adair*, the search here was not without suspicion. Importantly, the probation department had a reasonable ground to suspect Lietzau might be engaged in an improper relationship with a minor, a serious offense and one that would be a patent violation of his probation. *See A.R.S. § 13-1405(B)* (sexual conduct with a minor under fifteen is a class two felony). Additionally, given the nature of S.E.’s mother’s complaints, there was reason to investigate whether Lietzau’s cell phone might contain evidence corroborating her report. Contrary to the trial court’s conclusion, the totality of circumstances, as more specifically detailed below, clearly tip towards a finding of reasonableness under *Adair*.

Application of *Adair*

¶12 First, Lietzau was on felony probation, and his probation officer had been contacted by an identified individual whose only motivation was that of a mother concerned for her child’s safety. She specifically named Lietzau, obviously known to her as a criminal offender, and indicated she had reason to believe he was inappropriately involved with her thirteen-year-old daughter. Indeed, she contacted the probation department on more than one occasion, including the arresting surveillance officer, to voice her fears. The probation department thus had a well-founded, non-arbitrary reason to suspect Lietzau of committing another felony while on probation, rather than “[m]ere speculation,” as urged by Lietzau. While Lietzau asserts the probation department “had no

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information to indicate that the inappropriate nature of that relationship was criminal or otherwise violated [his] conditions of probation," it is well established that reasonable suspicion is not negated by possibilities of innocent conduct. *See State v. Evans*, 237 Ariz. 231, ¶ 11 (2015) (to justify suspicion, officer need not rule out the possibility of innocent explanations for conduct); *State v. Teagle*, 217 Ariz. 17, ¶ 49 (App. 2007) (reasonable suspicion is based on particularized and objective facts, not hard certainties).

¶13 Although there was no testimony about the arresting officer's motivation in searching Lietzau's phone after the trial court declined to hear the state's probation department witness, and Lietzau argues the state failed to make an offer of proof and thereby waived this issue, the motions before the court at that time contained such evidence, including the transcribed interview of the surveillance officer. *See State v. Treadaway*, 116 Ariz. 163, 168 (1977) (offer of proof not necessary when substance of potential testimony apparent); *see also State v. Keener*, 110 Ariz. 462, 465 (1974) (hearsay generally admissible in suppression hearing); Ariz. R. Evid. 104(a) (trial court not bound by the Arizona Rules of Evidence in suppression hearing). The arresting officer expressly stated in his interview that he was aware of the allegations made by S.E.'s mother; in fact, he had spoken with her himself. And even had that not been the case, it would be of little moment because cumulative police information and knowledge are attributed to an arresting officer. *See State v. Lawson*, 144 Ariz. 547, 553 (1985) (arresting officer need not "personally be in possession of all the facts" so long as collective knowledge of all officers sufficient); *State v. Keener*, 206 Ariz. 29, ¶ 14 (App. 2003); *see also United States v. Sutton*, 794 F.2d 1415, 1426-27 (9th Cir. 1986) (suspicion justified by collective information known by officers).

¶14 Second, cell phones are "ubiquitous" repositories of communications and photos "for a variety of purposes," *State v. Tucker*, 231 Ariz. 125, ¶ 17 (App. 2012), and "[e]ven the most basic phones . . . hold photographs, picture messages, [and] text messages." *Riley*, 573 U.S. at 394. The use of these pervasive devices to convey communications of a sexual nature is well known, particularly involving older children and young adults. *See, e.g., State v. Ortiz*, 238 Ariz. 329, ¶¶ 1, 24 (App. 2015) (defendant convicted of sexual conduct with a minor; "'flirtatious' text messages" to victim evidence of "grooming" for purposes of child abuse); *State v. Villegas*, 227 Ariz. 344 (App. 2011) (conviction for luring minor for sexual exploitation arising from text messages and e-mail with police posing as fourteen-year-old girl); *United States v. Brackett*, 846 F.3d 987 (8th Cir. 2017) (child pornography conviction where minor sent sexually explicit

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photographs to defendant via cell phone); *Miller v. Skumanick*, 605 F. Supp. 2d 634, 637 (M.D. Pa. 2009) (practice of sending sexually suggestive text messages and images via cell phone “widespread among American teenagers”); *State v. Thomas*, 966 N.E.2d 939, ¶ 5 (Ohio Ct. App. 2011) (upholding conviction based on “sexually explicit electronic messages” to minors and their “tak[ing] sexually explicit photographs of themselves and . . . send[ing] those photographs to [defendant’s] cell phone”); *State v. Carey-Martin*, 430 P.3d 98, 112 (Or. Ct. App. 2018) (“sending sexually explicit self-portraits” via cell phone “common among teenagers”); *see also* Elizabeth M. Ryan, Note, *Sexting: How the State Can Prevent a Moment of Indiscretion from Leading to a Lifetime of Unintended Consequences for Minors and Young Adults*, 96 Iowa L. Rev. 357, 360 (2010) (conveying “sexually suggestive text messages and images” via cell phone is a “social phenomenon among minors and young adults”); Oxford University Press, Word of the Year 2009, <https://en.oxforddictionaries.com/word-of-the-year/word-of-the-year-2009%20> (last visited Jan. 31, 2019) (recognizing the term “sexting” as “the sending of sexually explicit texts and pictures” by cell phone).

¶15 Third, although the court in *Lara* determined that “property” does not “unambiguously include cell phone data” when read with specifically enumerated categories of property in defendant Lara’s terms of probation, that particular scenario does not exist here. 815 F.3d at 611. And, other courts have held to the contrary. *See People v. Sandee*, 222 Cal.Rptr.3d 858, 864 (Ct. App. 2017) (condition allowing search of “property” and “personal effects” included cell phone); *State v. White*, 890 N.W.2d 825, ¶ 13 (N.D. 2017) (probation conditions authorizing officers to search “person, vehicle or residence” included cell phones found inside residence); *see also* *United States v. Yuknavich*, 419 F.3d 1302, 1311 (11th Cir. 2005) (despite absence of probation condition authorizing searches, warrantless search of probationer’s computer upheld). But more importantly, whether or not similar probation terms in *Lara* and this case could be viewed as including cell phones and their data, it is significant that the *Lara* court implied the search there would have been valid had the officers possessed reasonable suspicion.³ 815 F.3d at 607, 609-10.

³Thus, while Lietzau’s probation terms are another factor to consider under *Adair*, it is not necessary to reach the issue of whether they constitute an independent waiver of rights regarding his cell phone or electronic data. *See Knights*, 534 U.S. at 117-18 (declining to resolve whether acceptance of

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¶16 Because, unlike in *Lara*, the search of Lietzau’s cell phone was supported by reasonable suspicion that he was committing a new offense, we disagree with the trial court’s conclusion that the search was not conducted for the proper purpose of determining his compliance with probation conditions. *Adair*, 241 Ariz. 58, ¶ 25. An express condition of Lietzau’s probation was “obeying all laws.” Accordingly, although the court in *Adair* listed them as distinct factors, because the search here was for a proper purpose, we cannot say it was arbitrary, capricious, or harassing. *See id.* ¶ 25.

Trial Court’s Findings

¶17 We lastly address Lietzau’s assertions that “the [s]tate failed to present any evidence” that the search was conducted for a proper probationary purpose, and “the trial court’s factual findings were fully supported by the evidence.” The court’s only factual findings, however, related to the way the search occurred, which was not disputed. In fact, the court concluded that the search had been conducted in the “proper manner.” And after repeatedly denying the state’s requests to introduce testimony, the court said it did not “need any” and went on to focus solely on the allegations underlying Lietzau’s arrest. As noted earlier, the court proceeded to discuss case law, primarily *Lara* and *Adair*, and then concluded that the search had “violated [Lietzau’s] constitutional rights,” in large part because it found the search arbitrary for being unrelated to the underlying probation violations he was charged with. As already discussed, however, this conclusion was erroneous. Further, we are aware of no basis or authority, and Lietzau identifies none, holding that a probationary search is limited to the confirmation of known or charged probation violations.

¶18 Indeed, not even founded suspicion for a known or suspected violation of probation is required if the search of a probationer’s home that would otherwise raise Fourth Amendment prohibitions is reasonable under the totality of the circumstances. *Adair*, 241 Ariz. 58, ¶ 1 (the legality of a probationary search “does not hinge on whether the search is supported by reasonable suspicion”); *United States v. King*, 736 F.3d 805, 806 n.1, 810 (9th Cir. 2013) (rejecting argument that reasonable suspicion was required to authorize warrantless probationary search). If the search of a probationer’s cell phone, however, invokes more constitutional protection

probation term authorizing warrantless searches constituted waiver of Fourth Amendment rights).

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than a search of his home, as argued by Lietzau citing *Lara*, we are nevertheless confident in concluding that actual founded suspicion falls much closer to the governance of *Adair* and, together with the surrounding circumstances, justified the warrantless search here. Stated differently, the *Adair* reasonableness standard, as applied to a probationer's cell phone, must necessarily be informed by facts supporting founded suspicion when it exists, as in the case at hand.

Conclusion

¶19 Under the totality of the circumstances, including Lietzau's significantly diminished privacy rights as a probationer, his acceptance of search conditions when he agreed to probation which arguably included his cell phone, the probation department's well-grounded suspicion that Lietzau might be involved in a serious offense with an adolescent child, and the well-known use of cell phones as an aid in committing sexual offenses against children, it cannot be said the officer's search of Lietzau's cell phone was unreasonable. *See Adair*, 241 Ariz. 58, ¶ 23. Accordingly, we conclude the trial court abused its discretion in granting Lietzau's motion to suppress.⁴

Disposition

¶20 Because we have determined the probationary search here was lawful on the specific facts involved, we reverse the trial court's order granting Lietzau's motion to suppress and remand the case for further proceedings consistent with this decision.

⁴Because we reverse on this ground, we need not address the state's additional argument that the trial court erred in not permitting its witness to testify at the evidentiary hearing.

EXHIBIT 2

State v. Lietzau, 463 P.3d 200 (Ariz. 2020) (as amended)

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

STATE OF ARIZONA,
Appellant,

v.

BRYAN MITCHELL LIETZAU,
Appellee.

No. CR-19-0132-PR
Filed May 22, 2020

Appeal from the Superior Court in Pima County
CR20162952-001

The Honorable Howard Fell, Judge Pro Tempore
REVERSED AND REMANDED

Opinion of the Court of Appeals, Division Two
246 Ariz. 380 (App. 2019)
Filed March 25, 2019
VACATED

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VICE CHIEF JUSTICE TIMMER authored the Opinion of the Court, in which CHIEF JUSTICE BRUTINEL, and JUSTICES BOLICK, GOULD, LOPEZ, BEENE, and MONTGOMERY joined.

VICE CHIEF JUSTICE TIMMER, Opinion of the Court:

¶1 Cell phones provide access to an immense array of private information, much of which is stored in the Cloud or on sites controlled by third parties. As such, the United States Supreme Court concluded in *Riley v. California* that people have uniquely broad expectations of privacy in cell phones and, therefore, a warrant is generally required to search them. 573 U.S. 373, 393–94, 401 (2014). In the wake of *Riley*, we are asked to decide whether Arizona’s standard conditions of probation, which permit warrantless searches of a probationer’s “property,” apply to cell phones. We hold they do. We further hold that the search here was reasonable under the totality of the circumstances and therefore compliant with the Fourth Amendment.

BACKGROUND

¶2 In August 2014, the superior court entered judgment against Bryan Lietzau for the crime of aggravated harassment, a domestic violence offense and a class 6 undesignated felony. The court suspended imposition of a prison sentence on Lietzau and placed him on supervised probation for eighteen months. In return, Lietzau agreed to comply with uniform conditions of supervised probation and separate domestic violence probation terms, both of which outlined requirements for “leading a law-abiding lifestyle” and cooperating with the adult probation department (“APD”), among other terms and conditions. Pertinent here, Lietzau agreed to “submit to search and seizure of person and property by the APD without a search warrant” (“Condition 4”).¹

¶3 A few months later, G.E. reported to the APD her suspicion that S.E., her thirteen-year-old daughter, and Lietzau were engaging in an

¹ Similarly, the domestic violence probation terms required Lietzau to “[s]ubmit to search and seizure of person and property by any probation officer.”

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“inappropriate relationship.” APD surveillance officer Casey Camacho arrested Lietzau weeks later for violating several conditions of probation unrelated to S.E.: (1) failing to provide APD safe, unrestricted access to his residence; (2) failing to participate and cooperate in counseling or assistance programs as directed; (3) failing to take a drug test as directed; and (4) failing to perform community restitution. En route to jail, Camacho looked through text messages on Lietzau’s cell phone and discovered numerous incriminating messages and photos between Lietzau and S.E. Camacho typed out the messages and gave his transcription and the cell phone to police. The State subsequently indicted Lietzau on six counts of sexual conduct with a minor.

¶4 Lietzau moved to suppress all evidence gathered as a result of Camacho’s cell phone search, arguing the search violated his state and federal constitutional rights to be free from unreasonable searches and seizures. The State responded that Condition 4 justified Camacho’s warrantless search because a cell phone is “property.” Both parties provided evidence supporting their positions, including a transcription of defense counsel’s interview of Camacho. After conducting a non-evidentiary hearing, the court granted the motion.

¶5 The court first reviewed the holdings in *Riley* and *United States v. Lara*, 815 F.3d 605 (9th Cir. 2016), both of which addressed the unique privacy implications attendant to cell phone searches. The court then applied factors listed in *State v. Adair*, 241 Ariz. 58, 64 ¶¶ 23–25 (2016), to determine whether the search was reasonable under the totality of the circumstances, and thus constitutionally permissible. The court ultimately found that the search was unreasonable because Condition 4 was not sufficiently broad to permit the search, Camacho had no proper purpose in searching the phone, the search was arbitrary, and the alleged probation violations involved only “administrative kinds of things.”

¶6 The court of appeals reversed. *State v. Lietzau*, 246 Ariz. 380, 381 ¶ 1 (App. 2019). After applying the *Adair* factors, it found that the search was reasonable. *Id.* at 384 ¶ 11. Unlike the superior court, the court of appeals relied heavily on the fact that at the time of Lietzau’s arrest, the APD and Camacho had been told about the suspected, inappropriate relationship between Lietzau and S.E. *Id.* This allegation, according to the court, gave the APD “a well-founded, non-arbitrary reason to suspect Lietzau of committing another felony while on probation.” *Id.* ¶¶ 11–12. The court also found that the term “property” in Condition 4 included a cell

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phone, and that cell phones are “ubiquitous’ repositories of communications and photos” that may reveal an inappropriate relationship with a minor. *Id.* at 385–86 ¶¶ 14–15. Under the totality of these circumstances, the court concluded that Camacho’s search of the cell phone was reasonable, and that the trial court erred by granting the motion to suppress. *Id.* at 386 ¶ 19.

¶7 We granted Lietzau’s petition for review to resolve issues of statewide importance that are likely to recur.

DISCUSSION

¶8 We review the trial court’s suppression order for an abuse of discretion. *See State v. Peoples*, 240 Ariz. 244, 247 ¶ 7 (2016). In doing so, we consider only the evidence presented at the suppression hearing and view that evidence in a light most favorable to upholding the court’s ruling. *Id.* An error of law constitutes an abuse of discretion. *Id.*

I. Cell phones as “property” under Condition 4

¶9 Lietzau argues the court of appeals erred by finding that “property” in Condition 4 includes cell phones. He does not dispute that a cell phone constitutes “property” under the plain meaning of the word. *See Property*, Black’s Law Dictionary (11th ed. 2019) (defining “property” as “the rights in a valued resource such as land, chattel, or an intangible”). Rather, he relies on the Supreme Court’s decision in *Riley* to argue that the term “property” in Condition 4 necessarily excludes cell phones.

¶10 The Court in *Riley* recognized that cell phones are “minicomputers” that hold “a digital record of nearly every aspect of [people’s] lives—from the mundane to the intimate” and are thus unlike the types of property carried in one place by people living before the digital age. *Riley*, 573 U.S. at 393–95. As such, the Court concluded that a warrant is generally required to search a cell phone, and such devices are not subject to the search incident to arrest exception to the Fourth Amendment’s warrant requirement. *Id.* at 401–03; *see also Peoples*, 240 Ariz. at 248–49 ¶¶ 11–16 (discussing *Riley*).

¶11 Lietzau argues that after *Riley*, just as a warrant is generally required to search an arrestee’s cell phone, a warrant is generally required to search a probationer’s cell phone. Because the trial court was

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presumptively aware of *Riley* before placing Lietzau on probation, and the court could not impose an illegal condition, he asserts that Condition 4 necessarily excludes cell phones from its reach. *Cf. Polk v. Hancock*, 237 Ariz. 125, 129 ¶ 10 (2015) (concluding the trial court erred by imposing illegal probation term despite the defendant's agreement because "parties cannot confer authority on the court that the law proscribes").

¶12 We disagree that *Riley* prohibits probation conditions authorizing warrantless searches of cell phones. Simply put, the Court did not address that issue. Conversely, it has recognized that supervising probationers "permit[s] a degree of impingement upon privacy that would not be constitutional if applied to the public at large" to "assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large." *Griffin v. Wisconsin*, 483 U.S. 868, 875 (1987). To that end, it has found that "a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens," including a condition requiring the probationer to "[s]ubmit his . . . person, property, place of residence, vehicle [and] personal effects" to a warrantless search. *United States v. Knights*, 534 U.S. 112, 114, 119 (2001); *see also State v. Montgomery*, 115 Ariz. 583, 584 (1977) ("[A] probationer who has been granted the privilege of probation on condition that he submit at any time to a warrantless search may have no reasonable expectation of traditional Fourth Amendment protection." (quoting *People v. Mason*, 488 P.2d 630, 633 (Cal. 1971))). Nothing in *Riley* suggests that the substantial privacy concerns attendant to warrantless cell phone searches of arrestees, who have not been convicted of a crime, foreclose warrantless searches of probationers' cell phones pursuant to a probation condition, assuming the search is otherwise reasonable. *See Griffin*, 483 U.S. at 873, 876 (requiring a warrantless search of a probationer's home to be "reasonable" to comply with the Fourth Amendment).

¶13 *Lara*, relied on by the trial court, does not persuade us to exclude cell phones from the reach of Condition 4. *Lara*'s probation conditions authorized warrantless, suspicionless searches of his "person and property, including any residence, premises, container or vehicle under [his] control." *Lara*, 815 F.3d at 607. Probation officers searched text messages on *Lara*'s phone and found evidence ultimately leading to a criminal conviction. *Id.* at 608. The Ninth Circuit held that the district court erred by not suppressing that evidence because the cell phone search was unreasonable under the circumstances. *Id.* at 612, 614. Significantly, for our

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purposes, the court concluded that the word “property” in Lara’s probation conditions did not unambiguously include cell phone data. *Id.* at 611. It pointed out that although the examples given in the condition “refer to physical objects that can be possessed,” cell phone data cannot be physically possessed and much information accessible through a phone, such as banking and medical records, are possessed by third parties and are thus not “under [Lara’s] control” as provided in the condition. *Id.*

¶14 *Lara* is distinguishable and, to the extent it is not, we reject its reasoning. Condition 4 authorizes a warrantless search of Lietzau’s “property” without qualifying examples, making it broader than the condition in *Lara*. Regardless, we disagree with *Lara* that the inability to physically possess digital data means it is not property when displayed on a cell phone. Whether we consider digital data to be merged with the cell phone displaying it, much like information written on paper, or treat it as intangible, digital data constitutes “property.” *See Property*, Black’s Law Dictionary, *supra* (including “chattel” and something “intangible” in the definition of “property”).

¶15 In sum, the plain meaning of “property” in Condition 4 includes a cell phone. *Riley* does not vary that meaning. The trial court erred by concluding otherwise.

II. Reasonableness of the search under the Fourth Amendment

¶16 Lietzau argues that even if Condition 4 authorized a search of his cell phone, Camacho’s search was unreasonable because it was suspicionless and unrelated to the reason for Lietzau’s arrest or his probation conditions. More specifically, he asserts that the search had nothing to do with S.E., and the court of appeals “conjured its own factual findings” to justify the search on that basis. The State responds that the court of appeals correctly applied the *Adair* factors to conclude that the search was reasonable and thus compliant with the Fourth Amendment.

¶17 We have previously found that probation conditions like Condition 4 are “not an unreasonable or an unconstitutional limitation upon [a probationer’s] right to be free from unreasonable searches and seizures.” *Montgomery*, 115 Ariz. at 584. But we have never held that such conditions alone are sufficient to make any search of a probationer’s person or property reasonable under the Fourth Amendment. *See Adair*, 241 Ariz.

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at 61 ¶ 11 (declining to address the issue). Instead, we have concluded that this condition diminishes a probationer's reasonable expectation of privacy in his person and property. *See id.* ¶ 12; *Montgomery*, 115 Ariz. at 584; *see also Knights*, 534 U.S. at 119–20. We examine the particular circumstances of a case to determine whether that diminished expectation, in combination with other factors, renders a search reasonable under the Fourth Amendment. *See Adair*, 241 Ariz. at 62 ¶ 18.

¶18 The most recent case from this Court to address probationary searches is *Adair*. There, we considered whether reasonable suspicion was required to authorize the warrantless search of a probationer's home. *Id.* at 60 ¶ 9. After reviewing a trilogy of Supreme Court opinions and balancing a probationer's "significantly diminished privacy interests" against the state's "substantial" interests in preventing recidivism, protecting the public, and reintegrating probationers into society, we concluded that a warrantless probationary search complies with the Fourth Amendment if the search is reasonable under the totality of the circumstances. *Id.* at 62–64 ¶¶ 19–23.

¶19 The *Adair* Court identified a non-exhaustive list of factors relevant to the reasonableness inquiry: (1) whether the "target of the search [is] a known probationer subject to a valid, enforceable probation condition allowing a warrantless search"; (2) whether the search is "conducted by a probation officer in a proper manner and for the proper purpose of determining whether the probationer was complying with probation obligations"; (3) whether "the search [is] arbitrary, capricious or harassing"; (4) "the nature and severity of the probationer's prior conviction(s) for which he is on probation"; (5) "the content and scope of the probation conditions"; (6) "the nature and severity of the suspected criminal offenses or probation violations giving rise to the search"; (7) "whether the suspected crimes or violations are the same as or similar to the crimes of which the probationer was previously convicted"; and (8) "the nature, source, and plausibility of any extraneous information supporting the search." *Id.* ¶ 25 (citation omitted). Not all factors are relevant in every case, and they are somewhat overlapping.

¶20 Applying the *Adair* factors here and viewing the facts in a light most favorable to upholding the trial court's ruling, we conclude that Camacho's search of Lietzau's cell phone was reasonable under the totality of the circumstances.

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¶21 Lietzau was on supervised probation and subject to Condition 4, which authorized a warrantless search of his “property,” including his cell phone. As such, Lietzau had a diminished expectation of privacy in his phone. *See Knights*, 534 U.S. at 119–20; *Adair*, 241 Ariz. at 61 ¶ 12; *Montgomery*, 115 Ariz. at 584. Lietzau’s reasonable expectation of privacy in his cell phone log, e-mails, and text messages was particularly diminished because he could reasonably expect they would be searched to determine his compliance with probation conditions, including conditions forbidding contact with the victim in the domestic violence case and her family. The search was conducted by a surveillance officer, and nothing suggests the search was conducted in an improper manner.

