

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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Alsham M. Laster – Petitioner

vs.

State of Indiana – Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE INDIANA COURT OF APPEALS**

APPENDIX

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## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



# I N T H E Court of Appeals of Indiana

Alsham M. Lester,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

---

September 24, 2024  
Court of Appeals Case No.  
23A-CR-2699  
Appeal from the Marion Superior Court  
The Honorable Jennifer P. Harrison, Judge  
Trial Court Cause No.  
49D20-2111-MR-33962

---

**Memorandum Decision by Judge Kenworthy**  
Judges Bradford and Pyle concur.

## **Case Summary**

[1] Following a jury trial, Alsham M. Laster was convicted for the murder of his girlfriend, Latisha Burnett.<sup>1</sup> Laster now appeals, raising one issue for our review: did a twenty-two-hour delay in securing a warrant render the seizure of his cell phone unreasonable for purposes of the Fourth Amendment to the United States Constitution or Article 1, Section 11 of the Indiana Constitution? Concluding the seizure was reasonable under both constitutions, we affirm.

## **Facts and Procedural History<sup>2</sup>**

[2] Laster and Burnett lived together in Laster's home on North Luett Avenue in Indianapolis. During the week of July 5, 2021, Burnett's cousin, Corey Smith, was remodeling the home's bathroom. Smith worked at the home on Friday, July 9, and planned to continue working into the next week, until Laster texted Smith on Monday, July 12, telling him not to come over.

[3] In the evening prior, July 11, Laster's neighbor heard what she thought were gunshots coming from Laster's home. But the neighbor did not call the police

<sup>1</sup> Ind. Code § 35-42-1-1(1) (2018).

<sup>2</sup> We heard oral argument on August 30, 2024, on the Indiana Fever Practice Court. We thank Danny Lopez, Executive Vice President for Community and External Engagement and Corporate Communications at Pacers Sports and Entertainment, and the Gainbridge Fieldhouse staff for their warm welcome and hospitality. We also thank the students of Believe Circle City High School, Ben Davis High School, Irvington Preparatory Academy, New Palestine High School, Purdue Polytechnic High School, and Rooted School-Indy for their attention and thoughtful questions. And lastly, we thank counsel for the quality of their arguments and for staying to answer student questions.

because she “hear[d] gunshots all the time in the neighborhood.” *Tr. Vol. 3* at 197. The neighbor saw Laster leave his home around 9:30 that evening in a black Honda SUV belonging to Burnett, which Laster sometimes drove because his own car had a broken wheel. The next day, the neighbor watched as Laster returned home in the Honda. After about twenty minutes, Laster emerged from the home with a trash bag and something else under his arm. Laster placed the items in the Honda and left.

[4] Around 9:30 p.m. that same day, July 12, Laster called 9-1-1 using his cell phone. During the call, Laster identified himself and notified police “there is a deceased person” in his home on North Luett Avenue. *Conventional Ex. Vol. 1 page 2* at 0:05–0:11. Laster was not at home when he made the call. When asked how he knew the person was dead, Laster said, “That’s for the medical team to determine,” *id.* at 2:07–2:11, and “They’re not moving to anything. They’re not responding to anything.” *Id.* at 2:29–2:34.

[5] Indianapolis Metropolitan Police Department Officer Daniel Reed was dispatched to Laster’s home and arrived minutes later. Officer Reed entered the home through the unlocked front door and found Burnett’s body in a “funeral pose” on a bedroom floor. *Tr. Vol. 3* at 143. Burnett’s head was lying on a pillow, her arms were positioned across her chest, and a white sheet was “pulled up almost all the way up to [her] chin . . . very neatly tucked in and put together.” *Id.* at 144. Next to her body, a box fan turned on high blew cold air in her direction. Police identified a crumpled dryer sheet and possible blood

near Burnett's body. And the home's thermostat was set to fifty degrees, causing the room to be "very, very cold." *Id.*

[6] Burnett's body had wounds consistent with those caused by gunshots. A pair of holes in the bedroom floor lined up with holes in Burnett's body. Police found three shell casings in a trashcan in the same room as Burnett's body and a fired bullet in one of the holes in the floor. Police also recovered Burnett's cell phone from the bedroom. Following an autopsy, a pathologist classified Burnett's death as a homicide caused by multiple gunshot wounds. He reasoned Burnett's body had been cooling for at least twenty hours but did not think it had "been there for days" before police arrived. *Tr. Vol. 4* at 27.

[7] On July 13, around 2:00 a.m., police stopped Laster while he was driving Burnett's Honda and took him to the police station for questioning. Once there, the police seized Laster's cell phone. Laster said the phone's number ended in 0721 and was the phone he called 9-1-1 from. About two hours later, Detective Connie Pearson met with Laster and read him his *Miranda* rights. Laster was handcuffed and refused to speak to police without a lawyer present. While Laster was being held at the police station, police obtained a warrant to search the black Honda SUV. During their search, police found laundry detergent and a bag containing a pair of pants with several blood stains. DNA testing later confirmed most of the blood on the pants was Burnett's and a smaller portion was Laster's. Police released Laster around 10:53 a.m. but did not return his cell phone.

[8] The next morning, July 14, around 8:15 a.m., Detective Pearson applied for a warrant to search Laster's cell phone.<sup>3</sup> In her warrant request, Detective Pearson detailed potential evidence, like GPS and location data, she expected to find on the cell phone. A trial judge granted Detective Pearson's request. In total, about twenty-two hours elapsed between the warrantless seizure of Laster's cell phone and the trial court's grant of Detective Pearson's request for a warrant to search the phone.<sup>4</sup> The following items were obtained from Laster's cell phone: the cell phone itself; the phone's SIM card; a report decoding data extracted from the cell phone; copies of text messages; logs of incoming and outgoing calls and text messages; a photo of Burnett with her eyes closed, lying in the same position and wearing the same clothes as she was when police found her deceased; and meta data showing the photo of Burnett was taken at 4:47 p.m. on July 10, 2021. Police also obtained copies of several text messages and call logs from Burnett's cell phone.

[9] In November 2021, the State charged Laster with Burnett's murder. Laster moved to suppress all evidence obtained from his cell phone, arguing police seized his phone in violation of the Fourth Amendment to the United States

<sup>3</sup> Detective Pearson had previously applied for a warrant to search and seize Laster's cell phone, but a trial court denied her request. A copy of Detective Pearson's first warrant request was not included in the appellate record.

<sup>4</sup> The parties stipulated to the timing of Laster being brought in for questioning, his release, and the application of the warrant at a suppression hearing. On appeal, the parties frame the gap between the seizure and the obtaining of a warrant as twenty-two hours. This represents the time between Laster being released from questioning just before 11:00 a.m. on July 13 and the trial court granting Detective Pearson's second warrant request around 8:30 a.m. on July 14.

Constitution and Article 1, Section 11 of Indiana’s Constitution. The trial court denied Laster’s motion, finding the seizure reasonable under both constitutions. The case proceeded to trial. The jury found Laster guilty as charged, and the trial court sentenced him to sixty-two years in the Indiana Department of Correction.

## **Standard of Review**

[10] Laster contends the trial court erred in admitting the evidence obtained from his cell phone, renewing his argument that the seizure of his cell phone violated the Fourth Amendment and Section 11.<sup>5</sup> Trial courts have discretion regarding the admission of evidence, and although “we assess claims relating to admitting or excluding evidence for abuse of discretion, to the extent those claims implicate constitutional issues, we review them *de novo*.” *Ramirez v. State*, 174 N.E.3d 181, 189 (Ind. 2021); *see also Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014) (noting the “ultimate determination of the constitutionality of a search or seizure is a question of law that we consider *de novo*”).

### **1. The trial court did not admit evidence in violation of Laster’s Fourth Amendment rights.**

[11] The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The “basic purpose of this Amendment . . .

<sup>5</sup> Laster does not challenge the legality of the search of his cell phone.

is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Carpenter v. United States*, 585 U.S. 296, 303 (2018) (citation omitted). And as its text makes clear, the Fourth Amendment’s “ultimate touchstone” is reasonableness. *Lange v. California*, 594 U.S. 295, 301 (2021) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

[12] Ordinarily, “seizures of personal property are ‘unreasonable within the meaning of the Fourth Amendment . . . unless . . . accomplished pursuant to a judicial warrant.’” *Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (quoting *United States v. Place*, 462 U.S. 696, 701 (1983)). But a law enforcement officer may temporarily seize property without a warrant if they have “probable cause to believe [the property] holds contraband or evidence of a crime” and “the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.” *Place*, 462 U.S. at 701.

#### **A. Police had probable cause to seize Laster's cell phone.**

[13] Laster first contends police did not have probable cause to seize his cell phone. Although probable cause is the “traditional standard” of the Fourth Amendment, *Arizona v. Hicks*, 480 U.S. 321, 329 (1987), it is a “fluid concept” not susceptible to a precise definition, *Hodges v. State*, 125 N.E.3d 578, 582 (Ind. 2019) (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). So, rather than applying “rigid rules, bright-line tests, and mechanistic inquiries,” courts should favor a “more flexible, all-things-considered approach” when determining whether probable cause exists. *Florida v. Harris*, 568 U.S. 237, 244 (2013) (describing probable cause as a “practical and common-sensical standard”).

That is, probable cause exists “when the totality of the circumstances establishes ‘a fair probability’—not proof or a *prima facie* showing—of criminal activity, contraband, or evidence of a crime.” *Hodges*, 125 N.E.3d at 582 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Probable cause does not establish guilt; instead, innocent activity “will often supply a basis for showing probable cause.” *Id.* (reviewing “the degree of suspicion that attaches to particular types of noncriminal acts” to determine the existence of probable cause) (quotation omitted). Ultimately, probable cause is “not a high bar.” *Id.* at 581 (quoting *Kaley v. United States*, 571 U.S. 320, 338 (2014)).

[14] By the time police seized Laster’s phone, they were aware he had called 9-1-1 using that phone and requested police conduct a welfare check on a person he believed was deceased in his home. In this same call, Laster provided police with his name and phone number, and relayed he was not currently at home. When responding to the call, police located Burnett’s body in a bedroom. Examiners identified what they believed to be three gunshot wounds. Three bullet casings were also found in a trashcan in the bedroom. And police spoke with Laster’s neighbors, who observed Laster coming and going from the house around the time Burnett was killed. Detective Pearson’s warrant application also detailed evidence of potential criminal wrongdoing that might be on Laster’s phone, including the phone’s call log, browser history, location information, photos, and messages. Looking at the totality of the circumstances, an objective police officer could reasonably conclude there was a

fair probability Laster's cell phone contained evidence of a crime. Police therefore had probable cause to seize Laster's cell phone.

**B. Exigent circumstances justified the cell phone's seizure under the Fourth Amendment.**

[15] Because police seized Laster's cell phone without a warrant, the State must show one of the "few specifically established and well-delineated exceptions" to the warrant requirement applies. *Ramirez*, 174 N.E.3d at 190 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One such exception is when the exigencies of a situation make law-enforcement needs so compelling that a warrantless search or seizure is objectively reasonable. *Carpenter*, 585 U.S. at 319. Preventing the "imminent destruction of evidence" is a recognized exigency. *Ramirez*, 174 N.E.3d at 190 (quotation omitted). Courts determine whether exigent circumstances justify a warrantless seizure by considering whether: (1) the police had probable cause to believe the item seized contained contraband or evidence of a crime; (2) the police had "good reason to fear" that, absent such seizure, the defendant would destroy material evidence before the officers could obtain a warrant; and (3) the police "made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy." *McArthur*, 531 U.S. at 331–32. This is a "case-specific" inquiry. *Lange*, 594 U.S. at 302.

[16] Here, an objective police officer could reasonably conclude the contents of Laster's cell phone were in danger of being imminently destroyed. If police had returned Laster's cell phone after his interview, Laster would have had an

opportunity, and perhaps a strong incentive, to delete or otherwise destroy incriminating evidence on his phone. To prevent the cell phone's contents from being tampered with or destroyed, police secured it while applying for a warrant. *See Riley v. California*, 573 U.S. 373, 388–89 (2014) (explaining how seizing a cell phone while pursuing a warrant can prevent the destruction of evidence by removing the risk posed by the owner or another individual deleting, wiping, or encrypting evidence on the phone). By doing so, police acted within the scope of the Fourth Amendment. *See Ramirez*, 174 N.E.3d at 190–91 (upholding a warrantless seizure of a recording device under the exigent-circumstances exception when police had a compelling need to secure the recorder before obtaining a warrant to search it due to the destructibility of the recorder's contents); *see also Segura v. United States*, 468 U.S. 796, 808 (1984) (recognizing “society’s interest in the discovery and protection of incriminating evidence from removal or destruction can supersede, at least for a limited period, a person’s possessory interest in property, provided that there is probable cause to believe . . . that property is associated with criminal activity”).

**C. The twenty-two-hour delay in obtaining a warrant did not render the seizure of Laster’s cell phone unreasonable.**

[17] A permissible warrantless seizure, however, may still be unreasonable if police fail to obtain a warrant within a reasonable period of time. *See McArthur*, 531 U.S. at 332 (explaining a seizure must last “no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant”). But there is no bright-line rule for determining when a delay becomes unreasonable.

Instead, courts assess the reasonableness of a seizure by weighing “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” *Place*, 462 U.S. at 703; *see also McArthur*, 531 U.S. at 331 (instructing courts to “balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable”). When conducting this balancing, courts should consider factors like the “brevity” of the seizure, the strength of the State’s basis for the seizure, and “whether the police diligently pursue[d] their investigation.” *Place*, 462 U.S. at 709.

[18] Starting with Laster’s interests, we note he had a strong interest in possessing his cell phone. But the seizure at issue here implicates only Laster’s possessory interests, not his privacy or liberty interests. *See Ramirez*, 174 N.E.3d at 190; *see also Segura*, 468 U.S. at 806 (“A seizure affects only the person’s possessory interests; a search affects a person’s privacy interests.”). After all, the police did not search the contents of Laster’s cell phone until after obtaining a warrant to do so. Laster’s privacy interests therefore were not adversely affected.

[19] As for the State’s interests, police had probable cause to believe Laster’s cell phone would contain evidence of a crime. The State therefore had a stronger interest than if the seizure rested only on reasonable suspicion. *Compare McArthur*, 531 U.S. at 331 (holding a two-hour delay after probable-cause seizure of house was reasonable), *with Place*, 462 U.S. at 709 (holding 90-minute delay after reasonable-suspicion seizure of a suitcase was unreasonable).

[20] Turning to law-enforcement diligence, we are mindful that with the benefit of hindsight, courts “can almost always imagine some alternative means by which the objectives of the police might have been accomplished.” *United States v. Sharpe*, 470 U.S. 675, 686–87 (1985). But that does not necessarily mean police conduct was unreasonable. During the twenty-two-hour gap between seizing Laster’s phone and obtaining a warrant, police were investigating Burnett’s death by requesting warrants to search Laster’s residence, Burnett’s vehicle, and recovered cell phones—including Laster’s. Said another way, police were not abdicating their responsibility or causing unnecessary delay.

[21] Considering these factors together, we cannot say the twenty-two-hour delay was so long the seizure of Laster’s cell phone was unreasonable. *See United States v. Burgard*, 675 F.3d 1029, 1034 (7th Cir. 2012) (holding a six-day delay between the seizure of a cell phone based on probable cause and the police obtaining a warrant to search the phone did not render the seizure unreasonable), *cert. denied*.

[22] In sum, police had probable cause to seize Laster’s cell phone, the warrantless seizure of Laster’s cell phone was justified under the exigent-circumstances exception to the warrant requirement, and the twenty-two-hour gap between the seizure and police obtaining a warrant did not render the seizure unreasonable. As a result, the seizure did not violate the Fourth Amendment, and the trial court did not err in admitting the evidence obtained from Laster’s cell phone.

## **2. The trial court did not admit evidence in violation of Laster's Article 1, Section 11 rights.**

[23] Laster also claims the trial court admitted evidence in violation of his rights under Article 1, Section 11 of the Indiana Constitution, which guarantees, in relevant part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated[.]” Ind. Const. art. 1, § 11. Although the language of Section 11 is nearly identical to its federal counterpart, our courts interpret the state provision “independently and ask whether the State has shown that a particular search or seizure was reasonable based on the totality of the circumstances.” *Ramirez*, 174 N.E.3d at 191. In doing so, we use the framework set forth in *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005). We determine the reasonableness of a law-enforcement officer’s search or seizure by balancing three factors: “1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen’s ordinary activities, and 3) the extent of law enforcement needs.” *Id.* at 361. “When weighing these factors as part of our totality-of-the-circumstances test, we consider the full context in which the search or seizure occurs.” *Hardin v. State*, 148 N.E.3d 932, 943 (Ind. 2020), *cert. denied*.

[24] We begin by evaluating the law-enforcement officer’s “degree of concern, suspicion, or knowledge that a violation has occurred.” *Litchfield*, 824 N.E.2d at 361. We consider all the information available to the officers at the time of the search or seizure. *Hardin*, 148 N.E.3d at 943. When police seized Laster’s

phone, they had at least a moderate degree of concern, suspicion, or knowledge a violation had occurred. Laster called 9-1-1 to request police conduct a welfare check on a deceased person in his home. Only Laster and Burnett lived at the North Luett Avenue home. Police responding to Laster's call located Burnett's body lying in a "funeral pose" on a bedroom floor, identified apparent gunshot wounds to Burnett's body, and found three spent shell casings in a trashcan nearby. *Tr. Vol. 3* at 143. And when police searched Burnett's Honda SUV, they found a pair of pants with blood stains next to a bottle of laundry detergent. Police had at least a moderate degree of suspicion a violation had occurred when they seized Laster's cell phone.

[25] Next, we consider "the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities." *Litchfield*, 824 N.E.2d at 361. We measure the degree of intrusion from the defendant's point of view, considering the "intrusion into both the citizen's physical movements and the citizen's privacy." *Hardin*, 148 N.E.3d at 944. Additionally, we focus on the degree of intrusion caused by the method of search or seizure. *Id.* at 945. The degree of intrusion was low. Although police seized Laster's cell phone, they did not search it until they obtained a warrant. As a result, Laster's privacy interests were not adversely affected. *See Ramirez*, 174 N.E.3d at 190. A twenty-two-hour-long deprivation of Laster's possessory interests is not insignificant but was not unreasonable when placed in the context of the early stages of a homicide investigation.

[26] Under the final *Litchfield* factor, we review the extent of law enforcement’s needs “to act in a general way” and “to act in the particular way and at the particular time they did.” *Hardin*, 148 N.E.3d at 946–47. The need to seize Laster’s phone was significant. After Laster was brought in for questioning and then released, he likely knew he was a suspect in Burnett’s murder. If police returned Laster’s cell phone at that point, he would have had the opportunity and incentive to wipe his phone of potential incriminating evidence. *See Riley*, 573 U.S. at 388–89 (discussing two types of evidence destruction unique to digital data beyond manual destruction: remote wiping and data encryption). True, police could have taken additional steps to better protect the information on Laster’s phone after seizing it—turning it off, placing it in airplane mode, and/or putting it in a Faraday cage.<sup>6</sup> This inaction cuts against law-enforcement needs being significant, but this factor still weighs in favor of the State.

[27] On balance, the seizure of Laster’s phone pending a search warrant did not violate Article 1, Section 11 of Indiana’s Constitution.

## Conclusion

[28] The Fourth Amendment and Section 11 demand reasonableness, not perfection. Because that bar was met here, we affirm.

<sup>6</sup> Faraday cages or bags are “essentially sandwich bags made of aluminum foil” which isolate a phone from radio waves. *Id.* at 390.

[29] Affirmed.

Bradford, J., and Pyle, J., concur.

ATTORNEY FOR APPELLANT

Talisha Griffin  
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Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Indiana Attorney General  
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Deputy Attorney General  
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## Appendix B

# In the Indiana Supreme Court

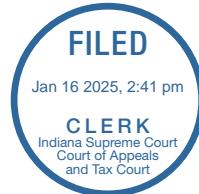
Alsham Montue Laster,  
Appellant(s),

v.

State Of Indiana,  
Appellee(s).

Court of Appeals Case No.  
23A-CR-02699

Trial Court Case No.  
49D20-2111-MR-33962



### Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 1/16/2025.



Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.

## Appendix C

FILED

October 25, 2023

CLERK OF THE COURT  
MARION COUNTY  
DW



**STATE OF INDIANA  
COUNTY OF MARION**

**SENTENCING ORDER**

Case Name	Case Number	Court	
State of Indiana v. ALSHAM MONTUE LASTER	49D20-2111-MR-033962	Marion Superior Court 20	
Judicial Officer	Prosecutor	Defense Attorney	
Harrison, Jennifer Prinz	Mark Alexander Busby	Mitchell Swedarsky	
Date of Offense	Date of Sentencing	TCN Number	Gallery Number
07/10/2021	10/25/2023	9530280332	000000511155

**The Defendant was charged with the following crimes, resulting in the following Dispositions under the above-referenced cause:**

PART I	CHARGES			
	COUNT	CRIME	GOC	STATUTORY CITATION
I	35-42-1-1(1): Murder			35-42-1-1(1)

**As a result of the above convictions, the Court has sentenced the defendant as follows:**

PART II	SENTENCE				
	COUNT	SENTENCE	SUSPENDED	CONCURRENT	CONSECUTIVE
I	62 Year(s) and 0 Day(s)	0 Year(s) and 0 Day(s)			
COUNT	CONFINEMENT TYPE				
I	Indiana Department of Correction	Defendant must register as a violent offender for life			

**The Defendant is to serve this sentence at: Indiana Department of Corrections**

If the Defendant is being sentenced to the Indiana Department of Correction as a Level 6 offender, the following statutory criteria apply:

- IC 35-38-3-3(d)(2) [convicted of a Level 6 felony that was committed in a penal facility]
- IC 35-38-3-3(d)(3)(A) [convicted of a Level 6 felony and sentence ordered to be served consecutively to a sentence for another felony; release date is greater than 365 days]
- IC 35-38-3-3(d)(3)(B) [convicted of a Level 6 felony that is enhanced by an additional fixed term under IC 35-50-2-8 through -16; release date is greater than 365 days]
- IC 35-38-3-3(d)(3)(C) [sentence enhanced under IC 9-30-15.5-2; release date is greater than 365 days]
- IC 35-38-3-3(d)(3)(D) [violent offender as defined in IC 35-31.5-2-352(1); release date is greater than 365 days]
- IC 35-38-3-3(d)(3)(E) [two (2) prior unrelated felony convictions; release date is greater than 365 days]

PART III	CREDIT TIME CALCULATION		
	TYPE	NUMBER OF ACTUAL DAYS CONFINED	CREDIT DAYS EARNED
Incarceration (All Credit Days apply to Case Number 49D20-2111-MR-033962)		720	240

PART IV	SENTENCING CONDITIONS				
	CONDITION	DURATION	LOCATION	AMOUNT/COMMENT	EFFECTIVE
Abstract: Recommended					10/25/2023

Degree of Security - No Recommendation					
---	--	--	--	--	--

**The Court is assessing Court Costs and Fees in the amount of <Root> and a Monetary Award (if applicable) in the amount of . The authority for this Order and the breakdown of the costs and fees are as follows and are found in Indiana Code, Sections 33-37-4-1, -4 and 33-37-5-19.**

PART V	MONETARY OBLIGATIONS	
<b>Court Costs and Fees</b>		
		\$0.00 Total: \$0.00
<b>Restitution</b>		
In the Amount of .		
Awarded To:	Awarded Against:	Payable Through <input type="checkbox"/> Marion County Clerk <input type="checkbox"/> Marion County Probation
Comments:		

PART VI	ADDITIONAL SENTENCING INFORMATION	
Date to Report for Incarceration 10/25/2023	Additional Comments and Orders	

/S Harrison, Jennifer Prinz

Harrison, Jennifer Prinz, Judicial Officer  
Marion Superior Court 20

10/25/2023

Date

*\*Original signature on file with the Court.*

## Appendix D

STATE OF INDIANA	)	MARION COUNTY SUPERIOR COURT 20
	)SS:	
COUNTY OF MARION	)	CAUSE NO. 49D20-2111-MR-033962
STATE OF INDIANA,	)	
	)	
State-Plaintiff,	)	
	)	
vs.	)	
	)	
ALSHAM M. LASTER,	)	
	)	
Defendant.	)	

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### MOTION TO SUPPRESS HEARING

BEFORE THE HONORABLE JENNIFER P. HARRISON  
JUDGE OF THE MARION COUNTY SUPERIOR COURT 20

DATE: SEPTEMBER 27, 2023

PAGES 14 TO 42

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Court Reporter: Jeanine Currans

Proceedings recorded by electronic sound recording;  
Transcript produced by TheRecordXchange

**APPEARANCES**

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SUITE 160  
INDIANAPOLIS, IN 46204

**ON BEHALF OF THE DEFENDANT, ALSHAM M. LASTER**

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SEPTEMBER 27, 2023

(Called to order at 3:30 p.m.)

3 THE COURT: State of Indiana vs. Alsham Laster,  
4 49D20-2111-MR-033962.

5 Mr. Lester is present in person with counsel, Mr. Swedarsky and  
6 Ms. Kennedy. The State is here by Mr. Busby and Mr. Cermak.

7 This is set on suppression.

8 MS. MADISON: Judge, it's Ms. Madison.

9 THE COURT: Madison.

10 MS. MADISON: That's okay.

11 THE COURT: Who did I -- who am I thinking of?

12 MR. BUSBY: What did you say? Ms. Candy?

13 THE COURT: Kennedy.

14 MR. BUSBY: Kennedy.

15 MS. MADISON: It would be a nice, a nice name.

16 MR. BUSBY: Another former president

17 THE COURT: Another former president --

18 MR. BUSBY: Yeah.

19 THE COURT: -- that

20 MR. BUSBY: Madison, Kennedy,

21 THE COURT: I'm sorry. I was in a mu

22 so my brain --

25  111

24 MR. BUSBY. It's different, ame

25 THE COURT. Okay. MS. Madison.

16

1 MR. BUSBY: We're off to a good start.  
2 THE COURT: I'm so sorry.  
3 MS. MADISON: That's okay.  
4 THE COURT: Okay. This is on Defendant's Motion to Suppress  
5 and do you want to lay out the agreed facts --  
6 MS. MADISON: Yes, Judge.  
7 THE COURT: -- so they're on the record?  
8 MS. MADISON: Sure. So what we have stipulated to is that IMPD  
9 officers took Alsham Laster's phone as he was brought into the homicide office  
10 for questioning at approximately 2:00 a.m. on July 13th of 2021.  
11 At 3:50 a.m. Detective Connie Pearson met with Laster. Pearson  
12 provided and read Laster what she referred to as his Miranda rights.  
13 Specifically, that Laster had the right to remain silent, that  
14 anything Laster said could be used against him in Court, that he had the right  
15 to speak with an attorney and have the attorney present during questioning,  
16 that a lawyer could be appointed prior to any questioning at no cost and that  
17 Laster had the right to start answering questions and stop at any time or stop  
18 immediately and talk to a lawyer.  
19 After reading him those rights, Detective Pearson asked Laster his  
20 age to which he replied 41. Pearson then read the following to Laster: I am 41  
21 years of age and I'm signing this of my own free will. I do not want to talk to a  
22 lawyer at this time. I know what I'm doing and understand what I am doing.  
23 No promises or threats have been made to me. No coercion of any kind has  
24 been used against me. I am willing to make a statement and answer questions.  
25 Detective Pearson then asked Laster if he agreed with that. Laster

1 responded that he had handcuffs on and would like to exert/preserve his Fifth  
2 Amendment rights.

3 When asked to speak clearly, Laser responded. "I don't want to  
4 talk," to which Detective Pearson responded, "You don't want to talk to me?" to  
5 which Laser responded, "No, not without a lawyer."

6 Following this exchange, Detective Pearson ceased speaking with  
7 Laser. Laser was then released at 10:53 a.m. on July 13th, 2021 but his  
8 phone remained in IMPD custody.

9 On July 14th, 2021 at 8:16 a.m. Detective Connie Pearson applied  
10 for a warrant to search and seize Laser's phone. This was granted at 8:31  
11 a.m. that same day.

12 THE COURT: Okay. All right. Sorry, brain's tired.

13 Okay. And so you're moving to suppress the actual, just the  
14 seizure of his phone?

15 MS. MADISON: Correct.

16 THE COURT: Okay. There's no warrant.

17 MR. BUSBY: So --

18 THE COURT: I'll move to you.

19 MR. BUSBY: Thank you, Your Honor.

20 THE COURT: Sorry. My brain is --

21 MR. BUSBY: It's okay.

22 THE COURT: --struggling today.

23 MR. BUSBY: I've, I've submitted four documents and --

24 THE COURT: Yeah.

25 MR. BUSBY: -- and to accurately summarize, there actually is a

1 warrant. The warrant was not requested until after the phone was seized and  
2 there's about a 22-hour gap between the seizure and the subsequent warrant.  
3 So that's factually speaking just what we're dealing with.

4 What I've submitted to the Court is four warrants. Warrant --  
5 States Exhibit number 1 is the actual warrant requesting search and seizure of  
6 the phone or granting seizure and search of the phone. So this warrant here,  
7 State's Exhibit number 1 -- have a copy for the Court if the Court would like to  
8 take it.

9 THE COURT: I forwarded you the email that he -- I just forwarded  
10 it to you. Do you need him to actually submit these, or can you just use the  
11 exhibits? He's got them marked.

12 THE CLERK: Are they in PDF form?

13 MR. BUSBY: They're marked --

14 THE COURT: They're in PDF --

15 MR. BUSBY: -- in PDF form and labeled.

16 THE CLERK: Oh, good.

17 THE COURT: We don't need them. You're good and I have mine  
18 so --

19 MR. BUSBY: All right. Fantastic. So Judge, number one is the  
20 actual warrant for the morning of July 14th, which is Wednesday. And this is  
21 requested approximately 22 hours after Mr. Laster is released from the  
22 presence or custody, as the Court sees to determine it, of the Indianapolis  
23 Metropolitan Police Department.

24 At that point, Detective Pearson stopped questioning him and he is  
25 released. However, IMPD does retain possession of the phone. The IMPD then

1 submits this through Detective Pearson requesting that -- the permission to  
2 seize and search the phone and that's granted on the warrant on page -- I'm  
3 sorry -- is the fourth from the last page in the document.

4 This search warrant authorizes law enforcement officers to search  
5 for and seize the following gray iPhone inside a black OtterBox case clip which  
6 was the phone seized from his person, Your Honor.

7 In addition to that document, I've also submitted State's Exhibits  
8 2, 3 and 4. What is significant about these documents is all three of these  
9 documents were submitted to a magistrate or judicial official requesting  
10 warrants to search various places.

11 Two of these are for cars and one is for a residence. All of them  
12 were granted prior to Mr. Laster being released from custody. They all mention  
13 phones and they all get permission for the State to seize phones.

14 At this point in the investigation this is within roughly 24 hours of  
15 the investigation starting. We don't know all the phone numbers yet. What we  
16 do know at this point when this -- State's Exhibit number 1 is filed is that we  
17 have a 911 call from Mr. Laster identifying himself and identifying his phone  
18 number. So that's included in the PC for these, some of these warrants.

19 But as things are developing, you can see -- the Court can see in  
20 real time these changing. I neglected to put them in chronological order, but  
21 State's Exhibit 4 is the first warrant submitted. State's Exhibit 2 is the second,  
22 State's Exhibit 3 is the third and all of them do give the State permission to  
23 search various locations for cell phones.

24 State's Exhibit 1 is ultimately the warrant that did grant  
25 permission to seize the phone and as we conceded, Your Honor, it was

1       executed 22 hours after Mr. Laster was released from the custody of IMPD and  
2       his phone was detained.

3                   So ultimately, the issue before the Court is whether or not that  
4       constitutes an unreasonable search and seizure under both the Fourth  
5       Amendment and under the Indiana Constitution.

6                   And counsel was kind enough to provide our case law in advance.  
7       In reviewing that case law, what I would direct the Court's attention to number  
8       one State -- *Hodges v. State of Indiana* as it provided the Court with the totality  
9       of the circumstances established a fair probability of criminal activity,  
10      contraband or evidence of a crime we have probable cause.

11                  So in this circumstance for the Court to properly assess what  
12      probable cause was in that moment, I think reviewing State's Exhibits 1  
13      through 4, the PC affidavit's submitted.

14                  All four of these were granted by judicial officers. I think that  
15      lends strength to the argument that there was probable cause to seize the  
16      phone prior to number one being executed.

17                  So if we did have a warrantless seizure I think it is to the extent  
18      that is permissible at times under law, justifiable. I do think number one is  
19      curative because the State did not intrude upon the phone and search the  
20      phone until this warrant was granted.

21                  So the seizure in detaining the phone, when are we allowed to  
22      detain an item without a warrant? We have to worry about things that are  
23      fungible, things that can be destroyed or manipulated and a phone, given what  
24      a phone does now compared to what it did 20 years ago when some of this case  
25      law came out and I understand it's controlling, Your Honor, but one of these

1 cases from 1927 and that's the general catch-all language. It's a much  
2 different object and item than we've ever really had legally before in our case  
3 law.

