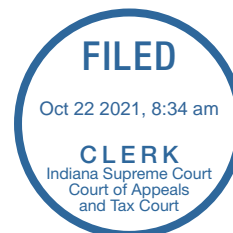


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Brishon Darvel Bond,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 22, 2021

Court of Appeals Case No.  
21A-CR-917

Interlocutory Appeal from the  
Hamilton Superior Court

The Honorable William J. Hughes,  
Judge

Trial Court Cause No.  
29D03-1906-F4-4783

**Bradford, Chief Judge.**

## Case Summary

- [1] Following an investigation into a number of burglaries in Boone and Hamilton Counties, Brishon Darvel Bond was charged with numerous felonies. Prior to trial, Bond filed a motion to suppress certain evidence stemming from a search warrant that allowed detectives to place a GPS monitoring device on his vehicle. The trial court denied Bond's motion to suppress, and this interlocutory appeal follows. We affirm.

## Facts and Procedural History

- [2] In October of 2018, Zionsville Police Detective Elizabeth Frost began investigating several "high end" burglaries in the Zionsville area. Appellant's App. Vol. II p. 198. Each of the burglaries involved a similar method of operation, that being

using patio furniture to get to the second story master bedroom window/patio door, where entry was made into the home. While inside of the home the suspect would stay inside of the master bedroom suite area, take a pillow case off of the bed, items commonly stolen would consist of jewelry, coins, guns[,] etc. The suspect would then exit the home through the same window/door entered.

Appellant's App. Vol. II p. 198. Detective Frost became aware of similar burglaries dating back to 2015 in Carmel, Fishers, Westfield, and elsewhere in Boone County. The "same type of entry and items stolen were consistent with all of these burglaries." Appellant's App. Vol. II p. 198.

[3] At some point during her investigation, Detective Frost obtained reason to believe that Bond was a participant in the burglaries. Specifically, she learned that in January of 2018, detectives from the Carmel and Westfield Police Departments had obtained search warrants for AT&T, T-Mobile, Verizon, and Sprint authorizing the officers to obtain cellphone tower usage records to correspond with the burglaries that occurred on October 27th, November 17th, December 9th, and December 21, 2017.<sup>1</sup> Upon receiving those records, the detectives searched for common numbers with no other immediately-plausible reason for being in all four locations on those dates. In doing so, detectives realized that the phone number (317) 979-9225 had been in the area of the burglaries on each of the four dates. Bond was subsequently identified as the subscriber associated with that phone number. Forensic testing on a black ski mask collected after an attempted burglary that occurred on December 26, 2018, also confirmed the presence of Bond's DNA.

[4] As the investigation into the burglaries progressed, detectives searched Indiana Bureau of Motor Vehicles records for registrations connected to Bond. Detectives learned that Bond was the registered owner of a black BMW, a Toyota Avalon, and a gold Infiniti QX56. Detectives began conducting surveillance on Bond's address on December 20, 2018. While conducting surveillance, detectives only observed Bond driving the gold Infiniti, observing

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<sup>1</sup> Bond does not challenge the validity of these search warrants.

him using the Infinity to run errands, attend a public meeting, pick up food, and go to the bank.

[5] On February 20, 2019, Detective Frost filed a search warrant affidavit (“the Affidavit”) in which she requested permission to place a GPS tracking device on Bond’s Infinity. In the Affidavit, Detective Frost averred that she believed that probable cause existed to believe that Bond was using his Infinity to “engage in criminal activity” and that “ascertaining the precise location of the target vehicle will assist with the ongoing criminal investigation.” Appellant’s App. Vol. II p. 206. The trial court issued the search warrant on February 22, 2019, authorizing detectives to place the GPS tracking device on Bond’s Infinity and monitor the Infinity’s whereabouts for sixty days.

[6] On June 18, 2019, the State charged Bond with six counts of Level 4 felony burglary, one count of Level 4 felony attempted burglary, three counts of Level 5 felony theft, three counts of Level 6 felony theft, and seven counts of Level 6 felony residential entry.<sup>2</sup> The State also alleged that Bond was a habitual offender. On March 25, 2021, Bond moved to suppress GPS evidence obtained pursuant to the search warrant issued on February 22, 2019. On April 21, 2021, the trial court denied Bond’s motion to suppress. The trial court subsequently certified the issue for interlocutory appeal, and we accepted jurisdiction.

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<sup>2</sup> Some of the charges relate to events that took place prior to the issuance of the search warrant on February 22, 2019, and some relate to events that took place after.

## Discussion and Decision

[7] Bond contends that the trial court erred in denying his motion to suppress the evidence stemming from the search warrant that allowed detectives to place a GPS monitoring device on his vehicle. Our standard of review on appeal for the denial of a motion to suppress evidence is similar to other sufficiency issues. *Johnson v. State*, 21 N.E.3d 841, 843 (Ind. Ct. App. 2014).

We determine whether substantial evidence of probative value exists to support the court’s denial of the motion. [*Westmoreland v. State*, 965 N.E.2d 163, 165 (Ind. Ct. App. 2012)]. We do not reweigh the evidence, and we consider conflicting evidence most favorably to the trial court’s ruling. *Taylor v. State*, 689 N.E.2d 699, 702 (Ind. 1997). However, unlike other sufficiency matters, we must also consider the uncontested evidence that is favorable to the defendant. *Westmoreland*, 965 N.E.2d at 165.

*Id.* “We review de novo a ruling on the constitutionality of a search or seizure, but we give deference to a trial court’s determination of the facts, which will not be overturned unless clearly erroneous.” *Westmoreland*, 965 N.E.2d at 165 (citing *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008)).