¶22 The trial court found, without explanation, that Camacho lacked a proper purpose for conducting the search and that the search was arbitrary. During defense counsel’s interview of Camacho, counsel never asked, and Camacho did not explain, the reason for the search. Nevertheless, Lietzau argues the search was improper because Camacho indicated that he searches probationers’ cell phones routinely, and he did not say he searched Lietzau’s phone because of any suspected wrongdoing or probation violation. To this end, Lietzau pieces together Camacho’s assertions that he “go[es] through hundreds of phones a month,” he “didn’t know one way or the other” whether Lietzau and S.E. text-messaged each other, and he believed he did not need a warrant because Lietzau was on probation.

¶23 Lietzau’s focus on Camacho’s subjective purpose for searching the cell phone is misplaced. The reasonableness of a search turns on objective criteria and not an officer’s subjective mindset or motivations. *See Kentucky v. King*, 563 U.S. 452, 464 (2011) (“[W]e have never held, outside limited contexts such as an inventory search or administrative inspection . . . , that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment.” (citation omitted) (internal quotation marks omitted)); *see also State v. Hausner*, 230 Ariz. 60, 73 ¶ 39 (2012) (to same effect). An objective inquiry is consistent with other tests for reasonableness and promotes “evenhanded law enforcement.” *See King*, 563 U.S. at 464 (citing *Horton v. California*, 496 U.S. 128, 138 (1990)). Thus, to determine whether Camacho searched the cell phone for the proper purpose of determining whether Lietzau was complying with his probation obligations, we examine whether the circumstances, viewed objectively, support such a finding. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011) (“Fourth Amendment reasonableness is predominantly an objective

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inquiry . . . [that asks] whether the circumstances, viewed objectively, justify [the challenged] action." (citations omitted) (quotation marks omitted)).

¶24 Camacho, as the assigned surveillance officer, properly monitored Lietzau's compliance with probation conditions to assist the APD's efforts to simultaneously rehabilitate Lietzau and protect the domestic violence victim and society from future crimes. *Cf. Knights*, 534 U.S. at 119–21 (describing the goals for probation as rehabilitation, protecting society from future criminal violations, and integrating the probationer back into the community); *see also Montgomery*, 115 Ariz. at 584 (noting that probation conditions "aid in the rehabilitation process or prove a reasonable alternative to incarceration as punishment for the crime committed"); Ariz. R. Crim. P. 27.1(b) (stating a "court may impose conditions on a probationer that promote rehabilitation and protect any victim"). One probation condition required Lietzau to "maintain a crime-free lifestyle by obeying all laws, and not engaging or participating in any criminal activity." At the time of the search, the APD and Camacho had been informed by G.E. on more than one occasion that Lietzau, a twenty-two-year-old man, was suspected of engaging in an "inappropriate relationship" with S.E., a thirteen-year-old girl, which Camacho reasonably understood to mean a sexual relationship. If G.E.'s suspicions were correct, Lietzau was committing serious criminal offenses that not only violated his probation conditions but victimized S.E.

¶25 As the court of appeals observed, text-messaging about sexual relationships is commonly done among teens and young adults. *See Lietzau*, 246 Ariz. at 385 ¶ 14; *see also* Elizabeth M. Ryan, *Sexting: How the State Can Prevent a Moment of Indiscretion from Leading to a Lifetime of Unintended Consequences for Minors and Young Adults*, 96 Iowa L. Rev. 357, 360 (2010) (observing that sending "sexually suggestive text messages and images" via cell phone is a "social phenomenon among minors and young adults"). Determining whether Lietzau's text messages revealed a sexual relationship with S.E. directly related to his compliance with probation conditions, his rehabilitation, and the APD's efforts to protect the public from future crimes. Thus, Camacho had an objectively proper purpose for searching those messages, even if that was not his subjective motivation. *See Adair*, 241 Ariz. at 66 ¶ 32 (upholding probationary search that "directly related" to the requirement that the probationer obey all laws and not possess illegal drugs).

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¶26 Even absent evidence that Lietzau and S.E. were engaging in a suspected sexual relationship, Camacho had an objectively proper purpose for searching the cell phone messages to ensure Lietzau's compliance with probation conditions. Lietzau was prohibited from contacting the domestic violence victim and her family as a condition of probation. Checking Lietzau's cell phone text messages to determine whether he was obeying the non-contact condition constituted a proper purpose for the search. *Cf. Griffin*, 483 U.S. at 875 (stating that "probation serves as a period of genuine rehabilitation and [assures] that the community is not harmed by the probationer's being at large," and "[t]hese same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed"). Camacho did not have to suspect that Lietzau had violated the non-contact condition to perform a cursory search of the messages, both ensuring compliance and deterring future violations. *Cf. id.* at 876 (analogizing a probation officer to a parent who acts with "the welfare of the probationer" in mind and citing an officer's need to maximize "the deterrent effect" offered by expeditious searches).

¶27 Lietzau was also required to provide the ADP access to his residence, participate in counseling and drug testing, and perform community restitution, all of which he failed to do within months after being placed on probation. The trial court characterized these probation violations as "administrative kinds of things" and implied they played no part in determining whether Camacho's search was reasonable. We disagree. These conditions were imposed to rehabilitate Lietzau while ensuring he did not pose a danger to society. By skipping counseling and evading drug testing, Lietzau presented a presumptive threat for reoffending, thus endangering the community. He simultaneously prevented the ADP from fully assessing the level of that threat and potentially enhancing its rehabilitative efforts by cutting off access to his residence. Under these circumstances, checking the cell phone messages to determine whether he was reoffending or otherwise posing a public threat reasonably furthered the goals of rehabilitation and public protection. *See Samson v. California*, 547 U.S. 843, 854 (2006) (observing that a probationer's incentive to conceal criminality "justifie[s] an 'intensive' system" for supervision (citing *Griffin*, 483 U.S. at 875)).

¶28 We disagree with the trial court that the search was arbitrary. A search is arbitrary, capricious, or harassing if it is "conducted for reasons unrelated to the rehabilitative and reformative purposes of probation or other legitimate law enforcement purposes." *People v. Bravo*, 738 P.2d 336,

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342 (Cal. 1987). Most often, determining whether a search was conducted for a proper purpose will resolve whether the search was arbitrary, capricious, or harassing. But a search directly related to a probation condition can nevertheless be arbitrary, capricious, or harassing if, for example, “motivated by personal animosity” or conducted “too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer.” *People v. Reyes*, 968 P.2d 445, 451 (Cal. 1998) (citations omitted). Searches conducted under those circumstances do not reasonably relate to the goals of probation. Here, as explained, Camacho had a proper purpose in searching Lietzau’s cell phone text messages that furthered the goals of rehabilitating him and protecting the public. *See supra ¶¶ 24–27*. Nothing suggests Camacho was motivated by an improper purpose, and Lietzau does not suggest otherwise.

¶29 Finally, and importantly, Camacho’s search of the cell phone did not delve deeper than reasonably necessary to determine whether Lietzau was complying with his probation terms. Although Condition 4 diminished Lietzau’s reasonable expectation of privacy in his cell phone, it did not eliminate it. *See Knights*, 534 U.S. at 118, 120. In short, Condition 4 did not grant Camacho carte blanche to indiscriminately search all information accessible by the cell phone. Because a cell phone is a gateway to a massive amount of personal information, *see Riley*, 573 U.S. at 393–95, probationary searches must be limited to data reasonably expected to contain information related to determining a probationer’s compliance with probation conditions. The search here stayed within that boundary.

¶30 In sum, under the totality of the circumstances, we hold that Camacho’s search of Lietzau’s cell phone was reasonable and therefore compliant with the Fourth Amendment. The trial court erred by finding otherwise.

CONCLUSION

¶31 We reverse the trial court’s order granting the motion to suppress and remand for further proceedings. Although we agree with the court of appeals’ disposition, we vacate its opinion to replace it with our own.

EXHIBIT 3

Order of Arizona Supreme Court
denying reconsideration and
amending opinion, June 12, 2020

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,)	Arizona Supreme Court
)	No. CR-19-0132-PR
	Appellant,)
) Court of Appeals
v.) Division Two
) No. 2 CA-CR 18-0011
BRYAN MITCHELL LIETZAU,)	
) Pima County
	Appellee.) Superior Court
) No. CR20162952-001
)	

FILED 06/12/2020

O R D E R

The court has received a motion for reconsideration filed by Appellee, Bryan Mitchell Lietzau.

In addition to arguing that the Court erred in its legal analysis, Appellee asserts the Court mistakenly stated that (1) the police discovered messages on the cell phone, and (2) the conditions of probation prohibited contact with S.E. and her family.

Based on the State's representation in a filing in the court of appeals, it appears that police were unable to retrieve messages from the cell phone, making the Court's recitation incorrect on this point. This fact, however, does not impact the Court's analysis.

The Court did not assert that the conditions of probation prohibited contact with S.E. and her family. The Court's references to the "victim" were to the victim in the original, domestic violence case. Although the Court believes the reference is clear when read in context, the matter can be clarified to eliminate any confusion.

After consideration by the full court,

IT IS ORDERED denying the motion for reconsideration.

IT IS FURTHER ORDERED the Opinion filed May 22, 2020 is amended as follows:

The second to last sentence in paragraph 3 currently reads:

"Camacho informed police, who then obtained a search warrant to search the cell phone and discovered the messages."

The corrected sentence should read:

"Camacho typed out the messages and gave his transcription and the cell phone to police."

The second to last sentence in paragraph 21 currently reads:

"Lietzau's reasonable expectation of privacy in his cell phone log, e-mails, and text messages was particularly diminished because he could reasonably expect they would be searched to determine his compliance with probation conditions, including conditions forbidding contact with the victim and her family."

The corrected sentence should read:

"Lietzau's reasonable expectation of privacy in his cell phone log, e-mails, and text messages was particularly diminished because he could reasonably expect they would be searched to determine his compliance with probation conditions, including conditions forbidding contact with the victim in the domestic violence case and her family."

The first sentence of paragraph 24 currently reads:

"Camacho, as the assigned surveillance officer, properly monitored Lietzau's compliance with probation conditions to assist the APD's efforts to simultaneously rehabilitate Lietzau and protect the victim and society from future crimes."

The corrected sentence should read:

"Camacho, as the assigned surveillance officer, properly monitored Lietzau's compliance with probation conditions to assist the APD's efforts to simultaneously rehabilitate Lietzau and protect the domestic violence victim and society from future crimes."

The second sentence of paragraph 26 currently reads:

"Lietzau was prohibited from contacting the victim and her family as a condition of probation."

The corrected sentence should read:

"Lietzau was prohibited from contacting the domestic violence victim and her family as a condition of probation."

DATED this 12th day of June, 2020.

/s/

ANN A. SCOTT TIMMER
Vice Chief Justice

TO:

Michael O'Toole
Jacob R Lines
David J Euchner
Abigail Jensen
Mikel Steinfeld
blc

EXHIBIT 4

Motion for Reconsideration, June 8,
2020

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IN THE ARIZONA SUPREME COURT

STATE OF ARIZONA,) No. CR-19-0132-PR
Appellant,)
v.) No. 2 CA-CR 2018-0011
BRIAN MITCHELL LIETZAU,)
Appellee.) Pima County Superior Court
) No. CR-20162952-001
)
) **MOTION FOR**
) **RECONSIDERATION**
)

Pursuant to Ariz. R. Crim. P. 31.20, Appellee moves the Court to reconsider its Opinion dated May 22, 2020 for the following reasons.

I. The Opinion ignores the Supreme Court's mandate that "cell phones are different" and strips probationers of all privacy rights, putting probationers on par with incarcerated persons.

To "determine whether to exempt a given type of search from the warrant requirement," courts "assess[], on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Riley v. California*, 573 U.S. 373, 385 (2014), quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999). While the factors for assessing the reasonableness of a probation search set out in *State v.*

Adair, 241 Ariz. 58 (2016), seem designed to aid in that assessment, the Court’s Opinion in this case completely abandons that principle.

The Court gives lip service to the rule that, while a probationer’s Fourth Amendment interests are limited by the terms of probation, they are not eliminated. *Opinion ¶ 17* (“[W]e have never held that [probationary search] conditions alone are sufficient to make any search of a probationer’s person or property reasonable under the Fourth Amendment. Instead, we have concluded that this condition diminishes a probationer’s reasonable expectation of privacy in his person and property. We examine the particular circumstances of a case to determine whether that diminished expectation, in combination with other factors, renders a search reasonable under the Fourth Amendment.”), *citing, inter alia, Adair*, 241 Ariz. at 61-62, ¶¶ 12, 18. The impact of the Opinion, however, is to eliminate all Fourth Amendment protections for probationers and any need to assess the reasonableness of a probation search as long as the probation officer is “searching the cell phone ... to ensure [the probationer’s] compliance with probation conditions.” *Id. ¶ 26.*

As the *Riley* Court recognized, limiting the scope of a cell phone search to a search of evidence of the offense for which the suspect has been detained, or, in this case, the probation conditions he is suspected of violating, imposes no limits at all.

It would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to

suppose evidence of just about any crime could be found on a cell phone. Even an individual pulled over for something as basic as speeding might well have locational data dispositive of guilt on his phone. An individual pulled over for reckless driving might have evidence on the phone that shows whether he was texting while driving. The sources of potential pertinent information are virtually unlimited....

Riley, 573 U.S. at 399.

While the Opinion pays scrupulous attention to the importance of ensuring a probationer's compliance with the terms of probation, it dismisses the other side of that equation, i.e., the degree to which the search invades the probationer's privacy interests. Simply deciding that cell phones are "property" within the scope of the search provision in Lietzau's conditions of probation does not absolve this Court of the requirement to assess the nature and scope of the privacy invasion occasioned by the search of his phone. Probationers may have reduced privacy rights, but they are not entirely stripped of all privacy rights as are incarcerated persons—yet the Opinion implies that all privacy rights evaporate upon the signing of conditions of probation.

The Court compounds this error, and repeats the Court of Appeals' error, by justifying the need to search a probationer's phone because of the vast amount of information a cell phone may contain. *Opinion*, ¶ 29; *State v. Lietzau*, 246 Ariz. 380, 385 ¶ 14 (App. 2019). Yet, the Court fails to consider how this fact increases the invasiveness of a cell phone search, as the *Riley* Court recognized, and requires

a much higher level of justification than even a search of a probationer’s home, as in *Adair. Riley*, 573 U.S. at 396-97 (“Indeed, a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is.”) (emphasis in original).

In effect, the Opinion turns conditions of probation into the “general warrants” that “were the immediate evils that motivated the framing and adoption of the Fourth Amendment.” *Payton v. New York*, 445 U.S. 573 (1980). That cannot be allowed.

II. The Opinion makes two critical factual errors that affected the reasoning in the case. These errors cannot remain uncorrected.

In addition, the Opinion contains two critical factual errors that are crucial to the reasoning in the case. First, this Court incorrectly stated in two places that Lietzau’s conditions of probation prohibited “contact with the victim and her family.” *Opinion ¶¶ 21, 26*. Lietzau was not convicted of any crime related to S.E. or her family; he was on probation for a harassment charge against an ex-girlfriend.

The origin of this error was the State’s Opening Brief: “Given that [Lietzau] was found at the victim’s house, it was reasonable to check if he had made phone

contact as well.” OB ¶ 18. When Lietzau pointed this out in his answering brief, *see* AB ¶ 23, the State acknowledged its factual error at the outset of its reply brief:

First, the State must acknowledge an error in its opening brief. As Lietzau notes in paragraph 23 of his answering brief, the State did assert in its opening brief that Lietzau was found at the victim’s house. This statement is incorrect. This statement was a result of undersigned counsel’s confusion about a conversation he had with the trial attorney in this case. Undersigned counsel has reviewed the record again and agrees that this statement is not supported by the record. Counsel apologizes and asks this Court to disregard the statement.

RB ¶ 2. The State complied with its duty of candor and corrected its mistake in good faith. The State did not repeat the error in its response to the Petition for Review.

This Court did not merely misstate the evidence in its cursory factual summary in the beginning of the Opinion. On the contrary, it misstated this fact at two separate parts of the reasoning, in a manner demonstrating how critical the issue was to the outcome of the case. The primary fact upon which the Opinion relied as evidence of Camacho’s reasonableness in searching the phone was that “Lietzau, a domestic violence offender, was prohibited from contacting the victim and her family as a condition of probation.” *Opinion* ¶ 26. If this fact is corrected, the Court may not reach the same result. In any event, the fact must be corrected.

Second, this Court repeated the error of the Court of Appeals by incorrectly stating that the search of Lietzau’s phone pursuant to the later search warrant

“discovered” the “incriminating photos and text messages between Lietzau and S.E.” *Opinion ¶ 4; State v. Lietzau*, 246 Ariz. 380, 382 ¶ 4 (App. 2019). In a previous special action in this case, the State made clear that the search of Lietzau’s phone yielded no inculpatory evidence. *See State’s Petition for Special Action, p. 8, State v. Fell*, 234 Ariz. 134 (App. 2017) (“By the time Lietzau’s phone was forensically downloaded, the text messages that the probation officer had transcribed were gone.”). None of the pleadings by either party in this case supports the contrary statements by the Court of Appeals and this Court. Lietzau pointed out this error in his Petition for Review, p. 3 n.2.

Conclusion

Therefore, Appellee asks the Court to vacate the Opinion and reconsider this matter in a manner that comports with the Fourth Amendment as interpreted by the U.S. Supreme Court, and to correct the factual error above in its revised opinion.

DATED: June 8, 2020.

By /s/ Abigail Jensen
David J. Euchner & Abigail Jensen
Attorneys for Brian Lietzau

EXHIBIT 5

Original opinion of Arizona
Supreme Court, May 22, 2020

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

STATE OF ARIZONA,
Appellant,

v.

BRYAN MITCHELL LIETZAU,
Appellee.

No. CR-19-0132-PR
Filed May 22, 2020

Appeal from the Superior Court in Pima County
CR20162952-001

The Honorable Howard Fell, Judge Pro Tempore
REVERSED AND REMANDED

Opinion of the Court of Appeals, Division Two
246 Ariz. 380 (App. 2019)
Filed March 25, 2019
VACATED

COUNSEL:

Barbara LaWall, Pima County Attorney, Jacob R. Lines (argued), Deputy County Attorney, Tucson, Attorneys for State of Arizona

Joel Feinman, Pima County Public Defender, David J. Euchner (argued), Abigail Jensen, Deputy Public Defenders, Tucson, Attorneys for Bryan Mitchell Lietzau

Mikel Steinfeld (argued), Phoenix, Attorney for Amicus Curiae Arizona Attorneys for Criminal Justice

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VICE CHIEF JUSTICE TIMMER authored the Opinion of the Court, in which CHIEF JUSTICE BRUTINEL, and JUSTICES BOLICK, GOULD, LOPEZ, BEENE, and MONTGOMERY joined.

VICE CHIEF JUSTICE TIMMER, Opinion of the Court:

¶1 Cell phones provide access to an immense array of private information, much of which is stored in the Cloud or on sites controlled by third parties. As such, the United States Supreme Court concluded in *Riley v. California* that people have uniquely broad expectations of privacy in cell phones and, therefore, a warrant is generally required to search them. 573 U.S. 373, 393–94, 401 (2014). In the wake of *Riley*, we are asked to decide whether Arizona’s standard conditions of probation, which permit warrantless searches of a probationer’s “property,” apply to cell phones. We hold they do. We further hold that the search here was reasonable under the totality of the circumstances and therefore compliant with the Fourth Amendment.

BACKGROUND

¶2 In August 2014, the superior court entered judgment against Bryan Lietzau for the crime of aggravated harassment, a domestic violence offense and a class 6 undesignated felony. The court suspended imposition of a prison sentence on Lietzau and placed him on supervised probation for eighteen months. In return, Lietzau agreed to comply with uniform conditions of supervised probation and separate domestic violence probation terms, both of which outlined requirements for “leading a law-abiding lifestyle” and cooperating with the adult probation department (“APD”), among other terms and conditions. Pertinent here, Lietzau agreed to “submit to search and seizure of person and property by the APD without a search warrant” (“Condition 4”).¹

¶3 A few months later, G.E. reported to the APD her suspicion that S.E., her thirteen-year-old daughter, and Lietzau were engaging in an

¹ Similarly, the domestic violence probation terms required Lietzau to “[s]ubmit to search and seizure of person and property by any probation officer.”

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“inappropriate relationship.” APD surveillance officer Casey Camacho arrested Lietzau weeks later for violating several conditions of probation unrelated to S.E.: (1) failing to provide APD safe, unrestricted access to his residence; (2) failing to participate and cooperate in counseling or assistance programs as directed; (3) failing to take a drug test as directed; and (4) failing to perform community restitution. En route to jail, Camacho looked through text messages on Lietzau’s cell phone and discovered numerous incriminating messages and photos between Lietzau and S.E. Camacho informed police, who then obtained a search warrant to search the cell phone and discovered the messages. The State subsequently indicted Lietzau on six counts of sexual conduct with a minor.

¶4 Lietzau moved to suppress all evidence gathered as a result of Camacho’s cell phone search, arguing the search violated his state and federal constitutional rights to be free from unreasonable searches and seizures. The State responded that Condition 4 justified Camacho’s warrantless search because a cell phone is “property.” Both parties provided evidence supporting their positions, including a transcription of defense counsel’s interview of Camacho. After conducting a non-evidentiary hearing, the court granted the motion.

¶5 The court first reviewed the holdings in *Riley* and *United States v. Lara*, 815 F.3d 605 (9th Cir. 2016), both of which addressed the unique privacy implications attendant to cell phone searches. The court then applied factors listed in *State v. Adair*, 241 Ariz. 58, 64 ¶¶ 23–25 (2016), to determine whether the search was reasonable under the totality of the circumstances, and thus constitutionally permissible. The court ultimately found that the search was unreasonable because Condition 4 was not sufficiently broad to permit the search, Camacho had no proper purpose in searching the phone, the search was arbitrary, and the alleged probation violations involved only “administrative kinds of things.”

¶6 The court of appeals reversed. *State v. Lietzau*, 246 Ariz. 380, 381 ¶ 1 (App. 2019). After applying the *Adair* factors, it found that the search was reasonable. *Id.* at 384 ¶ 11. Unlike the superior court, the court of appeals relied heavily on the fact that at the time of Lietzau’s arrest, the APD and Camacho had been told about the suspected, inappropriate relationship between Lietzau and S.E. *Id.* This allegation, according to the court, gave the APD “a well-founded, non-arbitrary reason to suspect Lietzau of committing another felony while on probation.” *Id.* ¶¶ 11–12. The court also found that the term “property” in Condition 4 included a cell

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phone, and that cell phones are “ubiquitous’ repositories of communications and photos” that may reveal an inappropriate relationship with a minor. *Id.* at 385–86 ¶¶ 14–15. Under the totality of these circumstances, the court concluded that Camacho’s search of the cell phone was reasonable, and that the trial court erred by granting the motion to suppress. *Id.* at 386 ¶ 19.

¶7 We granted Lietzau’s petition for review to resolve issues of statewide importance that are likely to recur.

DISCUSSION

¶8 We review the trial court’s suppression order for an abuse of discretion. *See State v. Peoples*, 240 Ariz. 244, 247 ¶ 7 (2016). In doing so, we consider only the evidence presented at the suppression hearing and view that evidence in a light most favorable to upholding the court’s ruling. *Id.* An error of law constitutes an abuse of discretion. *Id.*

I. Cell phones as “property” under Condition 4

¶9 Lietzau argues the court of appeals erred by finding that “property” in Condition 4 includes cell phones. He does not dispute that a cell phone constitutes “property” under the plain meaning of the word. *See Property*, Black’s Law Dictionary (11th ed. 2019) (defining “property” as “the rights in a valued resource such as land, chattel, or an intangible”). Rather, he relies on the Supreme Court’s decision in *Riley* to argue that the term “property” in Condition 4 necessarily excludes cell phones.