4 So when we look at how we treat an item like this we do have to  
5 worry about it being destroyed or manipulated. And I think in that  
6 circumstance there's some exigency that the State does have a right or a need  
7 to preserve that evidence.

8 I know Detective Pearson in hindsight would do this differently. I  
9 don't think we're saying this was strategic or anything. Our homicide  
10 detectives are under a lot of stresses as is the whole system and that's not an  
11 excuse, that's just transparency, Judge.

12 So with all that in mind, looking at *Williams v. State*, *Williams v.*  
13 *State* two standards of review, Your Honor, and it's a constitutional issue so  
14 the Court conducts in *de novo*, so I think that's very important as opposed to  
15 abusive discretion.

16 These are *de novo* assessments of both the Fourth Amendment  
17 and also the Indiana Constitution Article 1.

18 And the test that the Court applies is two different tests. First, the  
19 federal test when they discuss on page 20 and page 21, in that situation, Mr.  
20 Williams asserted that the officers violated his Fourth Amendment rights when  
21 they searched the cell phones from the motel room, or they seized the cell  
22 phones pending the search warrant request for those phones.

23 And what happened was the officers took those phones, put them  
24 in airplane mode and waited until they got the warrant. And just like that,  
25 Your Honor, we have physical possession of the phone, but we do not intrude

1       upon the curtilage of the phone until we have that warrant, Judge.

2                   So merely holding the phones at these times is a parallel to exactly  
3 what happened in *Williams*.

4                   The Supreme Court of the United States has made clear that such  
5 measures do not run afoul of the Fourth Amendment specifically in *Riley v.*  
6 *California*, another case cited by Defense.

7                   Both the Defendant's there conceded that the officers could have  
8 seized and secured their cell phones to prevent destruction of evidence. I think  
9 that's what we have with cell phones. You can easily erase what's on a cell  
10 phone, you can erase what's on the cloud.

11                  As an aside, when Mr. Laster was arrested in November of 2021 he  
12 had a phone on him. We're not using it at trial. It was not discovered  
13 (inaudible) in a timely manner. We're not intending to use it in any way but  
14 just for the reference the Court understands everything on that phone with the  
15 exception of some pieces of evidence was uploaded from the cloud.

16                  So I think the other thing that's very important to recognize in this  
17 circumstance, the physical phone and the contents of that phone can be easily  
18 changed and uploaded.

19                  So if there's a question of inconvenience to the Defendant to that  
20 information is still accessible through his phone carrier.

21                  So really it is that physical seizure of evidence that can be  
22 manipulated, tampered with or erased potentially.

23                  So then the Court's assessment really needs to be what's the  
24 connection of this phone to criminal activity? I think that's what these  
25 probable cause affidavits establish.

1           The Court ultimately in *Williams* held that the officer's temporary  
2 seizure pending approval of search warrant by a judicial officer was a  
3 reasonable response. Thus, the officers did not violate Williams' Fourth  
4 Amendment rights when they seized his cell phones.

5           So I think it's a totality of circumstances. It's a reasonableness  
6 which is an appropriate response from law enforcement. And although the  
7 language does say a few hours occurred in this particular holding there's no  
8 temporal component to either the State or federal review of reasonableness.

9           So in this instance, I understand it's not a few hours, it's 22 but  
10 that is still fairly reasonable under the test supplied by the federal government  
11 as interpreted by the State of Indiana and the Supreme Court.

12           With regards to the State's standard what the *Williams v. State*  
13 court stated was the totality of the circumstances require consideration of both  
14 the degree of intrusion and the basis upon which the officer selected the  
15 subject of the search or seizure.

16           They then go on to say that the degree of concern, suspicion or  
17 knowledge of the violation has occurred. We do have a dead body in this  
18 circumstance.

19           The degree of intrusion the method of search and seizure imposes  
20 on the citizen's ordinary activities. In this case, we are physically taking a  
21 phone that costs money that is his property, absolutely. I don't mean to  
22 downplay that. I don't mean to suggest it reasonable that, that warrantless  
23 searches are the standard or should be.

24           But in this circumstance, applying number one and number two,  
25 and then number three, the extent of law enforcement needs which sort of the

1        *Litchfield factors.*

2            We have a circumstance where you have a highly mobile,  
3 manipulable piece of evidence that was preserved in a pristine state until we  
4 had a warrant to search it and it was only searched upon that warrant.

5            So the seizure did predate the actual execution of the warrant and  
6 we do concede that.

7            In reviewing the other cases submitted, *Kentucky v. King*, exigency  
8 exists where law enforcement needs are so compelling that warrantless actions  
9 (inaudible) reasonable.

10           That was a case of search not seizure. And I think what's really  
11 important about that case and some of the other cases that generate this, this  
12 is in a home, and this is an exigency created by the State.

13           I think you see a lot of cases where unannounced knock and entry,  
14 we hear them flushing drugs, you better break in. Well, they wouldn't be  
15 flushing the drugs if you hadn't done an unannounced entry. So you can't  
16 create exigency. That's not what we have in this case.

17           Finally, with regards to the general warrants language that was  
18 submitted there is a situation where an officer could say I want anything that  
19 could be involved in a murder. That language has been struck down. But if  
20 you have a warrant that says specific, specific, specific, broadly general, the  
21 remedy even to that is just get rid of the broadly general.

22           So what we're stating here, Judge, is that the warrant that  
23 ultimately led to the search of the phone is sufficiently specific. It is based on  
24 probable cause. And although there was a delay between seizure and  
25 execution of the search warrant the Court should not find it unreasonable,

1 Judge.

2 THE COURT: Okay.

3 MR. BUSBY: Thank you.

4 THE COURT: Now I'm going to call you the wrong name. Ms.

5 Madison.

6 MS. MADISON: Thank you, Judge. I would like to begin by talking  
7 about *Williams v. State* because I think it's the most on point case law that we  
8 have available to us, and it is such a recent case as well. I believe it got  
9 handed down in February of 2023.

10 In that case, as Mr. Busby stated, the Court of Appeals did both a  
11 Fourth Amendment analysis and an Indiana Constitution analysis. It held that  
12 there is no Fourth Amendment violations for seizing a phone to prevent  
13 destruction of evidence where a warrant was pending.

14 That was not the case here. A warrant was not applied for, for 22  
15 hours after not the initial seizure of the phone but Mr. Lester's release from  
16 custody, which means that for over 24 hours they had that phone without a  
17 warrant.

18 And I believe *Williams v. State* doesn't lay out for how long exactly  
19 they had the phone prior to actually obtaining a warrant. They say it's just  
20 (inaudible) few hours.

21 And the Court in that case found that the action was reasonable  
22 under the Fourth Amendment but here we have a seizure that's unreasonable  
23 because of the fact that the phone was held for so long.

24 The *Williams* court also discussed seizures constitutionality under  
25 Article 1, Section 11 using the balancing test from *Litchfield* which balanced

1 degree of concern, suspicion or knowledge that a violation has occurred  
2 (inaudible) intrusion into a subject's ordinary activities and the extent of law  
3 enforcement needs.

4 As to that first factor, the Court found that the degree of intrusion  
5 into the Defendant's ordinary activities by seizing his phone was minimal and  
6 that's because he was under arrest already and he remained under arrest.

7 Here, I think it's -- he was certainly in custody. He had been  
8 cuffed and his rights had been read to him, but he was released, and his phone  
9 was kept so it's distinguishable from *Williams* significantly in that manner.

10 And as to the degree of intrusion into Mr. Laster's ordinary  
11 activities, the lives of most contemporary Americans for better, for worse  
12 revolve around our phones.

13 We use them for work, we use them for communication with  
14 friends, with family. We use them to store information, to schedule our lives,  
15 for entertainment so it's a high degree of intrusion.

16 As for the second factor in *Williams*, they determined that there  
17 was a high degree of suspicion because law enforcement had learned from the  
18 victim in that case that the defendant had used his phone specifically in the  
19 commission of the illegal activities he was being charged with.

20 Here we just do not have that level of nexus between the item that  
21 was seized and the suspicion of, of it being actually used in the commission of  
22 an illegal activity.

23 All law enforcement knew in terms of that phone specifically was  
24 that it had been used to call 911 and that that 911 call struck law enforcement  
25 as you know, kind of shady in nature. And that's the -- that was the only

1 nexus between those two things at that point in time.

2 As to the extent of law enforcement needs in *Williams*, law  
3 enforcement needed the evidence, needed the evidence on the cell phone and  
4 they needed to be able to maintain it to protect the chain of custody and to  
5 prevent any potential destruction of evidence.

6 But the language was that that was used was they could do that  
7 pending the granting of a search warrant. And again, here, there was not even  
8 an application for a search warrant for over 24 hours after that initial seizure.

9 So I think, I think obviously this case is highly distinguishable  
10 from *Williams v. State* and even more than that, the language in *Williams v.*  
11 *State*, I think does suggest that the seizure here was unreasonable under the  
12 Fourth Amendment and also unconstitutional under the Indiana Constitution.

13 We can't just be taking people's phones without a warrant because  
14 we think that there might be something on them that could give the police good  
15 information. It's just a fishing expedition and I think that's exactly what  
16 happened here.

17 As to the contention that the warrants that Mr. Busby submitted, I  
18 believe two through four, kind of encompass the seizure of Mr. Laster's phone.

19 Number one, I think in so far as those warrants give law  
20 enforcement permission to seize the phones found in those locations, I think  
21 those warrants are overbroad to begin with.

22 I don't think that in the application for those warrants it was  
23 established that the, there was that important nexus between the phone and  
24 its potential use in the commission of a crime and in the crime that they were  
25 investigating itself.

1           And in the application for those warrants, I don't even believe a  
2 phone is mentioned. I believe it's just once, once the warrant was granted the  
3 language used was and you can seize the cell phone.

4           So I don't think there's that particularized suspicion there that  
5 warranted those warrants being, being granted for the phones in the first place.

6           And to say that those warrants which gave law enforcement  
7 permission to seize those phones found in those locales then extends to also  
8 give law enforcement permission to seize Mr. Laster's phone from Mr. Laster's  
9 person, I think that just -- it doesn't hold water.

10          I also don't think that the State has established that exigent  
11 circumstances existed here. I think there are far less intrusive manners of  
12 handling this situation than were employed. They could have briefly seized his  
13 phone, put it on airplane mode, put it in a protective baggie that prevents a  
14 remote --

15          MR. SWEDARSKY: Protective baggie.

16          MS. MADISON: For real, yeah.

17          THE COURT: There it is.

18          MS. MADISON: That's a very technical, technical term. Oh,  
19 there's a bag. It's supposed to keep them from being remotely wiped.

20          Anyways, there's steps that could have been taken that would have  
21 been less intrusive than keeping his phone for 24 hours prior to seeking a  
22 warrant. And, and that's not what they did.

23          So I don't think that the argument that exigent circumstances  
24 justified the seizure holds up either.

25          So we would be moving to or asking the Court to suppress the

1 phone in this case under the US Constitution as well as the Indiana  
2 Constitution.

3 THE COURT: Thank you.

4 All right. Mr. Busby, I have some questions real fast for you.

5 MR. BUSBY: Yes, Your Honor.

6 THE COURT: Well, first off for both parties, since it's not in your  
7 Statement of Facts, am I to assume that you all don't agree that he requested  
8 the phone upon his release or is there no agreement as to that?

9 MS. MADISON: No agreement.

10 MR. BUSBY: No, Your Honor.

11 THE COURT: No agreement. Okay. All right. Mr. Busby, what do  
12 you say about that the search warrants, other than search warrant exhibit one,  
13 that these search warrants authorized seizure of cell phones at those locations  
14 but not a seizure outside of those locations?

15 MR. BUSBY: Well, and I understand it and so looking at State's  
16 Exhibit number 1 which is the warrant for the phone itself, it does actually say  
17 the Defendant was driving in the black Honda Accord that is the subject of one  
18 of the other search warrants.

19 So there, there's a nexus between the vehicle he's in and that  
20 search warrant. I'm not saying that I would ever recommend to an officer you  
21 don't need a new warrant. I'm saying that what that shows the Court is that a  
22 judicial officer understood the nexus between that phone and the possibilities  
23 involved in the crime and I'm sure the Court has questions about that, so I  
24 won't go into it yet.

25 But I think none of these are for his person specifically. They're in

1 places he knew to be. And so in this circumstance when we know that we have  
2 judicial authority to take from his, from his residence, which is incredibly  
3 personal, his car, which was a shared car to be clear with the record and then  
4 his person.

5 These are all personal things and I understand there is a  
6 constitutional issue with them. I just don't believe that -- I think it would have  
7 been intrusive for us to search the phone without a warrant.

8 I think preserving and holding it until we get that warrant I think,  
9 interpreting the language to mean that you actually have to have an active  
10 warrant submitted, let's say your remote or something else and I understand  
11 it's not a circumstance, but I don't think the warrant has to be pending in that  
12 sense. I think it just has to be we're holding it pending a warrant to search it.

13 So, and I was overbroad there.

14 THE COURT: So I agree and I don't think *Williams* says that you  
15 have to have a pending warrant to search the phone to seize it. But what -- I  
16 guess, under the Fourth Amendment, what makes 22 hours a reasonable time  
17 to hold a phone --

18 MR. BUSBY: I think --

19 THE COURT: -- prior to requesting --

20 MR. BUSBY: -- if you look at the State's test that the State  
21 provided in *Williams*, neither the State nor the federal constitution test that  
22 they provide has a temporal element.

23 So I think you could hold a phone for, for six years theoretically  
24 and still be reasonable about it. Let's say the person goes missing or whatever  
25 else. I think it's ridiculous, I don't think I would.

1           But I'm saying there can be circumstances that are reasonable that  
2 are not speedy. You know, it's like that expression you know, you can get it  
3 quick, you can get it done well or you can get it cheap, but you can't get all  
4 three.

5           I think in this circumstance, balancing those three things because  
6 there's no temporal element expressly stated I don't think that there is a  
7 reasonableness based on 22 hours vs. 14 vs. six vs. two.

8           I think it's more of a why did you take the phone? Was it  
9 connected to a crime? And did you act in a reasonable manner in pursuing,  
10 you know, that connection or did you have a rational basis?

11           And I think going to counsel's point about the lack of nexus, I  
12 think we have judicial officers saying very clearly there's a nexus. So --

13           THE COURT: Because the 911 call, he lived there the --

14           MR. BUSBY: Yeah.

15           THE COURT: Yeah. No.

16           MR. BUSBY: And I, I think the other thing is too, Judge, when we  
17 look at DNA warrant today vs. the very first DNA warrants it's state of the art.  
18 We understand more about DNA now than we did 25, 30 years ago.

19           With the cell phones it's the same thing. I don't think we have to  
20 expressly or explicitly state you can use a cell phone for pictures, geolocation,  
21 timing of events, when the phone call was made.

22           As was stated, he was the 911 caller and the victim is found with  
23 bullets in them, there's a very clear nexus between that circumstance and the  
24 Defendant.

25           And that phone being such a personal item that tracks so many

1 biometrics about us and all these other things we do, I think it's well  
2 established through case law and our education and our understanding of  
3 state of the art that maybe we don't have to spell out every single nexus.

4 I think it's almost a commonsense assumption now that well, if he  
5 was there the phone was probably with him and there may be information on  
6 there relative to the murder. Does that make sense?

7 THE COURT: Yeah. So basically you're saying, and that's kind of  
8 why you gave me *Hodges* is that there's probable cause that this could have  
9 information on it like the box --

10 MR. BUSBY: Absolutely.

11 THE COURT: -- the probable cause that that had drugs inside of it  
12 so they could seize it and then request a warrant to search it.

13 MR. BUSBY: It's not the same as a Terry stop, Judge, but to  
14 conduct a Terry stop you have to have these basic assumptions of a crime  
15 having occurred and this person being connected to it. It's that to a heightened  
16 level.

17 So we have a crime, we have a possible connection, and you know,  
18 to the extent it's a fishing expedition. I don't disagree in the sense we don't  
19 know what's on there yet.

20 THE COURT: Right.

21 MR. BUSBY: That's absolutely, we're looking for something that  
22 may reveal evidence to us. But I don't think it was like, you know, tower  
23 dumps is a good example.

24 We have the technology so every person that has used a cell phone  
25 tower in the last 24 hours and we can intrude in tens of thousands of people's

1 lives that have a privacy interest.

2 I think that's more what a fishing expedition is characterized as in  
3 search and seizure. And you know, again, I, I know that Detective Pearson  
4 would go back in time and do things slightly different, but you know, it's not  
5 intentional misconduct by the State nor is it unreasonable, the steps that were  
6 taken, even though it was not timely, Judge.

7 THE COURT: Okay. And so Ms. Kennedy [sic], then you disagree  
8 then because when you were laying out the *Litchfield* factors you, you disagree  
9 that -- with the State's contention that there's a nexus between the phone and  
10 potential evidence.

11 MS. MADISON: Yes.

12 THE COURT: And so for number one, you think that factor --  
13 what, can you tell me again why you think that factor weighs in favor of the  
14 Defendant? The degree of concern, suspicion or knowledge that a violation has  
15 occurred?

16 MS. MADISON: Yes, Judge. So I mean, in *Williams* court, that  
17 was a scenario where the victim told law enforcement that the phone  
18 specifically was used in the commission of the alleged offenses.

19 I think what we need is not just a vague hunch that a phone was,  
20 that a phone is going to produce evidence of the crime that they're suspecting  
21 Mr. Laster of at this point.

22 There needs to be something more than just well, he has a phone,  
23 and we think he did this and oftentimes there's evidence on a phone.

24 There needs to be more of an understanding of how that phone  
25 was used in the commission of whatever crime this is. There needs to be a

1 belief that the phone itself was an instrument of this criminality. And I don't  
2 think that exists here.

3 I don't think a 911 call coming from him and knowing that he lived  
4 with the victim, I don't think that's enough to establish that the phone itself  
5 has evidence on it worth seizing.

6 I think, I think if we start going down that road that's an extremely  
7 slippery slope and it's just going to allow law enforcement to seize phones  
8 whenever someone's suspected of a crime. And I don't think that's appropriate.

9 THE COURT: What do you say to the fact that it was less than 24  
10 hours and so that the temporal component that, that for, for the  
11 reasonableness under a Fourth Amendment analysis that that's not  
12 unreasonable, the 22 hours?

13 MS. MADISON: I think that --I, I do think 22 hours is  
14 unreasonable. I mean, I think once they applied for this search warrant it was  
15 granted within 15 minutes. This is not something that should have taken a  
16 full day especially given the balancing that against the, the privacy interests of  
17 our client.

18 I -- there was just -- I -- there was just no reason to wait that long.

19 THE COURT: Okay. Anything else, Mr. Busby?

20 MR. BUSBY: Just on the nexus point, Your Honor.

21 THE COURT: Yes.

22 MR. BUSBY: State's Exhibit number 3 is a warrant that was  
23 granted for the cell phone records that correspond to the phone number  
24 associated with Mr. Laster. And I just want to draw an important, and I think,  
25 significant difference between phone records and the phone itself.

1           The phone itself may have been the phone used for the 911 call.  
2 That phone itself may have been the phone he had on his person when he  
3 made the 911 call. He lives with the victim in the case. So that phone itself  
4 independently of the phone records is capable of tracking your whereabouts.

5           If I'm using Wi-Fi vs. cell towers it's not showing up on cell towers  
6 it's showing up on the Wi-Fi. So the phone itself is slightly different than the  
7 phone records but I think the phone records and then a judge finding this  
8 nexus on this PC affidavit clearly establish the nexus and the relevance of the  
9 phone for things beyond what we ultimately found on the phone.

10          You know, there's, there's things like internet browsing activity,  
11 pictures, all these other things. But at its heart, the fact that this phone tracks  
12 your whereabouts, and they all do, whether it be through Wi-Fi or cell tower I  
13 think that makes it relevant evidence regardless of everything else. And if a  
14 judicial officer said you can't search this phone, the remedy is to return it.

15          We didn't intrude upon the phone. We did take it from his person  
16 without a warrant at that time. And I think that's also an important  
17 distinction, Judge.

18          THE COURT: All right. Thank you. Anything --

19          MS. MADISON: I mean, even if the Court finds that there was a  
20 nexus, that's fine. That could have been laid out in a warrant and it wasn't  
21 until a full day later and I just don't think that there's the exigent  
22 circumstances here to justify just sitting on the phone for that long.

23          THE COURT: Okay. So here's, here's what, and -- I love when the  
24 Court of Appeals does this and does break it down into both because I think it  
25 does make it clear that we have two different sections of rights and I think it's

1 helpful.

2 And you guys have done great arguing both of them, so I  
3 appreciate that because -- but I do find -- I, I agree with the State that the  
4 Fourth Amendment was not violated.

5 I do -- I don't think that 22 hours is an unreasonable amount of  
6 time to seize a phone without searching it and to hold it and then apply for a  
7 search warrant. I think you're getting close to unreasonable. I would disagree  
8 with Mr. Busby. I think that six years would totally be found to be  
9 unreasonable.

10 MR. BUSBY: I'll concede that point, Your Honor.

11 THE COURT: But I don't think 22 hours to hold the phone and  
12 then request it is unreasonable in light of -- I, I just, I don't find it to be an  
13 unreasonable -- and I don't think that the Fourth Amendment is saying it has  
14 to be done absolutely immediately.

15 I think if the detective had sat on it for too much longer we might  
16 be in a different situation under the Fourth Amendment. But I think with the  
17 Fourth Amendment I have to look at the reasonableness of the situation and he  
18 was brought in for questioning and based upon what the detective knew at that  
19 point in time seized the phone when he was brought in.

20 I think Defense is correct, clearly in custody. He's in cuffs and  
21 being read as Miranda. So he is in custody from 2:00 a.m. until when he was  
22 released at 10:30 I think, 10:53 a.m. on July 13th.

23 And for me, I don't think the prior search warrants have any  
24 bearing on it because I agree with the Defense that the search warrants  
25 authorized the seizure of any phones found at those locations.

1           But I certainly think that at that time that she had the right to  
2 hold into her, her custody and then request a search warrant on the phone of  
3 an item such as a cell phone that is -- I think it's the case where it's the United  
4 States Supreme Court's case where they talk about how cell phones are -- they,  
5 they are the most private things that we have at this point in time.

6           But they also are where people put all of this information that they  
7 shouldn't put and when -- I believe that I agree with the State that there's a  
8 nexus there that this phone could have information on it. They had -- I think  
9 they had a reasonable belief. I think it was completely reasonable for them to,  
10 to keep the phone and then request a search warrant. And I don't think 22  
11 hours is unreasonable.

12           Under *Litchfield* under the Indiana Constitution I again, so because  
13 of that reason, I think that the one is -- I think one weighs in favor of the State  
14 with the degree of concern, suspicion or knowledge that a violation has  
15 occurred, aka that this phone would have information on it that would be  
16 helpful to the police. I believe that weighs in favor of the State.

17           I agree with the Defense though that the degree of the intrusion  
18 imposes on the citizens ordinary activities that would weigh in favor of the  
19 Defendant, but I only give it slightly higher to the Defendant.

20           I certainly think -- I agree, Ms. Kennedy [sic] that it's something  
21 that we use every day. I think not giving it back to him when he was released  
22 then it does, it does impose, impose a hardship on his ordinary activities and  
23 so it does weigh in favor but it's a slight and when I weigh the one and three  
24 which I find both weigh in favor of the State.

25           I think the extent of law enforcement needs, as Mr. Busby has laid

1 out, phones are -- the information that are on phones are highly fungible. They  
2 can be -- things can be changed, erased. And in order to make sure that the  
3 phone, it has what it needs at the time when they seize it and that nothing is  
4 taken off of it.

5 If they had given it back and then maybe never retrieved this  
6 phone then that would have been lost. So I do think that one and three weigh  
7 in favor of the State.

8 So I do not find the Article 1, Section 11 right -- Article 1, Section  
9 11 rights to have been violated as to the seizure of the phone.

10 I appreciate Mr. Busby and I appreciate detective that you're here.  
11 I love that he's saying that you would do it differently because that would  
12 certainly appease *Williams* a little bit more, but I don't think that it's in  
13 violation still at this point.

14 Obviously, I think any later would have been a, a harder situation  
15 for me but I think within 24 hours, I don't find that to be unreasonable.

16 So suppression is denied.

17 So we have trial Monday. Anything that we need to do before then  
18 while we're here.

19 MR. BUSBY: I'm in the process of getting counsel, Defense  
20 obviously an exhibit list and witness list. Those will all be filed before Friday.  
21 Other than that I think we're, we're on our way.

22 We've got everything on hard drives to give them if they need  
23 anything that was missing from the initial batch of discovery. I don't think  
24 anything was missing but sometimes we dump so much stuff. There's just a  
25 lot of stuff that takes up a lot of memory. So we're just trying to work through

1 that and come up with some stipulation to save the Court some time.

2 THE COURT: Okay. How many days? Have we talked about this?

3 MR. SWEDARSKY: Two.

4 MR. BUSBY: I think two is reasonable, Your Honor.

5 THE COURT: Two? So I end at 4:30 on Mondays because I like to  
6 let them go home and eat because they don't know they're going to be there all  
7 day. I know other people don't like to do that and then we'll go late Tuesday.

8 Is that fine?

9 MR. SWEDARSKY: That's fine, Judge.

10 MR. BUSBY: That's fine, Your Honor.

11 THE COURT: That's just how I prefer. I don't like to piss off my  
12 jurors. Will that push us into three or are we good with still two?

13 MR. SWEDARSKY: I think we're good with two. Judge, I honestly  
14 think that factually they're not allowed to speak with regard to a lot of these  
15 issues. It's more of how you interpret them, and I think once we get going with  
16 the witnesses, and I know we talked about some stipulations too to kind of  
17 move things along, so we'll work with the State on that.

18 I think Ms. Kennedy [sic] and I are going to file a motion in limine  
19 at some point in the near future as well.

20 So other than that, from the Defense, we'll be ready to go on  
21 Monday. I've got my client's clothing sizes here so he's going to look great.

22 MR. BUSBY: I've mentioned to the Court previously, we have a  
23 small 404(b) concept. I don't anticipate it coming up in my case in chief. I've  
24 discussed it with counsel, so it won't be a surprise with getting that filed in  
25 that 24 hours.

1           Mr. Lester does have a prior conviction that may be relevant under  
2 certain circumstances. It's an aggravated battery involving a firearm so there's  
3 some circumstances that are similar.

4           But again, that's not our case in chief and we get to Court and  
5 Defense counsel (inaudible).

6           MS. MADISON: When does the Court want our motions in limine?

7           THE COURT: So I would love them before close of business on  
8 Friday, but I understand everyone's busy. So if you finish them after that, e-  
9 mail them to me because I won't get an e-filing until Monday morning. So I  
10 would like to have them and be able to review them over the weekend --

11           MS. MADISON: Okay.

12           THE COURT: -- before I come in Monday morning.

13           MR. BUSBY: And we'll let the Court know what we agreed to  
14 before the weekend if we get a copy as well, so you're not worried about  
15 arguments on things. We can let all parties know where we stand on those so  
16 it's not a Monday morning you know --

17           MR. SWEDARSKY: If it helps, I can file it when I get back to the  
18 office or tomorrow morning so that we can look at it and if there's any issues  
19 with them we can discuss that and hash it out ahead of time.

20           MR. BUSBY: We'll get it worked out, Judge.

21           THE COURT: Your motion in limine?

22           MR. SWEDARSKY: Yes, of course.

23           THE COURT: Oh, great.

24           MR. SWEDARSKY: I can file it. It's on my computer. I can make  
25 it into a PDF form and then shoot it on the e-file.

1 THE COURT: You're a delight. Anything else?  
2 MS. MADISON: Nothing from the Defendant.  
3 MR. SWEDARSKY: No, Judge.  
4 MR. BUSBY: No, Your Honor. Thank you.  
5 MR. SWEDARSKY: Oh, Judge, one other thing, it's Ms. Madison,  
6 not Ms. Kennedy.

7 THE COURT: Did I call you Ms. Kennedy again?  
8 Jesus Christ. Oh my God. I'm sorry.

9 MS. MADISON: He did it too.

10 THE COURT: I'm really sorry.

11 MS. MADISON: That's okay.

12 THE COURT: No, it's my fault. I'm sorry.

13 MS. MADISON: He would have done it through the whole hearing.

14 MR. BUSBY: They are both presidents.

15 MS. MADISON: I know. I feel like the president thing has  
16 happened before.

17 THE COURT: All right.

18 Mr. Lester, we'll see you Monday morning.

19 (Proceedings adjourned at 3:40 p.m.)

20

21

22

23

24

25

## Appendix E

### CONFIDENTIAL

D20: Post Trial: Violation / Motion Minute Sheet Date 9/27/2023 AM/PM *2 day*

State of Indiana v. Faster

Case Number: 49 D20 2411 - MR 033942

#### RESOURCES

Hearing Judge:  Honorable Jennifer Harrison /  MAG Steven Rubick /  PT /  SRJ \_\_\_\_\_

Court Reporter:  J Currans

#### RESULTS

Commenced & Concluded

#### PARTIES

State by Deputy Prosecutor Busby/Madison  
 Defendant in Person  in custody  from DOC  not in custody  by counsel Swedarsky  
Madison

#### WARRANTS / BONDS / HOLDS

[ADMFTA] Failure to Appear  [HJE] Court issues Warrant  [ORW] Order Recall Warrant

[DHC] Defendant to be Held in Custody NO BOND

[ARJBOND] Court Sets Bond: \$ \_\_\_\_\_  10% Cash  Cash  Surety  NO BOND hold

#### HEARINGS

VACATE  HV  HVOP  HCPL

HV (Viol)  HVOP (Prob)  HCPL (Comp) date \_\_\_\_\_/\_\_\_\_\_2023 9:00am/1:00pm Time \_\_\_\_\_

[HRG] Comm Corr Probation Contested Status date \_\_\_\_\_/\_\_\_\_\_2023 Time \_\_\_\_\_

#### EVENTS/ORDERS

C.C. present  Probation present

[QCSINT] Interpreter Services Used (language) \_\_\_\_\_ *Suppression denied*  
 [ARC] advisement of rights  [AWR] Waiver of rights  [HJE] Defendant Sworn In

[QCSIC] PD Appointed \_\_\_\_\_  [HJE] Court enter denial on defts behalf

[HJE] This is an attorney only hearing  [HJE] Defendant is pro-se / wishes to proceed pro-se

[JAD] violation remains under advisement **MCCC PROBATION**  [CA] Case Sent to Coll Ag  as to restitution only

[MTC] Motion Continue **State/Defense** State/Defense does not object  [OGMTC]  [ODMTC]

[HJE] Contested Violation Hearing Held  [HJE] Court Finds Defendant \_\_\_\_\_ of Violation(s)

[HJE] Defendant admits/denies allegations # \_\_\_\_\_ and court finds allegations to be true/not true

[HJE] Court makes no findings as to allegation(s) \_\_\_\_\_  [HJE] State withdraws allegation(s) \_\_\_\_\_

[HJE] tracking 49 \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  [ARJTRC] Transfer case transferred to court \_\_\_\_\_

[HJE] Defendant is/is not in compliance  [HJE] Defendant continued on  prob  comm corr

[ODP] Discharge Prob success/admin/unsuccessful  [OGMEPP] Order Granting Motion to Extend Prob Period

[MMODPL] Modify Placement S/D  [OGMMODPL]  [ODMMODPL]  [OGIP]

[MMODPR] Modify Probation S/D  [OGMMODPR]  [ODMMODPR]  [OGIP]

[MMODS] Modify Sentence S/D  [OGMMODS]  [ODMMODS]  [OGIP]

[HJE] Motion for modification remains under advisement, Court to issue written ruling

[HJE] Report to Drug Lab today  [HJE] Defendant ordered to test \_\_\_\_\_, defendant will test positive/negative

[RCC] Report to Community Corrections  [CCC] Community Corrections Conditions \_\_\_\_\_

[RP] Report to Probation  [CP] Probation Conditions \_\_\_\_\_

[HJE] time served in ADC shall count as a time served sanction  [HJE] Court now closes case as time served

[ORCOA] ORC to be Held for Other Agency  [SBDOA] Upon Satis Bond, Deft Held for Other Agency  [ORC]

[OREV] Order of Revocation  Probation Revoked  Community Corrections Revoked

[HJE]  remaining fees for  Probation  Community Corrections are  waived  indigent  except for restitution

## Appendix F

Filed: 9/24/2023 7:47 PM  
Clerk  
Marion County, Indiana

STATE OF INDIANA ) IN THE MARION COUNTY SUPERIOR COURT  
 ) SS: CRIMINAL DIVISION ROOM TWENTY  
COUNTY OF MARION ) CAUSE NUMBER: 49D20-2111-MR-033962  
STATE OF INDIANA, )  
 )  
 )  
VS. )  
 )  
 )  
ALSHAM LASTER, )

**MOTION TO SUPPRESS EVIDENCE**

Comes now the Defendant, Alsham Laster, by counsel, Lauren Madison (MCDPA), and moves this Court to set a Hearing on this Motion to Suppress Evidence. In support of this Motion, Mr. Laster states:

1. That Mr. Laster's phone was illegally seized and subsequently searched by law enforcement;
2. That any evidence obtained from Mr. Laster's phone was done so because of this illegal seizure and search of Defendant's phone in violation of his rights under the Fourth Amendment of the U.S. Constitution, as well as Article 1, Sec. 11, of the Indiana Constitution.

