[CAPTION]

MOTION TO SUPPRESS EVIDENCE (EXIGENT CIRCUMSTANCES/ PROBATION SEARCH)

The Defendant, by counsel, respectfully requests that this Court to suppress all property seized by the arresting officers, all observations made by the arresting officers, and all statements made by the Defendant. In support of this Motion, the Defendant states the following:

1. The Defendant is charged with [insert offenses].
2. On [insert date], a police officer, without lawful authority, entered and searched the Defendant's home.
3. Any information resulting from the entry and search, including the Defendant's blood alcohol level and demeanor, was unlawfully obtained because:
    a. At the time the police officer entered the Defendant's home, the police officer did not have a warrant or justification for a warrantless entry and, thus, violated the Fourth Amendment to the United States Constitution.
    b. Considering the totality of the circumstances, the police officer's warrantless entry into the Defendant's home was unreasonable and, thus, violated Article I, Section 11 of the Indiana Constitution.
    c. The police officer's continued presence in the Defendant's home was neither justified by a warrant nor an exception to the warrant requirement and, thus, violated the Fourth Amendment to the United States Constitution.
    d. Considering the totality of the circumstances, the police officer's continued presence in the Defendant's home was unreasonable under Article I, Section 11 of the Indiana Constitution.
    e. The police officer's seizure of the Defendant was a direct result of the unlawful entry and continued presence, and thus, also violates the Defendant's constitutional rights to be free from unreasonable

seizures. U.S. CONST. 4th Amend.; IND.CONST. art. I, δ 11.

WHEREFORE, the Defendant requests the Court to:

a. Suppress and bar from use as evidence in the trial of this cause any observations, including Defendant's blood alcohol level and her demeanor, which resulted from the illegal entry, search and seizure.

b. Suppress and bar from use in the trial of this cause all testimony relating to any observations, including the Defendant's blood alcohol level and her demeanor, which resulted from the illegal entry, search and seizure.

(Signature)

Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) (a warrantless intrusion of a home may be justified by hot pursuit of a fleeing felon, imminent destruction of evidence, need to prevent a suspect's escape, or risk of danger to police or other persons inside and outside the house; although murder was involved, police were not justified in entering house without warrant where the Defendant was not known to be murderer but suspected of being the getaway driver, police had already recovered murder weapon, no suggestion that others in house were in danger, police had house surrounded and Defendant was "going nowhere").

Cudworth v. State, 818 N.E.2d 133 (Ind.Ct.App. 2004) (there must be an actual emergency; officer's belief that someone is lying about who is inside the home is insufficient).

J.K. v. State, 8 N.E.3d 222 (Ind.Ct.App. 2014) (suspicion of criminal activity is not an exception to the warrant requirement).

Kirk v. Louisiana, 536 U.S. 635, 122 S.Ct. 2458, 153 L.Ed.2d 599 (2002) (exigent circumstances are always required to enter a house when officers have neither arrest warrant nor search warrant, regardless of existence of probable cause).

Brigham City, Utah v. Stuart, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006) (objective facts control in determining whether entry into a home is justified based on a developing emergency situation; where a warrant and consent are lacking, police officers will not be impeded if injury to a person is imminent; subjective motivations of police officers is irrelevant).

Paul v. State, 971 N.E.2d 172 (Ind.Ct.App. 2012) (an important factor to be considered in determining whether an exigency exists for a warrantless arrest is the gravity of the underlying offense for which the arrest is being made; however, no exigency is created simply because there is probable cause to believe that a serious offense has been committed).

Joseph v. State, 975 N.E.2d 420 (Ind.Ct.App. 2012) (a police officer's subjective belief that exigent circumstances exist is insufficient to justify warrantless entry into home; rather, the test is objective).

DESTRUCTION OF EVIDENCE

Esquerdo v. State, 640 N.E.2d 1023 (Ind. 1994) (under the exigent circumstances exception, a warrantless search is justified if the State shows by clear and convincing evidence that the police had an objective and reasonable fear that evidence was about to be destroyed).

Harless v. State, 577 N.E.2d 245 (Ind.Ct.App. 1991) (where evidence did not show anyone in home posed danger justifying protective sweep, and there were no facts which made officers certain that evidence was being destroyed, warrantless search of home was improper; fact that narcotics are involved, standing alone, is not enough to invoke exigent circumstances).

Justice v. State, 552 N.E.2d 844 (Ind.Ct.App. 1990) (absent auto accident, dissipation of alcohol in blood does not create exigent circumstances justifying warrantless, non- consensual blood test); cf. Missouri v. McNeely, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013) (the natural dissipation of alcohol in the bloodstream does not constitute a per se exigence, but is among the factors that must be considered in deciding whether a warrant is required).

NOTE: Even if there is an accident, the police still must have probable cause that the Defendant had been intoxicated prior to a blood draw. Hannoy v. State, 789 N.E.2d 977 (Ind.Ct.App.), *aff'd on reh'g*, 793 N.E.2d 1109 (Ind.Ct.App. 2003).

