

Police Prosecutor Update

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Carter v. State
Court of Appeals December 30, 2024
2024 Ind. App. Unpub. LEXIS 1677

State's mere connection of a seized phone to a GrayKey did not violate Defendant's rights under Article 1, Section 11 of the Indiana Constitution

- Carter had been providing alcohol and vape pens to M.H., a minor that he had met on Snapchat, in exchange for nude photos of M.H.
- After M.H.'s parents took his phone away, Carter tried to deliver a new phone to M.H. at his school so that they could communicate; however, Carter delivered the phone to the wrong school.
- Police obtained a search warrant for Carter's phone and seized it. A second warrant was requested to be able to search the contents of Carter's phone.
- Before obtaining the second warrant, police connected the phone to a "GrayKey" device, which allows limited access to device data even if the phone is locked, prevents the battery from dying, and blocks remote access.
- After the second search warrant was granted, a search of Carter's phone revealed several nude photos of M.H.
- After being found guilty of Possession of Child Pornography as a Level 6 Felony and Contributing to the delinquency of a Minor, a Class A Misdemeanor, Carter appealed, alleging that his rights under Article I, Section 11 of the Indiana Constitution were violated by the State connecting his cell phone to the GrayKey device before obtaining the second warrant to actually search his phone.

Importantly, the GrayKey program does not automatically extract data from a cell phone. The program requires an officer to enter a command to begin the extraction process. In this case, the second search warrant was acquired prior to this step being taken by the police. The photos found on Carter's phone were not discovered until after the second search warrant had been granted

Using the *Litchfield* balancing test, the Court looked at the reasonableness of the

officer's search, balancing 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 person's ordinary activities; and 3) the extent of law enforcement needs.

The degree of suspicion that the phone contained incriminating photographs was high, something that Carter conceded at trial.

The degree of intrusion was low. The only information obtained by connecting the phone to the GrayKey device was that the phone was locked- a fact that had no privacy value. Carter argued that the ability of the GrayKey to search his phone made the degree of intrusion very high; however, the Court reasoned that since the search could not have been initialized without police entering a program command to do so, his concern was illusory.

Finally, the degree of law enforcement needs was high. An additional function of the GrayKey program is to preserve the phone's lock state and battery life, and more importantly, prevent the phone from being accessed remotely.

Conviction Affirmed.

Brooks v. State of Indiana
Indiana Court of Appeals January 31, 2025
2025 Ind. App. LEXIS 19

Exigent circumstances existed to ping the defendant's cell phone under Ind. Code § 35-33-5-12(a) and the Fourth Amendment.

- Brooks began an online relationship with 13-year-old S.W.
- S.W. snuck out of her home and was picked up by Brooks and taken to an area hotel.
- S.W.'s parents realized that S.W. was not in her room at 4:00 a.m. and called 911 to report that their daughter was missing from the home.
- S.W.'s mother looked through the caller ID on their phone and noticed a 574 number that she did not recognize had called their number several times in the days prior to their daughter's disappearance.
- Officers had S.W.'s mother call the 574 number to try to identify the owner, but the call was not answered and the voicemail was not set up.
- Officers asked dispatch to ping the 574 number to try to locate where the phone was at.
- Officers requested the ping without a search warrant.
- As a result of the ping, officers located Brooks and S.W. at a local hotel.

- S.W. denied that she and Brooks had sex; however, S.W.'s mother followed her into the bathroom when she was returned home and observed blood in S.W.'s underwear.
- S.W. admitted to her mother and to police that she and Brooks did have sex.
- Brooks was charged with three counts of Child Molesting
- Brooks filed a motion to suppress the evidence obtained by the ping of his phone as illegally obtained in violation of I.C. 35-33-5-12, the 4th Amendment of the U.S. Constitution, and Article 1, Section 11 of the Indiana Constitution.
- The trial court denied the motion to suppress, and Brooks was convicted on all three counts of Child Molesting.