WHEREFORE, Defendant moves this Court to find that the detention and search of defendant's person/property was illegal, and to suppress from introduction into evidence in this cause any evidence discovered directly and indirectly as a result of the illegal detention and search and for any other relief just in the premises.

Respectfully submitted,

/s/ Lauren Madison  
Lauren Madison  
Attorney # 35842-49  
Marion County Public Defender Agency  
151 N. Delaware Street, Suite 200  
Indianapolis, IN 46204

### **Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing has been served upon the Marion County Prosecutor's Office pursuant to Indiana Rule of Trial Procedure 86 via electronic filing on the date of filing.

/s/ Lauren Madison  
Lauren Madison  
Attorney # 35842-49  
Marion County Public Defender Agency  
151 N. Delaware Street, Suite 200  
Indianapolis, IN 46204

## Appendix G

**IN THE  
INDIANA COURT OF APPEALS**

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**APPELLATE NO: 23A-CR-02699**

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ALSHAM M. LASTER,	)	APPEAL FROM THE MARION
	)	COUNTY SUPERIOR COURT 20
Appellant / Defendant,	)	
	)	TRIAL COURT CAUSE NO.:
vs.	)	49D20-2111-MR-033962
	)	
STATE OF INDIANA,	)	
	)	BEFORE THE HONORABLE
Appellee / State-Plaintiff.	)	JENNIFER P. HARRISON, JUDGE

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**TRANSCRIPT OF EVIDENCE**

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317-232-6201

JEANINE CURRANS  
OFFICIAL COURT REPORTER  
MARION COUNTY SUPERIOR COURT 20

STATE OF INDIANA	)	MARION COUNTY SUPERIOR COURT 20
COUNTY OF MARION	) SS:	CAUSE NO. 49D20-2111-MR-033962
STATE OF INDIANA,	)	
	)	
State-Plaintiff,	)	
	)	
vs.	)	
	)	
ALSHAM M. LASTER,	)	
	)	
Defendant.	)	

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JURY TRIAL - DAY 2

BEFORE THE HONORABLE JENNIFER P. HARRISON  
JUDGE OF THE MARION COUNTY SUPERIOR COURT 20

DATE: OCTOBER 3, 2023

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Court Reporter: Jeanine Currans

Proceedings recorded by electronic sound recording;  
Transcript produced by TheRecordXchange

**APPEARANCES**

**ON BEHALF OF THE STATE-PLAINTIFF, STATE OF INDIANA**

MARK A. BUSBY, #22677-49  
JOSEPH A. CERMAK, #31924-49  
MARION COUNTY PROSECUTOR'S OFFICE  
251 E. OHIO STREET  
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**ON BEHALF OF THE DEFENDANT, ALSHAM M. LASTER**

MITCHELL SWEDARSKY, #23769-49  
LAUREN E. MADISON, #35842-49  
MARION COUNTY PUBLIC DEFENDER'S OFFICE  
3115 SOUTHEASTERN AVE.  
SUITE 300  
INDIANAPOLIS, IN 46203

**DIRECT - CONNIE PEARSON**

1 MS. MADISON: Judge, Defense would object based on -- we would  
2 reincorporate our arguments from our previous hearing on the motion to  
3 suppress and we would ask that any evidence obtained from Mr. Laster's  
4 phone showed an objection just continuing on all of that evidence.

5 THE COURT: Okay. State?

6 MR. BUSBY: Thank you. No comment from the State.

7 THE COURT: And would you like to reincorporate your previous --

8 MR. BUSBY: I would. Yes. I'm sorry, Judge.

9 THE COURT: Okay.

10 MR. BUSBY: I would like to reincorporate our argument in the  
11 motion to suppress, on the Court's ruling.

12 THE COURT: The Court will incorporate the motion to suppress  
13 argued on September 27th, 2023, and the record will be incorporated into this  
14 trial as to this -- I ruled with the State on its previous ruling and denied the  
15 Defendant's motion to suppress. The Court will show continued objection to all  
16 evidence obtained from Mr. Laster's phone from the Detective on July 13th --

17 MS. MADISON: 13th.

18 THE COURT: -- of 2021.

19 MS. MADISON: Correct.

20 MR. BUSBY: (Inaudible).

21 MS. MADISON: And although the Court has granted our request  
22 to show a continuing objection, we might just keep approaching.

23 THE COURT: Okay. That's perfectly fine.

24 MS. MADISON: Okay.

25 MR. BUSBY: Thank you.

**DIRECT - CONNIE PEARSON**

1 MS. MADISON: Thank you.

2 (Sidebar ends at 10:47 a.m.)

3 BY MR. BUSBY:

4 Q And Detective, on what day was that item taken from the person of  
5 Alsham Laster?

6 A July 13th.

7 Q Thank you.

8 MR. BUSBY: Your Honor, at this time, State would reoffer State's  
9 Exhibit 111 into evidence.

10 THE COURT: Okay. Court will admit State's 111 into evidence,  
11 over Defense objection.

12 (State's Exhibit 111 admitted into evidence)

13 MR. BUSBY: Thank you, Your Honor.

14 BY MR. BUSBY:

15 Q And in addition to the phone we just discussed, when you made contact  
16 with Mr. Laster on the 13th, was he driving the black Honda?

17 A He was.

18 Q And instant to him driving the black Honda, did you execute a search on  
19 that black Honda as well?

20 A I did.

21 Q And that was previously testified to by Ms. Sego, is that correct?

22 A Yes, sir.

23 Q Thank you.

24 I'm now going to hand you what's marked as State's Exhibit Number 27 for the  
25 purpose of identification. Can you please take a moment and review this item?

1 MS. MADISON: Oh, okay. Okay.  
2 MR. BUSBY: So I think you misunderstood --  
3 MS. MADISON: Withdrawn. Withdrawn.  
4 THE COURT: Okay.  
5 MR. BUSBY: Do you want to --  
6 (Sidebar ends at 10:51 a.m.)  
7 MR. BUSBY: Okay. Thank you, Judge. I apologize.  
8 MS. MADISON: Okay. Sorry. I'll move on.  
9 BY MS. MADISON:  
10 Q Okay. Detective, I want to talk briefly about the scene where Latisha was  
11 found. So there were shell casings that were found in the trash, correct?  
12 A Yes.  
13 Q And that trash bin -- trash basket was in the room where Latisha's body  
14 was found, correct?  
15 A Yes.  
16 Q Okay. And after the first search of the home, officers left around 2:00  
17 a.m.; does that sound accurate to you?  
18 A Yes.  
19 Q Okay. And when those officers left, they tried to secure the door to the  
20 residence, correct?  
21 A Yes.  
22 Q Okay. And that was the front door?  
23 A Yes.  
24 Q Okay. But it actually wouldn't shut, is that true?  
25 A My recollection is it was shut. They were able to place something, like,

1 under the knob to keep it from being opened.

2 Q Okay. So I guess what I'm asking is, the door would not shut and lock  
3 on its own, correct?

4 A Yes, ma'am.

5 Q And if I told you that there was a chair that had to be propped under the  
6 handle to shut it, would that sound accurate to you?

7 A Yes, ma'am.

8 Q Okay. You talked to a lot of people as part of this investigation, right?

9 A Yes.

10 Q Okay. You talked to neighbors?

11 A I did.

12 Q Several neighbors, right?

13 A Yes.

14 Q Okay. You talked to Latisha's family members?

15 A I did.

16 Q Okay. And you talked to her ex-husband, Willie Johnson, correct?

17 A I did.

18 Q Okay. And during your investigation and in speaking with Mr. Johnson,  
19 you discovered that he had a life insurance policy on Latisha, is that true?

20 A True.

21 Q Okay. And Latisha had an estate that you were investigating, correct?

22 A Correct.

23 Q Okay. And Willie Johnson, her ex-husband, was the representative of  
24 that estate, correct?

25 A Correct.

1 A Oh, several times. Yeah.

2 Q Okay. So around this time, you were supposed to work on his house on  
3 the 12th of July; is that correct?

4 A Yeah.

5 Q And did you go to work on his house on the 12th of July?

6 A No.

7 Q And why did you not go to his house to work on the 12th of July?

8 A He had text me and told me that something came up and --

9 MS. MADISON: Judge, can we approach?

10 THE COURT: You may.

11 (Sidebar begins at 11:15 a.m.)

12 MS. MADISON: If there's a text, I think the best evidence would be  
13 to show that text instead of having someone testify to it.

14 MR. BUSBY: (Inaudible) -- I'm just arguing for his state of mind at  
15 this point.

16 THE COURT: Uh-huh.

17 MR. BUSBY: The text will be entered in through another witness  
18 who did the forensic evaluation, but that witness has not been called yet, so  
19 we'd be subject to leaking evidence and (inaudible) to do that.

20 THE COURT: And she (inaudible)?

21 MR. BUSBY: I'm sorry.

22 THE COURT: Mr. Laster's phone?

23 MR. BUSBY: Yes.

24 THE COURT: Okay. Okay.

25 MS. MADISON: And we'd also renew our objection that this is

**DIRECT - COREY SMITH**

1 coming from his phone which should be suppressed.

2 THE COURT: Okay.

3 MR. BUSBY: I wanted to just ask him for his response to the text,  
4 not just the content.

5 THE COURT: Okay.

6 MR. BUSBY: If I can get permission to lead him on that point?

7 THE COURT: Okay.

8 MR. BUSBY: We'll get the actual content of the text in through Mr.  
9 Spangler, and we'd incorporate our argument for the motion to suppress, as  
10 well, (inaudible) --

11 THE COURT: So as to this thing, you're still wanting his statement  
12 from Mr. Laster --

13 MR. BUSBY: I want him to indicate the --

14 THE COURT: -- for state of mind?

15 MR. BUSBY: Yeah, just for state of mind.

16 THE COURT: Over Defense objection, we are going to do this  
17 witness's state of mind and what he did or did not do. We'll limit it though.

18 MR. BUSBY: Okay. (Inaudible).

19 MR. SWEDARSKY: (Inaudible).

20 (Sidebar ends at 11:17 a.m.)

21 THE COURT: Over Defense objection, and for the purposes of  
22 explaining Mr. Smith's state of mind, the Court will allow the testimony.

23 Mr. Busby, if you need to re-ask the question, feel free.

24 MR. BUSBY: Thank you.

25 BY MR. BUSBY:

1 Q And now I'm going to hand you State's Exhibit 113, which is marked for  
2 the purpose of identification; could you please take a moment to review that  
3 document?

4 A This document is the SIM card report that the -- from the SIM card that  
5 was removed from this phone.

6 MR. BUSBY: And State will offer State's Exhibit 113 into evidence  
7 at this time.

8 MS. DIVINCENZO: Judge, may we approach?

9 THE COURT: You may.

10 (Sidebar begins at 1:13 p.m.)

11 MS. DIVINCENZO: The Defense would object to the admissibility  
12 of this report based on our previous argument at the suppression hearing. We  
13 would ask that that argument be incorporated here.

14 MR. BUSBY: The State would ask the Court to incorporate its  
15 argument and its finds.

16 THE COURT: The Court will include both the motion to suppress  
17 and the arguments by counsel. The Court incorporates its previous ruling, the  
18 Defense Motion -- the Defendant's objection is denied.

19 MS. DIVINCENZO: Thank you, Judge.

20 MR. BUSBY: Thank you, Judge.

21 (Sidebar ends at 1:13 p.m.)

22 MR. BUSBY: Your Honor, State would offer State's Exhibit 113  
23 into evidence.

24 THE COURT: Over Defense Objection, State's 113 is admitted.

25 (State's Exhibit 113 admitted into evidence)

1 A Yes.

2 Q So whatever was sent from one phone and received by the other phone,  
3 it's just two different points of view, one from each phone; is that correct?

4 A That's --

5 Q All right.

6 A That's correct.

7 MR. BUSBY: At this time, Your Honor, State would offer State's  
8 Exhibits 116 and 118 -- or 115 and 118 into evidence.

9 MS. DIVINCENZO: Judge, we'll -- yes.

10 (Sidebar begins at 1:18 p.m.)

11 MS. DIVINCENZO: We would just incorporate -- we would just  
12 renew our objection and incorporate argument made at the previous hearing on  
13 the Motion to Suppress.

14 MR. BUSBY: And State would ask the Court to incorporate its  
15 argument and the Court's findings.

16 THE COURT: The Court will incorporate both Defense argument  
17 and State's argument made at the Motion to Suppress hearing, denies the  
18 Motion to Suppress and denies State's -- Defense's objection to this (inaudible).

19 (Sidebar ends at 1:18 p.m.)

20 THE COURT: Over Defense objection, as to Exhibit 118, 118 will  
21 be admitted and then --

22 You don't have any objection to 115?

23 MS. DIVINCENZO: No, Your Honor.

24 THE COURT: All right.

25 And 115 is admitted without objection.

1 A That is correct.

2 Q And on the right-hand side, we can see what is called description, and  
3 there is a number at the top that indicates approximately how long that call  
4 lasted; is that correct?

5 A That is correct, that's duration time.

6 Q Okay. And there will be differences between the two phones in terms of  
7 like when I hit call and when you actually pick up; is that correct?

8 A That is correct.

9 Q So some differences are expected?

10 A Yes.

11 MR. BUSBY: At this time, State will offer State's Exhibit 116 into  
12 evidence.

13 MS. DIVINCENZO: No objection.

14 THE COURT: Showing no objection 116 is admitted.

15 (State's Exhibit 116 admitted into evidence)

16 BY MR. BUSBY:

17 Q And now State's Exhibit 119, which is marked for identification is the  
18 same call log from the point of view of the 0721 phone; is that correct?

19 A That is correct.

20 MR. BUSBY: State would offer State's Exhibit 119 into evidence at  
21 this time.

22 MS. DIVINCENZO: Judge, may we approach?

23 (Sidebar begins at 1:25:27 p.m.)

24 MS. DIVINCENZO: Defense objects and asks that the Court  
25 incorporate our argument from our suppression hearing and show it as our

1 continuing objection.

2 MR. BUSBY: And the State would ask the Court to incorporate our  
3 argument and the Court's findings (inaudible).

4 THE COURT: The Court includes rights to Defense Motion to  
5 Suppress and argument, State's argument, Court's ruling and denies -- sorry,  
6 (inaudible), and overrules the objection.

7 MS. DIVINCENZO: Thank you, Judge.

8 (Sidebar ends at 1:25:58 p.m.)

9 THE COURT: As to 119, it is admitted over Defense objection.

10 (State's Exhibit 119 admitted into evidence)

11 MR. BUSBY: And at this time, State would move to publish State's  
12 Exhibits 116 and 119 to the jury.

13 THE COURT: You may.

14 I might connect you.

15 MR. BUSBY: Sure.

16 BY MR. BUSBY:

17 Q So now to explain some of the fields that are in this document, which is a  
18 little bit different than the last one, we have type over here which is call log, so  
19 this is a phone call, correct?

20 A That is correct.

21 Q And then direction incoming or outgoing are the two directions?

22 A Yes.

23 Q And incoming means that this phone received this phone call, correct?

24 A Yes.

25 Q All right, and then the timestamp here is the time and date; is that

1 Q And similarly to the last report, the last communication between these  
2 two phones is the morning of July 10, 2021, at 12:18 a.m. and this phone  
3 shows a slightly shorter duration but essentially point zero two seconds, point  
4 zero one second; is that correct?

5 A That is correct.

6 Q Thank you, I am now going to hand you what's been marked State's  
7 exhibit 121 and 123 for purpose of identification. And these are both items  
8 that were retrieved from the phone number ending in 0721; is that correct?

9 A Yes, it is.

10 Q And the first document is a photograph retrieved from that phone  
11 number; is that correct?

12 A Yes, it is.

13 Q And the second document, the State's Exhibit 123 is what is called the  
14 Metadata of that document; is that correct?

15 A That is correct.

16 Q Can you explain for the benefit of the jury what metadata is and how it is  
17 relevant to your investigation?

18 A What Metadata is -- is -- Metadata is -- if you want to think of it from  
19 this perspective, it is date on -- data about data. Say for example, I have a  
20 photograph, and I take photographs with my cellphone. When I take that  
21 photograph, what happens is within that data set, the phone will actually  
22 record the -- the information about the -- about the image. It will record the  
23 date, the time, sometimes it'll record the actual location, it'll also give the make  
24 and the model of the -- of the actual cell phone that took that -- took that  
25 picture and we can as digital forensic examiners can recover that data.

1 Q So the first exhibit, State's Exhibit 121 is a picture, and State's Exhibit  
2 123 is a description of the time that that picture was taken or created on the  
3 phone is a better phrase; is that correct?

4 A Yes, when it was captured by the phone is more accurate.

5 Q And can you explain what that means?

6 A Well, when it is captured -- captured time is actually the time when you  
7 push the -- when you push the button on the phone to take the picture, that's  
8 the actual time that you do that, that's the capture time. There's little  
9 difference from when -- when the -- once the image is captured, remember that  
10 -- that -- that image is turned into a digital format and then it's recorded within  
11 a database within that phone. So there's -- there is a second -- a second  
12 timestamp that is created -- that is created called the creation time and that is  
13 actually the one that is put in the database within the phone. So there is a  
14 little bit of a difference.

15 Q All right, thank you.

16 MR. BUSBY: At this time, State would offer State's Exhibit 123 --  
17 sorry, 121 and 123 into evidence.

18 MS. DIVINCENZO: Judge, may we approach?

19 THE COURT: You may.

20 (Sidebar begins at 1:31:04)

21 MS. DIVINCENZO: Defense objects, we would ask the Court to  
22 incorporate our argument from the hearing on the Motion to Suppress made  
23 previously.

24 MR. BUSBY: State would ask the Court to incorporate its previous  
25 findings and the State's argument into this Motion to Suppress and ask the

1 Court to allow the evidence into evidence.

2 THE COURT: The Court incorporates both the Motion to Suppress  
3 Defense argument, State's argument and my previous ruling and the Court  
4 overrules the Defense's objection.

5 MS. DIVINCENZO: Thank you, Judge.

6 MR. BUSBY: Thank you, Judge.

7 (Sidebar ends at 1:31:33 p.m.)

8 THE COURT: State's 121 and 123 are admitted over the Defenses  
9 objection.

10 (State's Exhibits 121, 123, admitted into evidence)

11 MR. BUSBY: Thank you, Your Honor, move to publish State's  
12 Exhibit 121?

13 THE COURT: You may.

14 Oh, I took you off, there you go.

15 And 23 is (inaudible).

16 BY MR. BUSBY:

17 Q And, sorry, I'm having a little bit of trouble with the stickers on this due  
18 to the formats, but this is the picture to which you were referring in State's  
19 Exhibit 121; is that correct?

20 A That is correct.

21 Q All right, and this picture was taken from the phone number ending in  
22 0721; is that correct?

23 A That is correct.

24 Q And when we look at the Metadata, we can find out more about when  
25 this picture was taken?

1                   THE COURT: The Court will incorporate the Motion to Suppress  
2 Defendant -- Defense counsel argument, State's arguments, Court's ruling,  
3 deny the Motion to Suppress and overrule the Defense; s objection.

4                   MS. DIVINCENZO: Thank you.

5                   MR. BUSBY: Thank you.

6 (Sidebar ends at 1:40:36 p.m.)

7                   THE COURT: Over Defense objection 126 will be admitted.

8 (State's Exhibit 126 admitted into evidence)

9                   MR. BUSBY: And we move to publish State's Exhibit 126.

10                  THE COURT: You may.

11                  MR. BUSBY: Thank you.

12 BY MR. BUSBY:

13 Q                All right, directing your attention to the screen ahead, I'm just going to  
14 zoom in so it is a little bit more readable for everybody. This is, again, the  
15 same kind of document that we just reviewed for the other phone, but this is  
16 for 0721, correct?

17 A                That is correct.

18 Q                And scrolling down here to the night of July 10, having previously  
19 discussed that phone call that was made in the early morning hours of July  
20 10<sup>th</sup> at 12:18:54, we can see that on line 142; is that correct?

21 A                That is correct.

22 Q                And that indicates a call from that phone number ending in 7333; is that  
23 correct?

24 A                That is correct.

25 Q                And now scrolling down again, to July 12, 2021, on line 249, we see a

1 Q And that is the history of contact between the number 317-792-0721,  
2 the gray iPhone and a second number 317-384-5811; is that correct?

3 A That is correct.

4 MR. BUSBY: State at this time will offer State's Exhibit 120 into  
5 evidence.

6 MS. DIVINCENZO: Judge, may we approach?

7 THE COURT: Yes.

8 (Sidebar begins at 1:44:27 p.m.)

9 MS. DIVINCENZO: Judge, we would object to this evidence coming  
10 in and we would ask that the Court incorporate our previous motion to  
11 suppress argument made at that hearing.

12 MR. BUSBY: And, Your Honor, the State would ask the Court to  
13 incorporate the State's argument and the Court's ruling and allow the evidence  
14 into evidence.

15 THE COURT: Okay. The Court will incorporate the Motion and its  
16 previous ruling, denying the Motion to Suppress, and over Defense objection  
17 120 will be admitted.

18 MS. DIVINCENZO: Thank you.

19 (Sidebar ends at 1:44:56 p.m.)

20 THE COURT: 120 is admitted over Defense objection.

21 (State's Exhibit 120 admitted into evidence)

22 MR. BUSBY: And, Your Honor, I move to publish.

23 THE COURT: You may.

24 BY MR. BUSBY:

25 Q Now, we're drawing your attention to State's Exhibits 120, which is on

1 THE COURT: Yeah.

2 MR. BUSBY: -- purpose of the record --

3 THE COURT: Yes?

4 MR. BUSBY: We do have State's exhibit 114, which is a flash drive  
5 containing the entire Cellebrite reports for both item 1 and item 2, which have  
6 been entered in as State's Exhibits 110 and 111. So this is the entirety of the  
7 report. I'm not introducing this as an exhibit for the jury's benefits, just for the  
8 appellate record should there be a need for one. So at this time, the State is  
9 offering State's Exhibit 114 in the Court's custody, not as an exhibit but just as  
10 the entire documentation of the reports that are referenced.

11 THE COURT: And since this incorporates his phone, Defense, do  
12 you object? And I will incorporate your Motion to Suppress and your  
13 arguments, the State's arguments, my ruling, the Motion to Suppress is still  
14 denied and over Defense objection I will admit 114 which is for purposes of the  
15 appellate record only, not for the benefit of the jury and will not go back to the  
16 jury room.

17 (State's Exhibit 114 admitted into evidence)

18 UNIDENTIFIED SPEAKER: Thank you.

19 MR. BUSBY: Thank you, Your Honor.

20 MS. DIVINCENZO: Thank you, Judge.

21 THE COURT: Okay.

22 Defense, would you like some --

23 MR. REID: Just one moment, Judge, please.

24 MR. BUSBY: Would you like us to clear the court room?

25 MR. CERMAK: I think, we're fine right now, we're just going to --

IN THE  
INDIANA COURT OF APPEALS

**APPELLATE CASE NO. 23A-CR-02699**

ALSHAM M. LASTER,  
*Appellant*,  
vs.  
STATE OF INDIANA,  
*Appellee*.  
)

) Appeal from the  
Marion County Superior Court,  
Criminal Division 20  
)

) Cause No. 49D20-2111-MR-033962  
)

) The Honorable  
Jennifer Prinz Harrison, Judge  
)

## **BRIEF OF APPELLANT**

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### **STATEMENT OF THE ISSUE**

Did the trial court abuse its discretion when it admitted evidence obtained from an unlawful seizure of Laster's phone when no exigent circumstances supported the warrantless seizure?

## STATEMENT OF THE CASE

On November 4, 2021, the State charged Alsham Laster (“Laster”) with Murder.<sup>1</sup> Appellant’s Appendix (“App.”) Vol. II 30.

This matter proceeded to a jury trial on October 2 and 3, 2023. App. 9-10. The jury found Laster guilty. *Id.*

On October 26, 2023, the court sentenced Laster to sixty-two (62) years in the Indiana Department of Correction.

Laster timely filed a Notice of Appeal on November 14, 2023. App. 2-5. The Notice of Completion of Transcript was filed on January 4, 2024. [Online docket]. After filing a Motion to Hold in Abeyance to correct the Exhibit Volume that did not result in a new briefing schedule, Laster filed a Motion for Extension of Time. *Id.* A second Motion to Hold was filed on Feb. 16, 2024, because exhibits were missing from the record that were relevant to an issue being raised. *Id.* The Court granted the Motion on March 1, 2024. An Amended Notice of Completion of Transcript/Supplemental Exhibit Volume was filed on March 18, 2024. The Brief of Appellant is due on or before April 17, 2024. *Id.*

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<sup>1</sup> Ind. Code § 35-42-1-1(1) (2021).

## STATEMENT OF FACTS

### Substantive Facts

In July 2021, Laster and his girlfriend, Latisha Burnett, were living together at Laster's home. Tr. Vol. III 189-90. Burnett had children and was divorced. Tr. Vol. IV at 47-48. Burnett's ex-husband had a life insurance policy on Burnett, with the beneficiary being their daughter. *Id.* 47-49.

Laster's home is in a neighborhood where gunshots are common. Tr. Vol. III 197-98. Residents of the neighborhood do not call the police when hearing gunshots because they hear them "all the time in the neighborhood." *Id.* Laster's front door did not shut and lock. Tr. Vol. IV at 46-47. He had three (3) security cameras in the house in the top corner of a wall behind the front door, one in the dining room sitting on a table, and one in the hallway near the bathroom. *Id.* at 69-70; Exh. 35 (Exh. Vol. I at 40).

Laster owned an orange Challenger and Burnett drove a black Honda SUV, which she had recently purchased. Tr. Vol. III 193-94. Although Laster had his own car, he would drive Bennett's car on occasion. *Id.* at 195. During this time, Laster's Challenger was not drivable because of a busted wheel, and he was seen driving the Honda. *Id.*; Tr. Vol. IV 74.

Burnett's cousin, Corey Smith, was remolding the bathroom in Laster's home the week before July 12, 2021 (July 5<sup>th</sup>-9<sup>th</sup>). Tr. Vol. IV at 65, 71. Smith had a friend named Mike assist with the work. *Id.* at 70-71. Both men were in and out of the house. *Id.* at 71. Smith worked in the house every day the week of July 5th, except Thursday. *Id.* Smith was scheduled to resume work on the following Monday, July 12th. *Id.* at 67. Smith, however, did not go over to Laster's on the 12th based on communication he had with Laster. *Id.* at 67, 70.

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On July 9th, Burnett went over to Dr. Stephen Rodrigues' home. Tr. Vol. III 214-15. Burnett received a text from Laster telling her to get "her drunk ass home." *Id.* at 215.

On July 11, 2021, Betty Shutters, a neighbor of Laster's heard what she believed were gunshots around 7 to 7:30 pm. Tr. Vol. III 197. Shutters saw Laster leave the house around 9 to 9:30 pm in the Honda. *Id.* 192, 197.

The next day, on the 12th, Shutters saw Laster return home. *Id.* at 192. Laster stayed in the house for about twenty minutes before coming out with a trash bag. *Id.* Shutters noticed something else was also underneath Laster's arm. *Id.* Shutters watched Laster put the stuff in the Honda and leave. *Id.*

Later that evening, around 9:30 pm, Laster called 911 after finding Bennet dead in the house. Exh. 1A; Tr. Vol. III 138. Dispatch asked Laster how he knew Bennet was dead; and Laster responded that was for the medical examiners to determine, but Bennet was not responding to him. Exh. 1A. Laster was not at home when he called 911, but informed dispatch that the front door was unlocked. *Id.*

Officers with the Indianapolis Metropolitan Police Department ("IMPD") responded to Laster's home on N. Luett in Indianapolis to check on the welfare of the individual reported dead. Tr. Vol. III 133, 138. When officers arrived and entered the home, they found Bennet lying on the floor, her head on a pillow, her arms resting on her chest, and a white sheet covering her body up to her chin. *Id.* at 143-44. Burnett had a bruise over her front right shoulder. Tr. Vol. IV 21; Exh. 106 (Conf. Exh. Vol. I at 109). The air conditioner was set to 50 degrees. Tr. Vol. III 161. There was a box fan facing Bennet's body on the floor, and one crumpled dryer sheet next to Bennet's upper body. *Id.* at 162-63; Exh. 50 (Exh. Vol. I at 55).

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Burnett's exact time of death could not be determined, but she was believed to not have "been there for days." Tr. Vol. IV 26. Her cause of death was from multiple gunshot wounds, and the manner of death was determined to be a homicide. *Id.* at 28.

On July 13, 2021, around 2:00 am Laster was brought in for questioning. Tr. Vol. II 17. Law enforcement took Laster's phone. *Id.* at 19. At 3:50 am Det. Connie Pearson met with Laster. *Id.* at 17. Det. Pearson read Laster his *Miranda* rights and Laster declined to speak without a lawyer. *Id.* 17-18. Law enforcement continued to hold Laster until 10:53 am that day and then released him. *Id.* at 18. The police did not return his phone. *Id.* at 18.

On July 14, 2021, at 8:16 am Det. Pearson applied for a warrant to seize and search Laster's phone. *Id.* at 20. The warrant was granted at 8:31 am. *Id.* On the warrant, Det. Pearson indicated the same affidavit supporting the warrant was previously submitted to another judge under cause number 49D34-210-MC-021598, and the warrant was denied. Exh. 001 (Supp. Exh. at 3).

Under the second warrant that was granted, law enforcement seized Laster's cell phone (Exh. 111), the sim card from the phone (Exh. 113), a Cellebrite report (Exh. 114), phone records (Exh. 118), a call log (Exh. 119), phone history (Exh. 120), a photo (Exh. 121), metadata (Exh. 123), and the phone history (Exh. 126). Tr. IV 42, 96, 99, 104-05, 107, 114-17, 124; Exh. 001 (Sup. Exh. at 3).

In November 2021, the State charged Laster with the Murder of Burnett.

Procedural Facts

On September 27, 2023, a suppression hearing was held. Tr. Vol. II 14. Laster moved to have the contents discovered on his phone suppressed because his phone was unlawfully

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seized and searched under the Fourth Amendment of the U.S. Constitution and Art. 1, § 11 of the Ind. Constitution. *Id.* at 18, 21; App. 118.

The State submitted a warrant for the seizure and search of Laster's phone after Laster was released. Tr. Vol. II 18-21. The State conceded there was a 22-hour gap between the warrantless seizure of Laster's phone and the warrant being requested. *Id.* at 20-21. The State, however, argued *Williams v. State*, 204 N.E.3d 279 (Ind. Ct. App. 2023) supports the seizure of a phone pending a search warrant is permissible and holding the phone here is "parallel to exactly what happened in *Williams*." *Id.* at 22. The State argued the totality of circumstances established a fair probability of criminal activity because Laster called 911 from his phone and lived with Burnett. *Id.* at 22-23. Thus, the phone potentially contained evidence that was capable of being destroyed or manipulated and exigent circumstances existed where law enforcement needs were so compelling, making the warrantless seizure reasonable. *Id.* at 21-25.

The State, alternatively, relied on the probable cause affidavits submitted in three (3) warrants that were granted by judicial officers to argue "that lends strength to the argument that there was probable cause to seize the phone prior to number one being executed." *Id.* Warrant number one is Exh. 001, which is the search warrant for the seizure and search of Laster's phone. *Id.*; Exh. 001 (Supp. Exh. at 2-16). The other three (3) warrants were for the search of two cars and a residence. Tr. Vol. II 20. Those warrants were submitted and granted before Laster's release. *Id.* All three mentioned phones and gave permission to the State to seize phones. *Id.* The State maintained that "if a judicial officer said you can't search this phone, the remedy is to return it." *Id.* at 36.

The State further argued it did not intrude on the phone by searching it until after the warrant was granted. *Id.* at 21. The State maintained the phone was capable of being destroyed or manipulated, and that created exigent circumstances “that the State does have a right or a need to preserve that evidence.” *Id.* at 21-22. The State conceded,

I know Detective Pearson in hindsight would do this differently.  
I don’t think we’re saying this was strategic or anything.

...  
And you know, again, I, I know that Detective Pearson would go back in time and do things slightly different, but you know, it’s not intentional misconduct by the State nor is it unreasonable, the steps that were taken, even though it was not timely, Judge.

*Id.* at 22, 34.