¶10 The Court in *Riley* recognized that cell phones are “minicomputers” that hold “a digital record of nearly every aspect of [people’s] lives—from the mundane to the intimate” and are thus unlike the types of property carried in one place by people living before the digital age. *Riley*, 573 U.S. at 393–95. As such, the Court concluded that a warrant is generally required to search a cell phone, and such devices are not subject to the search incident to arrest exception to the Fourth Amendment’s warrant requirement. *Id.* at 401–03; *see also Peoples*, 240 Ariz. at 248–49 ¶¶ 11–16 (discussing *Riley*).

¶11 Lietzau argues that after *Riley*, just as a warrant is generally required to search an arrestee’s cell phone, a warrant is generally required to search a probationer’s cell phone. Because the trial court was

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presumptively aware of *Riley* before placing Lietzau on probation, and the court could not impose an illegal condition, he asserts that Condition 4 necessarily excludes cell phones from its reach. *Cf. Polk v. Hancock*, 237 Ariz. 125, 129 ¶ 10 (2015) (concluding the trial court erred by imposing illegal probation term despite the defendant's agreement because "parties cannot confer authority on the court that the law proscribes").

¶12 We disagree that *Riley* prohibits probation conditions authorizing warrantless searches of cell phones. Simply put, the Court did not address that issue. Conversely, it has recognized that supervising probationers "permit[s] a degree of impingement upon privacy that would not be constitutional if applied to the public at large" to "assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large." *Griffin v. Wisconsin*, 483 U.S. 868, 875 (1987). To that end, it has found that "a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens," including a condition requiring the probationer to "[s]ubmit his . . . person, property, place of residence, vehicle [and] personal effects" to a warrantless search. *United States v. Knights*, 534 U.S. 112, 114, 119 (2001); *see also State v. Montgomery*, 115 Ariz. 583, 584 (1977) ("[A] probationer who has been granted the privilege of probation on condition that he submit at any time to a warrantless search may have no reasonable expectation of traditional Fourth Amendment protection." (quoting *People v. Mason*, 488 P.2d 630, 633 (Cal. 1971))). Nothing in *Riley* suggests that the substantial privacy concerns attendant to warrantless cell phone searches of arrestees, who have not been convicted of a crime, foreclose warrantless searches of probationers' cell phones pursuant to a probation condition, assuming the search is otherwise reasonable. *See Griffin*, 483 U.S. at 873, 876 (requiring a warrantless search of a probationer's home to be "reasonable" to comply with the Fourth Amendment).

¶13 *Lara*, relied on by the trial court, does not persuade us to exclude cell phones from the reach of Condition 4. *Lara*'s probation conditions authorized warrantless, suspicionless searches of his "person and property, including any residence, premises, container or vehicle under [his] control." *Lara*, 815 F.3d at 607. Probation officers searched text messages on *Lara*'s phone and found evidence ultimately leading to a criminal conviction. *Id.* at 608. The Ninth Circuit held that the district court erred by not suppressing that evidence because the cell phone search was unreasonable under the circumstances. *Id.* at 612, 614. Significantly, for our

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purposes, the court concluded that the word “property” in Lara’s probation conditions did not unambiguously include cell phone data. *Id.* at 611. It pointed out that although the examples given in the condition “refer to physical objects that can be possessed,” cell phone data cannot be physically possessed and much information accessible through a phone, such as banking and medical records, are possessed by third parties and are thus not “under [Lara’s] control” as provided in the condition. *Id.*

¶14 *Lara* is distinguishable and, to the extent it is not, we reject its reasoning. Condition 4 authorizes a warrantless search of Lietzau’s “property” without qualifying examples, making it broader than the condition in *Lara*. Regardless, we disagree with *Lara* that the inability to physically possess digital data means it is not property when displayed on a cell phone. Whether we consider digital data to be merged with the cell phone displaying it, much like information written on paper, or treat it as intangible, digital data constitutes “property.” *See Property*, Black’s Law Dictionary, *supra* (including “chattel” and something “intangible” in the definition of “property”).

¶15 In sum, the plain meaning of “property” in Condition 4 includes a cell phone. *Riley* does not vary that meaning. The trial court erred by concluding otherwise.

II. Reasonableness of the search under the Fourth Amendment

¶16 Lietzau argues that even if Condition 4 authorized a search of his cell phone, Camacho’s search was unreasonable because it was suspicionless and unrelated to the reason for Lietzau’s arrest or his probation conditions. More specifically, he asserts that the search had nothing to do with S.E., and the court of appeals “conjured its own factual findings” to justify the search on that basis. The State responds that the court of appeals correctly applied the *Adair* factors to conclude that the search was reasonable and thus compliant with the Fourth Amendment.

¶17 We have previously found that probation conditions like Condition 4 are “not an unreasonable or an unconstitutional limitation upon [a probationer’s] right to be free from unreasonable searches and seizures.” *Montgomery*, 115 Ariz. at 584. But we have never held that such conditions alone are sufficient to make any search of a probationer’s person or property reasonable under the Fourth Amendment. *See Adair*, 241 Ariz.

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at 61 ¶ 11 (declining to address the issue). Instead, we have concluded that this condition diminishes a probationer's reasonable expectation of privacy in his person and property. *See id.* ¶ 12; *Montgomery*, 115 Ariz. at 584; *see also Knights*, 534 U.S. at 119–20. We examine the particular circumstances of a case to determine whether that diminished expectation, in combination with other factors, renders a search reasonable under the Fourth Amendment. *See Adair*, 241 Ariz. at 62 ¶ 18.

¶18 The most recent case from this Court to address probationary searches is *Adair*. There, we considered whether reasonable suspicion was required to authorize the warrantless search of a probationer's home. *Id.* at 60 ¶ 9. After reviewing a trilogy of Supreme Court opinions and balancing a probationer's "significantly diminished privacy interests" against the state's "substantial" interests in preventing recidivism, protecting the public, and reintegrating probationers into society, we concluded that a warrantless probationary search complies with the Fourth Amendment if the search is reasonable under the totality of the circumstances. *Id.* at 62–64 ¶¶ 19–23.

¶19 The *Adair* Court identified a non-exhaustive list of factors relevant to the reasonableness inquiry: (1) whether the "target of the search [is] a known probationer subject to a valid, enforceable probation condition allowing a warrantless search"; (2) whether the search is "conducted by a probation officer in a proper manner and for the proper purpose of determining whether the probationer was complying with probation obligations"; (3) whether "the search [is] arbitrary, capricious or harassing"; (4) "the nature and severity of the probationer's prior conviction(s) for which he is on probation"; (5) "the content and scope of the probation conditions"; (6) "the nature and severity of the suspected criminal offenses or probation violations giving rise to the search"; (7) "whether the suspected crimes or violations are the same as or similar to the crimes of which the probationer was previously convicted"; and (8) "the nature, source, and plausibility of any extraneous information supporting the search." *Id.* ¶ 25 (citation omitted). Not all factors are relevant in every case, and they are somewhat overlapping.

¶20 Applying the *Adair* factors here and viewing the facts in a light most favorable to upholding the trial court's ruling, we conclude that Camacho's search of Lietzau's cell phone was reasonable under the totality of the circumstances.

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¶21 Lietzau was on supervised probation and subject to Condition 4, which authorized a warrantless search of his “property,” including his cell phone. As such, Lietzau had a diminished expectation of privacy in his phone. *See Knights*, 534 U.S. at 119–20; *Adair*, 241 Ariz. at 61 ¶ 12; *Montgomery*, 115 Ariz. at 584. Lietzau’s reasonable expectation of privacy in his cell phone log, e-mails, and text messages was particularly diminished because he could reasonably expect they would be searched to determine his compliance with probation conditions, including conditions forbidding contact with the victim and her family. The search was conducted by a surveillance officer, and nothing suggests the search was conducted in an improper manner.

¶22 The trial court found, without explanation, that Camacho lacked a proper purpose for conducting the search and that the search was arbitrary. During defense counsel’s interview of Camacho, counsel never asked, and Camacho did not explain, the reason for the search. Nevertheless, Lietzau argues the search was improper because Camacho indicated that he searches probationers’ cell phones routinely, and he did not say he searched Lietzau’s phone because of any suspected wrongdoing or probation violation. To this end, Lietzau pieces together Camacho’s assertions that he “go[es] through hundreds of phones a month,” he “didn’t know one way or the other” whether Lietzau and S.E. text-messaged each other, and he believed he did not need a warrant because Lietzau was on probation.

¶23 Lietzau’s focus on Camacho’s subjective purpose for searching the cell phone is misplaced. The reasonableness of a search turns on objective criteria and not an officer’s subjective mindset or motivations. *See Kentucky v. King*, 563 U.S. 452, 464 (2011) (“[W]e have never held, outside limited contexts such as an inventory search or administrative inspection . . . , that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment.” (citation omitted) (internal quotation marks omitted)); *see also State v. Hausner*, 230 Ariz. 60, 73 ¶ 39 (2012) (to same effect). An objective inquiry is consistent with other tests for reasonableness and promotes “evenhanded law enforcement.” *See King*, 563 U.S. at 464 (citing *Horton v. California*, 496 U.S. 128, 138 (1990)). Thus, to determine whether Camacho searched the cell phone for the proper purpose of determining whether Lietzau was complying with his probation obligations, we examine whether the circumstances, viewed objectively, support such a finding. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011) (“Fourth Amendment reasonableness is predominantly an objective

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inquiry . . . [that asks] whether the circumstances, viewed objectively, justify [the challenged] action." (citations omitted) (quotation marks omitted)).

¶24 Camacho, as the assigned surveillance officer, properly monitored Lietzau's compliance with probation conditions to assist the APD's efforts to simultaneously rehabilitate Lietzau and protect the victim and society from future crimes. *Cf. Knights*, 534 U.S. at 119–21 (describing the goals for probation as rehabilitation, protecting society from future criminal violations, and integrating the probationer back into the community); *see also Montgomery*, 115 Ariz. at 584 (noting that probation conditions "aid in the rehabilitation process or prove a reasonable alternative to incarceration as punishment for the crime committed"); Ariz. R. Crim. P. 27.1(b) (stating a "court may impose conditions on a probationer that promote rehabilitation and protect any victim"). One probation condition required Lietzau to "maintain a crime-free lifestyle by obeying all laws, and not engaging or participating in any criminal activity." At the time of the search, the APD and Camacho had been informed by G.E. on more than one occasion that Lietzau, a twenty-two-year-old man, was suspected of engaging in an "inappropriate relationship" with S.E., a thirteen-year-old girl, which Camacho reasonably understood to mean a sexual relationship. If G.E.'s suspicions were correct, Lietzau was committing serious criminal offenses that not only violated his probation conditions but victimized S.E.

¶25 As the court of appeals observed, text-messaging about sexual relationships is commonly done among teens and young adults. *See Lietzau*, 246 Ariz. at 385 ¶ 14; *see also* Elizabeth M. Ryan, *Sexting: How the State Can Prevent a Moment of Indiscretion from Leading to a Lifetime of Unintended Consequences for Minors and Young Adults*, 96 Iowa L. Rev. 357, 360 (2010) (observing that sending "sexually suggestive text messages and images" via cell phone is a "social phenomenon among minors and young adults"). Determining whether Lietzau's text messages revealed a sexual relationship with S.E. directly related to his compliance with probation conditions, his rehabilitation, and the APD's efforts to protect the public from future crimes. Thus, Camacho had an objectively proper purpose for searching those messages, even if that was not his subjective motivation. *See Adair*, 241 Ariz. at 66 ¶ 32 (upholding probationary search that "directly related" to the requirement that the probationer obey all laws and not possess illegal drugs).

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¶26 Even absent evidence that Lietzau and S.E. were engaging in a suspected sexual relationship, Camacho had an objectively proper purpose for searching the cell phone messages to ensure Lietzau's compliance with probation conditions. Lietzau, a domestic violence offender, was prohibited from contacting the victim and her family as a condition of probation. Checking Lietzau's cell phone text messages to determine whether he was obeying the non-contact condition constituted a proper purpose for the search. *Cf. Griffin*, 483 U.S. at 875 (stating that "probation serves as a period of genuine rehabilitation and [assures] that the community is not harmed by the probationer's being at large," and "[t]hese same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed"). Camacho did not have to suspect that Lietzau had violated the non-contact condition to perform a cursory search of the messages, both ensuring compliance and deterring future violations. *Cf. id.* at 876 (analogizing a probation officer to a parent who acts with "the welfare of the probationer" in mind and citing an officer's need to maximize "the deterrent effect" offered by expeditious searches).

¶27 Lietzau was also required to provide the ADP access to his residence, participate in counseling and drug testing, and perform community restitution, all of which he failed to do within months after being placed on probation. The trial court characterized these probation violations as "administrative kinds of things" and implied they played no part in determining whether Camacho's search was reasonable. We disagree. These conditions were imposed to rehabilitate Lietzau while ensuring he did not pose a danger to society. By skipping counseling and evading drug testing, Lietzau presented a presumptive threat for reoffending, thus endangering the community. He simultaneously prevented the ADP from fully assessing the level of that threat and potentially enhancing its rehabilitative efforts by cutting off access to his residence. Under these circumstances, checking the cell phone messages to determine whether he was reoffending or otherwise posing a public threat reasonably furthered the goals of rehabilitation and public protection. *See Samson v. California*, 547 U.S. 843, 854 (2006) (observing that a probationer's incentive to conceal criminality "justifie[s] an 'intensive' system" for supervision (citing *Griffin*, 483 U.S. at 875)).

¶28 We disagree with the trial court that the search was arbitrary. A search is arbitrary, capricious, or harassing if it is "conducted for reasons unrelated to the rehabilitative and reformative purposes of probation or other legitimate law enforcement purposes." *People v. Bravo*, 738 P.2d 336,

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342 (Cal. 1987). Most often, determining whether a search was conducted for a proper purpose will resolve whether the search was arbitrary, capricious, or harassing. But a search directly related to a probation condition can nevertheless be arbitrary, capricious, or harassing if, for example, “motivated by personal animosity” or conducted “too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer.” *People v. Reyes*, 968 P.2d 445, 451 (Cal. 1998) (citations omitted). Searches conducted under those circumstances do not reasonably relate to the goals of probation. Here, as explained, Camacho had a proper purpose in searching Lietzau’s cell phone text messages that furthered the goals of rehabilitating him and protecting the public. *See supra ¶¶ 24–27*. Nothing suggests Camacho was motivated by an improper purpose, and Lietzau does not suggest otherwise.

¶29 Finally, and importantly, Camacho’s search of the cell phone did not delve deeper than reasonably necessary to determine whether Lietzau was complying with his probation terms. Although Condition 4 diminished Lietzau’s reasonable expectation of privacy in his cell phone, it did not eliminate it. *See Knights*, 534 U.S. at 118, 120. In short, Condition 4 did not grant Camacho carte blanche to indiscriminately search all information accessible by the cell phone. Because a cell phone is a gateway to a massive amount of personal information, *see Riley*, 573 U.S. at 393–95, probationary searches must be limited to data reasonably expected to contain information related to determining a probationer’s compliance with probation conditions. The search here stayed within that boundary.

¶30 In sum, under the totality of the circumstances, we hold that Camacho’s search of Lietzau’s cell phone was reasonable and therefore compliant with the Fourth Amendment. The trial court erred by finding otherwise.

CONCLUSION

¶31 We reverse the trial court’s order granting the motion to suppress and remand for further proceedings. Although we agree with the court of appeals’ disposition, we vacate its opinion to replace it with our own.

EXHIBIT 6

Motion to Suppress Cell Phone
Evidence with Attachments, filed
Nov. 27, 2017

1 Pima County Public Defender
2 33 N. Stone Ave., 21st Floor, Tucson, Arizona 85701
3 TEL: (520) 724-6800/FAX: (520) 770-4168
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5 **ABIGAIL OKRENT**
6 Attorney for Bryan Mitchell Lietzau

7 *JONI L. HENRY
CLERK, SUPERIOR COURT*

8 2017 NOV 27 PM 4:19

9 J. GIACOMINO, DEPUTY

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF PIMA

12 THE STATE OF ARIZONA,) Case No.: CR20162952-001
13 Plaintiff,)
14 vs.) **MOTION TO SUPPRESS
15 Defendant.) CELL PHONE EVIDENCE**
16)
17)
18)
19)
20)
21)
22)
23)
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30)
31)
32)

33 Bryan Lietzau, by and through undersigned counsel, moves this Court to suppress any
34 and all evidence, physical or testimonial, gathered in this case as a result of the search of his cell
35 phone by Adult Probation Officer Casey Camacho. Mr. Lietzau asserts his rights under the U.S.
36 Constitution and the Arizona Constitution to be free from unreasonable search and seizure, and
37 to exercise his remedy to suppress all evidence obtained from such unlawful searches. This
38 motion is supported by the accompanying Memorandum of Points and Authorities

39 **MEMORANDUM OF POINTS AND AUTHORITIES**

40 **I. FACTS**

41 The Defendant, Bryan Mitchell Lietzau, was indicted by a Pima County Grand Jury on
42 January 13, 2015 related to one count of Sexual Conduct With a Minor Under Fifteen, a Class
43 Two Felony (Dangerous Crime Against Children), in violation of A.R.S. § 13-1405. The charge

1 alleged that Bryan Mitchell Lietzau engaged in a single act of sexual intercourse with a minor,
2 “S.E.” sometime between November 1, 2014, and December 10, 2014. As a result of later
3 statements made by the S.E. on June 21, 2016 at a county attorney interview, the Defendant was
4 re-indicted on July 7, 2016 on six counts of sexual conduct with a minor (Dangerous Crime
5 Against Children) in violation of A.R.S. § 13-1405.
6

7 Bryan Lietzau was on probation for domestic violence aggravated harassment from
8 August 6, 2014, with an end date of February 26, 2016. He was under the supervision of the
9 Pima County Adult Probation Office, which is an agency of the Pima County Superior Court.
10 His probation terms include that he agrees to submit to “search and seizure of person and
11 property by the APD without a search warrant.” *Exhibit 1* There is no further expansion of the
12 extent of this search or the property involved.
13

14 On December 10, 2014, Pima County Adult Probation Surveillance Officer Casey
15 Camacho arrested Bryan Lietzau at his parent’s home “for a probation violation and placed him
16 in double lock handcuffs without incident.” Casey Camacho’s APETS notes from December 10,
17 2014, are attached as *Exhibit A*. Casey Camacho is a Senior Surveillance Officer with the Adult
18 Probation Office. Officer Camacho had been informed that he was to arrest Lietzau for a
19 probation violation, but in his Rule 15 interview with defense he claimed that he was unaware of
20 what the alleged violation was, Casey Camacho’s Rule 15 interview transcript is attached as
21 *Exhibit B*, see page 22 line 40 through page 23 lines 1-31, *Exhibit B*. Camacho did not believe
22 the probation violation had anything to do with text messages on a cellphone. Camacho Rule 15
23 transcript, page 26, lines 13-20. After Lietzau was handcuffed and placed in the back of the law
24 enforcement vehicle, Officer Camacho seized Leitzau’s cellular smartphone, a blue iPhone 5c in
25 a blue case. As another probation officer drove to the Pima County Jail, Officer Camacho
26

1 reviewed the iPhone. Officer Camacho alleged that he found numerous text messages between
2 Lietzau and S.E., and he retained possession of the iPhone for the next several days while he
3 manually transcribed the messages. Officer Camacho informed Tucson Police Department
4 Detective Steve Hanes about the messages, but did not show them to Detective Hanes because he
5 knew that Detective Hanes needed a warrant to view them. Camacho Rule 15 interview, p.18,
6 lines 8-11. Officer Camacho stated that he did not need a warrant to search the phone himself.
7 Camacho Rule 15 interview, p. 21, lines 26-32. Officer Camacho believed that he asked Lietzau
8 about the content of the text messages as he was viewing them, but he did not record this in his
9 notes. Camacho Rule 15 interview, p. 29, lines 5-12, *see also* Camacho APETS notes.

10
11
12 After Officer Camacho finished his manual transcription of the messages from the cell
13 phone, he released the cell phone and a copy of his typed notes to Tucson Police Department
14 Detective Steve Hanes. Camacho Rule 15 Interview, p.8, lines 20-22; p.17, lines 28-39.

15
16
17 On December 30, 2014, Detective Steve Hanes applied for and was granted a telephonic
18 search warrant for Lietzau's iPhone. The warrant is attached as *Exhibit C*. Detective Hanes
19 explained to the judge that the probable cause was based on "the statements that Adult Probation
20 made to me stating that they had reviewed the, uh, suspect's phone and that there was in fact
21 information on that phone that pertained to the relationship." *Exhibit D*

22
23
24 This iPhone is paid for by, and registered to, Mr. Lietzau's mother, Sandra Lietzau.
25 However, it was found on Mr. Lietzau's person and was used by Mr. Lietzau. At all times when
26 holding and searching it, Officer Camacho understood that it was Mr. Lietzau's phone.

27
28
29 **II. LAW AND ANALYSIS**

30
31 The Fourth Amendment to the U.S. Constitution protects individuals from the
32 government's unreasonable search of their "persons, houses, papers and effects." U.S. Const.

1 amend. IV. The Arizona Constitution protects an individual from being “disturbed in his private
2 affairs, or his home invaded, without authority of law.” Ariz. Const. art. 2, § 8. A warrant must
3 be based upon probable cause and “particularly describing the place to be searched...” U.S.
4 Const. amend IV.
5

7 **A. Officer Camacho performed an unreasonable warrantless search of
8 Lietzau's cell phone.**

9 The Fourth Amendment to the U.S. Constitution protects individuals against
10 unreasonable searches. Thus, government officials may only perform searches that are deemed
11 “reasonable.” *Illinois v. Rodriguez*, 497 U.S. 177, 110 S.Ct. 2793 (1990). A search is presumed
12 to be reasonable if it is supported by probable cause and conducted pursuant to a valid search
13 warrant. *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007), citing *Katz v. United States*, 389 U.S.
14 347, 357, 88 S.Ct. 507 (1967). “No search warrant shall be issued except on probable cause,
15 supported by affidavit, naming or describing the person and particularly describing the property
16 to be seized and the place to be searched.” A.R.S. § 13-3913.

17 Here, Officer Camacho was acting as a law enforcement official when he searched the
18 phone. He is employed by the government of Pima County. He was working in his official
19 duties. He has the power to make arrests, which exercised when he seized and searched
20 Lietzau's iPhone. He did not have a warrant; therefore, this search is presumed to be
21 unreasonable unless an exception to the warrant requirement applies.

22 **1. Warrants are required for searches of cell phones incident to arrest.**

23 Searches performed incident to arrest generally do not require warrants. *Davis v. United*
24 *States*, 564 U.S. 229, 234-235; 131 S.Ct. 2419, 2425 (2011). However, this exception does not
25 extend to cellular phones. *Riley v. California*, 134 S.Ct. 2473 (2014)

1 In *Riley v. California*, the defendant's cell phone (described as a "smartphone") was
2 searched when he was arrested during a traffic stop after police learned that his license was
3 suspended, and found illegal guns in his vehicle. *Riley*, 2480. At the time of the initial stop, one
4 officer looked through Riley's smartphone and found slang affiliated with the gang the Bloods.
5
6 *Id.* After Riley was booked into jail, a second officer looked at his smartphone on the basis of
7 the information discovered by the first officer. *Id.* The Supreme Court held that no warrantless
8 exceptions exist for a search of a cell phone incident to arrest. Cell phones, reasoned the
9 Supreme Court, are fundamentally different from other items. They "implicate privacy concerns
10 far beyond those implicated by the search of a cigarette pack, a wallet, or a purse." *Id.*, 2488-
11 2489. Because of the quality and quantity of information contained on a cell phone, the Supreme
12 Court concluded that a warrant is generally required before one is searched, even if the phone is
13 searched incident to arrest. *Id.*, 2493.