Indiana Code section 35-33-5-12 Analysis

This code section states that “A law enforcement officer...may not use a real time tracking instrument that is capable of obtaining geo-location information concerning a cellular device or a device connected to a cellular network unless” they have a warrant or exigent circumstances exist.

Here, the Court found that exigent circumstances existed to perform the ping on Brooks' phone. The Court weighed several factors and agreed that time was of the essence given: the age of S.W. (13 years old); that the front door of S.W.'s home had been left open; S.W. did not have a history of running away and her parents did not know why she would have run away that night; the 574 phone number was the only one on the home phone caller ID that S.W.'s parents did not know; S.W. left the home without her cell phone; and Brooks did not answer his phone when S.W.'s mother tried calling the phone. These facts led to the Court agreeing that conducting the ping on Brooks' phone was acceptable for determining if the phone number was somehow related to S.W.'s disappearance.

Fourth Amendment Analysis

The 4th Amendment prohibition against warrantless searches and seizures has specific exceptions. One of these exceptions is when exigent circumstances exist that are so compelling that they make a warrantless search or seizure reasonable. The Court reviews exigent circumstances by looking at the totality of the circumstances to decide if the police were faced with such an emergency to allow acting without a warrant.

Here, the Court reasoned that the unexplained disappearance of a 13-year-old girl from her home in the middle of the night and with no history of running away, along with the additional factors listed above, constituted the type of emergency that justified the warrantless ping of Brooks' phone, as Brooks' phone number was the only lead in her disappearance.

Article 1, Section 11 Indiana Constitutional Analysis

Under this section of the Indiana Constitution, the Court looks at the reasonableness of the warrantless search using the balancing test from *Litchfield*, which looks at 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 imposes on the person's ordinary activities; and 3) the extent of law enforcement needs.

Under the first factor, the Court found that the degree of suspicion was medium. The 574 phone number was the only lead that police had at that time to investigate S.W.'s unexplained disappearance from her home.

As for the degree of intrusion on the person's ordinary activities, the Court found that while determining Brooks' location was an invasion of his privacy, the degree of intrusion was moderate.

Finally, the extent of law enforcement need was extremely high. The only information that police had was that a 13-year-old girl was missing from her home in the middle of the night with no explanation. Their only possible lead with the phone calls from the 574 phone number to the home phone- a number that S.W.'s parents did not know. Police had a reasonable belief given the facts and circumstances of the disappearance that time was of the essence in exploring this lead to find S.W. before she was harmed.

In analyzing these three factors, the Court found that although the suspicion and the intrusion on Brooks were moderate, the exigency of the need to find a missing 13-year-old girl was extremely high, and therefore the police action in pinging Brooks' phone without a search warrant was reasonable.

Conviction Affirmed.

Drug School

Psilocybin, a.k.a. Magic Mushrooms, Mushrooms, or Shrooms

Psilocybin comes from certain types of *psilocybe* mushrooms. Psilocybin is metabolized in the body to the active drug psilocyn, also present in many of the same mushrooms. Psilocybin mushrooms are ingested orally. They may also be brewed as a tea or added to other foods to mask their bitter flavor. The physical effects include nausea,

vomiting, muscle weakness, and lack of coordination. The psychological effects of psilocybin use include hallucinations and an inability to discern fantasy from reality. Panic reactions and a psychotic-like episode also may occur, particularly if a user ingests a high dose.

Images of Psilocybin



UPCOMING IPAC TRAININGS

- Evidence Bootcamp
 - o March 20, 2025
 - o Hyatt Place Hotel, Downtown Indianapolis
- Domestic Violence Trial Ad 1
 - o April 22-24, 2025
 - o Hyatt Place Hotel, Downtown Indianapolis

- Spring Seminar
 - o May 16, 2025
 - o Marriott Indianapolis North

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This is a publication of Indiana Prosecuting Attorneys Council which will cover caselaw and various topics of interest to law enforcement officers. Please direct any questions or suggestions you may have for future issues to Dave Thornburg, Drug Resource Prosecutor at IPAC – DaThornburg@ipac.in.gov