Laster responded that the warrantless seizure was unreasonable because the State has not established exigent circumstances existed. *Id.* at 27-29. Just because Laster used the phone to call 911 and lived with the victim, that is not enough to establish the phone itself potentially held evidence. *Id.* at 35. Laster argued that such a finding would create a slippery slope that allows police to seize a phone whenever someone is suspected of a crime. *Id.*

Further, Laster argued the three (3) warrants granting permission to search the two cars and residence were “overbroad.” *Id.* at 28. Laster argued, the State did not establish “there was that important nexus between the phone and its potential use in the commission of a crime and in the crime that they were investigating itself.” *Id.* Further, Laster pointed out a phone was not mentioned in the three (3) applications for those three (3) warrants. *Id.* at 29. It was not until the warrant was granted that language existed allowing law enforcement to seize the cell phone. *Id.* Lastly, Laster argued, there is no particularized suspicion in those warrants that would allow Laster’s phone to be seized in the first place. *Id.*

[T]o say that those warrants which gave law enforcement permission to seize those phones found in those locales then extends to also give law enforcement permission to seize Mr. Laster's phone from Mr. Laster's person, I think that just -- it doesn't hold water.

I also don't think that the State has established that exigent circumstances existed here. I think there are far less intrusive manners of handling this situation than were employed. They could have briefly seized his phone, put it on airplane mode, put it in a protective baggie . . .

. . .  
[T]here's steps that could have been taken that would have been less intrusive than keeping his phone for 24 hours prior to seeking a warrant. And, and that's not what they did.

So I don't think that the argument that exigent circumstances justified the seizure holds up either.

So we would be moving to or asking the Court to suppress the phone in this case under the US Constitution as well as the Indiana Constitution.

*Id.* at 29-30.

The parties acknowledged there was a disagreement on whether Laster requested his phone after being released. *Id.* at 30.

The court found holding the phone for 22 hours is not unreasonable under the Fourth Amendment and there was a nexus that the phone could have information on it. *Id.* at 37-38. Thus, it was "reasonable" for police "to keep the phone and then request a search warrant." *Id.* at 38.

Further, applying the *Litchfield* factors, the court found the seizure of the phone reasonable under the Indiana Constitution. *Id.* The court found the degree of intrusion high and weighed in favor of defense. *Id.* However, the degree of concern that a violation occurred, and the extent of law enforcement needs weighed in favor of the State. *Id.* at 38-39. Thus, the

Brief of Appellant Alsham Laster

trial court held the seizure and search was reasonable under the Indiana Constitution. *Id.* at 39.

At trial, Laster objected to the admission of the evidence obtained from his phone based on his motion to suppress, and any testimony surrounding the evidence obtained. Tr. Vol. IV 41-42, 67-8, 96, 99, 104-05, 107-09, 115, 117, 124.

## **SUMMARY OF THE ARGUMENT**

The seizure of Laster's phone was unlawful under the Fourth Amendment of the U.S. Constitution and Art. 1, § 11 of the Indiana Constitution. The State argued exigent circumstances justified the warrantless seizure of Laster's phone when he was detained for questioning. However, no exigent circumstances supported the seizure of the phone at that time because there was no particularized suspicion (probable cause) that Laster's phone contained evidence of the crime. Thus, law enforcement did not have probable cause that the phone contained evidence of the crime.

After Laster refused to talk with police without a warrant, police continued to seize Laster for over seven (7) hours before releasing him. After Laster was released, police continued to seize his phone and did not apply for a search warrant until twenty-two (22) hours later. Because a cell phone is a highly personal item that is afforded great protection under both Constitutions, the delayed time between the warrantless seizure and application for the warrant was unreasonable. Thus, the warrantless seizure was unlawful, and the admission of the evidence obtained as a result was erroneous.

## ARGUMENT

### I. The Trial Court Abused Its Discretion When It Admitted Evidence Obtained as a Result of an Unlawful Seizure.

A trial court's ruling on the constitutionality of a search or seizure is reviewed *de novo* because it raises a question of law. *Pinner v. State*, 74 N.E.3d 226, 229 (Ind. 2017). The reviewing court gives deference to the trial court's determination of the facts, "which will not be overturned unless clearly erroneous." *Belvedere v. State*, 889 N.E.2d 286, 287 (Ind. 2008). The Court looks to the totality of the circumstances and considers all uncontested evidence together with conflicting evidence that supports the trial court's decision. *State v. Atkins*, 834 N.E.2d 1028, 1031 (Ind. Ct. App. 2005). Evidence obtained in violation of the Fourth Amendment must be excluded. *Terry v. Ohio*, 392 U.S. 1, 29, 88 S.Ct. 1868 (1968).

When an appellant challenges the admission of evidence through a motion to suppress but appeals the issue after trial, the issue is properly framed as whether the trial court abused its discretion by admitting the evidence at trial. *Jefferson v. State*, 891 N.E.2d 77, 80 (Ind. Ct. App. 2008), *trans. denied*.

To begin, the State conceded that the phone was seized without a warrant. Tr. Vol. II 24. Thus, the State had the burden of establishing an exception to the warrant requirement supporting the warrantless seizure. The State argued there was probable cause to believe the phone contained evidence of the crime and exigent circumstances existed to support the warrantless seizure—specifically, the threat of destruction of evidence. *Id.* at 23.

#### A. The seizure was unreasonable under the Fourth Amendment.

Under the Fourth Amendment of the United States Constitution, people have the right to be secure in their persons, houses, papers, and effects, against unreasonable searches and

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seizures, and no warrants shall be issued but upon probable cause. U.S. Const. amend. IV. This language applies to the seizure of a person and their property. *Payton v. N.Y.*, 445 U.S. 573 (1980).

The Fourth Amendment is concerned with reasonableness. *Riley v. California*, 573 U.S. 373, 381 (2014). Courts must balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable. *Illinois v. McArthur*, 531 U.S. 326, 331 (2001).

Typically, the seizure of personal property is unreasonable unless a warrant supports the seizure. *Id.* at 330. However, there are exceptions to this rule involving special law enforcement needs, diminished expectations of privacy, minimal intrusions, and the like. *Id.* A temporary seizure supported by probable cause that is designed to prevent the loss of evidence while law enforcement “act[] with diligence” to obtain a warrant in a reasonable period is permissible. *Id.* at 332-34.

In *U.S. v. Place*, 462 U.S. 696, 709-710, 103 S.Ct. 2637 (1983), the Court found a 90-minute seizure of the defendant’s luggage without probable cause unreasonable because of the nature of the interference with the defendant’s travels and the lack of diligence by police in pursuing their investigation. The Court explained that the seizure of personal property from the immediate possession of a suspect for the purpose of subjecting the property to further search is as intrusive as the seizure of a person. *Id.* at 708. The Court held probable cause for the temporary seizure of the luggage was required and here there was no probable cause. *Id.* at 709. Thus, the seizure was unreasonable under the Fourth Amendment.

In *Williams v. State*, 204 N.E.3d 279, 287 (Ind. Ct. App. 2023), *trans. denied*, (the case the State relied on heavily)<sup>2</sup> a panel of this Court found the warrantless seizure of Williams's cell phone reasonable under the Fourth Amendment. Law enforcement had probable cause to believe Williams was engaging in child sex trafficking after a victim came forward and provided law enforcement with information related to Williams's activities. *Id.* at 282-83. The victim informed law enforcement that Williams used multiple cell phones to set up sexual encounters. *Id.* at 282. After law enforcement obtained consent to enter the hotel room where Williams was staying, they observed two cell phones lying out in the open. *Id.* at 283. Based on the statements from the victim, law enforcement arrested Williams and seized the cell phones pending approval of a search warrant. *Id.* The phones were placed in airplane mode to avoid possible remote wiping. *Id.* A warrant was approved "a few hours later, and officers then searched Williams's cell phones." *Id.*

This Court held that based on *Riley v. California*, SCOTUS "has made it clear that [seizing a cell phone and placing it in airplane mode while awaiting a search warrant] do[es] not run afoul of the Fourth Amendment." *Id.* at 287. The Court relied on both parties' concession in *Riley* that officers could seize and secure the cell phone to prevent the destruction of evidence while seeking a warrant to support its holding. *Id.* The concession in *Riley*, however, was limited to a warrantless seizure because of a search incident to arrest, which was the basis of the warrantless seizure in *Williams* too. *Compare Riley*, 573 U.S. at 382, with *Williams*, 204 N.E.3d at 283, 287. Thus, this Court found "the temporary seizure pending the

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<sup>2</sup> Tr. Vol. II 22-24, 31

approval of a search warrant by a judicial officer was ‘a reasonable response’ to the situation.” *Williams*, 204 N.E.3d at 287.

Here, like *Place*, the 22-hour delay between the warrantless seizure of Laster’s phone and law enforcement’s application for a search warrant was unreasonable under the Fourth Amendment because of: (1) the nature of interference with Laster’s normal activities, and (2) the lack of diligence by police in pursuing their investigation. Further, law enforcement did not have probable cause to justify the warrantless seizure.

Laster objected to all the evidence obtained from the phone including testimony regarding the findings. Tr. Vol. IV 41-42, 67-68. The following is a list of all the exhibits objected to based on the grounds that the seizure and search of the phone were unlawful:

- Exhibit 111 (the cell phone). Tr. Vol. IV 42.
- Exhibit 113 (the sim card from the phone). Tr. Vol. IV 96.
- Exhibit 114 (Cellebrite report). Tr. Vol. IV 124.
- Exhibit 118 (phone records). Tr. Vol. IV 99.
- Exhibit 119 (call log from number ending in 0721). Tr. Vol. IV 104-05.
- Exhibit 120 (phone history for number ending in 0721). Tr. Vol. IV 116-117.
- Exhibit 121 (photo retrieved from phone). Tr. Vol. IV 107.
- Exhibit 123 (phone metadata). Tr. Vol. IV 107.
- Exhibit 126 (phone history for number ending in 0721). Tr. Vol. IV 114-115.

Cell phones are a “pervasive and [an] insistent part of daily life.” *Riley*, 573 U.S. at 385. Cell phone capabilities continue to advance, and they can now be considered a computer. *See* 18 U.S.C. § 1030(e); *U.S. v. Kramer*, 631 F.3d 900, 903 (8th Cir. 2011). Because cell phones are not only used to communicate with others but to store personal information, citizens have a

high expectation of privacy when it comes to their phones and any interference with that expectation must be supported by the Constitution.

Unlike *Williams* and *Riley* there is no evidence Det. Pearson or any other law enforcement official placed Laster's phone in airplane mode or in a Faraday cage to block the phone's signal when it initially seized the phone. Tr. Vol. II 29. It was not until Det. Brian Spengler retrieved the phone from the property room and took it out of the evidence envelope that the phone was placed in a Faraday cage. Tr. Vol. IV 116. Thus, under *Williams* and *Riley* law enforcement's failure to fully secure the phone by placing it in airplane mode makes the warrantless seizure unreasonable.

Further, at the time officers took Laster's phone, he was detained for questioning. Tr. Vol. II 17. After being read his rights at 3:50 am on July 13, 2021, Laster refused to speak to police without an attorney. *Id.* Yet, law enforcement continued to detain Laster for over seven (7) hours before releasing him at 10:53 am on July 13, 2021. *Id.* at 18. Law enforcement did not give Laster his phone back and instead continued to seize it without having submitted a warrant. *Id.* at 17-18, 25. Law enforcement waited until 8:16 am on July 14, 2021—twenty-two hours later—to apply for a search warrant to seize and search the phone. *Id.* at 18, 20.

**State's Exhibit 1 is ultimately the warrant that did grant permission to seize the phone** and as we conceded, Your Honor, it was seized 22 hours after Mr. Laster was released from the custody of IMPD and his phone was detained.

*Id.* at 20-21 (emphasis added).

It is of interest that the affidavit submitted for the warrant that was granted (State's Exh. 001) was submitted to another judge—Judge Sandifur—who found no probable cause

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to grant the warrant. Exh. 001 (Supp. Exh. at 3). Yet, after Judge Sandifur denied law enforcement's original warrant request, Judge Hagenmaier subsequently granted it based on the same information provided to Judge Sandifur. *Id.* at 3, 15. Thus, when law enforcement originally submitted a search warrant for the phone a judicial officer found law enforcement did not have probable cause to seize and search the phone. *Id.*

According to the State's own concession at the suppression hearing the phone should have been returned to Laster immediately upon denial of the first warrant. Tr. 36. Yet, law enforcement continued to seize the phone without a warrant and submitted the same affidavit to another judge in an attempt to get another result, which ultimately worked. *Id.*

If law enforcement did not have probable cause to seize and search the phone, according to the first judge, then law enforcement did not have probable cause to seize the phone when it did.

Law enforcement interfered with Laster's normal activities significantly when it: (a) seized his phone without a warrant when charges were not being filed at that time; (b) failed to return his phone after he was released; and (c) failed to return his phone after the first submission for a warrant was denied. Further, there was a lack of diligence by law enforcement in timely seeking a warrant to search Laster's phone when it waited 22 hours to submit the search warrant that was ultimately granted. Thus, the warrantless seizure of Laster's phone was unreasonable and violated the Fourth Amendment.

Further, unlike *Williams*, the seizure of Laster's phone was not pursuant to a search incident arrest. Thus, *Williams* does not control, nor does *Riley*.

The evidence obtained as a result of the warrantless seizure included a photo of Burnett (Exh. 121) as she was found by police. The State relied on that photo to argue Laster killed Burnett because “why would [he] have a picture of his dead girlfriend on his phone if he did not kill her?” Tr. 131. Thus, the erroneous admission of the evidence was relied on by the State to secure the conviction, and the error is not harmless beyond a reasonable doubt.<sup>3</sup>

Because law enforcement unlawfully seized Laster’s phone, the evidence obtained as a result was not admissible. *Terry*, 392 U.S. at 29. Further, because the initial seizure was unlawful, the subsequent search was also unlawful irrespective of the fact a search warrant was issued.

Without the evidence obtained from the phone, there is insufficient evidence to support Laster’s conviction for Murder and his conviction must be reversed.

**B. The seizure was unreasonable under Article 1, § 11 of the Indiana Constitution.**

Indiana Constitution Article One, Section Eleven guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure” and the right “shall not be violated.” Ind. Const. art. 1, § 11. Although Article One, Section Eleven tracts the Fourth Amendment language almost verbatim, however, the state constitution has been found to offer greater protection to its citizens. *Atkins v. State*, 143 N.E.3d 1025, 1035 (Ind. Ct. App. 2020).

In *Williams* this Court also analyzed the reasonableness of the warrantless seizure under Art.1, § 11. 204 N.E.3d at 287-88. This Court found law enforcement had a “very high degree

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<sup>3</sup> See *infra* Issue I.C at 22-23.

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of suspicion that Williams's cell phone contained evidence of a crime." *Id.* 288. The seizure of the phone and placing it in airplane mode while awaiting the approval of a search warrant "imposed a low degree of intrusion on Williams, who was also under arrest at that time." *Id.* Lastly, law enforcement's need for the evidence on the phone and "their concomitant need to maintain chain of custody over those phones pending the approval of that warrant was very high." *Id.* Thus, based on the totality of circumstances, the officers did not violate Williams's rights under the Indiana Constitution when they seized his phones. *Id.*

Here, the degree of suspicion that Laster's phone contained evidence of a crime at the time of the warrantless seizure was minimal. Just because Laster used the phone to call 911 to report Burnett's death is not indicative of criminal activity. If that were the case, every citizen who calls 911 to report a crime would be subject to having their phone seized by law enforcement because evidence could be on the phone because the citizen used the phone to contact police. Such a conclusion is unreasonable, even absurd, and would create a slippery slope for abuse by law enforcement.

The degree of intrusion on Laster was high because for most people their cell phone is their only means of communication. Additionally, law enforcement did not place the phone in airplane like in *Williams*. Lastly, the trial court found the degree of intrusion weighed in favor of Laster. Tr. II 38.

Finally, law enforcement needs were minimal because there was no direct evidence that suggested the phone contained evidence of the crime outside of Laster using the phone to call 911 and Burnett who lived with Laster was found in his home. It is fair to presume that almost all Americans, and other individuals across the world, have cell phones and use them to

communicate. And, it is not uncommon for individuals to live with each other outside of the marital context. If these two facts standing alone are sufficient to support a warrantless intrusion into citizens' daily activities and privacy, then law enforcement could easily establish probable cause to seize and search a citizen's cell phone based on their living circumstances and possession of a phone. This could create a slippery slope and open the door for a holding that any citizen suspected of a crime who has a phone is subject to having that phone seized and searched—with or without a warrant. The Framers did not intend for such an unbridled intrusion by the government. *Maryland v. Garrison*, 10 S.Ct. 1013, 1016, 480 U.S. 79 (1987).

Thus, based on the totality of circumstances law enforcement violated Laster's rights under Art. 1, § 11 of the Indiana Constitution and the trial court erred in admitting evidence obtained as a result of the unlawful seizure.

**C. The trial court's error in admitting the evidence obtained as a result of an unlawful seizure is not harmless beyond a reasonable doubt.**

A trial court's abuse of discretion in admitting evidence must be reviewed to determine if the error is harmless. Ind. Appellate Rule 66(A). When the admission of evidence is tied to a constitutional violation, then the error must be reviewed to determine if it is harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24 (1967); *Underwood v. State*, 722 N.E.2d 828, 833 (Ind. 2000). An error is considered harmless if there is no reasonable possibility that the evidence might have contributed to the conviction. *Chapman*, 386 U.S. at 24. Put another way, an error is harmless if the State "prove[s] beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Id.*

The evidence obtained from Laster's phone, specifically the picture of Burnett's body was relied on heavily by the State in closing. Tr. IV 131.

Ladies and Gentlemen, why would the Defendant have a picture of his dead girlfriend on his phone if he did not kill her?

*Id.* Outside of the picture of Burnett on Laster's phone and the other evidence obtained from the phone, the other evidence admitted by the State was not overwhelming.

It is not unusual that Laster discovered Burnett at his residence because Burnett lived with him. It is not unusual for someone to try to figure out why their loved one is lying on the floor unresponsive, including touching the person—explaining why there would be blood on Laster's clothing. It is not unusual for a person to call 911 and report a dead person found in their home. It is also not unusual to not be able to respond to a question asking how the person knows the individual is dead if they did not kill the person.

Laster is not attempting to reweigh the evidence by pointing these things out, only to show how important the evidence obtained from his phone, including the photo of Burnett's body, likely contributed to the verdict. Thus, the possibility exists that the evidence obtained from Laster's phone contributed to the verdict and the error is not harmless beyond a reasonable doubt. Laster's conviction must be reversed.

## **CONCLUSION**

For these reasons, Laster respectfully requests this Court reverse his conviction for Murder.

Respectfully Submitted,

/s/ Talisha Griffin  
Talisha Griffin, #34607-64  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I certify a copy of the Brief of Appellant was served upon Indiana Attorney General Theodore Rokita, via E-Service, this 17th day of April, 2024.

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IN THE  
COURT OF APPEALS OF INDIANA

No. 23A-CR-2699

ALSHAM M. LASTER,  
*Appellant-Defendant*,

v.

STATE OF INDIANA,  
*Appellee-Plaintiff*.Appeal from the  
Marion Superior Court 20,

No. 49D20-2111-MR-33962,

The Honorable Jennifer Harrison,  
Judge.**BRIEF OF APPELLEE**THEODORE E. ROKITA  
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## **STATEMENT OF THE ISSUE**

Whether the trial court properly admitted Defendant's cell phone and evidence obtained therefrom.

## **STATEMENT OF THE CASE**

On November 4, 2021, the State charged Defendant with murder (App. Vol. II 29). On September 24, 2023, Defendant filed a motion to suppress, and on September 27, 2023, a suppression hearing was held (App. Vol. II 118; Tr. Vol. II 14). The trial court denied the motion (Tr. Vol. II 37-39). On October 2 and 3, 2023, a jury trial was held, and the jury found Defendant guilty (App. Vol. II 167; Tr. Vol. IV 145).

On October 25, 2023, the trial court sentenced Defendant to 62 years executed in the Department of Correction (App. Vol. II 17; Tr. Vol. II 174). On November 14, 2023, Defendant filed a notice of appeal (Docket).

## **STATEMENT OF THE FACTS**

In July of 2021, Defendant was in a relationship with Latisha Burnett, who was also known as Sharee (Tr. Vol. III 189-90; IV 123; Supp. Ex. 1 at 6).<sup>1</sup> They lived together in Defendant's house (Tr. Vol. III 189-90; Supp. Ex. 1 at 6). On July 12, 2021, at 9:41 p.m., a 911 call was made from a phone number ending in 0721 (Tr. Vol. III 133-34; St. Ex. 1A 1:40-1:47). Defendant identified himself and stated that there was a deceased person in his home (St. Ex. 1A 0:05-0:12, 0:52-1:00, 1:50-

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<sup>1</sup> The State is citing exhibits from the suppression hearing as "Supp. Ex." and exhibits introduced at trial by the State as "St. Ex.").

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2:02; Supp. Ex. 1 at 5). Defendant stated that the person was not responding (St. Ex. 1A 2:24-2:35). When dispatch asked what the potential cause of the person's death could be, Defendant said that would be for the "medical team to determine" (St. Ex. 1A 2:03-2:12).

When police arrived at Defendant's house at 9:44 p.m., the front door was open and police entered the home (Tr. Vol. III 138, 141). An officer entered a bedroom and found Burnett's body covered by a sheet (Tr. Vol. III 143). The body was posed in a "funeral pose" with her arms across her chest and a pillow under her head (Tr. Vol. III 143). A dryer sheet was found near her body (Tr. Vol. III 162-63). Possible blood was found next to the body (Tr. Vol. III 163-64; St. Ex. 49, 51). The room was "very cold," a fan pointed at the body was running, and the thermostat was set at 50 degrees (Tr. Vol. III 143-44, 161). No other person was in the house when police arrived (Tr. Vol. III 145). Neighbors had seen Defendant earlier that day driving a black vehicle, going in and out of the residence several times, and putting a bag in the trunk of the vehicle (Supp. Ex. 1 at 6). Defendant left the residence around 4:30 p.m. and had not returned (Supp. Ex. 1 at 6).

An employee from the coroner's office observed three defects in Burnett's body consistent with gunshot wounds (Supp. Ex. 1 at 6). Three fired shell cases were found in a trash can in the same room as Burnett's body (Supp. Ex. 1 at 6). Two holes in the floor underneath Burnett's body lined up with holes in Burnett's body (Tr. Vol. III 165-66). A fired bullet was found in one of the holes in the floor

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(Tr. Vol. III 168). A red cell phone was discovered on the dresser in the bedroom where Burnett's body was found (Tr. Vol. IV 39; St. Ex. 110).

Defendant was stopped on July 13, 2021, while he was driving Burnett's black Honda Insight (Tr. Vol. IV 40, 42; Supp. Ex. 1 at 6). Defendant was taken to the police station for an interview, and police discovered a gray cell phone on his person (Supp. Ex. 1 at 6). Defendant said that the phone number was the same 0721 number that Defendant told 911 he was calling from the day before (St. Ex. 1A 1:40-1:47; Supp. Ex. 1 at 6). Police took Defendant's phone on July 13, 2021, at 2:00 a.m., as Defendant was going into the police station to be questioned (Tr. Vol. II 17).<sup>2</sup> The police read Defendant his *Miranda* rights and he was in handcuffs (Tr. Vol. II 17-18). Defendant refused to talk further with police, was held, and then released at 10:53 a.m., but police retained his phone (Tr. Vol. II 18; Supp. Ex. 1 at 6). Police applied for a warrant to search Defendant's phone on July 14, 2021, at 8:16 a.m. (Tr. Vol. II 18).<sup>3</sup>

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<sup>2</sup> The timing of Defendant's arrest, release, and the application for the warrant were stipulated to by the parties at the suppression hearing.

<sup>3</sup> Defendant alleges that the State obtained the warrant by submitting the same affidavit to a different judge after an earlier request had been denied (Def. Br. 18-19). This is incorrect. Defendant overlooks the fact that the warrant application informed the issuing judicial officer of the earlier submission and denial, and indicated that additional information had been included in the probable cause affidavit, which would have altered the original affidavit (Supp. Ex. 1 at 4). Also, the fact that this was the second time a warrant was requested does not affect any determination about whether police acted properly *ab initio* in seizing Defendant's phone.

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A cover sheet, submission form, probable cause affidavit, and search warrant for Defendant's phone were submitted to a judge (Tr. Vol. II 19-20; Supp. Ex. 1). The submission form informed the reviewing judicial officer that an affidavit had previously been submitted to another judge that did not result in a search warrant being issued, but that additions had been made to the probable cause affidavit about the death investigation and the suspect's phone (Supp. Ex. 1 at 4). The affidavit stated that potential data to be found on a phone could include location information for the phone including GPS data from "metadata in photo and video files," "applications that use GPS data," or "cell towers and Wi-Fi networks with which the device has interacted" (Supp. Ex. 1 at 11). The affidavit also asserted that "the high volume of the contents and potential concealment of the data through the use of a password, or other challenges in extracting and examining data described below, combined with the caseload of the examiner, could cause this process to take weeks or months" (Supp. Ex. 1 at 8).

The warrant was issued and both Defendant's and the red phone were taken to the lab, where a forensic examiner powered the phones off and placed them in a Faraday cage to prevent them from receiving any signals (Tr. Vol. IV 92-94, 97, 116). Once placed inside the cage, the detective powered the phones up and placed them on airplane mode so that they could not send or receive any information (Tr. Vol. IV 93-94, 97). He then used forensic software to recover data from the phones and analyze it (Tr. Vol. IV 93-94, 97).

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An analysis of the red cell phone found on the dresser next to Burnett's body identified the number of the phone as ending in 7333 (St. Ex. 112). Burnett was identified as the owner of the phone and Defendant was listed as a participant in text messages that involved the number ending in 0721 (St. Ex. 115; Tr. Vol. IV 100). Texts found on Burnett's phone on July 7, 2021, show her texting Defendant that she was getting ready to communicate with "Corey," after which Defendant responded, "Move that shit away from the camera in the living room" (St. Ex. 115). Later that same day Burnett texted Defendant, expressing displeasure about not being respected by Defendant and being accused of infidelity by him, and also mentioning the possibility of moving out (St. Ex. 115). On July 9, 2021, at 8:53 p.m., Defendant texted Burnett "Bring ya drunk ass home" (St. Ex. 115; Tr. Vol. IV 101). A call history from Burnett's phone between July 7 and 10, 2021, showed that the last outgoing call from Burnett's phone was made to Defendant's phone on July 10, 2021, at 12:18 a.m. (St. Ex. 116; Tr. Vol. IV 106, 113). All subsequent events recorded on the phone were only incoming messages or calls (Tr. Vol. IV 114; St. Ex. 125).

Forensic evaluation of Defendant's cell phone revealed that the number for the phone was the number ending in 0721, and the number ending in 7333 was listed as "Sharee" (St. Ex. 118; Tr. Vol. IV 97, 102-03). Defendant's phone contained "mirror image" text message information that was just "flipped around" from Burnett's phone, and it had a matching call history between the two phones that contained slight time differences accounted for by the difference between when a

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call was made and when the other phone picked up the call (Tr. Vol. IV 98, 102-07; St. Ex. 115, 116, 118, 119). A timeline of calls made and received from Defendant's phone showed the call made on July 10 from Burnett to Defendant, and Defendant's call to 911 on July 12, 2021, at 9:41 p.m. (Tr. Vol. IV 114-16; St. Ex. 126). Additionally, Defendant's phone contained a picture taken July 10, 2021, at 4:47 p.m. (St. Ex. 121, 123; Tr. Vol. IV 107-08, 111). That picture depicted Burnett with some type of cloth wrapped around her hair, her eyes closed, a dress that appears similar to the one Burnett was wearing when photographed by police inside the home, a pillow under her head, and a blanket covering her midsection (St. Ex. 45, 121).

The forensic pathologist opined that Burnett's body would have had to have been cooling for a period of at least approximately 20 hours, although he did not believe that she had been there for "days" because there was no decomposition (Tr. Vol. IV 26-27). Her death was caused by multiple gunshot wounds (Tr. Vol. IV 28). These included a contact gunshot wound that entered the left side of her face and exited the back of her head; a shot perforating her forearm, entering her bowel and stomach and exiting her back; and a shot through Burnett's liver, lung, and heart, which left a bullet that was recovered near her spine (Tr. Vol. IV 17-20, 25; St. Ex. 107-09).

A relative of Burnett's, Corey Smith, had been helping to remodel a bathroom in Defendant's house (Tr. Vol. III 195; IV 48, 64-65). The last day he had been in the house was July 9, 2021, because he was last there before the weekend, which

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would have encompassed July 10 and 11 (Tr. Vol. II 70). He was supposed to come to the house to work on July 12, but Defendant texted him not to come (Tr. Vol. IV 67, 69). Texts from Defendant's phone show that on July 12, 2021, at 2:37 p.m. he texted a number identified as "Corey (Sharee's cousin)" which read "Tomorrow or later this week...Won't be home this evening" (St. Ex. 120). The number texted from Defendant's phone was the same number that Smith identified as his (Tr. Vol. IV 69, 117-18). Smith had seen security cameras in the house when doing work there (Tr. Vol. IV 69-70). When an evidence technician took pictures on July 12 at the residence, the camera in the living room was no longer present (Tr. Vol. IV 69-70; St. Ex. 35).

When Defendant was stopped while driving Burnett's black Honda, a police evidence technician found laundry detergent and a bag containing a pair of gray pants in the trunk of the vehicle (Tr. Vol. III 186; IV 40, 42). The gray pants had blood stains on the outsides of the front portion of the pants and around the front pockets (Tr. Vol. III 201, 206-207). Blood stains from the front thigh area and the opening of the left front pocket each contained separate DNA profiles matching Burnett and Defendant (Tr. Vol. IV 55, 57).

After Defendant was charged with murder, he filed a motion to suppress evidence coming from his phone under the 4<sup>th</sup> Amendment and Article 1, Section 11 of the Indiana constitution, and the trial court held a hearing (App. Vol. II 118; Tr. Vol. II 14). The parties stipulated as to the timing of Defendant's arrest and release, the seizure and retention of his phone, and the application for the warrant

for Defendant's phone (Tr. Vol. II 17-18). The probable cause affidavit and other materials attached to the search warrant were submitted but no witness testimony was presented at the hearing (Supp. Ex. 1; Tr. Vol. II 19). The trial court denied the motion (Tr. Vol. II 37-39). At the jury trial Defendant objected to the evidence concerning Defendant's phone (Tr. Vol. III 10; IV 41, 99, 104, 108, 114, 117, 119). The jury found Defendant guilty (App. Vol. II 167; Tr. Vol. IV 145). The trial court sentenced Defendant to 62 years executed (App. Vol. II 17; Tr. Vol. II 174).

#### **SUMMARY OF THE ARGUMENT**

The trial court properly admitted into evidence Defendant's cell phone and information obtained from a forensic analysis of the phone. Police reasonably seized Defendant's phone as the product of a search incident to arrest. Police also had a reasonable belief that an exigent circumstance existed due to the potential destruction of evidence from Defendant's cell phone. Probable cause existed to believe that Defendant was involved in Burnett's murder and that his phone could have relevant evidence. Thus police were permitted to seize Defendant's phone and hold it until a search warrant was procured to search it. Even if police held the phone for a few hours too long, there was an insufficient causal connection between that length of seizure and the discovery of the evidence on the phone to justify suppression as a remedy. The delay between seizing the phone and obtaining a warrant caused only a minimal intrusion on Defendant, especially in light of the fact that it was only Defendant's possessory interest, not his privacy interest, in the phone that was affected by the seizure.

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The officer's seizure of Defendant's phone was also reasonable under Article 1, Section 11 of the Indiana constitution. The degree of suspicion that the cell phone held relevant information to the crime was high because police knew that Defendant was the only one seen leaving the house immediately preceding the discovery of Burnett's body, Burnett had apparent gunshot wounds in her head and torso, and the cell phone could reveal information about Defendant's location at relevant times. The degree of intrusion was low because the seizure of Defendant's cell phone for less than a day did not prevent his ability to travel, enter his home, or engage in other activities. The degree of law enforcement need was very high, because police needed to investigate a crime and maintain an appropriate chain of custody for the phone and its contents.

Any error in the seizure of Defendant's phone would also have been harmless. Strong independent evidence existed that included Defendant being the only one seen at the house during the timeframe of Burnett's death, a motive to commit the murder, DNA evidence linking Defendant and Burnett to blood found on his pants, and substantial efforts to conceal the crime. Much of the evidence on Defendant's phone was cumulative of other evidence, including communications taken from Burnett's phone. The picture of Burnett's dead body on the phone was cumulative to the extent it demonstrated that Defendant was aware of Burnett's death and that her body was present in the home, as Defendant's call to 911 established the same fact.

## ARGUMENT

### **The trial court properly admitted evidence from Defendant's cell phone.**

The trial court properly admitted Defendant's cell phone and the evidence recovered from that phone. When appealing the admission of evidence at trial after a suppression hearing, the issue is properly framed as whether the trial court abused its discretion in admitting evidence. *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). An abuse of discretion occurs "only when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id.* (citation omitted). This Court considers any conflicting evidence favorably to the trial court's decision, and also uncontradicted evidence for the defendant, because the trial court is in the best position to weigh the evidence and judge the credibility of witnesses. *State v. Cunningham*, 26 N.E.3d 21, 25 (Ind. 2015); *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). The ultimate determination of the constitutionality of the search or seizure of the evidence is a question of law which is considered *de novo*. *Carpenter*, 18 N.E.3d at 1001. The appellate court may affirm a trial court's judgment on any theory supported by the evidence. *State v. Keck*, 4 N.E.3d 1180, 1186 (Ind. 2014). This is so regardless of whether the trial court used that theory or not. *Tinker v. State*, 129 N.E.3d 251, 255 (Ind. Ct. App. 2019), *trans. denied*.