17 The holding in *Riley v. California* was followed and extended by the Arizona Supreme
18 Court in *State v. Peoples*. In *Peoples*, the defendant had left his cell phone in his deceased
19 girlfriend's apartment, which was the scene of the crime. *State v Peoples*, 240 Ariz. 244, 378
20 P.3d 421 (2016). The Court found that the Defendant retained his privacy interest in the cell
21 phone even though it was not in his physical possession at the time, and even though it did not
22 have a passcode. *Id.*, 249, 426. The Court maintained that no exception to the warrant
23 requirement applied. *Id* , 251, 428.

27 Bryan Leitzau was searched after he was arrested by a law enforcement agent employed
28 by a governmental agency. The iPhone was removed from his person and searched while
29 Lietzau was handcuffed in the law enforcement vehicle. Officer Camacho did not obtain a
30 warrant to search the iPhone. Therefore, this was an unlawful search.
31
32

1 Although the cell phone was not registered to Bryan Leitzau, he had a legitimate
2 expectation of privacy in it. He had it in his physical possession, he had been using it, and
3 Officer Camacho believed it to belong to Leitzau.
4

5 ***2. There was no exigent circumstance exception for this search.***
6

7 Searches incident to arrest may proceed without a warrant when they are necessary to
8 protect officer safety and to uncover evidence of the charged crime. Searches incident to arrest
9 must be limited to the space within the arrestee's immediate control, from which the arrestee
10 might be able to access something that could harm the arresting officers, or access destructible
11 evidence. *Arizona v Gant*, 556 U.S. 332, 335; 129 S. Ct. 1710, 1715 (2009).
12

13 Although it concluded that the search incident to arrest exception does not apply to cell
14 phones, the Court in *Riley* did not foreclose the possibility that some other warrant exception
15 might apply to a cell phone search. *Riley*, 2486. The Court particularly noted the exigent
16 circumstances exception. However, the Court viewed the potential exigent circumstances with
17 extreme skepticism, finding that cell phones were unlikely to harm arresting officers, and that
18 law enforcement had effective means of preserving cellular data until such time as they could
19 obtain a warrant. *Id.*, 2486-2487. This included simple methods like turning a cell phone off,
20 disconnecting it from a network, or removing its battery. *Id.*, 2487.
21

22 No exigent circumstance exception applied in this case. First, when Officer Camacho
23 searched Lietzau's iPhone, he did not even have an articulable reason for searching it. He did
24 not know why he was arresting Lietzau and did not believe it had anything to do with a cell
25 phone. He therefore did not have probable cause to believe that there was anything of
26 evidentiary value on the iPhone. Second, he did not show any concern that the evidence he
27

1 discovered on the iPhone was evanescent, since he later kept the iPhone on his desk for several
2 days while he transcribed the text messages.
3

4 **B. Statements made by Lietzau regarding the texts, and the subsequent search of the**
5 **phone by detectives, are fruit of the poisonous tree and must be suppressed.**

6 It is long established law that evidence obtained as a result of an unlawful search is
7 inadmissible, and that this exclusionary principle extends to the indirect, as well as the direct,
8 products of these searches. *Wong Sun v. U.S.*, 371 U.S. 471, 484; 83 S.Ct. 407, 416 (1963). The
9 remedy to this 4th Amendment violation is to suppress evidence gained in this manner. The
10 Fourth Amendment is enforceable against the States through the Fourteenth Amendment, and it
11 is enforced against the states through the exclusionary rule. *Mapp v. Ohio*, 367 U.S. 643, 81
12 S.Ct. 1684 (1961).

13
14 According to Officer Camacho, after he searched the phone, he asked Lietzau about the
15 text messages, and Lietzau told him they were between himself and S.E. Camacho Rule 15
16 Interview, p8 line 41 – p.9 lines 1-14. Assuming that Officer Camacho's memory is accurate, in
17 spite of his not having included this information in his notes, these questions arose solely from
18 the discoveries made when he searched the phone without a warrant, since the question "who are
19 these messages from?" does not exist without the existence of "these messages." Any statements
20 made by Lietzau regarding the text messages must, therefore, be suppressed.

21 Detective Hanes later obtained a search warrant for the cell phone, and did so on the basis
22 that Officer Camacho had informed him about the contents of the phone that Officer Camacho
23 had discovered during his own unreasonable, warrantless, unlawful search. Therefore, unless the
24 State can prove that Detective Hanes would have inevitably obtained this warrant independently
25
26

1 of Officer Camacho's information, any information gathered by Detective Hanes's search, or
2 later questioning of Lietzau based on this search, must also be excluded
3

4 ***1. There is no good faith exception to the remedy of suppression.***

5 The exclusionary rule exists to deter bad behavior by law enforcement and discourage
6 future violations of the 4th Amendment. *Davis v. U.S.*, 236-37. Thus, where law enforcement is
7 acting on a good faith basis that they are not violating the 4th Amendment, suppression of
8 evidence does not serve a deterrent purpose and does not apply. *Id*, 238. In *Davis*, a law
9 enforcement officer conducted a search that conformed to binding appellate precedent. *Id*, 235,
10 2426. The issue in *Davis*, litigated in a number of preceding cases as well, was whether such
11 reliance was objectively reasonable. The Court held that the officer's reliance on binding
12 appellate precedent in that case was reasonable.
13

14 Recently, the Arizona Supreme Court clarified that the good-faith exception only applies
15 if "binding appellate precedent specifically authorizes a particular police practice." *State v.*
16 *Havatone*, 241 Ariz. 506, ¶ 24 (2017), quoting *Davis v. United States*, 564 U.S. 229, 240 (2011).
17 Thus, when no such specific authorization exists or the law is unsettled, the exclusionary rule
18 applies to ensure that law enforcement errs on the side of the Constitution in executing their
19 duties.
20

21 In the present case, Officer Camacho did not act in good faith. In fact, Officer Camacho
22 knew that a warrant was required for a police officer to search a cell phone, which is why he
23 sidestepped this process and chose to search the phone himself. He then handed over his
24 transcription that he acquired through a warrantless search to the police. Officer Camacho may
25 have genuinely believed that he had the right to engage in a warrantless cell phone search even
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1 while knowing that the real police officer did not, but this reliance is not reasonable, since no
2 binding appellate precedent authorizing such searches exists.
3

4 **C. Even if this were a routine probation search, it was still unlawful.**

5 This was not a routine probation search. Although Officer Camacho was employed by
6 the Adult Probation Office, when he arrested, handcuffed, and transported Lietzau to jail, he was
7 acting as a regular law enforcement officer. However, even if this had been a routine probation
8 search, the search of Lietzau's iPhone was nevertheless unlawful and any evidence discovered
9 from it must be suppressed.
10

12 Arizona has upheld warrantless probation searches so long as they are reasonable under
13 the totality of the circumstances. *State v. Adair*, 241 Ariz. 58, 383 P.3d 1131 (2016). People on
14 probation and parole have diminished expectations of privacy, although people on probation
15 retain a higher expectation of privacy than parolees. *U.S. v. Lara*, 815 F.3d 605, 610 (9th Cir.,
16 2016). Although the privacy interest of probationers is diminished, it is still substantial. *Id.*
17 Probationers, like everyone else, maintain a heightened expectation of privacy in their cellular
18 telephones. *See Riley*.
21

22 In *U.S. v. Adair*, Defendant Christian Adair was placed on probation for solicitation to
23 possess drugs for sale *Adair*, 59, 1133. He signed a term of probation agreeing to submit to
24 warrantless search and seizure of his person and property. *Id.* Nine months after being placed on
25 probation, a confidential informant provided police with information that he believed Adair was
26 still selling drugs, and continued to provide police with detailed information regarding Adair's
27 behavior. Four months after the first tip, police accompanied probation officers for a search of
28 Adair's home. *Id.*, 60, 1134. The Arizona Supreme Court held that reasonable suspicion was not
29 required for a warrantless search of probationers' residences, but that it must still be reasonable
30
31
32

1 under the totality of the circumstances. *Id.*, 63-64, 1137-1138. The Court held that, under the
2 totality of the circumstances in this case, the warrantless search was reasonable because it was
3 based on corroborated evidence, for a crime “similar if not identical” to the offense for which
4 Adair was on probation. *Id.* 65-66, 1139-40.

5
6 Cell phone searches are a different animal. In *U.S. v. Lara*, the Ninth Circuit Court of
7 Appeals found that a probation search of a cell phone was not lawful. Lara was on probation for
8 a drug conviction, and one of the conditions of his probation required him to “submit his person
9 and property, including any residence, premises, container, or vehicle” to search and seizure
10 without a warrant or even probable cause. *Id.*, 607. When he failed to report to probation, his
11 probation officers went to his home, and searched his cell phone. *Id.* They maintained that it
12 was a standard protocol for them to search cell phones of probationers. *Id.* The 9th Circuit
13 considered that the issue was not simply whether Lara had accepted cell phone searches as part
14 of his probation terms, but also whether that search was reasonable. *Id.* The Court found that
15 the general term “property” was not sufficient to include cell phones in light of the holding in
16 *Riley v. California*, and that Lara maintained a “substantial privacy interest” in his cell phone.
17 *Id.*, 611-612. The Court balanced Lara’s substantial privacy interest in his cell phone against the
18 government’s interests of combating recidivism and reintegrating probationers, and concluded
19 that the search had been unreasonable. *Id.*, 612. The Court rejected the idea that a good faith
20 exception applied. *Id.* The Court excluded the evidence from the initial search of the cell phone,
21 as well as the subsequent search. *Id.*

22
23 While seemingly in conflict with *Lara* and ripe to be overturned, *U.S. v. Bare* provides an
24 example of a search that is readily distinguishable from both *Lara* and the present case. *U.S. v.*
25 *Bare*, 806 F.3d 1011 (9th Cir. 2015). Bare brandished a gun and fired a shot over a neighbor’s
26
27
28

1 head while threatening to kill him, and when police came to his residence they found numerous
2 guns and ledgers and a computer related to a pawn shop business, where he pawned the guns.
3 Bare was convicted of being a felon in possession of a firearm. *Id.*, 1014. He was sentenced to
4 prison, and as a condition of his supervised release he was explicitly subjected to searches of his
5 computer on the basis that his unlawful possession of firearms was directly connected to his
6 pawn business that utilized computer records. *Id.* When Bare was allowed on supervised release
7 (commonly known as parole), the computer search conditions were explicitly re-imposed. *Id.*
8 The Court held that there was demonstrable nexus between his offense and the need for adequate
9 deterrence. *Id.*, 1019.

10
11 Like Lara and unlike Bare, Lietzau was on probation, not parole. Like Lara, Lietzau
12 signed terms of probation that did not specifically mention a cell phone. Lietzau was on
13 probation for domestic violence and aggravated harassment, offenses that involved electronic
14 communications, but his terms of probation contained no explicit condition allowing searches of
15 his cellphone or any of his other electronics. The search of his cellphone was not reasonable
16 under the terms of his probation. No good faith exception applies because not only is there no
17 binding precedent authorizing such a search, but there is in fact binding precedent forbidding
18 such a search.

19 ///

20 ///

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1 **III. CONCLUSION**

2 Officer Camacho's search of Bryan Lietzau's phone was unlawful whether it was a
3 search incident to arrest or a routine probation search. The evidence obtained from that search,
4 and all subsequent evidence that resulted from that initial search, must be suppressed.
5

6 RESPECTFULLY SUBMITTED this 27th day of November, 2017.

7 Joel Feinman
8 Pima County Public Defender

9 By 

10 Abigail Okrent
11 Attorney for Bryan Mitchell Lietzau

12 Copies of the foregoing to:

13 Honorable Howard Fell DELIVERED
14 Division SR

15 Dawn Aspacher DELIVERED
16 Pima County Attorney's Office

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EXHIBIT

“ 1 “

AUG 06 2014

Rec'd in DEPT 08/06/2014 09:54 AM

TONI L. HELLON Clerk

O'Connell

Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
UNIFORM CONDITIONS OF SUPERVISED PROBATION

STATE OF ARIZONA

VS.

Lietzau, Bryan MCOUNTY/DIVISION: Pima , 5RCR: 20142245-001§13-901.01 Offense: 1st 2nd Ineligible

PID#:

OFFENSE(S): Aggravated Harassment (FG/M1)

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD),

PLACING the defendant on probation for a period of 18 year(s) month(s) days lifetime
 to begin 8/6/14 or
 upon absolute discharge from prison for a separate offense or
 upon release from prison for felony DUI (months; days credit for time served)
 upon release from prison pursuant to A.R.S. § 13-603(K)

REINSTATING the defendant on probation for a period of year(s) month(s) days lifetime
 to begin / / with a revised expiration date of / / .

I AGREE TO THE FOLLOWING AS CONDITIONS OF THE SUSPENSION OF IMPOSITION OR EXECUTION OF SENTENCE: (Conditions Checked Also Apply)**LAW ABIDING BEHAVIOR**

1. I will maintain a crime-free lifestyle by obeying all laws, and not engaging or participating in any criminal activity.
2. I will not possess or control any stun guns, tasers, firearms, ammunition, deadly or prohibited weapons as defined in A.R.S. § 13-3101.
3. I will report any contact I have with law enforcement to the APD within 72 (or 24) hours.
4. I will submit to search and seizure of person and property by the APD without a search warrant.
5. If deported or processed through voluntary departure, I will not return to the United States without legal authorization during the term of my probation. If I am deported or processed through voluntary departure, all conditions remain in effect except for _____.

REPORTING TO APD

6. I will report to the APD within 72 (or 24) hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. I will also keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. I will provide a sample for DNA testing if required by law.

RESIDENCE

7. I will provide the APD safe, unrestricted access to my residence and receive prior approval of the APD before changing my residence. I will reside in a residence approved by the APD.
8. I will request and obtain written permission of the APD prior to leaving the state (county).
9. I may apply for Interstate Compact supervision in the state of _____ and will not proceed to that state until reporting instructions are received and the APD issues a written travel permit.
10. I may apply for an Inter-County transfer and will not proceed to that County until APD issues written authorization.

TREATMENT/BEHAVIOR CHANGE/PRO-SOCIAL ACTIVITIES

11. I will actively participate and cooperate in any program of counseling or assistance as determined by APD, or as required by law, given assessment results and/or my behavior. I will sign any release or consent required by the APD so the APD can exchange information in relation to my treatment, behavior and activities.
12. I will not possess or use illegal drugs or controlled substances and will submit to drug and alcohol testing as directed by the APD.
13. I will obtain written approval of the APD prior to associating with anyone I know who has a criminal record. I will not knowingly associate with any person engaged in criminal behaviors

UNIFORM CONDITIONS OF SUPERVISED PROBATION – PAGE 2 OF 2

STATE OF ARIZONA

vs. Lietzau, Bryan M

COUNTY/DIVISION: Pima, SR
CR: 20142245-001

14. I will seek, obtain, and maintain employment, if legally permitted to do so, and/or attend school. I will inform APD of any changes within 72 hours.
15. I will be financially responsible by paying all restitution, fines, and fees in my case as imposed by the Court. I understand, if I do not pay restitution in full, the Court may extend my probation.
16. I will not consume or possess any substances containing alcohol.

SPECIAL REQUIREMENTS

17. I will complete a total of 100 hours of community restitution. I will complete a set number of hours per month as directed in writing by my probation officer. I will complete these hours at a site approved by the APD.
18. I will serve _____ days month(s), in the county jail beginning / / with credit for _____ days served, not to be released until / / . I will report to the APD within 72 (or _____) hours of my release from jail. I will comply with all program rules. Be screened for or shall participate in Work Furlough, if eligible or Work Release, if eligible
19. I will not have any contact with the victim(s) in any form, unless approved in writing by the APD.
20. I will comply with the following sanctions based on my behavior:
 - Up to _____ community restitution hours (in addition to any ordered under condition #17), as directed by the APD.
 - Up to _____ days in the county jail (in addition to any ordered under condition #18), at the discretion of the Court, upon recommendation from the APD.
21. I will abide by the attached special conditions of probation:

<input type="checkbox"/> Intensive Probation	<input type="checkbox"/> Sex Offender	<input type="checkbox"/> Gang
<input checked="" type="checkbox"/> Domestic Violence	<input type="checkbox"/> Drug Court	<input type="checkbox"/> _____
<input type="checkbox"/> Mental Health	<input type="checkbox"/> DUI Court/Program	
22. _____

Based upon the defendant's agreement to abide by the Conditions of Supervision set forth, above, as well as my review and approval of such conditions, I hereby impose and order that these conditions are in effect, and the defendant shall comply with said conditions.

Howard Jell
Judge of the Superior Court

8/6/14
Date

RECEIPT AND ACKNOWLEDGMENT: I acknowledge receipt of the conditions of probation and any attachments added. I understand that by not abiding by the conditions of probation my probation could be revoked and the Court may sentence me in accordance with the law. In addition, I waive extradition for any probation revocation proceedings in this matter.

Bryan Lietzau
Defendant 8/6/14
Date

6515 E Nicaragua Siulson AZ 85330 520-258-7214
Defendant's Address Apt. City State Zip Phone

DISTRIBUTION: Original -Court, Blue—APD, Pink—Defendant

Revision Nov. 2010

EXHIBIT

“ A “

Date/Time	Person	Location	Type	Made	Entered By	Team
12/10/2014 19:30:00	Client	Other (See Note)	Face to Face	Yes	Camacho, Casey-Pima	No

SO was advised by Lead PO Corral that she received the go ahead to arrest D on probation violation. SO and SO Hlick attempted to locate D at his listed residence (grandmother's) and was advised that he was not home and they didn't know where he was. SO then attempted to locate D at his parent's residence and noted the van D is associated with was in the driveway. SO knocked on the door and D answered a short time later. SO asked D who was home and D stated "just me." SO directed D to step outside and, while SO Hlick covered D with the TASER, SO advised D that he was under arrest for probation violation and placed him in double locked handcuffs without incident. SO Hlick cleared the residence to ensure there was nobody hiding inside. House was deemed clear and the house was secured using D's keys. At D's request, SO left the keys in the van and stated to leave the van unlocked. D was transported to PCJ without incident. While enroute to PCJ, SO searched D's phone and found hundreds of text messages between D and S.E. This subject is known to SO as a 13 y/o girl that D is accused of having an inappropriate relationship with. SO advised D that his phone was going to be held as evidence and a receipt was provided to him and placed in his property. D was not advised as to the reason the phone was being kept and he only asked if it would be possible to get it back. SO explained that was the purpose of the receipt, so he can claim it at a later date. D affirmed he understood. D booked without incident.

EXHIBIT

“ B “

Pima County
PUBLIC DEFENDER

INTERVIEW

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

Interviewer:

1 Case#: CR-2015-0152-001

2
3 Q = Christopher J. Lynch
4 Q1 = Irene Hazard
5 Q2 = Kelleen Mull
6 A = Casey Camacho

7
8 Q Okay. You ready? This is the interview of Casey Camacho taken in State vs. Lietzau, CR-2015-
9 0152. Today's date is June 3, 2016. It's now approximately 2:30pm. My name is Christopher
10 Lynch; I'm with the Pima County Public Defenders. Also present is our intern, her name is Kelleen
11 Mull. She's a student at Pepperdine University, not a 38D law student, but a student at Pepperdine
12 University who is a intern. Do you have any problem with her being her, Irene?

13
14 Q1 I don't. I have...

15
16 Q Okay, great. Okay, would you please identify yourself?

17
18 Q1 My name is Detective Irene Hazard, but I would like her to spell her name out so that...

19
20 Q K-E-L-E-E-N.

21
22 Q2 K-E-L-L-E-E-N, M-U-L-L.

23
24 Q Sorry. I've been having trouble with her name all day. Okay, got it?

25
26 Q1 I'm representing the County Attorney in this...did you say the CR on this case?

27
28 Q Yep.

29
30 Q1 Okay.

31
32 Q So this is the interview of...the rule 15 interview of Casey Camacho. Is that you, Mr. Camacho?

33
34 A Yes, it is.

35
36 Q Okay, good afternoon. Thank you for coming in for the interview. Tell me what you do for a living.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A I'm a senior surveillance officer for Pima County Adult Probation.

2 Q What does that mean?

3 A I assist the probation officer in monitoring the defendants, usually at their homes or place of
4 employment, to ensure compliance with court.

5 Q Okay. Have you ever monitored Bryan Mitchell Lietzau?

6 A I have.

7 Q Okay, and how many times did you monitor him?

8 A Total home visits, I'm not sure; I don't have that with me.

9 Q Okay.

10 A It was...

11 Q Do you...but you have it somewhere though, right?

12 A Yeah.

13 Q Where do you have it?

14 A Absolutely.

15 Q Where's that record?

16 A In our...our...it's called APETS. It's...it's the...where we put all our notes on cases.

17 Q Okay, so those notes, your notes on the case, is what indicate what your surveillance was of Bryan
18 Lietzau, right?

19 A Correct.

20 Q Okay, well we do have one APETS note that was given to us.

21 A Mm-hmm.

22 Q Dated December 10, 2014 and you have that in front of you, right?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Yes, I do.

2 Q And you reviewed that in preparation for...

3 A Uh-huh.

4 Q ...today's interview? Did you bring any of the other APETS notes with you?

5 A I did not.

6 Q Did you bring anything else that deals with Bryan Lietzau with you?

7 A Just when I confiscated his phone, I went through the...the text messages and I have...and I
8 transcribed those by hand before the phone was given to the detective.

9 Q Okay, you're the one that typed them out?

10 A Yes, sir.

11 Q Okay, so I want to understand how you did that. You grabbed the phone, right?

12 A Mm-hmm.

13 Q And then you read the text messages?

14 A Correct.

15 Q Is that what you're saying?

16 A As we were driving to the jail, I read the text messages.

17 Q Did you type them while you were going to the jail too?

18 A No, of course not.

19 Q Okay, so tell me what happened next?

20 A I read the...the text messages just briefly between the defendant and the victim in the case.

21 Q Who's the victim in the case?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A We have her as initials S.E.
2
3 Q Okay, do you know her name?
4
5 A I do.
6
7 Q Okay, what's her name?
8
9 A Can I...
10
11 Q It's a rule 15 interview, you can anything you want to, go right ahead.
12
13 A Alright, Savannah Edwards.
14
15 Q Okay, and how do you know Savannah Edwards is the victim in this case?
16
17 A Her mother contacted us regarding an inappropriate relationship with the defendant.
18
19 Q She contacted you?
20
21 A Affirmative. Well, not me, personally. She contacted the probation officer.
22
23 Q Okay, well I want to just talk about things that you know from your own personal...
24
25 A Okay.
26
27 Q ...knowledge. Not from anybody else's, okay?
28
29 A Okay.
30
31 Q So, did you ever talk to anybody about Savannah Edwards?
32
33 A Yes, I had contact with his mother...with her...with Savannah Edwards' mother.
34
35 Q When?
36
37 A I don't have dates.
38
39 Q Okay. Well, you picked up Bryan on December 10, 2014.
40
41 A Correct.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Was it before or after that date?

2 A It was before that date.

3 Q Okay, and when? How far...how far before that date?

4 A It was probably within a couple of weeks. We had been talking. There was probably a couple of
5 times we talked or...

6 Q Okay.

7 A ...I talked to her.

8 Q Alright, and what did she tell you?

9 A That she believed the defendant in the case, Mr. Lietzau, was having an inappropriate relationship
10 with her daughter.

11 Q Okay. How did she find you?

12 A I'm assuming the daughter told her that he was on probation. Honestly I don't know. I don't
13 remember.

14 Q Okay, but even if the daughter said he was on probation, did you know the daughter?

15 A I did not.

16 Q Okay, so how was it that she got in touch with you? Did she contact probation and probation then
17 contacted you or what?