### I. Issuance of Search Warrants Generally

[8] “In deciding whether to issue a search warrant, the issuing magistrate’s task is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place.” *Rader v. State*, 932 N.E.2d 755, 758–59 (Ind. Ct. App. 2010) (quoting *Mehring v. State*, 884 N.E.2d 371, 376–77

(Ind. Ct. App. 2008)). “[A] probable cause affidavit is required to establish a logical connection, or nexus, between the suspect and the location to be searched.” *Id.* at 759. “Put differently, the affidavit must link the object of the search with criminal activity.” *Heuring v. State*, 140 N.E.3d 270, 274 (Ind. 2020). Significantly, however, “probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Copas v. State*, 891 N.E.2d 663, 666 (Ind. Ct. App. 2008) (internal quotations omitted).

[9] The duty of the reviewing court is to determine whether the magistrate had a “substantial basis” for concluding that probable cause existed. [*Illinois v. Gates*, 462 U.S. 213, 238–39 (1983)]. It is clear that a substantial basis requires the reviewing court, with significant deference to the magistrate’s determination, to focus on whether reasonable inferences drawn from the totality of the evidence support the determination of probable cause. *Houser v. State*, 678 N.E.2d 95, 99 (Ind. 1997).

*Query v. State*, 745 N.E.2d 769, 771 (Ind. 2001).

## II. Applicable Constitutional Provisions

[10] The Fourth Amendment, which protects citizens against unreasonable searches and seizures of persons and property, provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

“As a deterrent mechanism, evidence obtained in violation of this rule is generally not admissible against a defendant absent a recognized exception.”

*Johnson v. State*, 117 N.E.3d 581, 583 (Ind. Ct. App. 2018).

[11] “Likewise, [A]rticle I, [S]ection 11 of the Indiana Constitution protects citizens from unreasonable searches and seizures.” *Id.* However, although the language of Article I, Section 11 tracks the Fourth Amendment verbatim,

Indiana has explicitly rejected the expectation of privacy as a test of the reasonableness of a search or seizure. The legality of a governmental search under the Indiana Constitution turns on ...  
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, 359–61 (Ind. 2005). Thus, “[d]espite the similarity of the two provisions, Indiana courts interpret and apply [A]rticle I, [S]ection 11 independently from Fourth Amendment analysis.” *Johnson*, 117 N.E.3d at 583 (citing *Mitchell v. State*, 745 N.E.2d 775 (Ind. 2001)).

### III. The Instant Matter

[12] We have concluded “that, absent extraordinary circumstances, a warrant is required before the police may conduct a ‘search’ by placing a GPS device on a vehicle and monitoring the vehicle’s movements by means of the GPS device.” *Keeylen v. State*, 14 N.E.3d 865, 874 (Ind. Ct. App. 2014). Nothing in the record before us indicates that any extraordinary circumstances were present that

would negate the necessity for a warrant. Thus, the detectives' act of placing a GPS device on Bond's Infinity required a valid search warrant.

### **A. Fourth Amendment**

[13] Again, in challenging the denial of his motion to suppress, Bond asserts that the search warrant was invalid because the Affidavit failed “to link the Infinity to the burglary investigations enumerated in the Affidavit.” Appellant’s Br. p. 11. However, contrary to Bond’s assertion, we conclude that the Affidavit sufficiently created a nexus between Bond, the criminal activity, and the likelihood that Bond was using his Infinity in furtherance of his alleged criminal conduct. The Affidavit indicated that Bond, who lived in Indianapolis, was connected to numerous burglaries occurring in Hamilton and Boone Counties. Bond’s cellphone records placed him in the general vicinity of at least four burglaries and his DNA was recovered from the location of another of the attempted burglaries. None of the burglaries or attempted burglaries occurred within reasonable walking distance of Bond’s home in Indianapolis, leading one to reasonably infer that he was using a vehicle to travel to and from the scenes of the burglaries and attempted burglaries. Further, while multiple vehicles were registered to Bond, the investigating detectives who conducted surveillance on Bond for over a month observed only the Infinity at Bond’s home and observed him driving only the Infinity. While these facts do not conclusively establish that Bond used the Infinity in commission of any criminal activity, the facts contained in the Affidavit are sufficient to establish a logical connection or nexus between Bond’s alleged criminal acts and the



Infinity. *See Rader*, 932 N.E.2d at 759. As such, we conclude that the Affidavit was sufficient to support the issuance of the warrant under the Fourth Amendment.

## **B. Article I, Section 11**

[14] Turning our attention to Bond’s claims relating to the Indiana Constitution, we again note that although there may be other relevant considerations under the circumstances, in reviewing the reasonableness of a search under the Indiana Constitution, we balance “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*, 824 N.E.2d at 361.

[15] While the placement of a GPS tracking device on Bond’s Infinity may be considered to be an intrusive method of searching for evidence relating to Bond’s potential participation in the largescale, multi-county burglary ring, detectives had a high degree of suspicion that Bond was an active participant in the alleged crimes. Bond had been tied to at least five of the previous crime scenes. Each of the burglaries and attempted burglaries involved a similar method of operation with similar items taken, allowing one to reasonably believe that the same individuals participated in each of the alleged crimes. Furthermore, law enforcement’s needs can reasonably be characterized as “great,” given that detectives were investigating a largescale multi-county burglary ring, with most, if not all, of the burglaries occurring in Boone and Hamilton Counties. The burglaries and attempted burglaries had occurred over

the course of at least three years. Again, phone records placed Bond in the vicinity of at least four of the burglaries and DNA evidence placed Bond at the scene of one of the attempted burglaries. Despite the fact that one could arguably classify the search as intrusive, the other *Litchfield* factors balance in favor of a finding of reasonableness. As such, we conclude that the issuance of the search warrant was reasonable under Article I, Section 11.

[16] The judgment of the trial court is affirmed.

Robb, J., and Altice, J., concur.