The evidence was properly admitted because police reasonably seized Defendant's phone as the result of a search incident to arrest. The seizure of the phone was also justified under the exigent circumstances doctrine. Finally, even if

any impropriety existed in the length of time the phone was seized before a warrant was obtained, the causal connection of that impropriety to the discovery of the evidence was sufficiently separated so that suppression is not justified.

**A. Seizure of the phone was proper under the Fourth Amendment.**

Defendant's cell phone was properly admitted because it was seized pursuant to a search incident to arrest. When a defendant is arrested, police may search for and seize evidence within a defendant's immediate control not only for officer safety, but also "it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." *Riley v. California*, 573 U.S. 373, 383 (2014) (quoting *Chimel v. California*, 395 U.S. 752, 762-63 (1969)). As recognized in *Riley*, this includes the seizure of a cell phone which might have relevant evidence while police seek a warrant for its search. *Id.* at 388.

Defendant was found by police, brought in for questioning, handcuffed, and read his *Miranda* rights (Supp. Ex. 1 at 6; Tr. Vol. II 17-18). At that time police had probable cause to believe that Defendant murdered Burnett and that his phone would have information relevant to Burnett's murder. Probable cause is the "knowledge of facts and circumstances which would warrant a man of reasonable caution to believe that the defendant committed the criminal act in question." *Kelly v. State*, 997 N.E.2d 1045, 1051 (Ind. 2013) (citations omitted). The existence of probable cause is a fact-sensitive determination. *Id.* "It is grounded in notions of common sense, not mathematical precisions. As such, the probable cause standard

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is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *State v. Parrott*, 69 N.E.3d 535, 542 (Ind. Ct. App. 2017) (quotation omitted), *trans. denied*.

At the time police seized Defendant's phone, they had observed Burnett deceased in Defendant's home suffering from apparent gunshot wounds, and fired shell cases were found in the room where Burnett was found, which warranted a reasonable belief that she had been murdered (Supp. Ex. 1 at 5-6; Tr. Vol. III 143). She was found in Defendant's house, Defendant was seen coming and going from the house that day a few hours before the call was made, and police had no information that any other person had been in the house that day (Supp. Ex. 1 at 5-6). Defendant had used his phone to call 911 to report Burnett's death, which gave additional reason to believe that at some point during or after her murder he had to be in Burnett's vicinity in order to have observed her condition (Tr. Vol. III 133-34; St. Ex. 1A). When Defendant exited the house he left in Burnett's vehicle, which he was still driving when he was found the next day (Supp. Ex. 1 at 6). Police discovered that he had a phone with him (Tr. Vol. IV 40, 42; Supp. Ex. 1 at 6). Defendant confirmed that the phone police found had the same number as the one he used to call 911 (*compare* St. Ex 1A *with* Supp. Ex. 1 at 6).

Police could reasonably believe that Defendant was involved in Burnett's murder because he was the only one known to be in the same residence where Burnett's body was found on the day she was found dead, and where Burnett was

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found dead with apparent gunshot wounds. Defendant's phone was connected to the crime because police knew he possessed it on the day Burnett's body was found, and the location data on it could have revealed information about Defendant's whereabouts during specific relevant times. This was sufficient to establish probable cause to believe Defendant murdered Burnett, to connect the phone to Burnett's murder, and to arrest Defendant and seize the phone. When police arrested Defendant, pursuant to a search incident to arrest they reasonably seized his phone to prevent its concealment or destruction.

Additionally, seizure was proper because an exigent circumstance existed to justify its temporary seizure. The Fourth Amendment's general prohibition on warrantless seizures of personal property is subject to "specifically established and well-delineated exceptions." *Ramirez v. State*, 174 N.E.3d 181, 190 (Ind. 2021) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One exception is when an exigent circumstance such as the "imminent destruction of evidence" makes law enforcement needs so compelling that a warrantless search or seizure is objectively reasonable. *Id.* (quoting *Peters v. State*, 888 N.E.2d 274, 278 (Ind. Ct. App. 2008), *trans. denied*; also citing *Carpenter v. United States*, 585 U.S. 296, 319 (2018)). In determining whether an exigent circumstance exists, a court looks to the totality of the circumstances to decide whether police "faced an emergency that justified acting without a warrant." *Missouri v. McNeely*, 569 U.S. 141, 149 (2013).

The United States Supreme Court has recognized that, in the context of cell phones, the need to prevent the destruction of evidence that could be found on a

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phone justifies seizing and securing a cell phone while seeking a warrant. *Riley*, 573 U.S. at 388 (noting that the defendants made a “sensible concession” that “officers could have seized and secured their cell phones to prevent destruction of evidence while seeking a warrant”); *see also Williams v. State*, 204 N.E.3d 279, 287 (Ind. Ct. App. 2023), *trans. denied*. The interest in finding and protecting against the “removal or destruction [of incriminating evidence] can supersede, at least for a limited period, a person’s possessory interest in property, provided that there is probable cause to believe that that property is associated with criminal activity.”

*Segura v. United States*, 468 U.S. 796, 808 (1984).

As argued above, police had probable cause to believe that the phone was associated with Burnett’s murder. The totality of the circumstances justified temporarily seizing Defendant’s phone. As noted in *Riley* and *Williams*, the evidence on a phone is readily susceptible to destruction. Once police located Defendant and attempted to further their investigation by speaking with him, Defendant was aware that police were investigating him after he called in Burnett’s death and he could have attempted to destroy evidence on it. By removing the phone from Defendant, police prevented Defendant from deleting or destroying evidence through physical access to the phone.

Finally, even if the length of seizure was unreasonable, this should not result in suppression. Evidence derived from an illegal search or seizure is only suppressible if it has come from the exploitation of the illegal seizure, but not if it came through means sufficiently attenuated from the “primary taint.” *Clark v.*

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*State*, 994 N.E.2d 252, 266 (Ind. 2013) (quoting *Wong Sun v. United States*, 371 U.S. 471, 485, 488 (1963)). “In making this determination, courts generally consider “(1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct.” *Id.* (citations omitted). The evidence may also be admissible if the evidence was obtained from an independent source. *Id.* at 271-72. These doctrines exist because the Supreme Court “has never held that evidence is “fruit of the poisonous tree” simply because “it would not have come to light but for the illegal actions of the police.” *Segura*, 468 U.S. at 815 (citations omitted). “[E]xclusion may not be premised on the mere fact that a constitutional violation was a “but-for” cause of obtaining evidence. Our cases show that but-for causality is only a necessary, not a sufficient, condition for suppression.” *Hudson v. Michigan*, 547 U.S. 586, 592 (2006).

Here police permissibly seized Defendant’s phone as an initial matter, whether as a search incident to arrest or as the result of an exigent circumstance. There was a delay of 22 hours between the seizure of the phone and the eventual issuing of the search warrant. The police conduct in seeking the first warrant, which was denied, and then rethinking and including more information in the probable cause affidavit, showed that the police actions were not flagrant misconduct but rather reasonable actions to further the investigation. The taint of holding a phone for a few too many hours was sufficiently separated from the eventual search so that suppression was not warranted.

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There was also an independent source for the evidence. Even if the seizure of the phone was for too long a period of time, the information included in the probable cause affidavit was independent of and not related to the mere fact that the police continued to hold the phone. That evidence came from their independent investigation in responding to the home, what they observed there, other witnesses police talked to, and Defendant's statements made before he decided to refuse to continue talking with police (Supp. Ex. 1 at 5-6). There is no indication that any of the information in the warrant, which would independently support the phone's search, was derived as the result of the extra amount of time police took to obtain the warrant.

Also, where "the evidence in question would inevitably have been discovered without reference to the police error or misconduct, there is no nexus sufficient to provide a taint and the evidence is admissible." *Nix v. Williams*, 467 U.S. 431, 448 (1984). Here, because police obtained the search warrant for the phone, the complained-of evidence would have inevitably been discovered without reference to the fact that police held the phone for some extra hours. Merely holding Defendant's phone for a few extra hours did not lead to the discovery of the evidence on the phone—the search warrant did. Because there was not a sufficient causal connection between the alleged police misconduct and the discovery of the evidence, the remedy of suppression is not justified in this case.

Defendant argues that the time delay between the phone's seizure and the application for the search warrant rendered the seizure unreasonable, citing *United*

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*States v. Place*, 462 U.S. 696 (1983), as an example where a 90-minute seizure of luggage was found unreasonable. However, his reliance on *Place* is misplaced. In *Place* the Court was discussing a temporary detention of luggage under the *Terry* doctrine, which only permits brief detentions of persons or, in that case, property, for investigation. *Id.* at 706. Because *Terry* stops are not supported by probable cause but only reasonable suspicion, the scope of the police investigation must be more limited, including the duration it takes to complete. *Id.* at 709.

Here the seizure of the phone was justified because probable cause existed to arrest Defendant, which extends the length of time police can reasonably seize property. However, even if case law on reasonable suspicion stops was directly applicable, 90 minutes has not been held to be a strict limitation. Other detentions of property for much longer periods have been held reasonable. *See, e.g., United States v. Van Leeuwen*, 397 U.S. 249, 253 (1970) (29-hour detention of mailed package reasonable).

In short, there is no brightline time limit—the test instead is simply whether police acted diligently within a reasonable amount of time. *Illinois v. McArthur*, 531 U.S. 326, 334 (2001). In *McArthur*, the Court evaluated the time period in conjunction with “the nature of the intrusion and the law enforcement interest at stake.” *Id.* at 333. This will necessarily be a fact-dependent inquiry.

Police acted diligently to obtain the warrant. The delay in obtaining the warrant was not the product of dilatory police action. The police initially sought a warrant at an earlier time, which was denied (Supp. Ex. 1 at 4). They diligently

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then engaged in the reasonable conduct of revising the probable cause affidavit to further their investigation. Although the process of obtaining the warrant stretched out over a number of hours, this did not mean that the police were not acting diligently in attempting to obtain the warrant.

The nature of the intrusion here was less significant than in *McArthur*, or even *Place*. The State was not preventing Defendant's access to his home, as was the case in *McArthur*. Nor was it delaying his travel without having necessary items from his luggage, as was the case in *Place*. Here the State merely removed his phone from him, which did not prevent his travel or access to his home.

The law enforcement interest at stake in preventing the destruction of evidence was high due to the easy destruction of cell phone evidence either through deletion of its contents or by physical means such as a hammer or throwing it in a body of water. The law enforcement interests also included needing time to manage a murder investigation that included locating and interviewing a number of witnesses, arranging for and conducting forensic analysis of firearms and DNA, and obtaining an autopsy. Even considering this, the police did not wait days or weeks to apply for the warrant. In light of the lesser nature of the intrusion and the important law enforcement interests, a temporary seizure of the phone for less than a day was not unreasonable and police were sufficiently diligent.

Defendant's contention that the seizure of his phone for less than a day created a significant intrusion enjoys no support in the record. No evidence was presented that specifically showed any way in which the seizure of his phone

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created a significant intrusion on his activities, and to presume that it did would require this Court to engage in speculation. Based on the record, the intrusion here was not significant.

Defendant also contends that the period of time should be considered unreasonable because of the heightened privacy interest in cell phones (Def. Br. 17-18). This misapprehends the relevant interests involved. “Because a seizure affects only a defendant’s possessory interests, whereas a search impacts privacy interests as well,” certain exigent circumstances may justify a warrantless seizure of an item even if would not justify a warrantless search of the item’s contents. *Ramirez*, 174 N.E.3d at 190. Because Defendant does not challenge the search warrant, the issue here is only its temporary seizure while awaiting the warrant, which implicates only his possessory interests. Therefore, his heightened privacy interests are irrelevant to the analysis here.

Defendant argues that because this case did not involve a search incident to arrest, cases like *Riley* and *Williams* do not control. However, police did validly seize the phone in a search incident to arrest, as noted above. Even if that were not the case, the exigent circumstances exception justifying seizure of evidence to prevent its destruction does not apply only in cases where a search incident to arrest was involved. *See, e.g., Holder v. State*, 847 N.E.2d 930, 938 (Ind. 2006) (exigent circumstance to prevent destruction of evidence justified warrantless entry into a home). The holdings in *Riley* and *Williams* concerning the exception and how it relates to cell phone evidence are still valid.

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Defendant also argues that, because there was no evidence that police immediately placed the phone in airplane mode to further restrict remote access like the police did in *Riley* and *Williams*, the seizure was unreasonable (Def. Br. 18). However, neither of those cases held that such measures were necessary for the seizure to be permissible, and for good reason. While the Court has held that reasonable preventive measures can be used by police to preserve evidence while they seek a warrant, *Riley*, 573 U.S. at 391, it has not said that police are required to take all such measures possible. That is because the focus of the Fourth Amendment inquiry is whether the police were justified in initially seizing the phone, thereby intruding on a defendant's possessory interest. The degree of electronic isolation the police imposed on the phone after this point is a distinction without a difference. Moreover, here police did remove the phone from him, thus limiting his direct physical access to the phone to change any data or physically destroy the phone. The fact that police did not do more to limit access is not determinative, because it does not affect the justification for police taking the phone from him in the first place.

Police had probable cause to believe the Defendant murdered Burnett and that his phone was connected to the murder. This justified the temporary seizure of the phone both as the result of a search incident to arrest and due to the existence of an exigent circumstance because of the potential destruction of relevant evidence. Nor was there a sufficient causal connection between the holding of the phone and the eventual search of its contents to warrant suppression. The seizure for less

than a day before obtaining a warrant, in light of the minimal intrusion on Defendant's possessory interests and the important law enforcement interests, was a reasonable length of time. The admission of the phone and its contents was therefore proper.

**B. Seizure of the phone was proper under Article 1, Section 11.**

When a defendant raises a challenge under Article 1, Section 11 of the Indiana constitution, this Court analyzes: "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). The Indiana analysis focuses on the "reasonableness of the police conduct under the totality of the circumstances." *Id.* at 359. The trial court did not abuse its discretion regarding Article 1, Section 11.

Looking first to the degree of suspicion or knowledge that violation has occurred, that factor weighs heavily in the State's favor. This case is similar to *Williams*, 204 N.E.3d at 287-88. In *Williams*, several pieces of evidence connecting the defendant's use of his cell phone to his trafficking of the victim resulted in a "very high" degree of suspicion. *Id.* at 288. In this case, substantial evidence tied Defendant to the murder and demonstrated the relevance of location data that could be found on the phone, as discussed above in Section I.A. concerning the existence of probable cause. This resulted in a significant degree of suspicion that Defendant was involved in Burnett's murder, which weighs in favor of the State.

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As to the degree of intrusion, in *Williams* this Court noted that it was low, in part due to the defendant being under arrest. *Id.* In this case, Defendant was held for some of the time that his phone was seized, decreasing the amount of intrusion for that period of time. After that, Defendant's phone was temporarily detained for less than a day, which, while inconvenient, was not so great a period of time as to make this a significant intrusion. There was no evidence presented that Defendant's travel, access to his home, or other activities were prevented by the seizure of his cell phone. And the intrusion occasioned by police "delay" in obtaining the warrant was also moderated by their reasonable conduct in fixing whatever deficiencies existed in the initial probable cause affidavit and re-presenting it. *See, e.g., Watkins v. State*, 85 N.E.3d 597, 602 (Ind. 2017) (noting that a high degree of intrusion was nevertheless moderated by other reasonable police conduct). The delay was not the result of police making no effort at all to obtain a warrant for 22 hours.

Additionally, this Court could consider the fact that when police applied for a warrant, they knew that the intrusion on Defendant occasioned by the deprivation of his phone would potentially have been for a period of "weeks or months" once a warrant was approved (Supp. Ex. 1 at 8). Police did not act unreasonably in intruding on Defendant's possessory interest for 22 hours during which they obtained a warrant when the reality was that Defendant would be without his phone for much longer once a warrant was approved. This is not to say that police could have waited weeks or months to apply for a warrant. It is just to point out

that police did not act unreasonably in holding Defendant's phone for some additional hours while they reworked and re-presented the probable cause affidavit for the search warrant in light of that fact. This factor does not weigh against the State.

The law enforcement needs, which included the need to deter and investigate crime and to apprehend its perpetrators, were high. *Moore v. State*, 211 N.E.3d 574, 583 (Ind. Ct. App. 2023). In that respect this case is identical to *Williams* in that it involved a "need for the evidence on the cell phones—assuming the approval of the requested search warrant—and their concomitant need to maintain chain of custody over those phones pending the approval of that warrant," which this Court found was "very high." *Id.* at 288. Here the police were investigating a murder and trying to apprehend the murderer, so the need could hardly be higher.

In sum, the degree of suspicion was high due to the significant connection of Defendant to the crime scene during the relevant timeframe and the possibility of finding relevant location data on the phone. The intrusion of Defendant having to go less than a day without a cell phone was not significant. And the law enforcement need to apprehend a murderer was very high. Viewing the totality of the circumstances, the officer's seizure of Defendant's phone pending the approval of the warrant was not unreasonable under the Indiana constitution.

### **C. Harmless error**

Even if the trial court's decision resulted in constitutional error, the appellate court need not reverse if the error is found to be harmless beyond a reasonable

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doubt. *Zanders v. State*, 118 N.E.3d 736, 741 (Ind. 2019) (citing *Chapman v. California*, 386 U.S. 18, 24 (1967)). One way of making this evaluation is to ask whether it is clear beyond a reasonable doubt that the fact-finder would have reached the same decision absent the error. *Id.* at 743 (citing *Neder v. United States*, 527 U.S. 1, 18 (1999)).

Any error in this case would be harmless because there was strong independent evidence to support his conviction apart from the evidence found on Defendant's phone. The State had evidence that Defendant called 911 and thus would have been in the area of Burnett's body during or after the time of her death (Tr. Vol. III 133-34; St. Ex. 1A). Witnesses saw him going into the residence during the couple of days preceding the discovery of her body, and there was no evidence that anyone else was in the home during that time, which was the timeframe within which the pathologist believed she would have died (Tr. Vol. III 143, 192-93; IV 26-27). There was also strong evidence of Defendant's motive, as texts from Burnett's phone revealed volatility in their relationship, which is a paradigmatic motive for acts of domestic violence (St. Ex. 115).

Defendant was seen exiting the home before police arrived carrying a bag and other items which he put in the trunk of Burnett's car (Tr. Vol. III 192). When found the next day, in the trunk was a bag containing a pair of pants with blood stains that matched the DNA profiles of Burnett and Defendant, and laundry detergent, which could have been used to wash the pants and potentially remove the blood and DNA evidence from them (Tr. Vol. III 186; IV 55, 57; St. Ex. 16, 19).

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There was also other evidence of Defendant's intent to conceal the fact of Burnett's death or his connection to it. The presence of the fan blowing on Burnett's body, the dryer sheets, and lowering the temperature in the house could be construed as an attempt to conceal any odor arising from the body (Tr. Vol. III 143-44, 161-63). Defendant removed himself from the house before calling 911, thus preventing police from attempting to question him at the scene (Tr. Vol. III 145). A security camera present in the home, which might have recorded events therein, had been removed (Tr. Vol. IV 69-70; St. Ex. 35). Defendant had also told Smith not to come to the house at a time when Burnett's body would have potentially been discovered by him (Tr. Vol. IV 67, 69).

Additionally, much of the evidence found on Defendant's phone was cumulative of other evidence found in "mirror image" on Burnett's phone, to which Defendant did not object. This included the evidence of motive and the content and timing of calls and texts (Tr. Vol. IV 98, 102-07; St. Ex. 115, 116, 118, 119). The evidence from Defendant's phone concerning his texts with Smith was cumulative of Smith's testimony (Tr. Vol. IV 67, 69).

Defendant focuses his harmless error argument on the one piece of evidence unique to his phone, his possession of a picture of Burnett, and the State's argument concerning the picture (Tr. Vol. IV 107-08, 111; St. Ex. 121, 123). However, the jury was independently informed, because of the 911 call, that Defendant was in the house and observed Burnett dead, which was what the picture appeared to depict (St. Ex. 1A). The presence of the picture, from which one

could infer that Defendant was aware of her death, added little when compared to the other evidence.

And while the State did comment upon the picture and what Defendant's motive might be to possess the picture, that speculative argument paled in comparison to the other evidence. Given the other evidence that Defendant was the only person observed in the home where Burnett's body was found during the timeframe of her death, Defendant's motive to kill Burnett due to their volatile relationship, his possession of clothing with blood containing both his and Burnett's DNA, the plentiful evidence of efforts to conceal the crime, and the cumulative nature of much of the phone evidence, one additional picture from Defendant's phone was harmless beyond a reasonable doubt even if it was erroneously admitted.

## **CONCLUSION**

This Court should affirm the trial court's judgment.

Respectfully submitted,

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**WORD COUNT CERTIFICATE**

I verify that this brief contains no more than 14,000 words.

/s/ Daylon L. Welliver  
Daylon L. Welliver

**CERTIFICATE OF SERVICE**

I certify that on June 10, 2024, the foregoing document was electronically filed using the Indiana E-filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS.

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IN THE  
INDIANA COURT OF APPEALS

**APPELLATE CASE NO. 23A-CR-02699**

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## **SUMMARY OF ARGUMENTS**

I. Law enforcement did not have probable cause to arrest Laster at the time it unlawfully seized his phone. Laster was brought in voluntarily for an interview at the time law enforcement seized his phone without a warrant. Laster was able to leave after refusing to talk with law enforcement without an attorney because law enforcement did not have probable cause to arrest Laster. Thus, the search incident to arrest exception is not applicable, and the trial court erred in admitting the evidence obtained as a result of the unlawful seizure.

II. Under the Fourth Amendment and Art. 1, § 11 of the Indiana Constitution, the attenuation doctrine is not applicable because the cell phone evidence came directly from law enforcement's exploitation of illegality— law enforcement continued to seize the phone after the first warrant was denied and the second search warrant was granted after the warrantless seizure. The evidence has no independent source able to purge the primary taint. Thus, the cell phone evidence cannot be used to sustain Laster's conviction. Laster's conviction must be reversed.

## ARGUMENTS

### I. The seizure of Laster's phone was not pursuant to a search incident to arrest.

On appeal the State now claims the warrantless seizure was lawful because it was pursuant to a search incident to arrest. Br. of Appellee at 17. This Court cannot affirm the trial court's admission of evidence on this basis because the record indicates law enforcement did not have probable cause to arrest Laster at the time his phone was unlawfully seized.

A warrantless arrest "must stand upon firmer grounds than mere suspicion." *Wong Sun v. U.S.*, 371 U.S. 471, 479 (1963). Probable cause, which warrants a man of reasonable caution to believe a felony has been committed, is measured by the particular facts of the case. *Id.* The requirement for probable cause and its determination cannot be diluted under any circumstance. *Id.* "[A] relaxation of the fundamental requirements of probable cause would 'leave law-abiding citizens at the mercy of the officers' whim or caprice.'" *Id.* (quotation omitted).

The information known to law enforcement at the time of the warrantless seizure was: (a) Burnett was shot in Laster's home, (b) Laster found Burnett and called 911 from his cell phone to report Burnett's body in his home, and (c) neighbors witnessed Laster going in and out of the house a few hours before the call was made. Conf. Supp. Exh. 001 at 5-6; Br. of Appellee at 16. Those three facts standing alone do not establish probable cause that Laster murdered Burnett.

Further, at the pre-trial suppression hearing, the State stipulated to the fact Laster was not under arrest at the time his phone was seized because "he was brought into the homicide office for questioning . . ." Tr. Vol. II 17. In fact, it is documented in the probable cause

affidavit submitted with both warrant requests (Exh. 001 and Exh. 002) that Laster was brought in for an “interview” when his phone was taken. Conf. Supp. Exh. at 6, 19. It is hard to believe if law enforcement had probable cause to arrest a suspect for murder, it would voluntarily let that suspect go after arresting him/her—especially when no new information was obtained after the suspect was arrested.

The warrantless seizure of Laster’s phone cannot be supported under the search incident to arrest exception to the warrant requirement. Thus, the seizure was unlawful, and the trial court’s admission of the cell phone evidence was erroneous.

**II. The evidence obtained from the unlawful seizure is fruit of the poisonous tree and cannot be used to sustain Laster’s conviction.**

Evidence obtained from an unlawful seizure “must be excluded under the fruit of the poisonous tree doctrine.” *Clark v. State*, 994 N.E.2d 252, 266 (Ind. 2013). “This extension of the exclusionary rule bars evidence directly obtained by the illegal search or seizure as well as evidence derivatively gained as a result of information learned or leads obtained during that same search or seizure.” *Id.*

Under the attenuation doctrine, the exclusionary rule is not applicable when the evidence obtained from the illegal conduct has an independent source sufficient to purge the primary taint. *Wong Sun*, 371 U.S. at 488. The attenuation doctrine applies under both the Federal and State Constitution. *Id.*; *Wright v. State*, 108 N.E.3d 307, 317 (Ind. 2018). It is the State’s burden to show the attenuation doctrine is applicable—the evidence should be admitted regardless of the violation—after the defendant shows there is a violation, and the evidence is fruit of that violation. *Clark*, 994 N.E.2d at 266.

#### **A. Under the Fourth Amendment the attenuation doctrine does not govern.**

Under the Fourth Amendment, courts employ a three-part test to determine if the attenuation doctrine applies. *Wong Sun*, 371 U.S. at 488; *Clark v. State*, 994 N.E.2d 252, 266 (Ind. 2013); *Wright*, 108 N.E.3d at 318. First, courts consider “the time elapsed between the illegality and the acquisition of the evidence.” *Clark*, 994 N.E.2d at 266 (quotation omitted). Second, “the presence of intervening circumstances.” *Id.* Third, “the purpose and flagrancy of the official misconduct.” *Id.*

Here, the police held Laster’s phone for 22-hours after its warrantless seizure before a search warrant was issued. Tr. Vol. II 19; Br. of Appellee at 19. During the 22-hour gap, police tried and failed to get a search warrant. Tr. Vol. II 36. The State concedes that after the first judge denied the initial warrant application, it should have returned the phone. *Id.* (arguing “if a judicial officer said you can’t search this phone, the remedy is to return it. We didn’t intrude upon the phone. We did take it from his person without a warrant at that time.”). The granted search warrant does not purge this taint.

The fact that the first warrant application was denied emphasizes the illegality of the seizure. Law enforcement was told it did not have probable cause to search the phone, meaning it did not have probable cause to continue to seize the phone, either. Yet, police continued to unlawfully seize Laster’s phone until a second judge permitted the search.

Law enforcement’s flagrant misconduct here cannot support a holding that the derivative evidence came by means sufficiently distinguishable to purge the primary taint. Thus, the cell phone evidence is fruit of the poisonous tree and cannot be used to sustain Laster’s conviction.

**B. Under the Art. 1, § 11 of the Indiana Constitution the attenuation doctrine does not govern.**

Under the Indiana Constitution, courts consider what is reasonable in light of the totality of circumstances when deciding whether the evidence is so attenuated from the illegality to become admissible at trial. *Wright*, 108 N.E.3d at 317-18. Indiana's exclusionary rule "parallels" the federal rule, but it does not "parrot" it. *Id.* As such, Indiana's rule begins with the federal three-part test but does not end there. *Id.* at 318. When considering the third element—the purpose and flagrancy of the misconduct—Indiana courts also evaluate whether the source of the evidence is sufficient to purge any taint. *Id.* Indiana courts also consider any "other factors [that] present themselves." *Id.*

In addition to incorporating the arguments made above, there is an additional factor this Court should consider under the totality of circumstances determination. The State maintains the second warrant sufficiently distinguished any taint from the initial illegality because it contained additional information "in the probable cause affidavit that was independent of and not related to the mere fact that the police continued to hold the phone." Br. of Appellee at 19-20. Because the first probable cause affidavit from the first search warrant was not admitted, it is unclear when police obtained the additional information. If the information was obtained after the unlawful seizure, then the second warrant is entwined with the exploitation of illegality. Thus, based on the totality of circumstances the derivative evidence obtained from the phone was the result of law enforcement's exploitation of illegality.

The evidence obtained as a result cannot be used to sustain Laster's conviction.

## CONCLUSION

For these reasons, Laster respectfully requests this Court hold the attenuation doctrine is not applicable in his case under either the Fourth Amendment or Art. 1, § 11 of the Indiana Constitution. Because the evidence was obtained in violation of Laster's constitutional rights under the Fourth Amendment and Art. 1, § 11 of the Indiana Constitution, the trial court abused its discretion in admitting the evidence. Laster's conviction must be reversed.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I certify a copy of the Reply Brief of Appellant was served upon Attorney General Theodore Rokita, and Deputy Attorney General, Daylon L. Welliver, via E-Service, this 24th day of June, 2024.

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## Appendix K

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### INDIANA SUPREME COURT

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#### IN THE INDIANA COURT OF APPEALS

CAUSE NO. 23A-CR-02699

ALSHAM M. LASTER,	)	Appeal from the
	)	Marion County Superior Court,
Defendant/Appellant	)	Criminal Division 20
	)	
v.	)	Lower Court Cause Number
	)	49G20-2111-MR-033962
	)	
STATE OF INDIANA,	)	The Honorable
	)	Jennifer Prinz Harrison, Judge
Appellee	)	

#### **PETITION TO TRANSFER**

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## QUESTIONS PRESENTED ON TRANSFER

I. When police seize evidence without a warrant based on exigent circumstances—specifically, the threat of destruction of evidence—they must secure the evidence to eliminate the threat while acting diligently to obtain a search warrant. In the case of cell phones, the threat does not stem solely from the defendant’s physical possession of the phone; it also comes from the defendant’s (or a third party’s) ability to wipe or encrypt the data remotely, as recognized in *Riley v. California*. Should this Court grant transfer to hold when a cell phone is seized under the threat of destruction of evidence exception to the warrant requirement, police must secure the phone in a manner that eliminates the threat, like putting it in airplane mode or a faraday bag?

I.A. When police are denied a search warrant for a phone, the proper remedy is to return the phone to its owner as soon as possible. Continuing to seize the phone for almost an entire day while submitting another warrant application to another judge is evidence police were not acting diligently or, worse, warrant shopping. Should this Court further hold that a twenty-two-hour delay in obtaining a warrant is not evidence of diligence?

II. It is well established that Article 1, § 11 of the Indiana Constitution confers greater protection than the Fourth Amendment. Should this Court grant transfer to hold that police seizure of a cell phone is unreasonable under Article 1, § 11 where: police do nothing to secure the phone and continue to seize the phone after a search warrant is denied, causing a twenty-two-hour seizure of the phone?

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## **BACKGROUND AND PRIOR TREATMENT OF THE ISSUES ON TRANSFER**

Alsham Laster (“Laster”) was found guilty, by a jury, of the murder of his live-in girlfriend Latisha Burnett. App. Vol. II 9, 30. At trial, Laster objected to the admission of the evidence obtained from his phone and any testimony surrounding the evidence based on an unlawful seizure. Tr. Vol. IV 41-42, 67-8, 96, 99, 104-05, 107-09, 115, 117, 124. Specifically, that his phone was unlawfully seized and searched under both the Fourth Amendment of the United States Constitution and Article 1, § 11 of the Indiana Constitution. *Id.*

Police took Laster’s phone from him when he came in for questioning around 2:00 A.M. on July 13, 2021. Tr. Vol. II 17. Police did not secure the phone by placing it in airplane mode, removing the battery, or placing it in a faraday bag. Tr. Vol. II 29; Tr. Vol. IV 116. On July 14, 2021, at 8:16 A.M., the State submitted a warrant for the seizure and search of Laster’s phone—twenty-two hours after Laster was released. Tr. Vol. II 17-21; Tr. Vol. III 189-90. This was the second warrant application to search the phone—a different judge had already denied a warrant. Exh. 001 (Supp. Exh. 3). By the State’s own concession, the phone should have been returned after the first warrant application was denied. *See* Tr. Vol. II 36 (arguing the proper remedy when a judge says you cannot search the phone is to return it). The State further conceded,

I know Detective Pearson in hindsight would do this differently.  
I don’t think we’re saying this was strategic or anything.  
...

And you know, again, I, I know that Detective Pearson would go back in time and do things slightly different, but you know, it’s not intentional misconduct by the State nor is it unreasonable, the steps that were taken, even though it was not timely, Judge.

*Id.* at 22, 34.

The State maintained the phone and its contents were capable of being destroyed or manipulated, exigent circumstances justifying the warrantless seizure. *Id.* at 21-22. Laster maintained the warrantless seizure was unreasonable because the use of his phone to call 911 is not enough to establish the phone itself contained evidence. *Id.* at 35. Laster argued that such a finding would create a slippery slope, allowing police to seize a phone whenever someone is suspected of a crime. *Id.*

The trial court found law enforcement did not act unreasonably under the Fourth Amendment. *Id.* at 37-38. Further, applying the *Litchfield* factors, the court found the seizure of the phone reasonable under the Indiana Constitution, even though the intrusion was high. *Id.*

On appeal, Laster challenged the admission of evidence from his phone under the Fourth Amendment and Article 1, § 11 of the Indiana Constitution. Br. of Appellant 13. In addition to arguing police did not have probable cause to seize the phone, Laster argued police did not secure the phone to eliminate the threat of destruction of evidence or act diligently to obtain a warrant. *Id.* at 17-20. In response, the State argued the evidence was properly admitted because police lawfully seized the phone under the search incident to arrest and exigent circumstances exception to the warrant requirement. Br. of Appellee 12-13.