18 A ...I don't have personal knowledge of that, how she discovered that...

19 Q Okay.

20 A ...information.

21 Q Does your APETS records indicate the conversations that you had with...with Savannah Edwards'
22 mother, that's Guadalupe Edwards?

23 A I don't recall; that was two years ago.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Okay.

2 A I don't recall if...

3 Q It should.

4 A ... (4:27)

5 Q It should, right?

6 A Probably.

7 Q You take notes of...of your work, don't you?

8 A When I make contact with defendants, yes.

9 Q Okay. Alright, so how often would you make contact with Bryan Lietzau?

10 A It was probably...he would be seen in the office once a month without fail and then I would make contact with him in his house at least once a month.

11 Q Okay, and when you make contact, that is you knock on the door and make sure that he's there?

12 A Affirmative.

13 Q Okay.

14 A Mm-hmm.

15 Q Okay, and then do you also surveil him to make sure that he isn't other places? Or...

16 A We...

17 Q ...secretly watch him?

18 A We are allowed to do that. I don't recall that I ever did that with Mr. Lietzau.

19 Q Okay. If you did, again, it would be in your APETS notes, right?

20 A That is correct.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Okay. You didn't look at your...all of your APETS notes regarding Bryan Lietzau before you came
2 in here today?

3
4 A No, I did not.

5
6 Q Alright. How come?

7
8 A Because I was just under the impression I was dealing with when I arrested him and the custody of
9 the phone after I took it from him.

10
11 Q Okay. What color was the phone that you took from him?

12 A Blue I believe.

13
14 Q Alright, and do you know what color the phone was that Savannah Edwards had?

15 A I do not.

16
17 Q Alright, and what was the phone number of the phone for Savannah Edwards?

18 A I don't have that.

19
20 Q Okay, do you have it in your notes, sir?

21 A No, it would be in his phone; that's why we took it.

22
23 Q Okay, do you have it in your...in your typed notes?

24 A No, I just...I transcribed the...the text messages, just the messages, not the...the phone number.

25
26 Q Okay, so how long did it take you to transcribe all those text messages?

27 A It was probably over two...over two days maybe three or four hours a day. I'm not sure.

28
29 Q Okay. Do you...

30 A It was a lot.

31
32 Q ...normally do that? Normally type text messages out?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A When there's...there's numerous text messages regarding behavior that was concerning specific to
2 our caseloads in addition to this particular case. So, yes, when that happens, I...I...I have done that
3 before, yes.

4
5 Q Okay. How many times have you typed text messages like the ones you did here? How many other
6 cases have you done that on?

7
8 A Probably two or three.

9
10 Q Okay. Do you have any record of the text messages other than what you typed?

11
12 A No, 'cause they're on the phone.

13
14 Q Okay, so that would be...what if they're not on the phone?

15
16 A Then somebody else deleted them.

17
18 Q Okay.

19
20 A I...you know, I don't know. There was...they were typed from the phone. I typed them right from the
21 phone and when the detective came in, I gave him a copy of this and the cellphone was released to
22 him.

23
24 Q Okay. Did you check the phone after you typed it to make sure that the text messages were still on
25 the phone?

26
27 A Sure.

28
29 Q Okay, and they all were?

30
31 A Yes.

32
33 Q Okay. What was the phone number then for Savannah? You don't know?

34
35 A I don't know.

36
37 Q Okay.

38
39 A It was on the phone.

40
41 Q Okay, so how do you know that the...that the text messaged that you typed up were from Savannah?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Because when we were driving to the jail, I looked up the name that was on the...the text messages
2 and I asked Bryan while we were on the way to the jail who was that and he told me it was Savannah.
3

4 Q Okay, he's the one that identified that it was Savannah?

5 A Correct.
6

7 Q It doesn't say that though in your report, does it?
8

9 A No, it doesn't.
10

11 Q There's no mention of any conversation that you had with him, is there?
12

13 A Other than I advised him we were keeping the phone.
14

15 Q Okay, and isn't that an important detail that he identified who Savannah was? That's how you knew
16 what to type and who to type?
17

18 A I'd have to look at the phone again to see exactly what it was that was listed as her name. It was over
19 two years ago. I don't...
20

21 Q You don't remember, right?
22

23 A Yeah.
24

25 Q Okay, so you don't remember if it was honey or S.E. or Savannah or another nickname?
26

27 A Correct.
28

29 Q Okay. Had you ever met Savannah before?
30

31 A I have not.
32

33 Q Okay. So, let's get back to the surveillance of Bryan prior to December 10, 2014. It is true that every
34 time you surveilled Bryan, you went to the house, knocked on the door, made sure he was there?
35

36 A Yes, and...
37

38 Q And you don't...
39

40 A ...breathalyzed him and...
41

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Okay.
2
3 A Yeah.
4
5 Q Alright, did all the things that you do, right?
6
7 A Mm-hmm.
8
9 Q Okay, and there was never any time that you went and just, kind of, watched him?
10
11 A No.
12
13 Q Secretly?
14
15 A No.
16
17 Q To see where he was going? Okay. So you never saw him with Savannah Edwards, right?
18
19 A No.
20
21 Q Alright. Did you ever see his car at Savannah Edwards' house?
22
23 A No.
24
25 Q Alright. Now, this is despite the fact that you're claiming that Mrs. Edwards had been contacting you
26 at least a couple weeks prior to December 10th, right?
27
28 A Correct.
29
30 Q And you still didn't do any surveillance of him to see if he was with this girl?
31
32 A No.
33
34 Q Who from the probation officer did?
35
36 A I don't know that anybody did.
37
38 Q Okay. Isn't that the kind of work that you would do if you thought that somebody was violating
39 probation by being with a minor and having sex with them that you would surveil them?
40
41 A Sure.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Okay, but you didn't in this case, right?

2 A No.

3 Q Okay.

4 A Not that I recall.

5 Q Alright. Well, it'd be in your notes, right? Your APETS, if you did it?

6 A Correct.

7 Q Alright, and you have no recollection of having done that at all in this case, right?

8 A No.

9 Q Alright.

10 A I just recall seeing him more often.

11 Q And you know that if you did do that and you did see him with her, you would've contacted the
12 police officer that was involved in this investigation and let them know, right?

13 A Of course.

14 Q Okay, and do you ever recall contacting the police officer that was involved in this investigation and
15 letting him know that?

16 A Letting him know what?

17 Q That you had seen Bryan with Savannah?

18 A I never saw Bryan with Savannah.

19 Q Okay, well you said as far as you know you didn't?

20 A No, as far...

21 Q And generally...

22 Aas I know that I didn't...didn't do additional surveillance on him.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Other than the regular...

2 A Regular home visits.

3 Q And that was every...once a month or once a week?

4 A Usually it's once a month, but this...with this case, I may have seen him more. I'd have to go back
5 and look.

6 Q Okay, and that's in your APETS notes, right?

7 A Yes.

8 Q Alright. Irene, if you could let Michelle know that I want a copy of his entire file regarding Bryan
9 Lietzau and I'll copy...I will follow up with a email. So, let's talk now about the contact that you had
10 with Guadalupe. When was...when did she first contact you with her concerns regarding Bryan
11 Lietzau?

12 A The first I heard of it was from...what the probation officer told me.

13 Q When was...that's not what I asked you though.

14 A Well, that's...

15 Q No...

16 A ...what I'm telling you.

17 Q Okay.

18 A I...I...you're...you're asking when I first...

19 Q When did you first hear...

20 A ...learned of the situation and it was from the probation officer, not...

21 Q Okay.

22 A ...from Guadalupe.

23 Q Alright, so when did you first hear from Guadalupe?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A It was within that timeframe. I...from when I heard from the probation officer, I...I contacted her, but
2 if you're asking for dates, I can't give you dates, 'cause I don't know.

4 Q Okay, so you...you don't have any idea when?

6 A No.

8 Q Alright. Or how long prior to December 10, 2014 the...how...well let's just talk about the probation
9 officer then. Probation officer is Libby Pilcher?

11 A Mm-hmm.

13 Q Yes?

15 A Yes.

17 Q Okay, how much prior to December 10, 2014, did Libby Pilcher contact you to let you know that she
18 had concerns regarding Bryan Lietzau?

20 A It was a conversation we had in our office on numerous occasions.

22 Q Okay, how much prior to December 10, 2014, did you have your first conversation in your office
23 about Bryan Lietzau? Was it in, let's say, October?

25 A I don't know. I...I couldn't give you a date.

27 Q Okay, how many numerous conversations did you have about Bryan Lietzau and Savannah Edwards
28 in your office?

30 A Numerous, that's...that's...I can't give you an exact number.

32 Q Ten?

34 A I'm not gonna give you an exact number. I have no idea.

36 Q Okay, but it wasn't a concern?

38 A Yes, it was a concern.

40 Q Okay, well not just he is a concern. The concern was him with Savannah Edwards, right?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A No, he was a concern, 'cause he was...he was in violation of his probation as well.

2
3 Q Okay. I don't want to talk about anything other than Savannah Edwards and Bryan Lietzau right
4 now So, let's talk about the concerns related to Savannah Edwards and Bryan Lietzau.

5 A Okay.

6
7 Q Do you recall when that first...when that concern was first brought to you?

8
9 A Not an exact date, no.

10 Q Okay.

11 A It was prior to him getting arrested.

12 Q Alright, and you can't tell me how much prior?

13 A No.

14 Q By weeks, months?

15 A I...I have no idea. You might have to ask the probation officer.

16 Q Alright. Okay, and that would be Libby Pilcher, because she would have some sort of a record on
17 that, right?

18 A I would assume so.

19 Q Okay. Okay, who else did you...did you talk about Bryan Lietzau and Savannah Edwards with?
20 Other people in the probation department. We know Libby Pilcher.

21 A Correct.

22 Q Anybody else in the probation department?

23 A The officer that went with me to arrest him.

24 Q Okay.

25 A I kind of gave him a quick background of what was going on.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Okay, who's that? Lead P.O. **Corral**?

2 A No.

3 Q Okay.

4 A The surveillance...

5 Q Hick?

6 A ...officer...the...yes.

7 Q S.O. Hick?

8 A Hick.

9 Q Okay.

10 A Mm-hmm.

11 Q What about Corral?

12 A She was the lead P.O. in the unit at the time.

13 Q So you had talked to her about it as well, right?

14 A Correct.

15 Q Okay, but that sounds like those conversations happened on the day. Can you tell me about the
16 people that you had conversations with before December 10, 2014 within the department? Those
17 numerous conversations.

18 A Probably my supervisor, John Burkholder.

19 Q John?

20 A Yeah.

21 Q Okay, and what...what were you talking about with John?

22 A They were just staffing the situation with...with...in conjunction with P.O. Pilcher.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Okay, what would the situation have been?

2 A Just that we had gotten this information and we were letting him know about it, so he was aware of
3 what was going on.

4 Q And that was information that Bryan Lietzau was having sex with a young girl, Savannah Edwards,
5 right?

6 A That was...yeah.

7 Q Okay.

8 A That we had received information that that was possible.

9 Q Okay, and did you...and then...now, so we got those conversations. Anybody else you can think of
10 that you had the conversation with at probation?

11 A Not off the top of my head.

12 Q Alright. Your notes should...should indicate who you had the conversation with, right?

13 A Not necessarily.

14 Q But possibly?

15 A Possibly.

16 Q Alright.

17 A But not necessarily.

18 Q Okay. Did anybody else keep notes about this besides you and Pilcher? Do...

19 A Not that I'm aware of.

20 Q Alright. So we got Burkholder, Pilcher, Hick, and Corral. Anybody else that you can think of?

21 A No.

22 Q Alright. Now, I want to focus on the conversations with Guadalupe. Now, we started to talk about
23 that. Guadalupe Edwards, the mother. Before we do that, is there anybody else besides probation

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 people and maybe police officers, who we'll get into in a minute, that you...and Guadalupe Edwards,
2 that you would have spoken to regarding potential sexual contact between Bryan Lietzau and
3 Savannah Edwards?

4 A No.

5 Q Okay, so we've got...in the universe we've got Guadalupe Edwards, the mother, we've got the
6 probation officers. Did you ever talk to the police about it?

7 A When we were trying to get a hold of the...what detective was gonna be assigned to the case.

8 Q Okay.

9 A The...that's...that information, I believe, is in...in lead P.O. Corral's notes.

10 Q His name is Steve Hanes.

11 A Correct.

12 Q Did you ever speak with Steven Hanes?

13 A Only when he came in to get the phone.

14 Q Okay, other than that, no?

15 A No.

16 Q Alright, and when he came in to get the phone, did you...you handed him a copy of...you gave him
17 the phone?

18 A Correct.

19 Q You released the phone to him, right?

20 A Correct.

21 Q And you also released the transcript that you have there in your file, right?

22 A Correct.

23 Q Okay.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A And I told him...I'm...I'm...

2

3 Q Go ahead.

4

5 A No, I had just...I had just...and I told him that I had typed these up. If...if...you know, if he wanted

6 them.

7

8 Q Okay, and did you then open the phone and show him where you got them?

9

10 A No, because he needed a warrant to look up the...his policy or whatever is that he needed a warrant to

11 be able to look at the phone, so at...

12

13 Q Okay.

14

15 A ...that point, the phone was turned off.

16

17 Q Alright.

18

19 A And we...it went in an evidence bag if I believe...if I remember correctly.

20

21 Q Okay. So where in the phone did you find these?

22

23 A In the text messages.

24

25 Q In the...just...just in the regular old text messages?

26

27 A Yeah.

28

29 Q Okay, so you open up a phone, an iPhone. It has a little green box in it, right? It says text messages.

30 Do you recall that?

31

32 A Sure. I don't have an iPhone, so I'm not sure what the...

33

34 Q Alright.

35

36 A ...the...

37

38 Q I do.

39

40 A There ya go.

41

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Let's take a look. See this? It says messages with a little white balloon in it?

2 A Okay.

3 Q Do you see that? Does that look familiar to you? Right here.

4 A Yes.

5 Q Did it look like that?

6 A I believe so.

7 Q Okay, do you recall?

8 A No, it was two years ago.

9 Q Okay.

10 A No, I don't recall. I don't recall the exact...what...what the little button looked like that I hit on the
11 phone.

12 Q Okay, so was it...

13 A It was his phone and he...and...and I...I opened his texts.

14 Q I know it seems like a silly question, especially two years later, but it's a very important question
15 'cause I need to know where you got the messages.

16 A It was off of his phone.

17 Q Off of his phone, but you...can you...as you sit here today, are you certain that you got it off of his
18 text messages?

19 A I believe...I believe so.

20 Q That icon?

21 A I believe so.

22 Q Okay. Alright, and do...do you recall erasing them afterwards?

23 41

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Never. Absolutely not.

2

3 Q Do you have any explanation for them not being on the phone if they aren't on the phone?

4 A No.

5

6 Q Okay, and when you handed the phone over to the detective, you didn't check to make sure that they

7 were still on the phone, did you?

8

9 A No.

10

11 Q Alright, and in fact you didn't turn the phone on again after you did the typing, did you?

12

13 A Correct.

14

15 Q Alright. On what dates did you do all this typing?

16

17 A It was...if I remember correctly, it was the day after we took him to jail is when I...when I started

18 doing the transcription.

19

20 Q Okay. Now, there were photos on the phone.

21

22 A Correct.

23

24 Q Did...were you able to identify who those photos were of?

25

26 A No, I don't...I don't remember. I don't think there was pictures of the...of her face, so no.

27

28 Q Okay. Well...okay, and other than they're not being pictures of her face, were you ever able to

29 identify who the photos were of any other way? Like showing the photos to Savannah Edwards, hey,

30 is this a photo of you?

31

32 A No, I did...

33

34 Q Okay.

35

36 A ...not do that.

37

38 Q Did you...you didn't do that with anybody? Not even...

39

40 A No.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q ...her mother, right?
2
3 A No, I didn't have contact with either one of them...
4
5 Q Alright.
6
7 A ...other than the phone with mom.
8
9 Q Alright, so I'm trying to figure out, you pick up Bryan, you get the phone, you start reading his text
10 messages?
11
12 A Mm-hmm.
13
14 Q Yes?
15
16 A Yes.
17
18 Q And are you driving or is somebody else driving?
19
20 A Somebody else is driving.
21
22 Q Alright, and did you read them all as you were driving along?
23
24 A No, I did not.
25
26 Q Okay, did you have a warrant?
27
28 A I don't need a warrant.
29
30 Q Okay, so the answer is no, right?
31
32 A The answer is no.
33
34 Q Alright.
35
36 A 'Cause he's on probation, I don't need a warrant.
37
38 Q Okay, now let's go over your note from December 10th, if you don't mind. S.O. that would be...
39
40 A Me.
41

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q But what does S.O. stand for again?
2
3 A Surveillance Officer.
4
5 Q Surveillance Officer was advised by lead P.O. Corral that she received the go ahead to arrest D, that
6 would be defendant.
7
8 A Defendant.
9
10 Q Bryan Lietzau?
11
12 A Correct.
13
14 Q On probation violation. Who'd she get that from?
15
16 A The supervisor, if I remember correctly. You would have to look at her notes.
17
18 Q Okay.
19
20 A But generally the way that works is she gets the okay from the supervisor.
21
22 Q What supervisor?
23
24 A Burkholder.
25
26 Q Okay, and who is she? Lead...lead P.O....
27
28 A She was the lead...
29
30 Q ...Corral?
31
32 A She was the lead P.O.
33
34 Q Okay, so she would've gotten the okay from Burkholder and her notes should show...should show
35 that, right?
36
37 A Correct and I believe she...we...she discussed with the detective on the case who said it would be
38 okay to arrest him.
39
40 Q What was the probation violation?
41

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A I'd have to...you'd have to look at the probation officer's notes on that.

2
3 Q You don't know as you sit here?

4
5 A No, I...

6
7 Q Okay.

8
9 A ...I was just advised to go arrest him.

10
11 Q Alright. Did you get any concern that he had violated his probation before you went to arrest him?

12
13 A Yes.

14
15 Q What was your concern?

16
17 A Various things, but he...he just was in violation of his probation and was...and see you're asking me
18 for specifics of what the violations were and I don't have those.

19
20 Q Okay.

21
22 A But he was in violation of his probation, that's why we arrested him.

23
24 Q Alright, so...

25
26 A We were not arresting him on this.

27
28 Q Okay, so as you sit here today, you don't know what the purpose for the arrest for the violation was,
29 right?

30
31 A Other than probation violation, no.

32
33 Q Okay. Alright, now let's get back to your contact with him, just your recollection of your contact
34 with him.

35
36 A Mm-hmm.

37
38 Q From your contact with him, did you think that he was in violation of his probation?

39
40 A Yes.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q Okay, how?

2

3 A Not following directives as far as...there's one even listed right here in...in this note that you have in

4 front of you. He was supposed to be living at his grandparents' house and not...he's not supposed to

5 be at his parents' house at all.

6

7 Q Okay.

8

9 A And he wasn't at his grandmother's house and we located him at his parents' house.

10

11 Q Okay, anything else?

12

13 A That's the one that I know for sure, because it's right here in front of me.

14

15 Q Okay, any other probation violations that you know of or that you can think of as you sit here today

16 from your contact with him and his file?

17

18 A As I sit here today, no.

19

20 Q Alright. So, let's keep going. S.O. and S.O. Hick...is S.O. Hick still working there?

21

22 A Yes, he is.

23

24 Q Attempted to locate D, Bryan Lietzau, right?

25

26 A Mm-hmm.

27

28 Q At his listed his residence, grandmother's, and was advised that he was not home and they didn't

29 know where he was.

30

31 A Okay.

32

33 Q Is that true?

34

35 A That's true.

36

37 Q It says that? Okay.

38

39 A That's what it says.

40

41 Q Is there any recollection that you have that's different from that?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Nope.
2
3 Q S.O. then attempted to locate D at his parents' residence and noted the van D is associated with was
4 in the driveway, correct?
5
6 A Correct.
7
8 Q Okay. S.O. knocked on the door and D answered a short time later, correct?
9
10 A Correct.
11
12 Q Alright. What time of day was this?
13
14 A 7:30pm approximately.
15
16 Q Alright. Did he tell you he was living there?
17
18 A No, but he knew he wasn't allowed to be there.
19
20 Q Not even to visit, huh?
21
22 A No.
23
24 Q Okay. S.O. asked D who was home and D stated just me.
25
26 A Okay.
27
28 Q Anything...
29
30 A Correct.
31
32 Q Anything you want to add to that?
33
34 A No.
35
36 Q S.O. directed D to step outside and while S.O. Hick covered D with a Taser, S.O., that's you, right?
37
38 A That's correct.
39
40 Q Advised D that he was under arrest for probation violation and placed him in double lock handcuffs
41 without incident.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Correct.

2
3 Q Do you remember that?

4
5 A Yes, I do.

6
7 Q Okay. Do you remember telling him what the probation violation was?

8
9 A No, we don't tell them. All that...all that they're advised at the time of arrest is that they're under
10 arrest for probation violation and that they'll find out what they're accusations against them or the
11 violations against them are at their initial appearance.

12
13 Q Okay. Now, at the time that you went to the residence, did you know that there was...strike that, did
14 you suspect that there was text messaging between Bryan Lietzau and Savannah?

15
16 A No. I didn't...I didn't know one way or the other.

17
18 Q Okay, so nobody mentioned any of that to you?

19
20 A Not that I recall.

21
22 Q Okay. Alright. While en route to PCJ, what does that mean? Pima County Jail?

23
24 A Pima County Jail.

25
26 Q S.O. searched D's phone and found hundreds of text messages between D and S.E. How did you
27 search it?

28
29 A I opened the phone and looked at the messages.

30
31 Q Okay, so you open the phone, turned the phone on, right?

32
33 A Correct.

34
35 Q And then went to an area where there would be messages?

36
37 A Correct.

38
39 Q And then you pressed the button on that, is that right? Correct...

40
41 A That...

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q ...me if I'm wrong.
2
3 A That's correct.
4
5 Q Okay, and that's what brought up the messages?
6
7 A Correct.
8
9 Q Now when...usually when you bring up a message...the messages on the iPhone...watch me as I do
10 this, if you would. When you bring up the messages on an iPhone, a lot of messages come up.
11
12 A Correct.
13
14 Q Right? And if you go all the way back to all the messages...
15
16 A I know. Right.
17
18 Q Right? You get a whole list of people.
19
20 A Okay.
21
22 Q Do you remember that?
23
24 A I'm sure that's what it looked like.
25
26 Q No? Right now?
27
28 A I don't remember that.
29
30 Q Do you remember it, that's what I'm asking. If...
31
32 A No.
33
34 Q ...you don't remember just say I don't remember.
35
36 A I don't remember that.
37
38 Q Alright. Okay.
39
40 A Exactly.
41

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q And you don't remember any of this that I just went through, right? You don't remember opening it,
2 hitting the icon, and having the messages come up?

3

4 A No.

5

6 Q You don't remember that, right?

7

8 A Well, I remember doing it, yes.

9

10 Q You do remember doing it?

11

12 A I don't remember the exact screens that you're showing me there, no.

13

14 Q Alright. Okay.

15

16 A 'Cause I go through hundreds of phones a month.

17

18 Q Alright, and you look at all different places for messages, right?

19

20 A Correct.

21

22 Q Okay, what other applications were on the phone for instant messaging, do you know?

23

24 A I don't recall.

25

26 Q Okay, and there could...there could've been others, true?

27

28 A True.

29

30 Q And those could've been the area where you would've found some of these text messages, true?

31

32 A That's possible.

33

34 Q Alright. So, you...as you sit here today, you're not certain if you found it under the traditional text
35 message like I should you with the white balloon that says messages under it?

36

37 A Mm-hmm.

38

39 Q Or some other application?

40

41 A That's correct.

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 Q You just know that you found these messages between these two?

2 A Yes.

3 Q Right? Okay, and you don't remember how you knew it was from Savannah, correct?

4 A I verified it with Mr. Lietzau.

5 Q Okay, other than your verification with Mr. Lietzau, you don't remember what the verification was,
6 right?

7 A No.

8 Q Okay.

9 A No, I didn't...I didn't look at the phone number or anything like that.

10 Q Okay. Alright. We'll get to that in a minute. S...you didn't look at the phone number at all, right?

11 A Correct.

12 Q Alright. S.O. Hick cleared the residence to ensure that there was nobody hiding inside. Pretty self-explanatory, true?

13 A True.

14 Q House was deemed clear and the house was secured using D's keys?

15 A Correct.

16 Q Alright, that's Bryan's keys, right?

17 A That's correct.

18 Q At Bryan's request, D's request, S.O, that's you, left the keys in the van and stated...and stated to
19 leave...that's a typo, isn't it?

20 A Yeah.

21 Q Started to leave the van unlocked, right?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Right, he...he asked us to just leave the keys in the van under...I think it was under the front seat or
2 something like that and just leave the van unlocked so his parents could get in or...

3
4 Q Okay.

5
6 A ...to get the keys.

7
8 Q Alright. D was transported to PCJ without incident.

9
10 A Correct.

11
12 Q Alright. While en route to PCJ, S.O. searched D's phone and found hundreds of text messages
13 between D and S.E.?

14
15 A Correct.

16
17 Q Okay, now that gets back to what we were just talking about. You don't really remember how you
18 knew it was between D and S.E. except you think Bryan told you that, right?

19
20 A Correct.

21
22 Q Okay. Now, what exactly did he say to you? Did you read them to him and then he said, yep that's...

23
24 A No, I just asked him...I asked him who these messages were to or from or what the...who the
25 conversation was with and he said Savannah. I...I'm assuming, 'cause obviously I didn't put it in the
26 notes here, so I'm not...but...

27
28 Q You don't remember what he said?

29
30 A I don't remember how that...yeah.

31
32 Q Okay, this subject is known to S.O. as a thirteen year old girl, it says Y.O. girl, and D...that D is
33 accused to having an inappropriate relationship with. Do you see that?

34
35 A Yes.

36
37 Q Okay, now who told you that she's a thirteen year old girl?

38
39 A The probation officer.

40
41 Q How was she known to you?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Through conversation with the probation officer.

2 Q Did you ever meet her?

3 A Nope.

4 Q What'd she look like?

5 A No idea.

6 Q Okay, where does she live?

7 A No idea.

8 Q What's her phone number?

9 A I don't know.

10 Q Alright. Is she Hispanic?

11 A I have no idea.

12 Q Alright. The photos that you saw, were those of a Hispanic woman or a Caucasian woman?

13 A Like I said, they were just small...small photos of somebody in a bra and somebody topless. I don't remember...I don't recall that there was any facial...

14 Q Okay.

15 A ...pictures of her face or anything like that, so I would have no idea.

16 Q Okay, do you have any recollection as to whether or not the breasts were white breasts of a Caucasian or brown breasts of a Hispanic?

17 A I do not.

18 Q Okay. How big were they?

19 A I have no idea.

20 Q Okay, any tattoos?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Not that I saw.
2
3 Q Okay. Any frosting on them?
4
5 A Pardon me?
6
7 Q Any frosting on the breasts?
8
9 A Not that I saw.
10
11 Q Okay, any writing on the breasts?
12
13 A Not that I recall.
14
15 Q Okay. This subject is known to S.O....strike that. Now, we know we've got the breasts. Did you see
16 any shots of any vagina?
17
18 A No.
19
20 Q Okay. Subject is known to S.O. as a thirteen year old girl that D is accused to having inappropriate
21 relationship...we already did that. S.O. advised that D...S.O. advised D that his phone was going to
22 be held as evidence and a receipt was provided to him and placed in his property. Getting back to
23 how you knew that...that D was having an inappropriate relationship, you got that information from
24 probation?
25
26 A Correct.
27
28 Q And from the girl's mother, right?
29
30 A Essentially, yes.
31
32 Q Okay, so what did the girl's mother tell you?
33
34 A I don't recall the conversations.
35
36 Q Okay. Were they by phone?
37
38 A Affirmative.
39
40 Q Is there anything that could spark your recollection or refresh your recollection as to what the girl's
41 mother told you?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A No.
2
3 Q Okay.
4
5 A Not off the top of my head that I...
6
7 Q Alright. I'm not asking about that. I don't want it from the top of your head. I'm just wondering is
8 there any notes anywhere that you don't have with you here today that might refresh your
9 recollection as to...
10
11 A That's possible.
12
13 Q Okay, and that would be in APETS?
14
15 A Yes.
16
17 Q APETS? Okay.
18
19 A Mm-hmm.
20
21 Q Alright, so...and you don't know how many times you spoke with her?
22
23 A No, I don't recall.
24
25 Q Or the dates that you spoke with her?
26
27 A I don't recall that either.
28
29 Q How long you were on the phone with her?
30
31 A No.
32
33 Q Or the nature of the phone calls?
34
35 A I do not.
36
37 Q Okay. Did she tell you what type of an inappropriate relationship was going on?
38
39 A If I...if I recall correctly, she wasn't...she wasn't sure. It was just she knew it was inappropriate.
40
41 Q Okay. What does inappropriate relationship mean?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Well, it can mean a lot of things, couldn't it? I...

2 Q Yeah.

3 A ...really don't know.

4 Q Okay, so you don't recall her saying...

5 A For this...

6 Q ...he's having...

7 A ...twenty-two year old man having a conversation of any kind with a thirteen year old girl without
8 permission is inappropriate.

9 Q Could be. Who knows? But the question is whether it's criminal or whether the relationship was
10 inappropriate and that's what I trying to get at.

11 A Mm-hmm.

12 Q Is there anything other than the fact that it was a twenty-two year old having a conversation with a
13 thirteen year old that you can recall that would make it "inappropriate"?

14 A That I had knowledge of at that time?

15 Q Yes.

16 A No.

17 Q Like he's having sex with my daughter, they had sexual intercourse?

18 A That conversation may have happened with the probation officer, but I don't recall if I had talked to
19 her about that or not.

20 Q Okay, and that's something you would recall if some mother told you that her thirteen year old
21 daughter was having sex with a twenty-three year old or twenty-two year old or twenty-one year old
22 person, right?

23 A I would imagine so, but I don't...

24 Q Alright. You don't have any recollection of that?

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 A Not off the top of my head, no, sir.

2
3 Q Alright, good. S.O. advised D that his phone was going to be held as evidence and a receipt was
4 provided to him and placed in his property. Anything to add to that?

5
6 A No. You have a copy of the receipt I gave him.

7
8 Q Okay. D was not advised as to the reason the phone was being kept and he only asked that it would
9 be possible to get it back?

10
11 A Correct.

12
13 Q Okay. S.O. explained that was the purpose of the receipt so he can claim it at a later date?

14
15 A Correct.

16
17 Q D affirmed he understood. D booked without incident.

18
19 A Correct.

20
21 Q Anything that you want to add to this note?

22
23 A No.

24
25 Q Okay. Is there...now that I've asked you all these questions, is there anything that's come to mind
26 that would make these notes fuller or more complete related to your involvement on December 10,
27 2014 at approximately 7:30pm?

28
29 A No.

30
31 Q Okay. Is there anything that has come to mind regarding Bryan Lietzau and Savannah Edwards, a
32 thirteen year old, that is not in your report other than what you have claimed, which is he told you
33 that the conversation was between him and Savannah, but that's not in your report. Anything else?

34
35 A Not right now.

36
37 Q Okay. Alright. Officer, thank you for your day. I don't have any further questions.

38
39 Q1 I don't have any further questions either. Thank you.

40

41

INTERVIEW - Continued

St. of Arizona v. Bryan Mitchell Lietzau

Date: 06/03/2016

Witness: Casey Camacho

Attorney: Christopher J. Lynch

1 We hereby certify that the foregoing transcription is true and accurate, to the best of our ability.
2
3
4
5
6
7 MDS/al: 06/08/2016

Multisource Document Services, LLC
Multisource Document Services, LLC

EXHIBIT

“ C ”

**STANDARD ARIZONA INVENTORY, AFFIDAVIT
AND RETURN OF SEARCH WARRANT**

FILED
TOMI L. HELLON
CLERK, SUPERIOR COURT

I, DET STEVE HANE S / 41824, a peace officer of the State of Arizona,
(print name) PR# 2015 JAN -2 AM 8:17

being first duly sworn, swear that:

On 12-30-14 (date), I executed Search Warrant No. 15 SW 0001 Issued by D. WANDERL, DEPUTY TUSA G E

TERESA GODOY, and the following property was seized:

The attached list of property was seized.

DIGITAL IMAGES

TEXT MESSAGES

I further certify that the above inventory is a true and detailed account of all the property taken by me pursuant to A.R.S. § 13-3921, and that a detailed receipt for the property taken was (given to) (left at):

MAILED TO BRIAN LIETZAU BY CERTIFIED MAIL

41824
Officer's Signature

This warrant returned, subscribed and sworn to before me on 12.15

(date)

Judicial Officer of Sheriff Court.
100004

FILED
STANDARD ARIZONA DUPLICATE ORIGINAL SEARCH WARRANT
CLERK, SUPERIOR COURT
STATE OF ARIZONA

2015 JAN -2 AM 8:17

SERVICE: DATE 12-30-14
TIME 1030

15 SW 0001

D. WANDELL, DEPUTY

COUNTY OF PIMA, STATE OF ARIZONA

TO ANY PEACE OFFICER IN THE STATE OF ARIZONA:

PROOF OF AFFIDAVIT HAVING BEEN MADE THIS DATE BEFORE ME BY DET HANES
41824. I AM SATISFIED THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT.

() ON THE PERSON(S) OF: _____

(X) ON THE PREMISES KNOWN AS: IPHONE 5c BLUE IN COLOR
WITH BLUE CASE

() IN THE VEHICLE(S) DESCRIBED AS: _____

IN THE COUNTY OF PIMA, STATE OF ARIZONA, THERE IS NOW BEING POSSESSED OR
CONCEALED CERTAIN PROPERTY OR THINGS DESCRIBED AS:

TEXT MESSAGES BETWEEN SUSPECT AND VICTIM

PICTURES AND IMAGES OF SUSPECT AND VICTIM

E-MAILS BETWEEN SUSPECT AND VICTIM

DISTRIBUTION White - COURT Canary - RECORDS Pink - DETECTIVE Goldenrod - DEFENDANT/SEARCH SITE

TPD2326 (12/05) Pg.1

100005

104
FIRST DISCLOSURE JAN. 27, 2015

15SW 0001

**STANDARD ARIZONA DUPLICATE ORIGINAL SEARCH WARRANT
STATE OF ARIZONA**

WHICH PROPERTY OR THINGS.

- WERE STOLEN OR EMBEZZLED
- WERE USED AS A MEANS FOR COMMITTING A PUBLIC OFFENSE
- IS BEING POSSESSED WITH THE INTENT TO USE IT AS A MEANS OF COMMITTING A PUBLIC OFFENSE
- CONSISTS OF ANY ITEM OR CONSTITUTES ANY EVIDENCE WHICH TENDS TO SHOW THAT A PUBLIC OFFENSE HAS BEEN COMMITTED, OR TENDS TO SHOW THAT A PARTICULAR PERSON COMMITTED THE PUBLIC OFFENSE
- THE PERSON SOUGHT IS THE SUBJECT OF AN OUTSTANDING ARREST WARRANT

WHICH OFFENSE OCCURRED ON OR ABOUT THE 1ST / 1ST DAY OF OCTOBER / DECEMBER 2014 IN THE COUNTY OF PIMA, STATE OF ARIZONA.

YOU ARE THEREFORE COMMANDED:

- IN THE DAYTIME (EXCLUDING THE TIME PERIOD BETWEEN 10:00 P.M. AND 6:30 A.M.)
- IN THE NIGHTTIME (GOOD CAUSE HAVING BEEN SHOWN)

TO MAKE A SEARCH OF THE PERSON(S) AND/OR VEHICLE(S) LISTED FOR THE PROPERTY LISTED, AND IF YOU FIND THE SAME OR ANY PART THEREOF, TO RETAIN SUCH IN YOUR CUSTODY OR IN THE CUSTODY OF THE AGENCY WHICH YOU REPRESENT, AS PROVIDED BY A.R.S. SECTION 13-3920.

RETURN OF THIS WARRANT TO BE WITHIN THREE (3) DAYS OF THE DATE THEREOF, AS DIRECTED BY A.R.S. SECTION 13-3918.

GIVEN UNDER MY HAND AND DATED THIS 30 DAY OF DECEMBER, 2014

Teresa Gacy
JUDGE, JUSTICE OF THE PEACE, OR MAGISTRATE OF

SUPERIOR COURT

DATE 12-30-14

TIME 10:07

SEARCH 41824
OFFICER

SEARCH 49540
OFFICER

DISTRIBUTION: White - COURT Canary - RECORDS FBI - DETECTIVE Goldenrod - DEFENDANT/SEARCH SITE

100006

EXHIBIT

“ D “

1 *****
2
3 Q Alright Your Honor, this is Detective HANES, Badge 41824. Would you
4 swear me in?
5 A Ah, do you swear to speak the truth, the whole truth, and nothing but the
6 truth, so help you God?
7
8 Q I do. Okay Your Honor, this is Detective HANES, Badge Number 41823 of
9 the Tucson Police Department. I'm calling you on 30th day of December,
10 2014, with Detective WALL, Badge Number 49543, standing by as a
11 witness. The time is now 10 a-m I'm calling for a telephonic search
12 warrant and have just, probable and reasonable cause to believe...
13 A Could, could I get you to hold on just a sec. I'm sorry, there's a lot of
14 noise, I gotta close the door, hold on.
15
16 Q No problem ma'am.
17 A (sorry guys, it's a really quiet phone call). I'm so sorry.
18
19 Q No problem.
20 A I had to close the door so I can hear you better.
21
22 Q Okay. Well I, I...
23 A Go ahead
24
25 Q ...calling for a telephonic search warrant and have just, probable and
26 reasonable cause to believe that there is now on the premises known as
27 an iPhone 5-C, blue in color with a blue case, the following property to wit
28 text messages between the suspect and victim, pictures and images of the
29 suspect and victim, and emails between the suspect and victim, uh, as set
30 forth in this Affidavit that I, that I, Detective HANES, your Affiant, am a
31 peace officer in the State of Arizona, employed by the Tucson Police
32 Department. Uh, I've been employed as a police officer for 15 years and
33 have the following special training and experience. Would you like me
34 to..
35 A I find you're qualified now, you're good.
36
37 Q Thank you Your Honor I am investigating the crimes of sexual conduct
38 with a minor which I believe to have been committed between the 1st day
39 of October 2014 and the 1st day of December 2014, in Pima County,
40 Arizona, based on the following reasons: Uh, on Octo-(ph), I'm sorry,
41 December 2nd, 2014, uh, the mother victim in this case became aware that
42 her daughter who is 13 years old, um, was possibly sexually active with a
43 21 year old male Uh, she came about this information when her daughter
44 was complaining of abdominal pain and was taken to Tucson Medical
45 Center for an evaluation. Uh, during the evaluation, the juvenile female

1 stated to the doctor, um, that she in fact had been sexually active with a
2 21 year old male on previous occasions Um, that 21 year old male was
3 contacted by Adult Probation. Uh, they obtained his telephone, uh, that he
4 had been using to have contact between himself and the, uh, juvenile
5 female. Um, based on the statements that Adult Probation made to me
6 stating that they had reviewed the, uh, suspect's phone and that there was
7 in fact information on that phone that pertained to that relationship Uh, I
8 am now asking for permission to get, to obtain that information Uh, I
9 believe it is necessary to search for this evidence, I'm sorry, I don't need, I
10 believe there is, uh, necessity to search this evidence after 10 p-m, so I
11 will skip to the part that's necessary. Uh, based on the preceding facts, I,
12 Detective BARRY request that a telephonic search warrant be issued I
13 also request that you consider this Affidavit and incorporate it into the
14 warrant itself. This concludes my Affidavit Your Honor
15

16 A I'm farb-(ph), I find probable cause and I'll authorize the warrant.
17

18 Q Thank you I will now read to you verbatim the Standard Arizona
19 Duplicate Original Search Warrant, State of Arizona, indicating which
20 spaces I have left blank and which, uh, I would request that you allow me
21 to forego reading the blank spaces and only read the spaces that I have
22 completed.
23 A That's fine
24

25 Q Okay. I also request that you permit me to forego re-reading the items to
26 be searched for and seized, and ask your permission that I may
27 incorporate the exact list I have already read in my Affidavit into the
28 Warrant.
29 A That's fine as well.
30

31 Q Alright, thank you. Standard Arizona Duplicate Original Search Warrant,
32 State of Arizona which property or things consist of any item or constitutes
33 any evidence which tends to show that a public offense has been
34 committed or tends to show that a particular person committed the public
35 offense, uh, Your Honor, I'm gonna start over because I read the wrong
36 page I apologize
37 A Okay.
38

39 Q I...
40 A That's alright.
41

42 Q Standard Arizona Duplicate Original Search Warrant, State of Arizona
43 Ah, County of Pima, State of Arizona. To any peace officer in the State of
44 Arizona, Proof of Affidavit having been this date before me by Detective
45 Hanes, Badge Number 41824. I am satisfied that there is probable cause

TELEPHONIC SEARCH WARRANT
PAGE 3
Q = DET. HANES

CASE #14 12 03 0009
A = JUDGE GODOY

1 to believe that on the premises known as blue iPhone 5-C with a blue
2 case, uh, in the County of Pima, State of Arizona, there is now being
3 possessed or concealed certain property or things described as text
4 messages between the suspect and victim, pictures and images of the
5 suspect and victim, and emails between the suspect and victim; which
6 property or things consist of any item or constitutes any evidence which
7 tends to show that a public offense has been committed or tends to show
8 that a particular person committed the public offense; which offense
9 occurred on or about the 1st day of October, 2014 to the 1st day of
10 December, 2014, in the County of Pima, State of Arizona, you are
11 therefore commanded in the daytime excluding the time period between
12 10 p-m and 6:30 a-m, to make of the search of the persons and/or
13 vehicles listed for the, listed for the property listed, and if you find the
14 same or any part thereof, to retain such in your custody or in the custody
15 of the agency you represent as provided by A.R.S. Section 13-3920.
16 Return of this warrant will be within three days of the date thereof as
17 directed by A R S. Section 13-3918. Given under my hand this 30th day of
18 December, 2014, and how would you like me to sign your name Your
19 Honor?

20 A Ah, TERESA no H, and then GODOY

21
22 Q Alright. That concludes, uh, the Search Warrant Your Honor. I'm gonna
23 go ahead and stop the tape.

24
25
26 (end of recording)

27
28
29 I have reviewed and verified that this is an accurate transcription of the original
30 interview. Signature. _____

31 Detective S. Hanes #41824.

32
33 Transcribed by Camille McEntee #101030, Special Victims Section, 01/27/17, 1030

EXHIBIT 7

State's Response to Motion to
Suppress Cell Phone Evidence with
Attachments, filed Dec. 7, 2017

1 BARBARA LAWALL
2 PIMA COUNTY ATTORNEY
3 By: NICOLETTE KNEUP
4 Deputy County Attorney
5 32 N. Stone, 14TH Floor
Tucson, AZ 85701
Telephone: (520) 740-5600
Nicolete.Kneup@pcao.pima.gov

12-7-17 **FILED**
DEC 7 2017
TOMI REED, CLERK
Deputy

6 THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF PIMA

8 THE STATE OF ARIZONA,

Case No.: CR-20162952-001

10 Plaintiff,

RESPONSE TO MOTION TO
SUPPRESS CELL PHONE EVIDENCE

11 vs.

HON. HOWARD FELL

13 BRYAN MITCHELL LIETZAU,

14 Defendant.

16 Lietzau has argued that the incriminating text message evidence in his case should be
17 suppressed because Probation Officer Camacho searched his phone without a warrant. The State
18 argues that the probation officer's search of Lietzau's phone was authorized by Lietzau's terms
19 and conditions of probation and that no warrant was required. Lietzau's motion should be denied.
20

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **Facts:**

24 On August 6, 2014, this Court placed Lietzau on probation for DV Aggravated Harassment
25 in CR20142245. In Lietzau's terms and conditions, he submitted to search and seizure of his person
26 and property without a warrant. Defense Exhibit 1. In addition to the uniform terms, Lietzau also

1 signed the domestic violence probation terms, which stated in part: "Grant probation officer safe
2 access to your residence and property. Submit to search and seizure of person and property by any
3 probation officer. Provide probation officer with truthful answers to inquiries and all
4 documentation as directed." State's Exhibit A at 5, #4.
5

6 In December 2014, Probation Officer Libby Pilcher petitioned to revoke Lietzau's
7 probation because he had failed to provide the APD a safe, unrestricted access to his residence; he
8 failed to participate and cooperate in any program of counseling or assistance as directed by the
9 APD and/or court; he failed to drug test as directed; and he failed to perform community restitution
10 as directed. State's Exhibit A at 1. Based on the allegations dating back to August, Lietzau was
11 brought before this Court. State's Exhibit B. At that time, he admitted to not participating in
12 counseling as directed. *Id.* The other allegations were dismissed without prejudice. *Id.* On January
13 7, Judge McGinley sentenced Lietzau to 90 days in jail for the probation violation. State's Exhibit
14 C. As noted by defense, Lietzau was booked into jail on December 10, 2014. Defense Exhibit A.
15

16 When Adult Probation took Lietzau into custody for his probation violations, Officer Casey
17 Camacho was the one who collected Lietzau and discovered the text messages on his phone that
18 led to the charges in this case. Defense Exhibit A. He transcribed the messages from the phone.
19 Defense Exhibit B at 3:13-18. Then he gave the phone, which had been powered off, and the notes
20 to the Tucson Police Department. *Id.* at 17:28-18:19. PO Camacho stated in his Rule 15 interview
21 that Detective Steve Hanes did not look at the phone right away because of his policy not to look
22 at the contents of a cell phone without a search warrant. *Id.* at 18:8-11. Then, on December 30,
23 Detective Steve Hanes applied for and was granted a search warrant to download the contents of
24 the cell phone. Defense Exhibit C. PO Camacho's statements about the contents of the phone
25 formed, in part, the probable cause for the warrant. Defense Exhibit D.

26 As noted by defense, the phone that contained the incriminating text messages was

1 registered with the wireless carrier under Lietzau's mother's name, Sandra Lietzau.

2 Lietzau is currently facing six counts of sexual conduct with a minor.

3
4
5
Law:

6 **A. Probation Officer Camacho acted within the scope of his duties and did not**
7 **commit any Fourth Amendment violation.**

8 Probationers have a reduced expectation of privacy. *State v. Montgomery*, 115 Ariz. 583,
9 584 (1977). What would constitute an unreasonable search of a non-probationer will not also result
10 in an unreasonable search of a probationer under the Fourth Amendment. *Id.*

11 Probation Officer Camacho acts as an extension of this Court when he supervises or detains
12 probationers. *Desilva v. Baker*, 208 Ariz. 597, 603, ¶ 22 (App. 2004). The supervision and
13 detention are part of the punishment ordered by the Court, a privilege in lieu of prison.
14 *Montgomery*, 115 Ariz. at 584. It is well-established that probation officers may search
15 probationers without warrants. *Id.* Furthermore, Lietzau signed off on that condition. State's
16 Exhibit A at 5, #4.