Oral argument was held on August 30, 2024. [Online Docket]. A month later, the Court of Appeals, in a memorandum decision, affirmed Laster's conviction under both the Federal and State constitution. *Laster v. State*, 23A-CR-2699, at \*2 (Ind. Ct. App. Sept. 24, 2024) (mem.). The court held the police had probable cause to believe evidence was on the phone because:

(a) Laster used it to call 911, (b) he was not home when he called, (c) Burnett's body had three potential gunshot wounds and was found lying in a bedroom, (d) three bullet casings were in the trashcan, and (e) a neighbor saw Laster coming and going from the house "around the time Burnett was killed." *Id.* at \*8. However, Burnett's time of death was not established at trial and the neighbor reported hearing what she believed was a gunshot the day before. Tr. Vol. III 197; Tr. Vol. IV 26.

The court further held that exigent circumstances existed to justify the seizure under the Fourth Amendment because there was a threat of evidence being destroyed once Laster was released, and the twenty-two-hour delay in obtaining the warrant did not make the seizure unreasonable. *Laster*, 23A-CR-2699, at \*9-10. The court made a general finding that "police secured [the phone] while applying for a warrant" and cited *Riley v. California*, 573 U.S. 373, 388-89 (2014). *Id.* at \*10.

Under the Indiana Constitution, the court held police had a moderate degree of concern that a violation occurred, the degree of intrusion was low (contradicting the trial court's finding) because police did not search the phone until they obtained a warrant, and law enforcement's needs "weigh[ed] in favor of the State." *Id.* at \*13-15. The court acknowledged that police took no "additional steps to better protect the information on Laster's phone after seizing it—turning it off, placing it in airplane mode, and/or putting it in a Faraday case." *Id.* at \*15. Law enforcement's failure to do so "cuts against [its] needs being significant." *Id.*

On October 4, 2024, Laster filed a Motion to Publish, and twelve (12) days later the court denied the motion. [Online Docket].

## ARGUMENTS

Without consent or a warrant, police seized Laster's phone for almost an entire day, even after its initial warrant application was denied. This is the epitome of unreasonable government intrusion—the very intrusion both the Federal and State constitutions were drafted to protect against. Law enforcement acted unreasonably by: (a) not eliminating the threat of destruction of evidence that it claimed existed, (b) not timely seeking a warrant like it did for other property; and (c) submitting a previously denied warrant application to another judge. In so doing, police intruded on Laster's constitutional rights.

This Court should grant transfer because the Court of Appeals' decision waters down constitutional search and seizure protections as they relate to cell phones—property that is highly valued and relied on by citizens. *See Seo v. State*, 109 N.E.3d 418, 438 (Ind. Ct. App. 2018) vacated by 148 N.E.3d 952 (Ind. 2020) (recognizing cell phones have been referred to as a second brain or extension of the mind); *Collidge v. New Hampshire*, 403 U.S. 443, 545 (1971) (“It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.”); *Olmstead v. U.S.*, 277 U.S. 438, 474 (1928) *overruled on other grounds* (Brandeis, J. dissenting) (warning that “in the application of a Constitution, our contemplation cannot be only of what has been, but of what may be.”)

This Court should hold that under the threat of destruction of evidence exception to the warrant requirement law enforcement must take steps to eliminate that threat by securing the phone. To secure the phone, law enforcement must, at minimum, place the phone in airplane mode, a faraday bag, or remove the battery to prevent the threat of remote wiping or tampering. This Court should further hold that when a warrant to search a phone has been

denied, police must notify the defendant and begin to take steps to return the property—police cannot continue to hold the property indefinitely without proper notification while it further investigates or submits additional warrants to other judges in hopes of getting a different result. Further, a twenty-two-hour delay in obtaining a warrant to search a phone, when other warrants for other property were submitted and granted near the time of the seizure, cannot be considered acting diligent.

The Court of Appeals' choice not to publish this decision should not shield it from this Court's review, especially when memorandum decisions can be relied upon as persuasive authority in the trial court, and Court of Appeals panels have begun to discuss such cases in published opinions. *See F.L. v. Community Fairbanks Behavioral Health*, --- N.E.3d ----, 2024 WL 4455445 at \*3 n. 3 (Oct. 10, 2024), *trans. denied* (discussing a memorandum decision to support its contention). Further, this case is of great constitutional importance, warranting this Court's voice.

### **I. Under the Fourth Amendment, the warrantless seizure was unlawful.**

The seizure of property under the exigent circumstances exception requires a balance of privacy-related and law enforcement-related concerns to determine if the intrusion is reasonable, even if the seizure primarily implicates possessory interests.<sup>1</sup> *Illinois v. McArthur*, 531 U.S. 326, 331 (2001). When the property being seized is a cell phone, the exception

<sup>1</sup> The Seventh Circuit has interpreted the balancing test as considering the individual's possessory interest when a seizure is involved, not the individual's privacy interest as stated in *McArthur*. *See U.S. v. Burgard*, 675 F.3d 1029, 1033 (7th. Cir. 2012) (stating “[o]n the individual person's side of this balance, the critical question relates to any possessory interest in the seized object”). However, *McArthur* deals with a seizure of property (a home). 531 U.S. at 331. Thus, Laster relies on the explicit test stated in *McArthur* although case law has established a seizure only effects an individual's possessory interest. *Segura v. U.S.*, 468 U.S. 796, 806 (1984).

requires the phone be secured to eliminate the threat while police act diligently to obtain a warrant. *Williams v. State*, 204 N.E.3d 279, 287 (Ind. Ct. App. 2023), *trans. denied* (citing to *Riley v. California*, 573 U.S. 373 (2014)). The seizure must be tailored to the need (to prevent the destruction of evidence), limited in time and scope (act diligently), and avoid significant intrusion. *Id.*

**A. Securing a cell phone to eliminate the threat of remote destruction of evidence is required to ensure the restraint is tailored to the need.**

The exception requires the seizure be tailored to the need to minimize its abuse. Without this safeguard, police could seize almost anything of potential evidentiary value because almost anything could be destroyed. Instead, police must specify what evidence is at threat of being destroyed and why the threat exists. *Coolidge*, 403 U.S. at 455 (explaining exceptions to the warrant requirement are “jealously and carefully drawn” and those seeking exemption must show “that the exigencies of the situation made that course imperative.”).

The threat of destruction of evidence on a cell phone can come from the defendant or a third-party. When the defendant is secured and no longer in possession of the phone, the threat no longer comes from the defendant. *Riley*, 573 U.S. at 388. However, a threat from a third-party could exist. *Id.* at 389. Cell phone data can be erased or encrypted remotely. *Id.* at 388. This threat of remote tampering was recognized in *Riley*, and the U.S. Supreme Court explained that police have “specific means to address the threat.” *Id.* at 388, 390. Police can disconnect the phone from the network by turning the phone off, removing the battery, or placing it in a faraday bag. *Id.* at 390. Releasing the defendant resurrects the threat of remote wiping by the defendant—that is why it is necessary for police to eliminate the threat of remote tampering.

In *Williams v. State*, the court's holding that there was no Fourth Amendment violation was predicated on the fact that when police seized the defendant's phones, the phones were placed in "airplane mode while they awaited a search warrant for those phones." 204 N.E.3d 279, 287 (Ind. Ct. App. 2023). This action adequately "secured" the phone pursuant to the exception. *Id.* Thus, under the threat of destruction of evidence exception police are required to eliminate the threat by securing the phone and eliminating the threat of remote tampering.

Here, police did not secure Laster's phone after seizing it. The battery was not removed, and it was not placed in a faraday bag or airplane mode. Tr. Vol. II 29; Tr. Vol. IV 116. Thus, the restraint was not tailored to the need.

**B. A warrantless seizure is not limited in time and scope when it takes twenty-two hours to secure a warrant, and the property was involuntarily relinquished.**

When police warrantlessly seize a phone, they must act diligently to obtain a warrant for the seizure to be limited in time and scope. A seizure that is reasonable at its inception can become unreasonable because of its duration. *Segura v. U.S.*, 468 U.S. 796, 812 (1984). How long is too long is a fact sensitive inquiry, and there is no bright line rule. *U.S. v. Burgard*, 675 F.3d 1029, 1033 (7th. Cir. 2012). Instead, a court must assess the reasonableness of the seizure by balancing the privacy-related and law enforcement-related concerns. *McArthur*, 531 U.S. at 331.

If the defendant did not voluntarily relinquish the property, for example, police must act more diligently. *State v. Val Leeuwen*, 397 U.S. 249, 253 (1970); *U.S. v. Place*, 462 U.S. 696, 708 (1983); *Illinois v. McArthur*, 531 U.S. 326, 332 (2001). In voluntarily relinquishment cases, the defendant's possessory interest is considered low. See *State v. Val Leeuwen*, 397 U.S. 249,

253 (1970) (explaining the only interest at stake of being invaded from the twenty-six-hour seizure of the mailed packages was the defendant's privacy interest and that interest was not disturbed until a warrant was obtained). In those cases, a seizure of more than twenty-four hours is not unreasonable. *Id.* But, the defendant's possessory interest remains high if the defendant involuntarily relinquishes the property. In those cases, a seizure as short as ninety (90) minutes can be unreasonable. *See U.S. v. Place*, 462 U.S. 696, 708 (1983) (finding the ninety-minute seizure of the defendant's luggage unreasonable because the seizure interfered with defendant's high possessory interest).

The scope of the seizure is also determinative of how long is too long for a warrantless seizure. *Illinois v. McArthur*, 531 U.S. 326, 332 (2001) (finding a two-hour warrantless seizure of the defendant's home reasonable because the seizure was limited in time and scope—police still allowed the defendant to access his home under supervision of the police).

Theoretically, once police seize property it should immediately take steps to secure a warrant. Especially when the defendant holds a high possessory and privacy interest in the property. This is evidence of acting diligent. *McArthur*, 531 U.S. 332. More pressing matters in the investigation may require police's attention first. But, if the record shows police had time to submit other warrants near the time of the seizure, its failure to submit the warrant with the others shows lack of diligence. The intrusion of the individual's possessory interest is, therefore, "less likely to be justifiable." *Burgard*, 675 F.3d at 1033.

Citizens hold a high possessory, as well as privacy interest, in their phone because of

how phones are used. Phones are used not only for communication but as a form of payment<sup>2</sup> and keys.<sup>3</sup> Phones are also used to manage finances,<sup>4</sup> conduct business, and obtain transportation.<sup>5</sup>

Here, police took Laster's phone from him without his consent and without a warrant. Thus, the phone was involuntarily relinquished, and Laster maintained a high possessory interest.

Depriving Laster of his phone for twenty-two hours after he was released significantly intruded on his possessory interest. Police applied for multiple warrants during the eight (8) hours Laster was at the homicide office and police were in possession of his phone. *See* Handout for Oral Argument [Online Docket]. Yet, police did not submit and obtain a warrant to search the phone during that time.

After Laster was released, police continued to seize his phone and took twenty-two hours to obtain a warrant. Law enforcement-related concerns were, therefore, minimal. When balanced against Laster's high possessory and privacy-related interest, the scales tip in favor of Laster. Law enforcement did not act diligently to obtain a warrant. Thus, the seizure was not limited in time and scope.

<sup>2</sup> Apple Pay, Apple, <https://www.apple.com/apple-pay/> (last visited Oct. 29, 2024); Google Pay, Google, <https://pay.google.com/about/pay-in-store/> (last visited Oct. 29, 2024).

<sup>3</sup> MyBuick Mobile App, Buick <https://www.buick.com/explore/connectivity/mybuick-app> (last visited Oct. 29, 2024); Phone as a Key, Ford <https://www.ford.com/support/how-tos/fordpass/phone-as-a-key/what-is-phone-as-a-key-in-fordpass/> (last visited Oct. 29, 2024).

<sup>4</sup> Bank of America, <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/overview/> (last visited Oct. 29, 2024); Wells Fargo, <https://www.wellsfargo.com/mobile-online-banking/> (last visited Oct. 29, 2024).

<sup>5</sup> Uber, <https://www.uber.com/us/en/download/> (last visited Oct. 29, 2024); Lyft, <https://www.lyft.com/rider/cities/mobile-al> (last visited Oct. 29, 2024).

**C. The continued seizure of property after the denial of a warrant is a significant intrusion on an individual's interest.**

Warrant shopping is a dangerous practice that runs afoul of the Fourth Amendment and the public's confidence in the integrity of the justice system. Yet the U.S. Supreme Court has not clarified whether it is diligent for police to submit the same, or substantially similar, warrant application to another judge (after the initial application is denied) in hopes of getting a different result without violating the Fourth Amendment.<sup>6</sup>

Holdings vary in the few courts across the country that have spoken on the issue. *See U.S. v. Pace*, 898 F.2d 1218, 1230-31 (7th Cir. 1990) (holding “[t]he Fourth Amendment on its face does not prohibit the government from seeking a second magistrate's approval to search when another magistrate denies a search warrant.”); *U.S. v. Davis*, 346 F. Supp. 435, 442 (S.D. Ill. 1972) (holding a magistrate's denial of a search warrant is a judicial decision that is final and binding and equitably estops another magistrate from issuing a search on the same showing); *People v. Bab*, 740 N.Y.S.2d 846, 949 (N.Y. 2002) (cautioning the circumstances do not involve a prior magistrate not finding probable cause and the affiant approaching a different magistrate in hope of getting a different result, in effect judge shopping); *People v. Bilskey*, 734 N.E.2d 341, 344 (N.Y. Ct. App. 2000) (rejecting the proposition that successive warrant applications weaken Fourth Amendment protections); *In the MATTER OF the SEARCH OF ONE DIGITAL DEVICE CURRENTLY LOCATED AT 601 4TH STREET NW, WASHINGTON, DC UNDER RULE 41*, No. 24-sw-91, 2024 WL 2152740, at \*5 (D.C. May 14, 2024) (mem.) (holding “when the government has presented an application

<sup>6</sup> Counsel has failed to find any SCOTUS case addressing this issue.

for a search warrant to one magistrate judge and it has been denied, it cannot then present a substantially similar application for the same target property to a different magistrate judge in hope of a better outcome.”); *People v. Rivoti*, 132 Misc.2d 106, (City Ct. N.Y. May 28, 1986) (refusing to permit police to ignore a judge’s denial of warrant and seek a more favorable judge because it “undermines the integrity of the judicial process and opens the door to all kinds of abuse. To hold otherwise approves judge shopping.”).

By the State’s own concession, when a judge says you cannot search a phone, the proper remedy is to return it. Tr. Vol. II 36. After a warrant application is denied, the continued seizure of the property, coupled with the submission of another warrant to another judge, makes the continued intrusion less likely to be justifiable. After such a denial, police no longer have authority to seize the property for the purpose of searching it. Further, if there is no established limit on how many times police can submit a warrant after it has been denied, then police are free to warrant shop without repercussions. Such action by the government is the type of significant intrusion that motivated our Founders to pass the Fourth Amendment. Further, police have other avenues they could use to appeal the denial of such a warrant.

*Compare In the MATTER OF the SEARCH OF ONE DIGITAL DEVICE CURRENTLY LOCATED AT 601 4TH STREET NW, WASHINGTON, DC UNDER RULE 41*, 2024 WL 2152740, at \*1 n. 1 (providing Fed. R. Civ. P. 59(e) and 60 provide for motions for reconsideration and can be utilized to review denied warrants), *with* Ind. Civ. P 59 and 60 (mimicking the federal rules on motions for reconsideration).

Here, police did nothing to avoid a significant intrusion into Laster's possessory interest. Once the first warrant was denied, police should have notified Laster and returned his phone.

Allowing police to surreptitiously hold citizen's property after the denial of a search warrant is dangerous and subject to abuse. The record shows police engaged in this practice of submitting another warrant to a different judge after its original application was denied, **twice**—one denial for the search of Laster's cell phone records and one for the search of his phone. Exh. 001 and 003 (Supp. Exh. 3, 25) (emphasis added). This Court should hold that once a search warrant is denied, police are required to notify the defendant and return the property. Further, a more appropriate remedy to challenge the denied warrant is to seek review of the decision to eliminate the threat of warrant shopping, something the defendant should also be notified of. Ind. Civ. P 59 and 60.

## **II. Under Article 1, § 11 of the Indiana Constitution the warrantless seizure was unlawful.**

Article 1, § 11 of the Indiana Constitution confers greater protections than the Fourth Amendment. *Ramirez v. State*, 174 N.E.3d 181, 191 (2021). The reasonableness of any law enforcement intrusion is based on the totality of circumstances while balancing three factors: (1) the degree of suspicion, (2) the degree of intrusion, and (3) the extent of law enforcement needs. *Id.*

The degree of suspicion is based on the information available to the officer at the time of the seizure. *Id.* When Laster's phone was seized—after he arrived at the homicide office for questioning—police knew Laster used his phone to call 911, and a neighbor saw him coming and going from the house before he called 911, put a bag in his truck, and leave. Supp. Exh.

19 (warrant highlighting information known to police three hours after initial seizure of phone); Tr. Vol. II 17; Tr. Vol. III 138, 192. Thus, the degree of suspicion that the phone contained evidence of a crime was minimal.

The degree of intrusion is evaluated from the defendant's perspective and considers the restraint on his physical movement and privacy, while focusing on how the police conducted the seizure. *Ramirez*, 174 N.E.3d at 192. Here, taking Laster's phone put a significant restraint on his movement as he was released from the homicide office with no car and no way to call a ride. Further, the intrusion into Laster's privacy was significant. Citizens have a high privacy interest in their phone, and a warrantless seizure from the government is highly intrusive. Thus, as the trial court found, the degree of intrusion was high and weighed in favor of Laster. Tr. Vol. II 38.

To determine the extent of law enforcement needs, courts consider the police's need to act in a particular way, at that time. *Id.* After police seized Laster's phone, they did not secure the phone and eliminate the threat. Thus, as the Court of Appeals held, this failure to act cuts against law enforcement's need to seize the phone without a warrant. The extent of law enforcement needs was, therefore, minimal.

Based on the totality of circumstances, police's actions were not reasonable; thus, the seizure was unreasonable.

## **CONCLUSION**

For these reasons, this Court should grant transfer and vacate the Court of Appeals' decision that further water downs citizens constitutional protection against unreasonable intrusion by the government.

## **WORD COUNT CERTIFICATE**

I hereby certify that the foregoing Petition to Transfer contains no more than 4,200 words.

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 6, 2024, I filed the foregoing Petition to Transfer electronically, using the Indiana E-filing System (“IEFS”). I certify further that the following individuals were electronically served, Deputy Attorney General, Daylon L. Welliver, and Theodore Rokita, Attorney General.

*/s/ Talisha Griffin*  
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IN THE  
COURT OF APPEALS OF INDIANA

No. 23A-CR-2699

ALSHAM MONTUE LASTER,  
*Appellant-Defendant,*

v.

STATE OF INDIANA,  
*Appellee-Plaintiff.*

Appeal from the  
Marion Superior Court 20,  
  
No. 49D20-2111-MR-33962,  
  
The Honorable  
Jennifer P. Harrison, Judge.

**BRIEF IN OPPOSITION TO TRANSFER**

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Brief in Opposition to Transfer  
State of Indiana

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## **BRIEF IN OPPOSITION TO TRANSFER**

The Court of Appeals' memorandum decision correctly held that holding Defendant's phone for less than a day to apply for a search warrant during an active murder investigation did not unreasonably infringe on Defendant's privacy or possessory interests, and did not violate Article 1, Section 11 of the Indiana Constitution. *Laster v. State*, 23A-CR-2699, slip op. at 10-12 (Ind. Ct. App. Sep. 24, 2024). Both the Federal and Indiana Constitutions turn on reasonableness in particular circumstances, not perfection in the ideal. Defendant is wrong to claim that police cannot secure evidence for a later authorized search unless the safekeeping measures are comprehensive barriers to any hypothetical access to the evidence. Defendant's concerns over "warrant shopping" are not supported in law, and not justified by the facts of this case. There is no justification for further review here, and transfer should be denied.

## **BACKGROUND AND PRIOR TREATMENT OF ISSUES**

Defendant and Latisha Burnett lived together in Defendant's house (Tr. Vol. III 189-90; Supp. Ex. 1 at 6).<sup>1</sup> On July 12, 2021, Defendant called 911 from his cell phone and stated that there was a deceased person in his home (Tr. Vol. III 133-34; St. Ex. 1A 0:05-0:12, 0:52-1:00, 1:40-2:02; Supp. Ex. 1 at 5). Police arrived at Defendant's house a few minutes later, found the front door open, and entered the home (Tr. Vol. III 138, 141). Burnett's body was in a bedroom covered by a sheet

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<sup>1</sup> Suppression hearing exhibits are noted as "Supp. Ex." and the State's trial exhibits are noted as "St. Ex."

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and posed in a “funeral pose” (Tr. Vol. III 143). A dryer sheet and possible blood was found near her body (Tr. Vol. III 162-64; St. Ex. 49, 51). The room was “very cold,” a fan pointed at the body was running, and the thermostat was set at 50 degrees (Tr. Vol. III 143-44, 161). No other person was in the house (Tr. Vol. III 145).

Burnett’s body had three wounds consistent with gunshots (Supp. Ex. 1 at 6). Three fired shell cases were found in a trash can in the same room (Supp. Ex. 1 at 6). Two holes in the floor lined up with holes in Burnett’s body and a bullet was found in one of the holes (Tr. Vol. III 165-66, 168). Neighbors saw Defendant earlier that day driving a black vehicle, going in and out of the residence several times, and putting a bag in the trunk (Supp. Ex. 1 at 6). Defendant left the residence around 4:30 p.m. and had not returned (Supp. Ex. 1 at 6).

Defendant was stopped on July 13, 2021, while driving Burnett’s black vehicle (Tr. Vol. IV 40, 42; Supp. Ex. 1 at 6). Defendant was taken to the police station for an interview, and police discovered a cell phone on his person (Supp. Ex. 1 at 6). Defendant identified the phone number as the same number that Defendant called 911 from the day before (St. Ex. 1A 1:40-1:47; Supp. Ex. 1 at 6). Police took Defendant’s phone on July 14, 2021, at 2:00 a.m., as Defendant was going into the police station to be questioned (Tr. Vol. II 17). The record is silent about whether police took any measures to secure Defendant’s phone other than removing it from his person (Tr. Vol. IV 40, 42; Supp. Ex. 1 at 6). Although Defendant implied at the suppression hearing that police did not take such

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measures, there was testimony that the forensic analyst later put the phone in a Faraday cage and placed it on airplane mode, and there was no testimony that police did not do so at the time they seized the phone (Tr. Vol. II 29; Tr. Vol. IV 93, 116).

Police read Defendant his *Miranda* rights and he was in handcuffs (Tr. Vol. II 17-18). Defendant refused to talk further with police, was held, and then released at 10:53 a.m., but police retained his phone (Tr. Vol. II 18; Supp. Ex. 1 at 6). The record is silent as to whether Defendant requested the phone back upon release (Tr. Vol. II 30). Police applied for a warrant to search Defendant's phone on July 14, 2021, at 8:16 a.m. (Tr. Vol. II 18). Police submitted a cover sheet, submission form, probable cause affidavit, and search warrant for Defendant's phone to a judge (Tr. Vol. II 19-20; Supp. Ex. 1). The submission form informed the reviewing judge that: (1) an affidavit requesting a search warrant had previously been submitted to a different judge who did not issue the warrant; and (2) that additions had been made to the probable cause affidavit submitted with the second request regarding the investigation and the suspect's phone (Supp. Ex. 1 at 4). The warrant was issued and both Defendant's and Burnett's phone were taken to the lab, where a forensic examiner recovered data from the phones (Tr. Vol. IV 92-94, 97, 116; Supp. Ex. 1 at 16). Also during this time frame, police were applying for and serving other search warrants for a car and phone records (Supp. Ex. 2-4; Tr. Vol. III 183-87).

Defendant filed a motion to suppress evidence from his phone and the parties stipulated as to the timing of Defendant's arrest and release, the seizure and

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retention of his phone, and the application for the warrant (Tr. Vol. II 14, 17-18; App. Vol. II 118). No evidence was presented about whether Defendant used his phone for anything other than communication. The trial court denied the motion (Tr. Vol. II 37-39). The Court of Appeals affirmed in a memorandum decision, finding that police had probable cause to seize Defendant's phone and that exigent circumstances justified doing so. *Laster*, slip op. at 7-10. The Court found that the 22-hour time span between Defendant's release and police obtaining a warrant was not unreasonable because Defendant's privacy interests were not implicated by a seizure, and police were in the midst of a death investigation and involved in investigative tasks such as obtaining and executing multiple search warrants. *Id.* at 11-12. Finally, the Court found under the Indiana constitution that the degree of concern was "at least" moderate based on the information police had at the time they seized the phone, the degree of intrusion was low because they did not search the phone until they got a warrant, and the law enforcement need was significant. *Id.* at 15.

## ARGUMENT

### **The Court of Appeals correctly held that police acted reasonably.**

Defendant effectively asks this Court to fashion a new rule which would require police to take specific additional measures to secure a cell phone after its warrantless seizure. Such a rule is neither required by current case law nor reasonable. Nor was 22 hours an unreasonable amount of time to seek a warrant given that police were investigating a murder and did not intrude on Defendant's

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privacy interest by searching the phone. Further, there was no evidence police were warrant shopping in resubmitting the application for a search warrant.

**A. The Fourth Amendment requires reasonable justification, not perfect execution in securing evidence.**

Defendant cites to *Riley v. California*, 573 U.S. 373, 383 (2014), and *Williams v. State*, 204 N.E.3d 279, 287 (Ind. Ct. App. 2023), *trans. denied*, to support his argument that police should be required to remove cell phone batteries or otherwise place a cell phone in some type of electronic isolation after a warrantless seizure (Pet. Trans. 9-10). However, neither of those cases stand for that proposition. In *Riley*, the Court faced a challenge to a cell phone's warrantless search, not its seizure. The government argued that the search should be allowed as a search incident to arrest in part due to concerns that evidence could be destroyed. 573 U.S. at 388. The Court rejected that reasoning because there existed less-intrusive ways police could prevent destruction of the evidence by removing a phone's battery or placing it into electronic isolation while they sought a warrant. 573 U.S. at 390. The Court's mention of different ways a phone might be secured pending a warrant did not create a rule requiring that such measures be taken to validate a seizure; rather the Court was explaining why the availability of such measures vitiated any justification for a *warrantless* search. A warrantless search did not occur here and *Riley* does not support the rule Defendant urges.

Nor did *Williams* suggest such a rule. There the Court of Appeals resolved a challenge to the warrantless seizure of a cell phone, not unlike the current case. That panel simply observed that the officers had taken the phones and placed them

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on airplane mode to prevent remote access. 204 N.E.3d at 287. The Court held, consistent with *Riley*, that electronic isolation when seizing a phone did not violate the Fourth Amendment. *Id.* Its discussion of that action was limited to whether it constituted an unreasonable seizure, not whether it was required to make the seizure reasonable.

Defendant's proposed rule makes little sense because it requires perfect execution in securing evidence instead of looking at whether police acted reasonably in seizing evidence. However, whether measures are taken to secure a phone does not bear on whether the seizure was justified at the outset. Instead, the validity of a phone's seizure is based on the reasonable justifications police had at the time of seizure, such as the existence of evidence to connect the phone to a crime and exigent circumstances. *Segura v. United States*, 468 U.S. 796, 808 (1984); *Ramirez v. State*, 174 N.E.3d 181, 190 (Ind. 2021). Additionally, there is the practical consideration of what actions would meet the requirements of Defendant's rule. If an officer removes a battery but does not place the phone in a Faraday bag, is that enough? If he takes the phone to a building where cell phone reception is bad, is that enough? Such a rule is unwieldy and would require this Court to vet technological issues unnecessary to protect a defendant's Fourth Amendment privacy interests.

**B. Twenty-two hours was not an unreasonable timespan.**

The Court of Appeals correctly held that holding Defendant's phone for less than a day before obtaining a warrant was not unreasonable. *Laster*, slip op. at 12.

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There is no bright line amount of time that establishes when a seizure becomes unreasonable—the test is simply whether police acted diligently within a reasonable amount of time. *Illinois v. McArthur*, 531 U.S. 326, 334 (2001). In *McArthur*, the Court evaluated the time period in conjunction with “the nature of the intrusion and the law enforcement interest at stake.” *Id.* at 333. In finding the seizure reasonable in that case, the Court observed that law enforcement balanced their needs “with the demands of personal privacy” by accompanying the defendant when he went into the home to prevent destruction of evidence, but police did not search the home until they obtained a warrant. *Id.* at 332. Here police held Defendant’s phone for 22 hours, but did not search it until they obtained a warrant, thus balancing their needs by not intruding into Defendant’s privacy until a judge said they could (Supp. Ex. 1 at 16).

As a useful comparison, the Seventh Circuit has found that a six-day period between the seizure of a cell phone and securing a warrant did not render the seizure unreasonable under the Fourth Amendment. *United States v. Burgard*, 675 F.3d 1029, 1031 (7th Cir. 2012), *cert. denied*. In *Burgard*, in analyzing law enforcement interests, the Court noted that the State has a stronger interest in seizures made on the basis of probable cause than in those based on reasonable suspicion, which permits a greater delay in obtaining the warrant. *Id.* at 1033.

Turning to police diligence, the time period between seizure and warrant was the result of delayed communication between officers in different agencies, extra time taken to prepare the warrant, and the officer’s involvement in another

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investigation. *Id.* at 1031. Recognizing that police could have been more diligent, the Court found that “police imperfection” was not enough to find constitutional error, because the officer’s “delay was not the result of complete abdication of his work or failure to ‘see any urgency.’” *Id.* at 1034. The Court noted that in “hindsight, courts ‘can almost always imagine some alternative means by which the objectives of the police might have been accomplished,’ but that does not necessarily mean that the police conduct was unreasonable.” *Id.* (quotation omitted).

Here the trial court and Court of Appeals found that police had probable cause to search the phone, giving the State a stronger interest, a determination Defendant does not contest in his transfer petition (Supp. Ex. 1 at 16). *Laster*, slip op. at 7-9, 11. As to diligence, police were in the middle of a murder investigation and were taking a number of investigative actions in applying for and executing search warrants for other evidence (Supp. Ex. 2-4; Tr. Vol. III 183-87). The 22-hour time period did not result from a “complete abdication” of responsibility. *Burgard*, 675 F.3d at 1034. Regardless of whether police might have applied for the warrant a few hours earlier than they did, police did not act unreasonably in waiting less than a day to fix and resubmit the probable cause affidavit to obtain a warrant. And, in discussing whether the ability to conduct a warrantless search would assist police, *Riley* recognized that in any criminal investigation “[t]he need to effect the arrest, secure the scene, and tend to other pressing matters means that law enforcement officers may well not be able to turn their attention to a cell phone right away.” 573 U.S. at 390.

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Defendant posits that there is a difference between cases in which a defendant voluntarily relinquishes the property and those where police seize a defendant's property (Pet. Trans. 10-11). However, none of the cases he cites for that proposition either discusses or turns on such a distinction. The relevant inquiry is whether a seizure becomes unreasonably long in light of the intrusion and the law enforcement interest. *McArthur*, 531 U.S. at 333-34. Additionally, Defendant's alleged distinction is more relevant to assessing a defendant's possessory interest, not his privacy interest. *Burgard*, 675 F.3d at 1033. As Defendant concedes, the more relevant inquiry under *McArthur* is about a defendant's privacy interest, not his possessory interest (Pet. Trans. 8). To the degree Defendant's possessory interest was implicated by the seizure, because seizures are less intrusive, they may be justified where a search would not. *Segura*, 468 U.S. 796, 806 (noting the less intrusive nature of a seizure); *Ramirez*, 174 N.E.3d at 190 (noting that because a seizure affects only possessory interests, not privacy interests, an exigency may justify warrantless seizure but not warrantless search). Given that the seizure here was relatively short in duration, and occurred due to probable cause that already existed when police seized his phone, 22 hours was not an unreasonable time in which to obtain the warrant.

**C. There is no legal or factual support for suppression due to “warrant shopping.”**

Defendant contends that “warrant shopping,” or the presentation of an application for a search warrant to a second judge after initially being denied a warrant from an earlier judge, violates the Fourth Amendment (Pet. Trans. 13). He

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seeks a remedy that would require police to return evidence to a suspect and then go to court to file a motion to correct errors or a motion for relief from judgment (Pet. Trans. 14-15). However, this rule is not required by the Fourth Amendment, nor are there facts to support his claim.