17 **1. Lietzau was subject to a search by a probationer officer, which is different from a**
18 **non-probationer's search incident to arrest.**

19 A warrantless search of probationer's cell phone falls within the scope of the search
20 conditions in the Court's probation orders. 24 C.J.S. Criminal Procedure and Rights of Accused §
21 2372, *citing* U.S. Const. Amend. 4; *People v. Sandee*, 15 Cal. App. 5th 294, 222 Cal. Rptr. 3d 858
22 (4th Dist. 2017). Therefore, such a search falls within the probation search exception to the warrant
23 requirement and does not violate Fourth Amendment prohibition against unreasonable searches
24 and seizures, since a reasonable, objective person would understand that the probation search
25 conditions encompass the search of a cell phone. *Id.* The probation search conditions are worded
26 conditions encompass the search of a cell phone. *Id.* The probation search conditions are worded

1 very broadly and contain no language that would limit the term *property* to exclude probationer's
2 cell phone, which would be a relevant-if-intended limitation since cases show that cell phones are
3 generally troves of incriminating evidence.

4 Lietzau cites *Riley v. California* and *State v. Peoples*, which are inapposite in this case,
5 since none of the defendants in those cases were probationers. *State v. Adair* was more akin to the
6 present case in that *Adair* established that probation officers were entitled to search a probationer's
7 house if it was supported by probation conditions, which would not be allowed without a search
8 warrant under other circumstances. *State v. Adair*, 241 Ariz. 58, 63, ¶ 22 (2016).

9
10 Since Lietzau's probation conditions authorized search of his person and property, and he
11 was detained for probation violations, PO Camacho's search of his phone was constitutional.

12 **2. There is no need to consider exigency in this case.**

13 **B. Since the probation exception applies to PO Camacho's text message discovery,**

14 ***Wong Sun v. US* is not applicable.**

15 **1. There is no need to consider the good faith exception since the exclusionary rule**
16 **does not apply under the circumstances.**

17 **C. There is no legal distinction between a "routine" probation search and any other**
18 **probation search.**

19 Arresting a probationer for a violation is considered a regular duty of a probation officer.
20 *Desilva*, 208 Ariz. at ¶ 22. There is no reason to consider a search of a probationer non-routine
21 when it is accompanied by detention for non-compliance.

22 There is also no support for the argument that *State v. Adair* works against the
23 constitutionality of the search in this case. The bottom line in *Adair* was that probation officers
24 could conduct searches of probationers without reasonable suspicion if the condition was listed in
25 the probationer's terms. 241 Ariz. at ¶ 22. There was no question before the court about whether a

1 search of a probationer was reasonable based on its similarity to the crime for which the
2 probationer was serving a punishment. Looking at paragraphs 28 and 29, the pertinent factors when
3 reviewing a probation search are whether the probationer was subject to a warrantless search under
4 his terms and conditions and whether the search was capricious or harassing. In *Adair*, the fact that
5 the new offense was similar to the old offense and that an informant gave information that Adair
6 was continuing to commit narcotics-related crimes simply added support for a finding of
7 reasonableness. *Id.* at ¶ 29.

8 Lietzau also cites *State v. Riley*, 134 S. Ct. 2473 (2014), to support his statement that
9 probationers maintain a heightened expectation of privacy in their cellular phones, but a quick
10 search of “probation” in that case produces no results. *Riley* does point out that a phone might
11 contain more personal documentation than a house might yield, but this point is to show the
12 significance of a cell phone search, to show that it is not the same as searching any other container.
13 *Id.* at 2491. There is no law that states that searching a phone requires more reasonableness than a
14 house. Either the Fourth Amendment requires a warrant or it does not. The Fourth Amendment
15 specifically lists persons, houses, papers, and effects.

16 In this case, the probation exception applies, especially considering *Adair* and especially
17 considering the broad language in both the standard probation terms and the DV probation terms
18 agreed to by Lietzau. *Riley* does not support the finding that probation officers could search all of
19 Lietzau’s property except his phone.

20 With regard to *US v. Lara*, cited by Lietzau, there is good reason to believe that the Arizona
21 courts would not follow the Ninth’s Circuit’s reasoning. In *State v. Montgomery*, 115 Ariz. 583,
22 585 (1977), the Arizona Supreme Court deviated from Ninth Circuit jurisprudence regarding
23 probationer searches. The court in *Adair* approved *Montgomery*. 241 Ariz. at ¶ 12. Importantly,
24 *Adair* was decided after *US v. Lara*.

1 Ultimately, there is no required nexus between the crime for which the probationer is being
2 punished and the search that a probation officer wishes to conduct during probation in order for
3 the search to be reasonable. Under *Adair*, if the search is authorized by the probation terms and is
4 not capricious or harassing, then it should be considered reasonable under the probation exception
5 to the Fourth Amendment warrant requirement.
6

7 **D. Lietzau might not have standing.**

8 A person claiming a violation of the Fourth Amendment must have “a legitimate
9 expectation of privacy in the invaded place.” *State v. Juarez*, 203 Ariz. 441, 444, ¶ 12 (App.
10 2002), *citing Rakas v. Illinois*, 439 U.S. 128, 143 (1978). To be considered legitimate, a person’s
11 subjective expectation of privacy must be “one that society is prepared to recognize as
12 ‘reasonable.’ ” *Id.*, *quoting Katz v. United States*, 389 U.S. 347, 361 (1967). Mere possession or
13 ownership of a seized item is insufficient to create a legitimate expectation of privacy in the area
14 searched. *Id.*

15 Two points militate against standing in this case. One is that the phone belonged to
16 Lietzau’s mother, although Lietzau used it. The second is that Lietzau claimed that his friend
17 possessed and used the phone when the texts were made. *See* Defense Motion in Limine to
18 Exclude Text Messages. In January, Lietzau told this Court that he would provide later argument
19 on standing. State’s Exhibit D. In this motion, Lietzau has only made the point that he possessed
20 and used the phone around PO Camacho. This Court may have been right that Lietzau had no
21 standing to challenge the search of the cell phone in this case because of his argument in his
22 earlier motion in limine.
23
24

25
26

1 Conclusion

2 The primary argument that Lietzau has set forth in support of suppression is that
3 Probation Officer Camacho searched his phone without a warrant. At the time, Lietzau was on
4 probation and subject to a broad search agreement. The law that Lietzau cites in support of
5 suppression does not help him for the reasons that his cases either concern non-probationers or
6 are not controlling authority in Arizona or do not explicitly state what he argues. Furthermore, he
7 has not adequately argued against the standing issue that concerned this Court in January. There
8 is no sufficient basis for suppression, and the motion should be denied.

10
11 RESPECTFULLY submitted this 7th day of December, 2017.

12
13 BARBARA LAWALL
PIMA COUNTY ATTORNEY

14
15 
16 NICOLETTE KNEUP
Deputy County Attorney
Nicolette.Kneup@pcao.pima.gov

18 Original of the foregoing filed with the Clerk of the Court
19 this 7th day of December, 2017

20 Copy of the foregoing delivered
21 this 7th day of December, 2017:

22 Honorable Howard Fell
Judge at Pima County Superior Court
110 W. Congress
Tucson, Az. 85710

24 Copy of the foregoing mailed/delivered
25 this 7th day of December, 2017:

26 Abigail Okrent, Esq.
Assistant Public Defender
33 N. Stone Ave. Ste. 2100
Tucson, Az. 85701

State's Exhibit A

DEC 18 2014

FILED IN COURT

DEC 15 2014

TONI L. HELTON, Clerk

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA J. Costanza
IN AND FOR THE COUNTY OF PIMA

Deputy

STATE OF ARIZONA,	Plaintiff,	CR-20142245-001
vs.		PETITION TO REVOKE PROBATION
LIETZAU, Bryan Mitchell		AND ORDER
	Defendant.	Assigned to Division SR The Honorable HOWARD L. FELL

On August 6, 2014, the above-named defendant was adjudged guilty of Count One: Aggravated Harassment, Domestic Violence, a Class Six Undesignated Offense, and was placed on probation for eighteen (18) months, to date from August 6, 2014. The attached written conditions were imposed and a copy given to the defendant.

THE COURT IS HEREBY PETITIONED to:

Revoke the defendant's probation because there is reason to believe the defendant violated the Conditions of Probation in that:



- On or about November 23, 2014, the defendant failed to provide the APD a safe, unrestricted access to his residence. (Condition 7)
- 2) On or about October 28, and November 25, 2014, the defendant failed to participate and cooperate in any program of counseling or assistance as directed by the APD and /or court. (Condition #11) (Condition #14)
- 3) On or about August 25, September 29, and December 3, 2014, the defendant failed to drug test as directed. (Condition #12)
- 4) The defendant failed to perform community restitution as directed. (Condition 17)

Issue a bench warrant for the arrest of the defendant. Adult Probation is authorized subpoena authority for fugitive apprehension.
 NCIC warrant/extradite ACIC Arizona warrant

Bring the defendant before Division SR of the Superior Court in Pima County

Issue a summons ordering the defendant to appear in Court

Enter a Criminal Restitution Order for all outstanding assessments pursuant to ARS § 13-805 (A) because the probationer has absconded.

DATED: December 11, 2014.

Defendant: LIETZAU, Bryan Mitchell
Case No: CR-20142245-001

Page 2

I affirm under penalty of perjury
that the foregoing is true and correct.

APPROVED:

Uncorral for:

John Burkholder, Unit Supervisor
Field Services Division, South
(520) 740-4800

CC/LP/mdh

Uncorral for:

Libby Pilcher, Probation Officer
Field Services Division, South
(520) 740-4800

The Court having read the foregoing PETITION TO REVOKE PROBATION AND ORDER and finding good cause appearing therefrom,

IT IS HEREBY ORDERED that:

A bench warrant issue for the arrest of the defendant. Adult Probation is authorized subpoena authority for fugitive apprehension.
 NCIC warrant/extradite ACIC warrant only

The defendant be brought before Division SR of the Superior Court in Pima County on the day of Dec. 14, 20 14, at the hour of 9 a.m. by the Pima County Sheriff, the Court having been advised that the defendant is in custody.

A summons issue ordering the defendant to appear before Division _____ of the Superior Court in Pima County on the _____ day of _____, 20 __, at the hour of _____.

A Criminal Restitution Order issue on all outstanding assessments pursuant to ARS § 13-805 (A).

DATED this 15th day of December, 20 14.

Dorval J. Ell
JUDGE OF THE SUPERIOR COURT

Kendrick A. Wilson, County Attorney
Katherine M. Daubert, Esq., Defense Attorney

Is there a history of weapon use? YES NO
Is there a history of violence? YES NO

Law Enforcement Agency Number TPD 14-03-27-0373

The defendant's last known address.

The defendant is currently in custody at the Pima County Jail.

Ethnicity: W Gender: M Height: 5'8" Weight: 147
Hair: Brown Eyes: Blue Date of Birth: 02/09/1993
Social Security Number: 601-29-1588
FBI Number: 927-70C-E0
ID Marks: None known
Alias Names: None known

Copies:

County Attorney – Kendrick A. Wilson
Defense Counsel – Katherine M. Daubert, Esq.
Adult Probation – Libby Pilcher, South Office
Clerk's Office/Computer
Clerk's Office/Criminal Desk
Sheriff's Department
Court Administrator

VICTIM NOTIFICATION / RESPONSE REPORT

JUDGE: HOWARD L. FELL

DIVISION: SR

DEFENDANT: LIETZAU, Bryan Mitchell

CR-20142245-001

PETITION TO REVOKE PROBATION AND ORDER

PETITION DATE: December 11, 2014

VICTIM NAME: Christina Visconti

OFFICER'S NAME: Libby Pilcher

PHONE: (520) 740-4800

- There is no victim in this case.
- The victim did not request notification.
- A notification letter was mailed to the victim on December 11, 2014.
- The victim was notified on _____ and does not wish to be heard at this time.
- The victim was notified on _____ and wishes to be heard in this case. Please set a hearing date.

Comments from Victim: _____

cc: Probation file

For Steno Use Only: The victim was notified on _____ Steno Initials: _____

BEST COPY

SUPERIOR COURT OF ARIZONA IN PIMA COUNTY

State of Arizona -vs- Lietzau, Bryan M	Case No CR 2014 2245-001 Court: Pima County Superior Court	<input type="checkbox"/> Judgment and Order Suspending Sentence and Imposing Domestic Violence Probation Terms <input type="checkbox"/> Domestic Violence Supervised Probation Terms Addendum
Defendant's Name DOB: 2/9/1993		

1. Is guilty of Aggravated Harassment ARS 13- 2921
2. That the defendant has committed a second or subsequent domestic violence offense within 60 months since January 1, 1999.
3. That the defendant and victim Christina Lietzau have a relationship as defined in 13-3601A.

It is hereby ordered suspending the imposition of sentence and placing the defendant on supervised domestic violence probation.

1. Obey all laws and all lawful orders of the probation officer. Probation officer has authority to perform warrantless arrests.
2. Report to probation officer as directed, within 24 hours of police contact, court appearances, release from incarceration or termination from residential treatment.
3. Maintain employment or enrollment in school as directed by probation officer.
4. Do not move from current residence or travel outside the State of Arizona without prior written approval of probation officer
5. Grant probation officer safe access to your residence and property. Submit to search and seizure of person and property by any probation officer. Provide probation officer with truthful answers to inquiries and all documentation as directed.
6. Do not knowingly associate with probationers, parolees or convicted felons without the prior written approval of probation officer.
7. Do not possess or control firearms, ammunition, explosives, deadly or prohibited weapons as defined by ARS 13-3101 and Lautenberg Amendment 18 USC 921 (a)(1).
8. Do not possess or use dangerous drugs, narcotic drugs, marijuana, toxic vapors, or prescription drugs without a valid prescription.
9. Submit to drug or alcohol testing as directed by the probation officer
10. Successfully complete any program of assistance, counseling or therapy as directed by the probation department.
11. Do not drink alcoholic beverages
12. Be incarcerated pursuant to the accompanying court order of confinement, if any.
13. Be subject to the following intermediate sanctions as directed by the probation officer:
 - community service up to 24 hours, in 8-hour increments
 - antabuse, if medically prescribed and as directed
 - electronic monitoring for up to 120 days
 - curfew for up to 28 days, in 7-day increments
14. Domestic Violence Special Terms.
 - A. Do not initiate or maintain telephone contact, correspondence, personal or third party contact with the victim without prior written approval of the court or probation officer. Do not enter the premises, travel or loiter near where the victim resides or works.
 - B. Avoid all contact with the victim's family unless approved by probation officer.
 - C. Abide by all court restrictions, orders of protection, directives, divorce decrees and/or visitation conditions.
 - D. Actively participate in and successfully complete domestic violence intervention treatment as directed by probation officer.
 - E. Abide by all treatment program rules, conditions and requirements, including payment of any fee.
 - F. Authorize therapist to disclose to the court and probation department information about your attendance and progress in treatment.
 - G. Immediately report any unapproved contact initiated by the victim to the probation officer
 - H. Immediately report the service of any court documents, divorce and/or visitation conditions to probation officer
 - I. If not already completed, be fingerprinted by Law Enforcement Agency, per ARS 41-1750, within five (5) days of sentencing.
15. Pay a \$65.00 Monthly Probation Fee commencing 30 days from date of orders while on supervised probation.
16. Beginning date: _____
Additional Terms. _____

Bryan Lietzau
DEFENDANT SIGNATURE

STREET ADDRESS

CITY ZIP CODE

PHONE MSG

Original
 Prosecutor
 Defendant

BG
Bailiff's/Clerk's Initials
DV-APO: Revised 09/03

Fingerprint

ITAP008/07/14AM0937

David M 8/6/14
JUDGE DATE OF CONVICTION

RECEIPT AND ACKNOWLEDGMENT. I hereby acknowledge Receipt of terms and conditions of probation and, if applicable, the attached Addendum to Terms. I understand the terms and conditions of probation as stated by the Court and contained herein, and that failure to comply with any term or condition could result in the Court revoking probation and imposing a maximum sentence allowed by law.

Abigail ~~Key~~ Stem
Pitcher-S.

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
UNIFORM CONDITIONS OF SUPERVISED PROBATION**

STATE OF ARIZONA

COUNTY/DIVISION: Pima 1 SR

VS.

Lietzau, Bryan M

BEST COPY

CR: 20142245-001

PID#:

OFFENSE(S): Aggravated Harassment (FG/M1)

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD),

PLACING the defendant on probation for a period of 18 year(s) month(s) days lifetime
 to begin 8/16/14 or
 upon absolute discharge from prison for a separate offense or
 upon release from prison for felony DUI (months; days credit for time served)
 upon release from prison pursuant to A.R.S. § 13-603(K)
 REINSTATING the defendant on probation for a period of year(s) month(s) days lifetime
 to begin / / with a revised expiration date of / / .

I AGREE TO THE FOLLOWING AS CONDITIONS OF THE SUSPENSION OF IMPOSITION OR EXECUTION OF SENTENCE: (Conditions Checked Also Apply)

LAW ABIDING BEHAVIOR

1. I will maintain a crime-free lifestyle by obeying all laws, and not engaging or participating in any criminal activity.
2. I will not possess or control any stun guns, tasers, firearms, ammunition, deadly or prohibited weapons as defined in A.R.S. § 13-3101.
3. I will report any contact I have with law enforcement to the APD within 72 (or 24) hours.
4. I will submit to search and seizure of person and property by the APD without a search warrant.
5. If deported or processed through voluntary departure, I will not return to the United States without legal authorization during the term of my probation. If I am deported or processed through voluntary departure, all conditions remain in effect except for _____.

REPORTING TO APD

6. I will report to the APD within 72 (or 24) hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. I will also keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. I will provide a sample for DNA testing if required by law.

RESIDENCE

7. I will provide the APD safe, unrestricted access to my residence and receive prior approval of the APD before changing my residence. I will reside in a residence approved by the APD.
8. I will request and obtain written permission of the APD prior to leaving the state (county)
9. I may apply for Interstate Compact supervision in the state of _____ and will not proceed to that state until reporting instructions are received and the APD issues a written travel permit.
10. I may apply for an Inter-County transfer and will not proceed to that County until APD issues written authorization.

TREATMENT/BEHAVIOR CHANGE/PRO-SOCIAL ACTIVITIES

11. I will actively participate and cooperate in any program of counseling or assistance as determined by APD, or as required by law, given assessment results and/or my behavior. I will sign any release or consent required by the APD so the APD can exchange information in relation to my treatment, behavior and activities.
12. I will not possess or use illegal drugs or controlled substances and will submit to drug and alcohol testing as directed by the APD.
13. I will obtain written approval of the APD prior to associating with anyone I know who has a criminal record. I will not knowingly associate with any person engaged in criminal behaviors

ITBPD08/07/14 M0937

UNIFORM CONDITIONS OF SUPERVISED PROBATION – PAGE 2 OF 2

Approved 8/6/14
J. L. S.

STATE OF ARIZONA

vs. Lietzau, Bryan M

COUNTY/DIVISION: Pima - 5R

BEST COPY CR: 20142245-001

14. I will seek, obtain, and maintain employment, if legally permitted to do so, and/or attend school. I will inform APD of any changes within 72 hours.
15. I will be financially responsible by paying all restitution, fines, and fees in my case as imposed by the Court. I understand, if I do not pay restitution in full, the Court may extend my probation.
16. I will not consume or possess any substances containing alcohol

SPECIAL REQUIREMENTS

17. I will complete a total of 100 hours of community restitution. I will complete a set number of hours per month as directed in writing by my probation officer. I will complete these hours at a site approved by the APD.
18. I will serve days month(s), in the county jail beginning / / with credit for days served, not to be released until / / . I will report to the APD within 72 (or) hours of my release from jail. I will comply with all program rules. Be screened for or shall participate in Work Furlough, if eligible or Work Release, if eligible
19. I will not have any contact with the victim(s) in any form, unless approved in writing by the APD.
20. I will comply with the following sanctions based on my behavior:
 - Up to community restitution hours (in addition to any ordered under condition #17), as directed by the APD.
 - Up to days in the county jail (in addition to any ordered under condition #18), at the discretion of the Court, upon recommendation from the APD.
21. I will abide by the attached special conditions of probation:

<input type="checkbox"/> Intensive Probation	<input type="checkbox"/> Sex Offender	<input type="checkbox"/> Gang
<input checked="" type="checkbox"/> Domestic Violence	<input type="checkbox"/> Drug Court	<input type="checkbox"/> _____
<input type="checkbox"/> Mental Health	<input type="checkbox"/> DUI Court/Program	
22. _____

Based upon the defendant's agreement to abide by the Conditions of Supervision set forth, above, as well as my review and approval of such conditions, I hereby impose and order that these conditions are in effect, and the defendant shall comply with said conditions.

Donald J. Ell
Judge of the Superior Court

Date

8/6/14

RECEIPT AND ACKNOWLEDGMENT: I acknowledge receipt of the conditions of probation and any attachments added. I understand that by not abiding by the conditions of probation my probation could be revoked and the Court may sentence me in accordance with the law. In addition, I waive extradition for any probation revocation proceedings in this matter.

Bryan Lietzau
Defendant

8/6/14
Date

6515 E. V. Saragua

Defendant's Address

Tucson AZ 85730 520-256-7214

Appt.

City

State

Zip

Phone

DISTRIBUTION: Original -Court, Blue -APD, Pink -Defendant
LCBO/AT 7/20/2010 0001

Revision Nov. 2010

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FINANCIAL JUDGMENT AND ORDER**

STATE OF ARIZONA

VS.

Lietzau, Bryan M.

COUNTY/DIVISION: Pima, 1 SR
CR: 20142245-001

BEST COPY

PID#: _____ Reinstatement Commencing: Today's Date This Date: _____

Pursuant to Condition 15 of the Uniform Conditions of Probation the defendant shall abide by the following:

Judgment and Orders of Restitution, Fines and Fees

FINANCIAL SANCTIONS	TOTAL	MONTHLY PAYMENT	BEGIN DATE To commence upon release from confinement or residential treatment
Restitution A.R.S. 13-804 Joint and Several per A.R.S. 13-804(F)	\$ _____	\$ _____	/ /
Time Payment Fee A.R.S. 12-116	\$ <u>20</u>	\$ <u>6.5</u>	/ /
Probation Fees A.R.S. 13-901	\$ _____	\$ _____	/ /
Attorney Fees Reaffirmation of previously ordered	\$ <u>400</u>	\$ _____	/ /
In addition to previously ordered	\$ _____	\$ _____	/ /
Extradition Fee	\$ _____	\$ _____	/ /
Interstate Compact Fee	\$ _____	\$ _____	/ /
Fine A.R.S. 13-801/802/821 Surcharge _____ %	\$ _____	\$ _____	/ /
Probation Surcharge A.R.S. 12-114 01	\$ <u>20</u>	\$ _____	/ /
Surcharge Assessment A.R.S. 12-116.04(A)	\$ <u>13</u>	\$ _____	/ /
Indigent Administration Assessment A.R.S. 11-588	\$ <u>25</u>	\$ _____	/ /
InterCounty Transfer Fee	\$ _____	\$ _____	/ /
Other: <u>DuShelter Fund</u>	\$ <u>50</u>	\$ _____	/ /
Other: <u>Address Confidentiality Fund</u>	\$ <u>50</u>	\$ _____	/ /
Total Monthly Payment	\$ _____	\$ _____	/ /

It is ordered credit be given for any monies paid to date and, if necessary, balances be adjusted accordingly. All modified orders are to be considered new orders for billing purposes.

Condition(s) # _____ of previous order dated _____ / _____ / _____ is/are deleted.

Condition(s) # _____ is/are suspended until further ordered.

- If restitution is not paid in full, the court may extend the period of probation pursuant to A.R.S. § 13-902(C).
- Should you become more than two months behind in your monthly payments, the adult probation department is authorized to order you to surrender your wages. Court-ordered financial obligations will be deducted and the remainder of your wages will be returned to you.

Bryan Lietzau
Defendant

8/6/14
Date

Donald J. Miller
Judge of the Superior Court

Date

Defendant's Address	Apt.	City	State	Zip	Phone
DISTRIBUTION. Original – Court File	Copies: Blue – Data Entry	Pink – Defendant	Yellow – Probation Office	Revision 2011	

State's Exhibit B

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. HOWARD FELL

CASE NO. CR20142245-001

COURT REPORTER: Barb Smith
Courtroom - 808

DATE: December 15, 2014

STATE OF ARIZONA

Victoria A. Otto, Esq. for Kendrick A. Wilson,
Esq. counsel for State

VS.

BRYAN MITCHELL LIETZAU (-001)
Defendant

Monique Lyon, Esq. counsel for Defendant

MINUTE ENTRY

INITIAL APPEARANCE ON PETITION TO REVOKE---ADMIT

Defendant present, in custody.

The defendant having received a copy of the Petition to Revoke Probation dated Thursday, December 11, 2014, waives its reading and states that he wishes to enter an admission.

The Court questions the defendant regarding his financial status.

The Court advises the defendant of his right to remain silent.

IT IS ORDERED appointing the public defender to represent the defendant in this matter.

The defendant is questioned by the Court regarding his understanding of the possible consequences of entering an admission to the allegations contained in the Petition to Revoke Probation dated Thursday, December 11, 2014, and the constitutional rights he waives by entering said admission.

The defendant enters an admission to allegation Number Two contained in the Petition to Revoke Probation dated Thursday, December 11, 2014.

The defendant is questioned by the Court regarding a factual basis for the entry of the admission.

THE COURT FINDS that there is a factual basis for the admission.

THE COURT FINDS that the defendant enters the admission knowingly, intelligently and voluntarily and that the defendant is in violation of the Conditions of Probation as set forth in said allegation.

IT IS ORDERED that allegations One, Three, and Four contained in the Petition to Revoke Probation dated Thursday, December 11, 2014, are dismissed without prejudice.

Jesse Costanza
Deputy Clerk

MINUTE ENTR Y

Page 2

Date: December 15, 2014

Case No.: CR20142245-001

IT IS ORDERED the defendant's conditions of release are hereby revoked, and the defendant shall be held in custody without bond pending the next hearing.

Defendant waives time for the Disposition Hearing.

IT IS ORDERED setting the matter for Disposition Hearing on Monday, January 05, 2015, at 9:00 AM, in Division LF.

IT IS ORDERED that a supplemental presentence report be prepared by the Adult Probation Department.

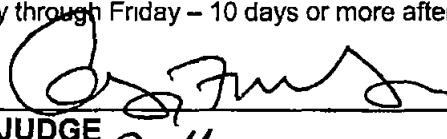
FILED IN COURT: Conditions of Release and Order; Petition to Revoke Probation

cc: Hon. Howard Fell
Kendrick A. Wilson, Esq.
Monique Lyon, Esq.
Adult Probation
Office of Court-Appointed Counsel
Pretrial Services

Jesse Costanza
Deputy Clerk

State's Exhibit C

ARIZONA SUPERIOR COURT, PIMA COUNTY

STATE OF ARIZONA Plaintiff vs. <u>Bryan Mitchell Lietzau</u> Defendant/	COMMITMENT ORDER – NO(S): <u>CR 20142245-001</u> CR _____ CR _____ CR _____	FILED IN COURT Toni L. Hellon Clerk, Superior Court Date: <u>1/7/2015</u> By. <u>K. Kray</u>
<p>IT IS ORDERED committing Defendant to the custody of the Pima County Sheriff pursuant to the order of the Court this date as follows:</p> <p><input checked="" type="checkbox"/> Sentence to Pima County Jail <input type="checkbox"/> Work Furlough <input type="checkbox"/> Immediate or <input type="checkbox"/> after 30/ _____ days <input type="checkbox"/> Sentence to Department of Corrections <input type="checkbox"/> Work Furlough Eligible <input type="checkbox"/> _____ days credit time served/CR <u>20142245-001</u> <input type="checkbox"/> Work Release <input type="checkbox"/> immediate <input type="checkbox"/> Eligible <input type="checkbox"/> _____ days credit time served/CR <input type="checkbox"/> School Furlough <input type="checkbox"/> Treatment Furlough <input type="checkbox"/> Immediate <input type="checkbox"/> _____ days credit time served/CR <input type="checkbox"/> To be released to PO or _____ <input type="checkbox"/> _____ days credit time served/CR upon bed space availability in residential treatment or <input type="checkbox"/> _____ approved halfway house</p> <p><input checked="" type="checkbox"/> Probation Violation (DISPOSITION HEARING) CR#s <input type="checkbox"/> PROJECT SAFE SANCTION <input type="checkbox"/> DRUG COURT SANCTION</p>		
CRIME(S): <u>CTI- Aggravated Harassment, DV (Flomi)</u>	TERM(S): <u>90 days</u>	
<input checked="" type="checkbox"/> IN CUSTODY	<input type="checkbox"/> Concurrent with <input type="checkbox"/> consecutive to CR _____ <input type="checkbox"/> and <input type="checkbox"/> CR _____ <input type="checkbox"/> To be served on _____ consecutive weekends	
<p><input type="checkbox"/> SELF-COMMIT ON <u>1/7/2015</u> by/no later than _____ : _____ a.m./p.m. to: <input type="checkbox"/> SELF-COMMIT ON <u>1/7/2015</u> by/no later than _____ : _____ a.m./p.m. to: <input type="checkbox"/> PIMA COUNTY JAIL <input type="checkbox"/> Alhambra – 10:00 a.m. to 3:00 p.m. – Tuesday, Wednesday or Thursday – 10 days or more after sentencing <input type="checkbox"/> Arizona Center for Women – 8:00 a.m. to 3:00 p.m. – Monday through Friday – 10 days or more after sentencing</p>		
DATE: <u>1/7/2015</u>	 JUDGE <u>John J. Murphy</u> BY <u>Off 3372</u> , Deputy	
SHERIFF STAMP Date <u>1/7/2015</u>		

State's Exhibit D

1 we are talking about.

2 THE COURT: All right. So I guess the issue
3 is how does Bryan have any standing to argue that the cell
4 phone for which there was a warrant that belonged to his
5 mother, how does he have any standing to say that that is
6 precluded?

7 MR. LYNCH: Well, I don't know the answer to
8 that, Judge.

9 THE COURT: I think I do. He doesn't have any
10 standing.

11 MR. LYNCH: I haven't filed that motion yet.
12 That's what I have indicated, if it shows, that's where we are
13 going with it.

14 THE COURT: I don't think he has any standing.

15 MR. LYNCH: Fair enough.

16 MS. ASPACHER: To go back to the text messages
17 that were typed out by Casey Camacho.

18 THE COURT: They are precluded.

19 MS. ASPACHER: I understand. I heard that
20 portion. But I am confused as to the transcript itself is
21 precluded or anything said in the text messages is precluded?
22 I can't use these to refresh the victim's recollection?

23 THE COURT: Correct.

24 MS. ASPACHER: So I can't use them at all?

25 THE COURT: Everything taken from that cell

EXHIBIT 8

Transcript of Trial Court Ruling on
Motion to Suppress Evidence,
Dec. 11, 2017

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

BEFORE THE HONORABLE HOWARD W. FELL

JUDGE OF THE SUPERIOR COURT

DIVISION SR

HEARING ON MOTION TO COMPEL/DISCLOSE

December 11, 2017

Tucson, Arizona

Reported by:

Olivia Armenta, RPR
Certified Reporter # 50411

1 APPEARANCES:

2 APPEARING ON BEHALF OF THE PLAINTIFF:

3 Rachael J. Fornof, Deputy County Attorney

5 APPEARING ON BEHALF OF THE DEFENDANT:

6 Christopher J. Lynch, Esquire

7 Abigail R. Okrent, Esquire

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PROCEEDINGS

THE COURT: State of Arizona versus Bryan Lietzau, 20162952. Rachael Fornof for the State, Abigail Okrent and Chris Lynch for Mr. Lietzau, who's present, in custody.

I've read everything and read the cases, unless either or both of you have something that you need to tell me, I'm ready.

MR. LYNCH: Okay. Judge, I just wanted -- I know we were last in court with a discussion about the un-redacted notes.

THE COURT: Right.

MR. LYNCH: You indicated you were going to give them to me.

THE COURT: Oh, yeah.

MR. LYNCH: So can I have an Order actually granting the motion, and can you -- will you please give them to me?

THE COURT: Yeah, let me see if I have them right here. I had them. Oh, here they are.

I'm sorry, that's not it.

MR. LYNCH: Well, Judge --

THE COURT: Yeah, I'll find them.

MR. LYNCH: -- if you're inclined to grant

1 the motion, if you could just have the Minute Entry
2 indicate the motion is granted and they shall disclose it,
3 then at least it comes through the electronic disclosure,
4 and then it's part of our file record.

5 THE COURT: It's ordered that the un-redacted
6 notes of the legal assistant that was present when the
7 alleged victim was most recently interviewed are to be made
8 available to Defense Counsel.

9 MR. LYNCH: Thank you, Your Honor. Can we
10 put a time, seven days -- within seven days?

11 MS. FORNOF: I do know that Ms. Aspacher is
12 going to be in trial with me next week. So if we can get
13 ten days, that would be really great.

14 THE COURT: No, no. I have them right here.
15 I found them. The only thing was redacted, and I'll -- you
16 can go back and make copies yourself.

17 The only thing that was redacted was, TR next
18 week. Dan explains text messages and calls jail. By Bryan
19 admit. Explains lying testimony. Defendant present. That
20 was it.

21 And then the other thing was BACA, whatever
22 that is, guardians for children counselor support. And
23 then there's -- at the bottom it says, Monday three to
24 five. Empty courtroom. Hearing Monday at 2:15.

25 MR. LYNCH: Okay.

1 THE COURT: That's all that was redacted. So
2 when we finish with this hearing, just go back and Lindsay
3 will make copies of both the redacted and the un-redacted
4 for you, and you can compare and contrast.

5 MR. LYNCH: Thank you, Your Honor.

6 THE COURT: All right. So now --

7 MR. LYNCH: Can the Minute Entry then
8 indicate that the motion was granted?

9 THE COURT: Yeah, yeah.

10 MR. LYNCH: Okay. Great.

11 THE COURT: All right.

12 MS. FORNOF: And just for the record, Judge,
13 I know that you indicated that you've read the motions and
14 you've read the cases. I think what the State wants to
15 ensure is that we have laid an adequate record in terms of
16 issues of reasonableness that are --

17 THE COURT: I read the responses. I assume
18 that that's what you guys wanted to say.

19 MS. OKRENT: I'm sorry, have we moved on to
20 the Motion to Suppress?

21 MR. LYNCH: Yes.

22 | THE COURT: Yeah.

23 MS. OKRENT: Because I would like to say
24 something on that.

25 THE COURT: All right.

1 MS. FORNOF: So I guess all I was saying is
2 that unless the Court has made specific findings of that, I
3 think what the State would want is to present evidence in
4 terms of testimony. We have the probation officer here to
5 do that, unless the Court doesn't --

6 THE COURT: Well, it's not the probation
7 officer that searched the cell phone, so it's not going to
8 do me any good or Defense Counsel any good. Camacho's not
9 here.

10 MS. FORNOF: No, and obviously she's looked
11 at the case notes surrounding the search and things like
12 that, but that would be the only evidence we present.

13 THE COURT: I don't need any testimony.

14 MS. OKRENT: Your Honor, I would like to make
15 a little bit more argument on that.

16 THE COURT: On what?

17 MS. OKRENT: The Motion to Suppress.

18 THE COURT: All right. If it's something
19 that's already been -- is contained, then I don't want to
20 hear it.

21 MS. OKRENT: It's a little bit more
22 information that wasn't briefed in my -- specific to the
23 cases already cited that wasn't briefed in my motion, that
24 was misrepresented in their reply -- or their response, and
25 I did not note that in my reply.

1 THE COURT: Which was what?

2 MS. OKRENT: The Adair Factors are very
3 important. The State maintains that Adair said that as
4 long as the search was in the search conditions, it was
5 presumed reasonable. They also said that as long as the
6 search wasn't capricious or harassing. And the search
7 conditions in Adair actually say arbitrary, capricious, or
8 harassing.

9 THE COURT: Right.

10 MS. OKRENT: Which is an important part of
11 the general list of factors that Adair lists that require
12 that there is a nexus between the search and the suspected
13 offense or violation --

14 THE COURT: Yeah, I was going to go over that
15 in my ruling.

16 MS. OKRENT: Thank you, Your Honor.

17 THE COURT: Rachael, anything else?

18 MS. FORNOF: No. Just for the record, the
19 State would like to call the witness to the stand, but
20 understands that the Court's position is that that may not
21 be necessary.

22 THE COURT: All right. So the issue here is
23 whether or not the -- essentially the blanket condition in
24 the conditions of probation that Mr. Lietzau signed, which
25 is No. 5, grant probation officer safe access to your

1 residence and property, submit to search and seizure of
2 person and property by any probation officer, provide
3 probation officer with truthful answers to inquiries and
4 all documentation as directed, whether that is sufficient
5 to essentially give the Probation Department carte blanche
6 about searching anything that they feel like they want to
7 search.

8 And in this case the allegations that were
9 made against Mr. Lietzau in the Petition to Revoke
10 Probation, for which he was arrested on the day that the
11 cell phone was seized by Surveillance Officer Camacho, were
12 as follows.

13 On November 23rd, 2014, he failed to provide
14 a safe, unrestricted access to his residence. No. 2, which
15 is what he admitted, that on October 28th and November 25th
16 he failed to participate and cooperate in any program of
17 counseling or assistance as directed by Adult Probation
18 Department and the Court. No. 3, August 25th, September
19 9th -- 29th, December 3rd, he failed to drug test. And No.
20 4, he failed to perform community restitution as directed.

21 So factually, my understanding is that
22 probation officer -- or Camacho arrests Mr. Lietzau. On
23 the way to the jail seized -- his cell phone was seized at
24 the time on the way to the jail. He searches the --
25 Camacho searches the cell phone. He finds information that

1 he believes is incriminating with regard to crimes that are
2 unrelated to what Mr. Lietzau was on probation for.

3 He then says that he made some notes about
4 that, and then provides the information to Tucson Police
5 Department. Tucson Police Department calls Judge Godoy,
6 gets a warrant based on -- and the Affidavit is clear,
7 based on the information that Camacho gave the police
8 officer. Judge Godoy grants a search warrant.

9 So as Abigail started saying before I
10 interrupted her, the cases that I think are most important
11 are what were cited by the Defense, and responded to by the
12 State.

13 So Riley, we know -- Riley versus California,
14 we know that a search warrant is required to search
15 someone's cell phone. But that didn't deal with the issue
16 of when someone's on probation, and they've agreed to allow
17 the Probation Department to search their property.

18 So then we look at Lara, which is United
19 States v. Lara. And in that case, the 9th Circuit case,
20 the Court indicated that -- a number of things. But one of
21 them was that in Lara's case, and he was on probation, that
22 the conditions of probation were not specific enough, and
23 they didn't include cell phone data, just property.

24 And the Lara Court concluded that the data on
25 the cell phone is not contemplated by that blanket

1 authorization when someone's on probation to search
2 property. And Lara said they have to -- we have to balance
3 on the one hand the degree to which the search intrudes
4 upon an individual's privacy, and on the other, the degree
5 to which the search is needed for the promotion of
6 legitimate governmental interests. And also said that a
7 probationer needs to be unambiguously informed of what
8 they're agreeing to when agreeing to the search.

9 So they say -- the Lara Court says that the
10 word property doesn't include cell phone data, especially
11 when the word is read in conjunction with language that
12 follows. So they say we repeat the relevant language here,
13 property, including any residence, premises, container, or
14 vehicle under my control, which is actually broader than
15 what our Probation Department does. Each of the specific
16 types of property named as examples refer to physical
17 objects and can be possessed. A cell phone is such an
18 object, but cell phone data, which were the subject of the
19 two searches in this case, are not property in that sense.

20 So then Lara says, in sum we conclude that
21 Lara had a privacy interest in his cell phone and the data
22 it contained. The privacy interest was substantial in
23 light of the broad amount of data contained in or
24 accessible through the cell phone. We recognize his
25 privacy interest was somewhat diminished in light of his

1 status as a probationer. But they ultimately conclude that
2 the search of the cell phone data was unlawful, and that
3 the exclusionary rule bars the admission of the evidence
4 that was the fruit of the unlawful search.

5 But there's this whole issue about
6 reasonableness, you know, what's reasonable. And so then
7 we look at Adair, which is what Abigail started talking
8 about. And Adair says that we look at the totality of the
9 circumstances. And they outline I think it's eight
10 criteria to determine whether the totality of the
11 circumstances -- whether some -- whether a search by the
12 probation officer is reasonable.

13 So one is the target of the search must be
14 known, must be a known probationer, subject to a valid
15 enforceable probation condition. Okay. That one we got.

16 The search must be conducted by a probation
17 officer in a proper manner, and for the proper purpose of
18 determining whether the probation officer was complying
19 with probation obligations. I don't think that applies.
20 There's no evidence that the search was conducted by a
21 probation officer in the proper -- well, the proper manner,
22 yes, but for the proper purpose, no.

23 The search must not be arbitrary. I find
24 that it was in this case.

25 The nature and severity of the probation

1 officer's prior conviction, which is on probation, it's a
2 Class 6 open. The content and scope of the probation
3 office -- of the probation conditions. Here the conditions
4 of probation were not broad enough to permit the search of
5 a cell phone.

6 The nature and severity of the suspected
7 criminal offense is the probation violations. Well, these
8 probation violations didn't -- alleged probation violations
9 didn't indicate that any new crimes had been committed.
10 These were all administrative kinds of things, failing to
11 get drug counseling and so forth. And finally, whether or
12 not -- I'm sorry, and the nature source and plausibility of
13 any extraneous information supporting the search.

14 Look, you know, the Court finds that the
15 search conducted by the probation officer violated Mr.
16 Lara's constitutional rights. The -- and as such, any
17 search thereafter, even with the warrant, was the fruit of
18 -- the so-called fruit of the poisonous tree, and it's
19 precluded. So the Motion to Suppress is granted, the cell
20 phone documentation and information is precluded.

21 MR. LYNCH: Thank you, Your Honor. I just
22 want to make clarification. You did mention just now your
23 finding was as it relates to Defendant Lara. You meant
24 Lietzau --

25 THE COURT: I did, yes.

1 MR. LYNCH: Great. Thank you, Judge.

2 THE COURT: Okay. All right. So now,
3 Rachael, I don't know if Dawn said anything to you, but she
4 sent me an email.

5 I think you got it, too, Chris.

6 MR. LYNCH: I did, Your Honor. I did.

7 THE COURT: About --

8 MS. FORNOF: She forwarded --

9 THE COURT: -- Wendy Dutton being available
10 on that Thursday or Friday.

11 MR. LYNCH: We'll allow her to be taken out
12 of order, Judge. That's fine.

13 THE COURT: Okay. Well, when you say out of
14 order --

15 MR. LYNCH: Well, the trial is going to be on
16 Monday, the 8th.

17 THE COURT: Right.

18 MR. LYNCH: It is foreseen that the trial
19 will go through till Friday.

20 THE COURT: Right.

21 MR. LYNCH: Sounds like she can be called --

22 THE COURT: On Thursday.

23 MR. LYNCH: -- on Thursday or Friday.

24 THE COURT: Okay. All right. But --

25 MR. LYNCH: On Thursday she could be

1 called --

2 THE COURT: All right. The reason I'm
3 pausing here is because -- do you expect that we're going
4 to finish all the testimony on Thursday?

5 MR. LYNCH: I'm expecting that we're going to
6 finish all the -- I'm hoping that we'll finish all the
7 testimony by Thursday.

8 THE COURT: Yeah. Okay.

9 MR. LYNCH: Right. And then --

10 THE COURT: So presume --

11 MR. LYNCH: -- closings in the morning, and
12 then be done.

13 THE COURT: Okay. All right. So presumably
14 we'll finish the case on Friday, unless they need to come
15 back on Monday to deliberate.

16 MR. LYNCH: That's correct.

17 THE COURT: Okay. All right.

18 MR. LYNCH: So there may be some testimony on
19 Friday, but I don't expect it.

20 Go ahead.

21 THE COURT: Abigail?

22 MS. OKRENT: This is just regarding the
23 motion. I just want to make sure that the issue standing
24 was addressed, and that the Court finds that Mr. Lietzau
25 does have standing --

1 THE COURT: Yes. It's also the Court's
2 finding that Mr. Lietzau has standing to challenge the
3 search of the cell phone.

4 MR. LYNCH: Great. Thanks, Judge.

5 So I think if we can -- I think the thought
6 is we start the trial on Monday at 1:30.

7 THE COURT: Yeah.

8 MR. LYNCH: We finish the trial on Friday,
9 with instructions to the Jury, or the Jury may have already
10 reached a verdict by Friday.

11 THE COURT: Yeah. All right. Okay.

12 MR. LYNCH: We're going to move it quickly.

13 THE COURT: So the trial date of the January
14 8th at 1:30 is affirmed.

15 MR. LYNCH: Thank you.

16 THE COURT: All right. Anything else going
17 to come up between now and then?

18 MR. LYNCH: There's only one additional
19 issue, and it's a little bit sticky. And that is you've
20 already ruled that the jail calls are limited to the jail
21 calls that were disclosed.

22 THE COURT: Right.

23 MR. LYNCH: I have 191 jail calls that were
24 just recently disclosed. And they all appear to be jail
25 calls that were disclosed before and are subject to your

1 prior ruling. So that's the position that we're going to
2 take.

3 I don't know if the State is taking something
4 new, but that case -- that decision also went up to the
5 Court of Appeals. And they denied review, but indicated
6 that you have the discretion to make the ruling that you
7 did.

8 THE COURT: Uh-huh.

9 MR. LYNCH: So there's, I think, five jail
10 calls that have been identified as being admissible, and
11 that's it. And I want to make sure that the State, if they
12 have a different understanding of it, that we get that
13 before you and heard. And I think the burden's on them.

14 THE COURT: Yeah, that was my recollection of
15 what my ruling was.

16 But talk to Dawn about it, Rachael, and find
17 out what her recollection is. And if there's something
18 that needs to be filed, file it.

19 MR. LYNCH: Great. That's it, Judge. That's
20 the only --

21 THE COURT: Okay.

22 MR. LYNCH: -- that I can think of.

23 THE COURT: All right. Then unless I'm so
24 fortunate to see you otherwise before the --

25 MR. LYNCH: Have a great Christmas, Judge.

1 THE COURT: Yeah. Thanks, you guys.

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1 C E R T I F I C A T E
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34 STATE OF ARIZONA)
5 COUNTY OF PIMA)
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7
89 I, Olivia Armenta, a Registered Professional
10 Reporter, in and for the State of Arizona, do hereby
11 certify that the foregoing transcript of the proceedings in
12 Pima County Superior Court is full, true and accurate to
13 the best of my knowledge, skill, and ability.

14

15 Signed and dated this 7th day of February, 2018.

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/ s /

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22 Olivia Armenta, RPR
Certified Reporter #50411

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