The practice of re-submitting a warrant application is not disallowed by the Fourth Amendment. Neither Defendant nor the State has located a United States Supreme Court case so requiring (Pet. Trans. 13). Further, allowing police to either fix inadvertent omissions or conduct further investigation, and then re-present a warrant, does not violate the spirit of the Fourth Amendment. *United States v. Pace*, 898 F.2d 1218, 1230-31 (7<sup>th</sup> Cir. 1990) (a “blanket rule barring the government from resubmitting a warrant application to a second magistrate would do little, if anything, to protect Fourth Amendment values.”); *see also United States v. McCoy*, 678 F. Supp. 2d 1336, 1351 (M.D. Ga. 2009) (“a finding that probable cause is lacking states nothing more than that the Government has not yet met the threshold.”). As long as police submit accurate information to a neutral and detached judicial officer in a subsequent search warrant request, an individual’s rights against unreasonable search and seizure are still protected.

Factually, Defendant’s claims lack support. Police notified the judge who approved the warrant that police had submitted a warrant request beforehand to a different judge who had denied it, including the cause number associated with the previous application (Supp. Ex 1 at 4). This allays any concerns about subterfuge on the State’s part in warrant shopping. See *People v. Bilsky*, 734 N.E.2d 341, 344

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(N.Y. Ct. App. 2000) (disclosure of a prior warrant application was proper). The Court in *Bilsky* noted that “[f]orthright disclosure lessens the potential for inappropriate ‘Judge shopping’ and alerts the different Magistrate fully to earlier developments, or nondevelopments, so that appropriate inquiry and consideration may be given for a fully informed judgment and decision on the matter.” *Id.* Also, the State indicated that additional information had been included in the probable cause affidavit, which also justified its second effort at obtaining a warrant (Supp. Ex. 1 at 4). There is no evidence the State was clandestinely warrant shopping by presenting the identical warrant application to a second judge hoping for a better outcome.

Defendant proposes that police should be required to return the evidence and have a prosecutor file a motion to correct errors or a motion for relief from judgment under Trial Rule 59 or 60 if the initial search warrant is denied (Pet. Trans. 14-15). This would unnecessarily delay police investigations by adding a more formalized court process which would require time for a suspect to respond or for a court to set a hearing on, and would provide further opportunities for a suspect to destroy relevant evidence. A suspect’s Fourth Amendment rights are still protected by the normal process of seeking the warrant and all its attendant rules without requiring the State to file a Trial Rule 59 or 60 motion. Any constitutional concerns about the warrant can always be addressed in a later motion to suppress without adding an unnecessary layer of litigation.

**D. Police acted reasonably under Article 1, Section 11.**

Under Article 1, Section 11 of the Indiana constitution, this Court focuses on the “reasonableness of the police conduct under the totality of the circumstances,” analyzing: “1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen’s ordinary activities, and 3) the extent of law enforcement needs.”

*Litchfield v. State*, 824 N.E.2d 356, 359, 361 (Ind. 2005). All three factors weigh in favor of admitting the evidence on Defendant’s phone.

As to the degree of suspicion or concern, the State notes that Defendant is not challenging the Court of Appeals’ determination that probable cause existed to believe that the phone would contain evidence relevant to the crime (Pet. Trans. 2). *Laster*, slip op. at 7-9. Therefore, Defendant implicitly agrees that probable cause existed. And, the evidence supporting probable cause was substantial, as laid out in the State’s Brief of Appellee, and as recognized by the Court of Appeals (St. Br. 15-17). *Laster*, slip op. at 7-9. This supports a finding that the degree of concern or suspicion was high that Defendant was involved in the murder and that his phone would have relevant evidence.

As to the degree of intrusion, Defendant claims that taking Laster’s phone significantly restricted his movement (Pet. Trans. 16). However, he provides no citation to factual support in the record for his assertion, and the State is aware of none. It is Defendant’s duty to provide appropriate record citations or factual support for his claims. *Lee v. State*, 91 N.E.3d 978, 990 (Ind. Ct. App. 2017) (noting

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that appellate courts do “not search the record to find a basis for a party’s argument”), *trans. denied*. Nor was the deprivation of his phone for less than a day a significant intrusion. Defendant was allowed to leave police custody and was free to engage in his ordinary activities, albeit without his phone. Although he engages in speculative reasoning about the extent to which people rely on their phones (Pet. Trans. 11-12), not all people use their phones to such an extent, and no evidence was presented specifically about how much Defendant relied on his phone other than for communication. The deprivation of his phone for less than a day did not result in a high degree of intrusion.

Finally, the law enforcement needs were high, weighing in favor of the State. Police were investigating a murder to which the phone was relevant. The need for police to investigate crimes and apprehend their perpetrators is substantial. *See, e.g., Paul v. State*, 189 N.E.3d 1146, 1158 (Ind. Ct. App. 2022) (investigation of homicide was a substantial State interest), *trans. denied*; *Moore v. State*, 211 N.E.3d 574, 583 (Ind. Ct. App. 2023) (noting law enforcement’s “responsibility to deter crime, to intercept criminal activity, and to apprehend its perpetrators”).

As to the other aspects of this argument, the State relies on its Brief of Appellee.

## **CONCLUSION**

For the foregoing reasons, and for all of those stated in the State’s Brief of Appellee including the argument concerning harmless error, this Court should deny transfer.

Brief in Opposition to Transfer  
State of Indiana

Respectfully submitted,

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**WORD COUNT CERTIFICATE**

I verify that this brief contains no more than 4,200 words.

/s/ Daylon L. Welliver  
Daylon L. Welliver  
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**CERTIFICATE OF SERVICE**

I certify that on November 26, 2024, the foregoing document was electronically filed using the Indiana E-filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS:

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## Appendix M

1 IN THE

2 INDIANA COURT OF APPEALS

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4 APPELLATE NO: 23A-CR-02699

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6 STATE OF INDIANA, APPEAL FROM MARION SUPERIOR COURT  
7 Plaintiff, CRIMINAL DIVISION TWENTY

8 v. TRIAL COURT CASE NO:

49D20-2111-MR-033962

9

10 ALSHAM LASTER, BEFORE THE HONORABLE  
11 Defendant. JENNIFER HARRISON, JUDGE

12

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SUPPLEMENT EXHIBITS

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MOTION TO SUPPRESS HEARING  
14 SEPTEMBER 27, 2023

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16

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Clerk of the Marion Circuit Court

Case Number: 49D21-2107-MC-021601

Transaction ID: 8A3B627DD1C44CD



**Wednesday, July 14, 2021**

## Electronic Search Warrant Cover Sheet

An Affidavit for a Search Warrant has been submitted by:

**Date:** 07/14/2021

**Time:** 08:16:29

**Officer:** Connie Pearson

**Phone:** 3173273544

**Email:** Connie.Pearson@indy.gov

**Officer Additional Comments:**

A handwritten signature in black ink, appearing to read "R. H. Hagenmaier".

Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49D21-2107-MC-021601  
Transaction ID : 8A3B627DD1C44CD  
Date and Time Issued : 07/14/2021 08:31:33  
Ruling : GRANTED  
Sealed Warrant : No



## Marion County

### Electronic Search Warrant Submission Form

HAS THIS AFFIDAVIT BEEN SUBMITTED BEFORE TO ANOTHER JUDGE*?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
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(\*PLEASE NOTE: IF PREVIOUSLY SUBMITTED TO A JUDGE, ANY ADDITIONAL SUBMISSIONS SHOULD BE DIRECTED TO THE SAME JUDGE IF AT ALL POSSIBLE.)

IF YES, NAME OF JUDGE TRAVIS SANDIFUR

CASE NUMBER 49D34-2107-MC-021598

WAS A SEARCH WARRANT ISSUED WITH THAT SUBMISSION*?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
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IF YES, CASE NUMBER

#### SEARCH WARRANT PRIORITY: \*REQUIRED FIELD

<input type="checkbox"/>	<b>Critical</b>	Threat to life. i.e. SWAT waiting to make entry on a hostage barricade
<input checked="" type="checkbox"/>	<b>Time Sensitive</b>	Significant amount of public safety resources waiting on warrant, imminent destruction or imminent loss of evidence (i.e. DUI's) that would not otherwise be considered an exigent circumstance exception
<input type="checkbox"/>	<b>Routine</b>	All Others – This would include most narcotics warrants where we are not currently "holding" a location

I swear and affirm, under penalty of perjury as specified by **IC 35-44.1-2-1**, that the foregoing and following representations in this document submission are true.

\*REQUIRED FIELDS DATE: 7/14/2021 TIME SUBMITTED: 8:16 AM

SUBMITTING OFFICER NAME	CONNIE PEARSON
PHONE NO	317-327-3544
EMAIL ADDRESS	CONNIE.PEARSON@INDY.GOV

*Please enter a valid phone number and email address where the Clerk of the Court/Judicial Officer can contact the officer in case of question*

#### ADDITIONAL OFFICER COMMENTS:

Document Version 2.0 Effective Date: 5-8-2017

ADDITIONS MADE TO PC REF HOMICIDE DEATH INVESTIGATION AND SUSPECT PHONE

*Richard S. Hagenmaier*  
Richard Hagenmaier  
Cause Number : 49D21-2107-MC-021601  
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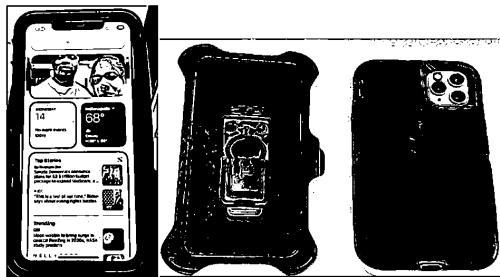
STATE OF INDIANA      )  
                            ) SS:  
COUNTY OF MARION    )

IN THE MARION SUPERIOR COURT  
CRIMINAL DIVISION

### Affidavit in Request for a Search Warrant

Detective Connie Pearson swears or affirms that he believes and has probable cause to believe that certain evidence of the crime of Homicide will be found within the following described property:

Gray I-Phone in a black Otterbox case with clip



#### Affiant's Training and Experience

I am a police officer with the Indianapolis Metropolitan Police Department (IMPD). I have been a police officers in Indianapolis/Marion County since March 2, 1998. I am a "law enforcement officer" as the term is defined in I.C. 35-41-1-17(a). I have been a detective for approximately 10 years, and I have had training and experience in Homicide Investigations.

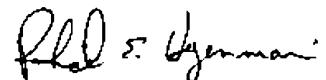
#### The Investigation

In support of your affiant's assertion of probable cause, the following facts are within your affiant's personal knowledge or have been learned through his investigation:

On July 12, 2021, at approximately 9:44 p.m., officers with the Indianapolis Metropolitan Police Department responded to a death investigation at 1230 N. Luett Ave. Officers responding to this location were advised that the caller had reported a dead person in his home and stated the front door should be locked and open. The caller refused to give any further information. Upon arrival, officers found the front door to the residence closed but unlocked. Officers made entry and found a black female, later identified from an Indiana Driver's License, to be Latisha Burnett, in a bedroom under a white sheet with her hands on her

*Richard E. Hagenmaier*  
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chest. Medic 18 arrived and pronounced the female deceased at 9:52 p.m. Coroner arrived and located 3 defects consistant with apparent gunshot wounds. There were also 3 shell casings located in a trash can in the same bedroom as the victim was located. The original 911 call was made by Alsham Laster who neighbors stated was the person who owns and lives at the residence of 1230 N. Luett Ave. Neighbors staed they observed Laster at the residence earlier in the day in a black vehicle and then after going in and out of the residence several times, putting a bag in the trunk, Laster left the residence at approximately 4:30 p.m. and had not returned. They stated they had not seen the female who stays at the residence. Alsham Laster was later located and brought to the Homicide office for interview where he would not speak to Detective Pearson and requested an attorney. Laster was driving the black 2019 Honda Insight belonging to the victim, Latisha Burnett, who was identified by neighbors as being Laster's live-in girlfriend. Laster had his gray I-phone in his Otterbox case on his person, and stated his phone number was 317-792-0721. Due to his girlfriend being found deceased from apparent gunshot wounds in his residence, and him being the 911 caller, his phone was confiscated as evidence for analysis. Due to the fact Alsham Laster is the one who called 911, and the victim is his live-in girlfriend, I, Detective Pearson, am requesting a search warrant authorizing the forensic examination of the above listed mobile device, and any identity modules and/or removable media contained therein to further this homicide investigation.



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## Mobile Devices

This affiant has learned the following about forensic examination of mobile devices from the Indianapolis Metropolitan Police Department (IMPD) Computer and Digital Forensics Unit:

### Background on Mobile Devices

#### Mobile Device Characteristics

Mobile devices perform an array of functions ranging from a simple telephony device to those of a personal computer. Designed for mobility, they are compact in size, battery-powered, and lightweight. Most mobile devices have a basic set of comparable features and capabilities. They house a microprocessor, read only memory (ROM), random access memory (RAM), a radio module, a digital signal processor, a microphone and speaker, a variety of hardware keys and interfaces and a liquid crystal display (LCD). (National Institute of Standards and Technology , 2014)

Different mobile devices have different technical and physical characteristics (e.g., size, weight, processor speed, memory capacity). Mobile devices may also use different types of expansion capabilities to provide additional functionality. Furthermore, mobile device capabilities sometimes include those of other devices such as handheld Global Positioning Systems (GPS), cameras (still and video) or personal computers. Overall, mobile devices can be classified as feature phones that are primarily simple voice and messaging communication devices or smartphones that offer more advanced capabilities and services for multimedia, similar to those of a personal computer. (National Institute of Standards and Technology , 2014)

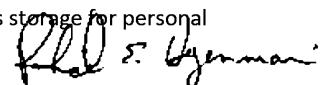
Both feature phones and smartphones support voice, text messaging, and a set of basic Personal Information Management (PIM) type applications including phonebook and calendar facilities. Smartphones add PC-like capability for running a wide variety of general and special-purpose applications. Smartphones generally support a wide array of applications, available through an application storefront. (National Institute of Standards and Technology , 2014)

A tablet device, commonly referred to as a tablet computer, or more simply, tablet, is a mobile device with a touch screen display that provides many of the same services as mobile smartphones.

A GPS navigation device is a mobile device that calculates the device's geographical location by receiving information from GPS satellites.

#### Identity Modules

Identity modules (commonly known as SIM cards) are synonymous with mobile devices that interoperate with GSM cellular networks. A Universal Integrated Circuit Card (UICC), commonly referred to as an identity module (e.g., Subscriber Identity Module [SIM], Universal Subscriber Identity Module [USIM], CDMA Subscriber Identity Module [CSIM]), is a removable component that contains essential information about the subscriber. The UICC's main purpose entails authenticating the user of the mobile device to the network providing access to subscribed services. The UICC also offers storage for personal

  
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information, such as phonebook entries, text messages, last numbers dialed (LND) and service-related information. (National Institute of Standards and Technology , 2014)

#### Removable Media

Mobile devices may provide an interface that supports removable media (e.g., microSD or MMC), which may contain significant amounts of data. Memory cards are typically flash memory, used as auxiliary user file storage, or as a means to convey files to and from the device.

#### Mobile Device Forensics

Mobile device forensics is the science of recovering digital evidence from a mobile device under forensically sound conditions using accepted methods. Mobile device forensics involves validation, preservation, acquisition, examination, analysis, and reporting of digital information.

The analysis of evidence from mobile devices requires the digital device to be processed by a qualified expert in a laboratory or other controlled environment. The high volume of the contents and potential concealment of the data through the use of a password, or other challenges in extracting and examining data as described below, combined with the caseload of the examiner, could cause this process to take weeks or months.

Recognizing that specialized and highly technical equipment and software will be needed to conduct the analysis of the previously seized mobile device and/or external storage device, the device(s) will be transferred to the Indianapolis Metropolitan Police Department Computer and Digital Forensics Unit or other qualified laboratory with a request that an examination be conducted in this matter. Additionally, under limited circumstances, assistance may be required by the receiving laboratory from other qualified laboratories.

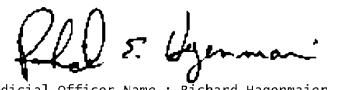
### Acquisition of Data from Mobile Devices

Acquisition is the process of imaging or otherwise obtaining information from a mobile device and its associated media.

Mobile device operating systems consist of open source operating systems as well as closed source operating systems. Closed operating systems make interpreting their associated file system and structure more difficult. Many mobile devices with the same operating system may also vary widely in their implementation, resulting in a myriad of file system and structure permutations. These permutations create significant challenges for mobile forensic tool manufacturers and examiners. (National Institute of Standards and Technology , 2014)

#### Data Acquisition

For many mobile devices, a forensic examiner is able to use commercial and/or open source forensic tools to acquire data from the mobile device. Depending on the type of device and its operating system, an examiner may use one or more methods of extraction using these forensic tools. These methods vary in the type of data they extract from the device, ranging from recovering only the logical data, to a



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physical data acquisition, which is a bit-for-bit extraction of all data stored on the device's internal and/or external storage devices.

Depending on the device, an examiner may be required to make some changes to the configuration settings of the device to facilitate the acquisition. In some instances, it also may be necessary for software to be loaded onto the device to facilitate acquisition of the data.

Some mobile device manufacturers design devices in a way that prevents the mobile device from communicating with the examiner's forensic workstation, preventing extraction from these devices using the previously described methods. With other devices, a physical acquisition of the phone's entire memory may not be possible using the previously described methods. To extract data from such devices, as well as from devices on which the examiner is unable to bypass a user's lock using the below described methods, when the device is damaged beyond repair, or for devices from which an examiner is unable to obtain a physical acquisition through the previously described means, more advanced methods of extraction may be necessary, including chip-off forensics.

Chip-off forensics is a technique used after all other acquisition methods have been exhausted. Chip-Off forensics is a technique in which the device is disassembled and the Ball Grid Array (BGA) or memory chip is removed from the device's printed circuit board, the memory chip is cleaned and repaired and raw data is extracted from the chip using specialized tools. This process renders the mobile device unusable, but preserves the data content.

Depending on the model of the device, it may not be possible to extract data from the device for analysis. In some instances, an examiner may document data on the mobile device by viewing the data on the screen and documenting the data by capturing a photograph of the device's screen.

#### Device Repair

In some instances, a mobile device may be damaged to an extent that extraction of data from the device or other analysis of the device in its current state would not be possible. This affiant is requesting authorization for the examiner, or a qualified third-party, to make any necessary repairs to such devices as necessary to allow for examination of the device.

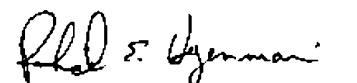
#### Bypassing user locks

When a mobile device is locked by a user's lock code, password, pattern lock, or other form of lock, commercial and/or open source forensic tools may be able to bypass the lock to extract the data. In instances in which the forensic tools are unable to bypass the lock, an examiner may be able to bypass the lock by making modifications to the device or by using non forensic hardware or software to decipher the passcode or otherwise bypass the passcode. In some instances, making these modifications to the device may void the device manufacturer's warranty.

### Examination of Acquired Data

The examination process uncovers digital evidence, including that which may be hidden or obscured. The results are gained through applying established scientifically based methods.

#### Potential evidence stored on mobile devices

  
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Mobile device manufacturers typically offer a similar set of information handling features and capabilities. The set of features and capabilities vary based on the era in which the device was manufactured, the version of the firmware running, modifications made for a particular service provider, and any modifications or applications installed by the user. (National Institute of Standards and Technology , 2014) The potential evidence on these devices may include, but is not limited to, the following types of data:

Contacts – A listing of the device's contacts, such as name, address, phone number, email address, and other contact information. This contact information can be user generated in a contacts application, or can be documentation of a user's contacts through other applications such as social media applications.

Calendar – Items persons document in their calendar application, such as meetings, events, and birthdays.

Notes – Most smart phones have an application in which users can enter notes or memos.

Call Logs – Records of phone calls made, received, or missed. These records can come from the phone's native phone application, or through third party applications through which users can make and receive phone calls using a number other than the number assigned through the phone's carrier. These phone numbers are obtained through the provider of the third-party application.

User Dictionaries – Most smart phones contain a dictionary to which words are added that don't exist in the phone's native dictionary. This feature works in conjunction with the messaging applications on the device to autocomplete words typed in messages or to make suggestions for auto-completion. These dictionaries will often contain slang words or words a user commonly misspells, which could assist an examiner for use during keyword searching.

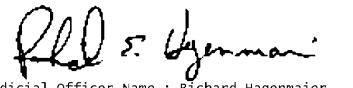
User Accounts – Information about the user of the phone, as well as email addresses or other usernames and their associated service. This user account information is useful for identifying other web based services or cloud storage services for which another search warrant could be sought to search for evidence of the criminal activity.

Web Browser Data – This includes bookmarks and web browser history. Bookmarks are websites that are sometimes saved by default or entered by a user to provided easier access to their bookmarked websites. Web browser history is documentation of websites visited.

Messages – This includes Short Message Service (SMS) messages, commonly referred to as "text messages", Multimedia Messages (MMS), instant messages, and chat messages. Through a mobile device's native messaging applications, as well as third-party applications, a user has the ability to send and receive messages containing text, audio, video, and photos. Most smart phones also have the ability to capture screenshots of what is displayed on the screen and save it as an image. It is common to find screenshot images of messages stored on mobile devices.

Email – Modern smart phones have the ability to sync a user's email accounts to the mobile device through email applications or through a web browser. The mobile device may contain these emails.

Audio Files – Mobile devices can store audio files, including but not limited to: Voicemail, audio recorded using recording functionality of the device, and music files.

  
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Documents – Documents such as PDF files, documents, and spreadsheets which can be saved to a device or external storage.

Applications – Examination of the applications present on the mobile device, such as social media applications, could lead the examiner to data stored within files created by that application.

Location Information – This includes Global Positioning System (GPS) data associated with metadata in photo and video files, and databases from applications that use GPS data in their operation. This location information can also come from cellular towers and Wi-Fi networks with which the device has interacted.

Photos – Images stored on the mobile device or external storage. This includes images captured by the device, sent and received in messages, downloaded, transferred from other devices, screenshots captured of the device's display, and other images created on the device through the user's device usage. In addition to photos related to criminal activity, it is common to find photos commonly referred to as "selfies" in which the user takes an image of themselves. These images can assist in identifying the user of the device.

Videos – Video movie files captured by the device or received from other sources. Like photos, these can often assist in identifying the user of the device.

Wireless Network Information – These records or wireless network connections could give clues to a device's historical locations.

Phone Number – The phone number associated to the mobile device.

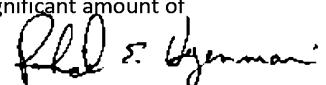
Subscriber Identity Module (SIM) Card information – The SIM card can contain the phone number associated to the device, as well as limited information such as phone call logs, contacts, and text message records. SIM cards also contain an Integrated Circuit Card Identifier (ICCID) which is a unique identifier of the SIM card.

Subscriber and equipment identifiers – Such as serial number, Mobile Equipment Identifier (MEID), Electronic Serial Number (ESN), or International Mobile Station Equipment Identity (IMEI). Varying models of phones differ in the unique identifier they contain.

Unallocated space – This is available space on the storage media to which the operating system can write data. This space could contain data which has previously been deleted but has not yet been overwritten.

Information about cloud based services – Mobile cloud computing is the combination of mobile networks and cloud computing allowing user applications and data to be stored on the cloud (i.e., internet servers) rather than the mobile device memory. (National Institute of Standards and Technology , 2014) Identification of these cloud based services could be useful to this investigation to identify additional sources of digital evidence that may need to be searched through future legal process.

Information about synced devices – The data contained on a mobile device is often present on a personal computer due to the capability of mobile devices to synchronize or otherwise share information among one or more host computers. Because of synchronization, a significant amount of

  
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data may be present on the owner's laptop or personal computer. Identification of synced devices could yield information about these devices which could potentially contain evidence related to this matter.

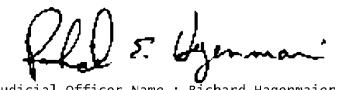
Portable GPS Device data which may be of importance may include: maps, tracks/archived tracks, waypoints, routes/journey, saved locations, favorites, owner information, "Home" location, recent destinations, city and state history, contacts/addresses, points of interest, last GPS fix, and pictures.

#### Time Specific Searches

Some artifacts recovered may be only partial information or missing associated timestamp information but could still be of evidentiary value. Additionally, many mobile devices allow for the user to change the time and date settings on their mobile device. A knowledgeable individual could alter the date/time of the mobile device to falsify timestamps associated with logged activities. For these reasons, this affiant requests for this search warrant to not be restricted to analysis or examination of activity during a specific timeframe.

#### References

National Institute of Standards and Technology . (2014, May). Guidelines on Mobile Device Forensics.



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### Request for Search Warrant

Based on the above information, this affiant believes there is probable cause to believe that a search of the above described device(s) will locate fruits, instrumentalities, and/or evidence of the crime of Homicide.

This affiant respectfully requests that this court issue a search warrant authorizing the forensic examination of the above listed mobile device(s), and any identity modules and/or removable media contained therein, using the above described mobile device forensic methods, for the following:

Gray I-Phone inside a black Otterbox case with clip.

For the reasons described above, this affiant also respectfully requests for this search warrant to include:

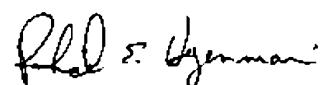
- Authority to bypass or remove user locks using software or hardware tools, including methods or modifications which may void the device manufacturer's warranty.
- Authority to, if necessary, perform a chip-off examination of the device.
- Authority to repair a damaged device if necessary for the examination, including seeking assistance from non-law enforcement officers with experience in device repair.
- Authority to seek assistance from another qualified laboratory, including laboratories with forensic experts who are not sworn law enforcement.

I swear (affirm) under penalty of perjury as specified in IC 35-44-2-1 that the foregoing representations are true.

S: Connie Pearson

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**AFFIANT**



Judicial Officer Name : Richard Hagenmaier  
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**LIST OF PROPERTY, OBJECTS, THINGS, INFORMATION, OR PERSONS  
AUTHORIZED TO BE SEIZED OR PRODUCED**

**To any law enforcement officer:**

Pursuant to this Search Warrant, Law Enforcement Officer(s), with the necessary and proper assistance of persons or entities that are shown this Search Warrant, are AUTHORIZED and ORDERED, in the name of the State of Indiana to do the following:

1. Enter into and upon the property and premises;
2. Diligently search for and seize all or part of property, objects, things or information; and
3. Diligently search for and seize the person(s)

You are hereby authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance, to search a mobile device, which is more particularly described as follows:

Gray I-Phone inside a black Otterbox case with clip.

and any identity modules and/or removable storage media contained therein, currently in the possession of the Indianapolis Metropolitan Police Department after having been seized from

Gray I-Phone inside a black Otterbox case with clip.

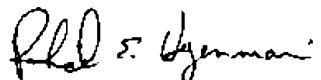
This search warrant authorizes law enforcement officers to search for and seize the following:

Gray I-Phone inside a black Otterbox case with clip.

Further, this warrant provides authorization for the following:

- Authority to bypass or remove user locks using software or hardware tools, including methods which may void the device(s) manufacturer's warranty, as described in the affidavit filed concurrently herewith.
- Authority to use a range of data acquisition techniques described in the affidavit of probable cause including, if necessary, a chip-off examination of the device(s).
- Authority to repair a damaged device if necessary for the examination, including using the assistance of non-law enforcement officers with experience in device repair.
- Authority to seek assistance from another qualified laboratory, including laboratories with forensic experts who are not law enforcement officers.

**End of List**

  
Richard Hagenmaier  
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### **Search Warrant Return**

I, Detective \_\_\_\_\_, hereby state this search warrant was executed on the \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_ and the following items were seized:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Detective

*Richard E. Hagenmaier*  
Richard E. Hagenmaier  
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## SEARCH WARRANT

**TO: ANY LAW ENFORCEMENT OFFICER:**

An Affidavit for a Search Warrant has been submitted to me, a duly authorized Judicial Officer of Marion County, Indiana. I have examined the Affidavit and being duly advised in the premises, FIND and DETERMINE that PROBABLE CAUSE exists for the issuance of this Search Warrant.

**Law Enforcement Officer(s)** are AUTHORIZED and ORDERED, in the name of the State of Indiana, and with the necessary and proper assistance of persons or entities that are shown this Search Warrant, to do the following:

1. Enter into and upon the property and premises;
2. Diligently search for and seize all or part of property, objects, things or information; and
3. Diligently search for and seize the person(s)

**All as described and detailed in the page(s) titled: "List of Property, Objects, Things, Information, or Persons to be Seized or Produced."**

This Search Warrant; the List of Property, Objects, Things, Information, or Persons to be Seized or Produced; along with the Affidavit are a part of this Search Warrant; and are watermarked with my electronic signature, the Court Cause Number and Transaction ID.

SO ORDERED, 14 Day of July, 2021 AT 8:31 AM.

**s/ Richard Hagenmaier**  
Judge, Marion Superior Court, (Room D21)

This Search Warrant issued by the Marion Superior Court, Indianapolis, Indiana is pursuant to Indiana Code §35-33-5-8(a)(4) which states: “[t]he affiant and the judge may use an **electronic signature** on the affidavit and warrant.” “An electronic signature may be indicated by “s/Affiant’s Name” or “s/Judge’s Name” or by any other electronic means that identifies the affiant or judge and indicates that the affiant or judge adopts the contents of the document to which the electronic signature is affixed.”

5-10-17 V1.6

Judicial Officer Name : Richard Hagenmaier  
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**SEARCH WARRANT RETURN**

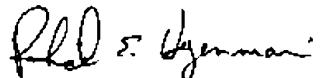
I, the undersigned, executed this warrant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o'clock AM/ PM and that the following items were seized:

---

***Law Enforcement Officer Name***

***Department Name***

5-10-17 V1.6

  
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**ELECTRONICALLY FILED**

07/13/2021 04:57:25

Myla L. Eldridge

Clerk of the Marion Circuit Court

Case Number: 49D18-2107-MC-021398

Transaction ID: 1AD7E3AB5A524DB

STATE EXHIBIT  
002

**Tuesday, July 13, 2021**

## Electronic Search Warrant Cover Sheet

An Affidavit for a Search Warrant has been submitted by:

**Date:** 07/13/2021

**Time:** 04:55:28

**Officer:** Connie Pearson

**Phone:** 317-327-3544

**Email:** Connie.Pearson@indy.gov

**Officer Additional Comments:**



Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D18-2107-MC-021398  
Transaction ID : 1AD7E3AB5A524DB  
Date and Time Issued : 07/13/2021 05:02:47  
Ruling : GRANTED  
Sealed Warrant : No

## Marion County



### Electronic Search Warrant Submission Form

<b>HAS THIS AFFIDAVIT BEEN SUBMITTED BEFORE TO ANOTHER JUDGE*?</b>		
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
(*PLEASE NOTE: IF PREVIOUSLY SUBMITTED TO A JUDGE, ANY ADDITIONAL SUBMISSIONS SHOULD BE DIRECTED TO THE SAME JUDGE <b>IF AT ALL POSSIBLE.</b> )		
If YES, Name of Judge		
Case Number		

<b>WAS A SEARCH WARRANT ISSUED WITH THAT SUBMISSION*?</b>		
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
If YES, Case Number		

#### SEARCH WARRANT PRIORITY: **\*REQUIRED FIELD**

<input type="checkbox"/>	<b>Critical</b>	Threat to life. i.e. SWAT waiting to make entry on a hostage barricade
<input checked="" type="checkbox"/>	<b>Time Sensitive</b>	Significant amount of public safety resources waiting on warrant, imminent destruction or imminent loss of evidence (i.e. DUI's) that would not otherwise be considered an exigent circumstance exception
<input type="checkbox"/>	<b>Routine</b>	All Others – This would include most narcotics warrants where we are not currently "holding" a location

I swear and affirm, under penalty of perjury as specified by **IC 35-44.1-2-1**, that the foregoing and following representations in this document submission are true.

**\*REQUIRED FIELDS** DATE: **7/13/2021** TIME SUBMITTED: **4:55 AM**

<b>SUBMITTING OFFICER NAME</b>	DETECTIVE CONNIE PEARSON
<b>PHONE NO</b>	317-327-3544
<b>EMAIL ADDRESS</b>	<b>CONNIE.PEARSON@INDY.GOV</b>

*Please enter a valid phone number and email address where the Clerk of the Court/Judicial Officer can contact the officer in case of question*

#### ADDITIONAL OFFICER COMMENTS:

*Document Version 2.0 Effective Date: 5-8-2017*

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Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D18-2107-MC-021398  
Transaction ID : 1AD7E3A85A524DB  
Date and Time Issued : 07/13/2021 05:02:47  
Ruling : GRANTED  
Sealed Warrant : No

STATE OF INDIANA      )  
                            ) SS:  
COUNTY OF MARION    )

IN THE MARION SUPERIOR COURT  
CRIMINAL DIVISION

**SEARCH WARRANT AFFIDAVIT**

I, Detective Connie Pearson, am first duly sworn upon my oath, state as follows:

**THE INVESTIGATION**

On July 12, 2021, at approximately 9:44 p.m., officers with the Indianapolis Metropolitan Police Department responded to a death investigation at 1230 N. Luett Ave. Officers responding to this location were advised that the caller had reported a dead person in his home and stated the front door should be unlocked and open. The caller refused to give any further information. Upon arrival, officers found the front door to the residence closed but unlocked. Officers made entry and found a black female, later identified from an Indiana Driver's license, to be Latisha Burnett, in a bedroom under a white sheet with her hands on her chest. Medic 18 arrived and pronounced the female deceased at 9:52 p.m. The original 911 call was made by Alsham Laster who neighbors stated was the person who owns and lives at the residence of 1230 N. Luett Ave. Neighbors stated they observed Laster at the residence earlier in the day in a black vehicle and then after going in and out of the residence several times, and putting a bag in the trunk, Laster left the residence at approximately 4:30 p.m and had not returned. They stated they had not seen the female who stays at the residence. Officers attempted to locate Alsham Laster at his mother's residence of 1114 S. Senate Ave, at which time Laster's mother called Laster on his cell phone and he agreed to come to the residence. Laster arrived at 1114 S. Senate and was then taken to the Homicide Office for Interview. Laster was driving a black 2019 Honda Insight 4dr. When asked if the vehicle belonged to him, he stated no, he was just borrowing it. I, Detective Pearson located a key-fab in Lastisha Burnett's purse matching the description of the vehicle Laster was driving. The vehicle was impounded and towed to the Crime Lab facility located at Animal Care & Control at 2600 S. Harding Street to be stored for later processing. This search warrant is being sought to process the vehicle for evidence of murder. All above events occurred in Marion County, State of Indiana.



Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D18-2107-MC-021398  
Transaction ID : 1AD7E3A85A524DB  
Date and Time Issued : 07/13/2021 05:02:47  
Ruling : GRANTED  
Sealed Warrant : No

**REQUEST FOR SEARCH WARRANT**

Based upon the probable cause set forth above, I also hereby request that the Court issue a search warrant, authorizing law enforcement officers to search a vehicle which is more particularly described as follows:

a black 2019 Honda Insight four-door bearing Indiana plate P104398, being stored at the Crime Lab located at the Animal Care & Control facility at 2600 S. Harding Street.

This search warrant authorizes law enforcement officers to search for and seize the following:

1. Firearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms
2. Spent cartridge casings, spent bullets, bullet fragments, ammunition
3. Documents showing ownership and/or other users of the vehicle
4. Biological material which may contain DNA, trace evidence, latent finger prints
5. Photographs/video of interior and exterior of the vehicle
6. Drug or narcotic evidence which may be present inside the vehicle
7. Cellular telephones or wireless devices

I swear or affirm under penalties for perjury that the foregoing representations are true.

/s/: Detective Connie Pearson

Affiant



Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D18-2107-MC-021398  
Transaction ID : 1AD7E3A85A524dB  
Date and Time Issued : 07/13/2021 05:02:47  
Ruling : GRANTED  
Sealed Warrant : No

**LIST OF PROPERTY, OBJECTS, THINGS, INFORMATION, OR PERSONS AUTHORIZED  
TO BE SEIZED OR PRODUCED**

**To any law enforcement officer:**

Pursuant to this Search Warrant, Law Enforcement Officer(s), with the necessary and proper assistance of persons or entities that are shown this Search Warrant, are AUTHORIZED and ORDERED, in the name of the State of Indiana to do the following:

1. Enter into and upon the property and premises;
2. Diligently search for and seize all or part of property, objects, things or information; and
3. Diligently search for and seize the person(s)

You are hereby authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance, to search a vehicle, which is more particularly described as follows:

a black 2019 Honda Insight four-door bearing Indiana plate P104398, being stored at the Crime Lab located at the Animal Care & Control facility at 2600 S. Harding Street.

This search warrant authorizes law enforcement officers to search for and seize the following:

1. Firearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms
2. Spent cartridge casings, spent bullets, bullet fragments, ammunition
3. Documents showing ownership and/or other users of the vehicle
4. Biological material which may contain DNA, trace evidence, latent finger prints
5. Photographs/video of interior and exterior of the vehicle
6. Drug or narcotic evidence which may be present inside the vehicle
7. Cellular phones or wireless devices

End of List



Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D18-2107-MC-021398  
Transaction ID : 1AD7E3A85A524DB  
Date and Time Issued : 07/13/2021 05:02:47  
Ruling : GRANTED  
Sealed Warrant : No

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION SUPERIOR COURT  
Criminal Division

## SEARCH WARRANT

### TO: ANY LAW ENFORCEMENT OFFICER:

An Affidavit for a Search Warrant has been submitted to me, a duly authorized Judicial Officer of Marion County, Indiana. I have examined the Affidavit and being duly advised in the premises, FIND and DETERMINE that PROBABLE CAUSE exists for the issuance of this Search Warrant.

**Law Enforcement Officer(s)** are AUTHORIZED and ORDERED, in the name of the State of Indiana, and with the necessary and proper assistance of persons or entities that are shown this Search Warrant, to do the following:

1. Enter into and upon the property and premises;
2. Diligently search for and seize all or part of property, objects, things or information; and
3. Diligently search for and seize the person(s)

**All as described and detailed in the page(s) titled: "List of Property, Objects, Things, Information, or Persons to be Seized or Produced."**

This Search Warrant; the List of Property, Objects, Things, Information, or Persons to be Seized or Produced; along with the Affidavit are a part of this Search Warrant; and are watermarked with my electronic signature, the Court Cause Number and Transaction ID.

SO ORDERED, 13 Day of July, 2021 AT 5:02 AM.

**s/ Matthew Symons**  
Judge, Marion Superior Court, (Room D18)

This Search Warrant issued by the Marion Superior Court, Indianapolis, Indiana is pursuant to Indiana Code §35-33-5-8(a)(4) which states: "[t]he affiant and the judge may use an **electronic signature** on the affidavit and warrant." "An electronic signature may be indicated by "s/Affiant's Name" or "s/Judge's Name" or by any other electronic means that identifies the affiant or judge and indicates that the affiant or judge adopts the contents of the document to which the electronic signature is affixed."

5-10-17 V1.6



Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D18-2107-MC-021398  
Transaction ID : 1AD7E3A85A524dB  
Date and Time Issued : 07/13/2021 05:02:47  
Ruling : GRANTED  
Sealed Warrant : No

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**SEARCH WARRANT RETURN**

I, the undersigned, executed this warrant on the 13th day of July, 2021 at  
8:52 AM o'clock AM/ PM and that the following items were seized:

One pocket knife with a black/white/red handle, blk/silver blade, one pocket knife, blk rubber handle. One pair of gray Levi Strauss and Co. pants.

/s/Detective Connie Pearson

***Law Enforcement Officer Name***

***Department Name***

5-10-17 V1.6



Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D18-2107-MC-021398  
Transaction ID : 1AD7E3A85A524dB  
Date and Time Issued : 07/13/2021 05:02:47  
Ruling : GRANTED  
Sealed Warrant : No



**ELECTRONICALLY FILED**

07/13/2021 07:59:29

Myla L. Eldridge

Clerk of the Marion Circuit Court

Case Number: 49D20-2107-MC-021405

Transaction ID: 4D525415A8AD4AC

STATE EXHIBIT  
003

**Tuesday, July 13, 2021**

## Electronic Search Warrant Cover Sheet

An Affidavit for a Search Warrant has been submitted by:

**Date:** 07/13/2021

**Time:** 07:58:31

**Officer:** connie pearson

**Phone:** 317-327-3544

**Email:** Connie.Pearson@indy.gov

**Officer Additional Comments:**

*Rich E. Hagenmaier*

Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 4D525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

## Marion County



### Electronic Search Warrant Submission Form

<b>HAS THIS AFFIDAVIT BEEN SUBMITTED BEFORE TO ANOTHER JUDGE*?</b> <input checked="" type="checkbox"/> <b>YES</b> <input checked="" type="checkbox"/> <b>NO</b>		
(*PLEASE NOTE: IF PREVIOUSLY SUBMITTED TO A JUDGE, ANY ADDITIONAL SUBMISSIONS SHOULD BE DIRECTED TO THE SAME JUDGE <i>IF AT ALL POSSIBLE.</i> )		
IF YES, NAME OF JUDGE TRAVIS SANDIFUR		
CASE NUMBER 49D19-2107-MC-021400		

<b>WAS A SEARCH WARRANT ISSUED WITH THAT SUBMISSION*?</b> <input type="checkbox"/> <b>YES</b> <input checked="" type="checkbox"/> <b>NO</b>		
IF YES, CASE NUMBER		

#### SEARCH WARRANT PRIORITY: **\*REQUIRED FIELD**

<input type="checkbox"/>	<b>Critical</b>	Threat to life. i.e. SWAT waiting to make entry on a hostage barricade
<input checked="" type="checkbox"/>	<b>Time Sensitive</b>	Significant amount of public safety resources waiting on warrant, imminent destruction or imminent loss of evidence (i.e. DUI's) that would not otherwise be considered an exigent circumstance exception
<input type="checkbox"/>	<b>Routine</b>	All Others – This would include most narcotics warrants where we are not currently "holding" a location

I swear and affirm, under penalty of perjury as specified by **IC 35-44.1-2-1**, that the foregoing and following representations in this document submission are true.

**\*REQUIRED FIELDS** DATE: **7/13/2021** TIME SUBMITTED: **7:58 AM**

<b>SUBMITTING OFFICER NAME</b>	CONNIE PEARSON
<b>PHONE NO</b>	317-327-3544
<b>EMAIL ADDRESS</b>	CONNIE.PEARSON@INDY.GOV

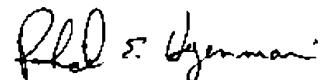
*Please enter a valid phone number and email address where the Clerk of the Court/Judicial Officer can contact the officer in case of question*

#### ADDITIONAL OFFICER COMMENTS:

*Document Version 2.0 Effective Date: 5-8-2017*

ADDED TARGET PHONE NUMBER AS SUSPECT'S

*Revised 5/10/2017*

  
Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 4D525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No



# INDIANAPOLIS METROPOLITAN POLICE DEPARTMENT



T-Mobile • / **metro**PCS

## T-Mobile, USA/Metro PCS Search Warrant Template

Enter the following information and it will be entered in the rest of the form automatically:

Your Name	Connie Pearson
Your Division/Branch	Homicide
Your Office Phone Number	317-327-3544
Your Office Fax	317-327-3499
Your Office Address	50 N. Alabama
City State Zip	Indianapolis, IN 46204
Your Email Address	Connie.Pearson@indy.gov
Your ID	L4045
Today's Date MM/DD/YYYY	07/13/2021
Case Number	IP210070567
Target Phone Number	317-792-0721
Target Name (or Unknown)	Alsham Laster
Date Range MM/DD/YYYY	07/01/2021 to 07/12/2021

Action	Date
Warrant Signed	
Faxed to Company	
Received Records	
Return Filed	

- Type the narrative of your PC in a separate document. Copy the text and paste it in the field below. Ensure the target number in your narrative is bold.
- Once you fill out the form save as a new document, case number and target number are recommended.
- Verify the cellular carrier of the target phone number. This can be done by dialing 571-434-5781 and entering the PIN 44298839. Then follow the prompts and enter the target phone number. The following websites can also be used to determine the cellular carrier of the target phone number:
  - <http://freecarrierlookup.com/>
  - <https://www.carrierlookup.com/>
  - <https://www.textmagic.com/free-tools/carrier-lookup>
- Use the attached fax cover. Fax the fax cover, the signed warrant itself (not the affidavit), and the affidavit of custodian of records to the fax number listed on the fax cover.

Revised 5/10/2017

*Richard E. Hagenmaier*  
Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 49525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

## AFFIDAVIT FOR PROBABLE CAUSE

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### STATE OF INDIANA, COUNTY OF MARION, SS:

Detective **Connie Pearson** swears (affirms) that:

On July 12, 2021, at approximately 9:44 p.m., officers with the Indianapolis Metropolitan Police Department responded to a death investigation at 1230 N. Luett Ave. Officers responding to this location were advised that the caller had reported a dead person in his home and stated the front door should be unlocked and open. The caller refused to give any further information. Upon arrival, officers found the front door to the residence closed but unlocked. Officers made entry and found a black female, later identified from an Indiana Driver's license, to be Latisha Burnett, in a bedroom under a white sheet with her hands on her chest. Medic 18 arrived and pronounced the female deceased at 9:52 p.m. The original 911 call was made by Alsham Laster who neighbors stated was the person who owns and lives at the residence of 1230 N. Luett Ave. Neighbors stated they observed Laster at the residence earlier in the day in a black vehicle and then after going in and out of the residence several times, and putting a bag in the trunk, Laster left the residence at approximately 4:30 p.m and had not returned. They stated they had not seen the female who stays at the residence. Officers attempted to locate Alsham Laster at his mother's residence of 1114 S. Senate Ave, at which time Laster's mother called Laster on his cell phone and he agreed to come to the residence. Laster arrived at 1114 S. Senate and was then taken to the Homicide Office for Interview. Laster was driving a black 2019 Honda Insight 4dr. When asked if the vehicle belonged to him, he stated no, he was just borrowing it. I, Detective Pearson located a key-fab in Lastisha Burnett's purse matching the description of the vehicle Laster was driving. A search warrant was granted for the vehicle. Upon running asking Alsham Laster what his phone number is, he stated 317-792-0721.

I, Detective **Connie Pearson**, conducted an internet search and found the phone number **317-792-0721** was listed as a T-Mobile, USA/Metro PCS cell phone.

I am requesting a search warrant to search the records of T-Mobile, USA/Metro PCS to include subscriber information for the number **317-792-0721** including name, date of birth, mailing address, alternate phone number, billing information to include bank account and credit card numbers, credit I swear (affirm), under penalty of perjury as specified by IC 35-44-2-1, that the foregoing and following representations in this document are true.

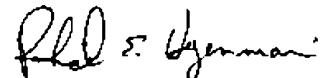
/s/ **Connie Pearson**

---

AFFIANT

07/13/2021

DATED: \_\_\_\_\_  
**IP210070567 317-792-0721**

  
Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 49525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

**From: Connie Pearson**

information, device identification such as IMEI, IMSI, MEID, serial number, make and model, and other numbers on the same account; all communication for the wireless number for the days of **07/01/2021** to **07/12/2021** to include cellular calls, SMS messages and Data communications, tower locations (LAC/CID), and azimuth for the sectors accessed during the communication; voice mail messages including content; and a detailed definitions page which identifies all information in the records for the phone number **317-792-0721** for the days of **07/01/2021** to **07/12/2021**.

I am requesting the subscriber, billing, credit, and account information to confirm the identity of the user of the phone. I am requesting the call, text, and data detail to identify numbers the phone was in contact with prior to, during, and after the incident. I am requesting the cell tower locations including sector directions to establish the location of the phone at the time of and after the incident. I am requesting the voice mail messages for the content which will likely lead to information about the incident. I am requesting the records for the period of **07/01/2021** to **07/12/2021** to establish a pattern of communication which will likely lead to suspects or persons of interest.

All events occurred in Marion County, Indiana.

I swear (affirm), under penalty of perjury as specified by IC 35-44-2-1, that the foregoing and following representations in this document are true.

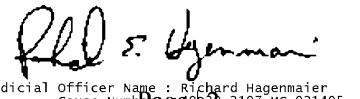
/s/ **Connie Pearson**

---

AFFIANT

**07/13/2021**

DATED: \_\_\_\_\_  
**IP210070567 317-792-0721**

  
Richard Hagenmaier  
Cause Number : 317-2107-MC-021405  
Transaction ID : 3d573415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

**LIST OF PROPERTY, OBJECTS, THINGS, INFORMATION, OR PERSONS  
AUTHORIZED TO BE SEIZED OR PRODUCED**

**To any law enforcement officer and T-Mobile, USA / Metro PCS:**

Pursuant to this Search Warrant, Law Enforcement Officer(s), with the necessary and proper assistance of persons or entities that are shown this Search Warrant, are AUTHORIZED and ORDERED, in the name of the State of Indiana to do the following:

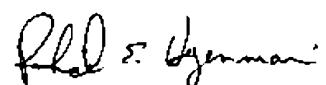
To any law enforcement officer:

Having found probable cause for the issuance of this search warrant, you are hereby authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance, to search **317-792-0721**, located at T-Mobile, USA/Metro PCS.

This search warrant authorizes law enforcement officers to search for and seize the following:

1. Subscriber information for the number **317-792-0721** including by way of example and not limitation:
  - a. Subscriber Name
  - b. Subscriber Address
  - c. Identifying information such as date of birth, driver's license number, and/or social security number
  - d. Subscriber contact information including email addresses and contact phone numbers
2. Billing and credit information for the phone number **317-792-0721** including by way of example and not limitation:
  - a. Method and source of payment information including credit card numbers, electronic funds transfers, and locations of cash payments
  - b. Credit information including any credit report run by the provider prior to the authorizing service
3. Service information for the phone number **317-792-0721** including by example and not limitation:
  - a. Purchase and activation location
  - b. Types of service subscribed to
  - c. Additional phone numbers associated with the same account
  - d. Make, model, and serial numbers (ESN, IMEI, MEID) of the phone(s) associated with the account

**IP210070567 317-792-0721**

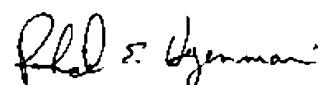
  
Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 49525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

4. Call Detail Records for the wireless number **317-792-0721** for the days of **07/01/2021** to **07/12/2021**, UTC Time including:
  - a. Cellular calls,
  - b. SMS/MMS messages
  - c. Data communication
  - d. Tower locations (LAC/CID) and azimuth for the sectors accessed during the communication
5. A list of all T-Mobile, USA/Metro PCS cell towers with latitude, longitude, address, and sector directions
6. Voice Mail Messages including content
7. A detailed definitions page which identifies all information in the records
8. Please preserve the records in case they are needed in the future
9. Please provide results in UTC Time

Please provide this information to Detective **Connie Pearson** in digital format on a compact disc in Excel or TXT format and / or Electronic Mail.

**END OF LIS**

**IP210070567 317-792-0721**

  
Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 49525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No



INDIANAPOLIS METROPOLITAN POLICE DEPARTMENT

**FAX HEADER SHEET**

BRYAN ROACH, CHIEF OF POLICE  
50 NORTH ALABAMA STREET  
INDIANAPOLIS, IN 46204

<b>PLEASE DIRECT THIS CORRESPONDENCE TO:</b>	
NAME:	
COMPANY:	T-Mobile, USA/Metro PCS
DEPARTMENT:	Law Enforcement Relations
FAX NUMBER:	973-292-8697

<b>CORRESPONDENCE SENT FROM:</b>	
NAME:	Connie Pearson
DIVISION/BRANCH:	Homicide
OFFICE TELEPHONE:	317-327-3544
FAX NUMBER:	317-327-3499
COMMENTS/NOTES	PAGES (Including This Sheet)

IP210070567 317-792-0721

*Rich E. Hagenmaier*  
Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 4D525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

This is in reference case number **IP210070567** . Please provide the information in digital format, either in Microsoft Excel, or a format that could be exported to Excel. If you provide the information in a format other than Excel please provide instructions to export to excel. Please email the records to me so I can begin working on them immediately. For court Purposes I need a certified copy as well. Please provide all the records along with the cell site Locations in a single disc, and have the custodian of records sign his or her name on the disc. Please complete the Affidavit of Custodian of Records and return the original copy with the Records. The information may be mailed to:

Indianapolis Metropolitan Police Department  
ATTN: Detective **Connie Pearson**  
**50 N. Alabama**  
**Indianapolis, IN 46204**  
Email: **Connie.Pearson@indy.gov**

**IP210070567 317-792-0721**

*Richard E. Hagenmaier*  
Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 49525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

STATE OF INDIANA      )  
                            )  
                            ) SS:  
COUNTY OF MARION    )

T-Mobile / Metro PCS Case #\_\_\_\_\_

**AFFIDAVIT OF CUSTODIAN OF BUSINESS RECORDS**

I, \_\_\_\_\_ being first duly sworn upon my  
(Name)

Oath, state as follows:

1. That I am the KEEPER OF THE RECORDS \_\_\_\_\_

and custodian of their business records. I am familiar with the record keeping practices and supervise the keeping of said business records.

2. That I have examined the \_\_\_ page document or CD enclosed with this affidavit, or the electronic documents attached to the electronic mail sent along with this affidavit, and certify that the enclosed or attached documents or CD are exact copies of records, which were copied from the permanent records of

\_\_\_\_\_  
(NAME ON THE ACCOUNT)

\_\_\_\_\_  
(PHONE NUMBER)

3. That the enclosed or attached records or CD were made and kept in the course of regularly conducted business activity at or near the date of each event recorded, were not prepared in anticipation of litigation, and were kept by employees of this business who had personal knowledge of the facts and events recorded.

4. That the enclosed records or CD are used by this business as the regular practice of business activity and it is our regular practice to make and keep these records, all of which are true and correct copies.

I affirm, under penalties for perjury, that the foregoing representations are true.

\_\_\_\_\_  
(Signature)

BEFORE ME, a Notary Public in and for the State of \_\_\_\_\_, on this \_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_, personally appeared \_\_\_\_\_ to me well known to  
be the person described in and who signed the foregoing, and acknowledged to me that he executed the same  
freely and voluntarily for the uses and purposes therein expressed.

WITNESS my hand and official seal the date aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires \_\_\_\_\_  
My County of Residence is \_\_\_\_\_

IP210070567 317-792-0721

*Richard E. Hagenmaier*  
Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 49525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

## SEARCH WARRANT

**TO: ANY LAW ENFORCEMENT OFFICER:**

An Affidavit for a Search Warrant has been submitted to me, a duly authorized Judicial Officer of Marion County, Indiana. I have examined the Affidavit and being duly advised in the premises, FIND and DETERMINE that PROBABLE CAUSE exists for the issuance of this Search Warrant.

**Law Enforcement Officer(s)** are AUTHORIZED and ORDERED, in the name of the State of Indiana, and with the necessary and proper assistance of persons or entities that are shown this Search Warrant, to do the following:

1. Enter into and upon the property and premises;
2. Diligently search for and seize all or part of property, objects, things or information; and
3. Diligently search for and seize the person(s)

All as described and detailed in the page(s) titled: "List of Property, Objects, Things, Information, or Persons to be Seized or Produced."

This Search Warrant; the List of Property, Objects, Things, Information, or Persons to be Seized or Produced; along with the Affidavit are a part of this Search Warrant; and are watermarked with my electronic signature, the Court Cause Number and Transaction ID.

SO ORDERED, 13 Day of July, 2021 AT 8:23 AM.

**s/ Richard Hagenmaier**  
Judge, Marion Superior Court, (Room D20)

This Search Warrant issued by the Marion Superior Court, Indianapolis, Indiana is pursuant to Indiana Code §35-33-5-8(a)(4) which states: “[t]he affiant and the judge may use an **electronic signature** on the affidavit and warrant.” “An electronic signature may be indicated by “s/Affiant’s Name” or “s/Judge’s Name” or by any other electronic means that identifies the affiant or judge and indicates that the affiant or judge adopts the contents of the document to which the electronic signature is affixed.”

5-10-17 V1.6

Judicial Officer Name : Richard Hagenmaier  
Cause Number : 49B20-2107-MC-021405  
Transaction ID : 4D5245145A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No

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**SEARCH WARRANT RETURN**

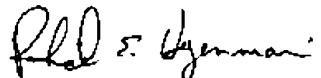
I, the undersigned, executed this warrant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at  
\_\_\_\_\_ o'clock AM/ PM and that the following items were seized:

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***Law Enforcement Officer Name***

***Department Name***

5-10-17 V1.6

  
Richard Hagenmaier  
Cause Number : 49D20-2107-MC-021405  
Transaction ID : 4D525415A8AD4AC  
Date and Time Issued : 07/13/2021 08:23:12  
Ruling : GRANTED  
Sealed Warrant : No



**ELECTRONICALLY FILED**

07/13/2021 00:20:31

Myla L. Eldridge

Clerk of the Marion Circuit Court

Case Number: 49D28-2107-MC-021389

Transaction ID: E1C3818B65F5422



**Tuesday, July 13, 2021**

## Electronic Search Warrant Cover Sheet

An Affidavit for a Search Warrant has been submitted by:

**Date:** 07/13/2021

**Time:** 00:17:29

**Officer:** Doug Swails

**Phone:** 317-306-9326

**Email:** Douglas.Swails@indy.gov

**Officer Additional Comments:**

Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D28-2107-MC-021389  
Transaction ID : E1C3818B65F5422  
Date and Time Issued : 07/13/2021 00:25:16  
Ruling : GRANTED  
Sealed Warrant : No

## Marion County



### Electronic Search Warrant Submission Form

<b>HAS THIS AFFIDAVIT BEEN SUBMITTED BEFORE TO ANOTHER JUDGE*?</b> <input checked="" type="checkbox"/> <b>YES</b> <input type="checkbox"/> <b>NO</b>		
(*PLEASE NOTE: IF PREVIOUSLY SUBMITTED TO A JUDGE, ANY ADDITIONAL SUBMISSIONS SHOULD BE DIRECTED TO THE SAME JUDGE <b>IF AT ALL POSSIBLE.</b> )		
If YES, Name of Judge Matthew Symons		
Case Number IP210070567		

<b>WAS A SEARCH WARRANT ISSUED WITH THAT SUBMISSION*?</b> <input checked="" type="checkbox"/> <b>YES</b> <input type="checkbox"/> <b>NO</b>		
If YES, Case Number 49D25-2107-MC-021386 (IP210070567)		

#### SEARCH WARRANT PRIORITY: **\*REQUIRED FIELD**

<input type="checkbox"/>	<b>Critical</b>	Threat to life. i.e. SWAT waiting to make entry on a hostage barricade
<input checked="" type="checkbox"/>	<b>Time Sensitive</b>	Significant amount of public safety resources waiting on warrant, imminent destruction or imminent loss of evidence (i.e. DUI's) that would not otherwise be considered an exigent circumstance exception
<input type="checkbox"/>	<b>Routine</b>	All Others – This would include most narcotics warrants where we are not currently “holding” a location

I swear and affirm, under penalty of perjury as specified by **IC 35-44.1-2-1**, that the foregoing and following representations in this document submission are true.

**\*REQUIRED FIELDS** DATE: **7/13/2021** TIME SUBMITTED: **12:17 AM**

<b>SUBMITTING OFFICER NAME</b>	DOUG SWAILS
<b>PHONE NO</b>	317-306-9326
<b>EMAIL ADDRESS</b>	DOUGLAS.SWAILS@INDY.GOV

*Please enter a valid phone number and email address where the Clerk of the Court/Judicial Officer can contact the officer in case of question*

#### **ADDITIONAL OFFICER COMMENTS:**

*Document Version 2.0 Effective Date: 5-8-2017*

ADDED Electronics and electronic accessories to warrant

Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D28-2107-MC-021386  
Transaction ID : E1C3818B65F542  
Date and Time Issued : 07/13/2021 00:25:16  
Ruling : GRANTED  
Sealed Warrant : No

STATE OF INDIANA      )  
                            )  
                            ) SS:  
COUNTY OF MARION    )

IN THE MARION SUPERIOR COURT  
CRIMINAL DIVISION

**SEARCH WARRANT AFFIDAVIT**

I, Detective Doug Swails, am first duly sworn upon my oath, state as follows:

**THE INVESTIGATION**

On July 12, 2021, at approximately 9:44 pm, Officers with the Indianapolis Metropolitan Police Department responded to a death investigation at 1230 N Luett Ave. Officers responding to this location were advised that caller had called in and reported a dead person in his home. The caller stated the front door should be unlocked and open. The caller refused to give any further information. Upon arrival officers found the front door to residences closed but unlocked. Officers made entry and found a black female in a bedroom under white sheets with her hands folded across her chest. Medic 18 arrived and pronounced the female deceased at 9:24 pm. Officers found a Dell laptop plugged in on a table.

Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D28-2107-MC-021389  
Transaction ID : E1C3818B65F542  
Date and Time Issued : 07/13/2021 00:25:16  
Ruling : GRANTED  
Sealed Warrant : No

**REQUEST FOR SEARCH WARRANT**

Based upon the probable cause set forth above, I also hereby request that the Court issue a search warrant, authorizing law enforcement officers to search the residence and detached garage which is more particularly described as follows:

The residence of **1230 N Luett Ave.** described as a single-story single-family dwelling with a detached garage. The residence has tan siding with white trim around the windows and a white storm door. There is a stained red wooden deck that wraps around the front of the house. The numbers 1230 are affixed to right of the door diagonally above the mailbox. The garage has tan siding with white trim and a black roof.

This search warrant authorizes law enforcement officers to search for and seize the following:

1. Firearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms
2. spent cartridge casings, spent bullets, bullet fragments, live bullets
3. documents showing ownership and/or other occupants of the residence
4. cellular telephones
5. DNA, trace evidence, latent prints
6. photographs/video of interior and exterior of the residence
7. Electronics and electronic accessories

I swear or affirm under penalties for perjury that the foregoing representations are true.

/s/Doug Swails  
Affiant

Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D28-2107-MC-021389  
Transaction ID : E1C3818B65F542  
Date and Time Issued : 07/13/2021 00:25:16  
Ruling : GRANTED  
Sealed Warrant : No

**LIST OF PROPERTY, OBJECTS, THINGS, INFORMATION, OR PERSONS AUTHORIZED  
TO BE SEIZED OR PRODUCED**

**To any law enforcement officer:**

Pursuant to this Search Warrant, Law Enforcement Officer(s), with the necessary and proper assistance of persons or entities that are shown this Search Warrant, are AUTHORIZED and ORDERED, in the name of the State of Indiana to do the following:

1. Enter into and upon the property and premises;
2. Diligently search for and seize all or part of property, objects, things or information; and
3. Diligently search for and seize the person(s)

You are hereby authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance, to search a residence and detached garage, which is more particularly described as follows:

The residence of **1230 N Luett Ave.** described as a single-story single-family dwelling with a detached garage. The residence has tan siding with white trim around the windows and a white storm door. There is a stained red wooden deck that wraps around the front of the house. The numbers 1230 are affixed to right of the door diagonally above the mailbox. The garage has tan siding with white trim and a black roof.

This search warrant authorizes law enforcement officers to search for and seize the following:

1. Firearms, firearm accessories, firearm parts, paperwork relating to the purchase or sale of firearms
2. spent cartridge casings, spent bullets, bullet fragments, live bullets
3. documents showing ownership and/or other occupants of the residence
4. cellular telephones
5. DNA, trace evidence, latent prints
6. photographs/video of interior and exterior of the residence
7. Electronics and electronic accessories

End of List

Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D28-2107-MC-021389  
Transaction ID : E1C3818B65F5422  
Date and Time Issued : 07/13/2021 00:25:16  
Ruling : GRANTED  
Sealed Warrant : No

## SEARCH WARRANT

**TO: ANY LAW ENFORCEMENT OFFICER:**

An Affidavit for a Search Warrant has been submitted to me, a duly authorized Judicial Officer of Marion County, Indiana. I have examined the Affidavit and being duly advised in the premises, FIND and DETERMINE that PROBABLE CAUSE exists for the issuance of this Search Warrant.

**Law Enforcement Officer(s)** are AUTHORIZED and ORDERED, in the name of the State of Indiana, and with the necessary and proper assistance of persons or entities that are shown this Search Warrant, to do the following:

1. Enter into and upon the property and premises;
2. Diligently search for and seize all or part of property, objects, things or information; and
3. Diligently search for and seize the person(s)

**All as described and detailed in the page(s) titled: "List of Property, Objects, Things, Information, or Persons to be Seized or Produced."**

This Search Warrant; the List of Property, Objects, Things, Information, or Persons to be Seized or Produced; along with the Affidavit are a part of this Search Warrant; and are watermarked with my electronic signature, the Court Cause Number and Transaction ID.

SO ORDERED, 13 Day of July, 2021 AT 12:25 AM.

**s/ Matthew Symons**  
Judge, Marion Superior Court, (Room D28)

This Search Warrant issued by the Marion Superior Court, Indianapolis, Indiana is pursuant to Indiana Code §35-33-5-8(a)(4) which states: “[t]he affiant and the judge may use an **electronic signature** on the affidavit and warrant.” “An electronic signature may be indicated by “s/Affiant’s Name” or “s/Judge’s Name” or by any other electronic means that identifies the affiant or judge and indicates that the affiant or judge adopts the contents of the document to which the electronic signature is affixed.”

5-10-17 V1.6

Judicial Officer Name : Matthew Symons  
Case/Cause Number : 49D28-2107-MC-021389  
Transaction ID : E1C381865F45422  
Date and Time Issued : 07/13/2021 00:25:16  
Ruling : GRANTED  
Sealed Warrant : No

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**SEARCH WARRANT RETURN**

I, the undersigned, executed this warrant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at  
\_\_\_\_\_ o'clock AM/ PM and that the following items were seized:

---

*Law Enforcement Officer Name*

*Department Name*

Respectfully submitted,



Marion County Public Defender Agency  
3115 Southeastern Ave., Suite 300  
Indianapolis, IN 46203  
(317) 327-4477  
[Talisha.Griffin@indy.gov](mailto:Talisha.Griffin@indy.gov)  
Counsel for Petitioner

Date: April 11, 2025