HOT PURSUIT

United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed. 2d 300 (1976) (a police officer in continuous pursuit of a perpetrator who has committed a felony or who reasonably is suspected of having committed a felony may follow the fleeing suspect into a private place, or the suspect's home if he chooses to flee there, and affect the arrest without a warrant). See also I.C. 35-33-3-5 ("fresh pursuit" defined).

Adkisson v. State, 728 N.E.2d 175 (Ind.Ct.App. 2000) (police may not cause a suspect to come into public view, i.e., threshold of home, and then invoke Santana, *supra*, to enter the home without arrest warrant); see also Harper v. State, 3 N.E.3d 1080 (Ind.Ct.App. 2014).

Sapen v. State, 869 N.E.2d 1273 (Ind.Ct.App. 2007) (because officer did not order Defendant to stop, but let him go back in his garage to retrieve his vehicle registration, officer was not in "hot pursuit" that might have justified illegal warrantless entry into home).

SECURE CRIME SCENE

Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d (1990) (police officers may make a cursory inspection of those spaces where a person may be found to secure a crime scene and ensure their safety; the protective sweep cannot be a full search but only a cursory inspection of places where a person could be found).

Vanzo v. State, 738 N.E.2d 1061 (Ind.Ct.App. 2000) (although second officer claimed she was searching for safety, fact that first officer already searched apartment, victim had been removed from scene, and another officer had been guarding door to apartment illustrated that scene was already secured; thus, second officer could not justify search based on safety for those still in apartment). See also LaMunion v. State, 740 N.E.2d 576 (Ind.Ct.App. 2000).

Weis v. State, 800 N.E.2d 209 (Ind.Ct.App. 2003) (police and welfare caseworkers did not act with sense of urgency and had no facts at time of warrantless entry that were different from suspicions they had over preceding three-week period when the Defendant failed to keep home visit appointments).

Trotter v. State, 933 N.E.2d 572 (Ind.Ct.App. 2010) (fact that there may be an unaccounted-for shotgun on the premises created a possible unsafe situation, but did not establish an exigency to justify a warrantless intrusion into a private residence). But see Harris v. State, 19 N.E.3d 298 (Ind.Ct.App. 2014) (exigent circumstances justified officer's warrantless entry into home to seize handgun officers witnessed Defendant place just inside door when responding to a report of an armed individual who had pointed gun at a female, where officers had no way of knowing of there was anyone in home who could have concealed or used gun on officers, and any young children in home would have had easy access to gun).

Weddle v. State, 989 N.E.2d 371 (Ind.Ct.App. 2013) (protective sweep justified under federal and state constitutions where officers searched only adjoining rooms from which an attack could immediately occur, and officers had specific and articulable facts that an individual, who could jeopardize their safety, was hiding in the back of the house).

Mundy v. State, 21 N.E.3d 114, 120, n.5 (Ind.Ct.App. 2014) (concerns of officer safety "is not a talismanic phrase that permits an officer to enter a home absent a warrant or exigent circumstances"; no exigency existed where officer entered home based upon smell of marijuana and what appeared to be marijuana plants growing outside the home).

COMMUNITY-CARETAKING FUNCTION

Brigham City v. Stuart, 547 U.S. 398 (2006) (an exigency to warrant requirement exists where there is need to assist persons who are seriously injured or threatened with such injury).

Carpenter v. State, 18 N.E.3d 998 (Ind. 2014) (although police have an interest in protecting the public from risk of harm from a violent dog, this interest does not confer blanket authority for warrantless entry of private homes under all circumstances; here, the dogs' aggressive behavior and bloodied appearance were not enough to give rise to a reasonable belief that a person was in danger of imminent harm or in need of emergency assistance).

LIMITATIONS TO DOCTRINE

Hawkins v. State, 626 N.E.2d 436 (Ind. 1993) (exigent circumstances cannot be created by the police themselves). See also State v. Williams, 615 N.E.2d 487 (Ind.Ct.App. 1993); Willis v. State, 780 N.E.2d 423 (Ind.Ct.App. 2002); State v. Lagrone, 985 N.E.2d 66 (Ind.Ct.App. 2013) (exigent circumstances did not justify warrantless search of Defendant's home when electronic parcel wire in package containing marijuana indicated that Defendant had opened the package while in his home because police had created the exigent circumstances by placing the electronic parcel wire in the package without a warrant). But see Kentucky v. King, 563 U.S. 452, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011) (where police smelling marijuana and suspecting a drug dealer was inside the apartment, knocked on the apartment door, fact that the police then heard noises associated with destroying evidence justified warrantless entry).

Middleton v. State, 714 N.E.2d 1099 (Ind. 1999) (exigent circumstances did not justify entry into home when police had home secured while getting warrant). See also Haley v. State, 696 N.E.2d 98 (Ind.Ct.App. 1998); Smock v. State, 766 N.E.2d 401 (Ind.Ct.App. 2002).

Paschall v. State, 523 N.E.2d 1359 (Ind. 1988) (where officers were searching the Defendant's car after an accident, officer's search of locked suitcase was not justified regardless of probable cause that locked suitcase contained narcotics; officers had suitcase and car secured and could have obtained warrant).

Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed2d 732 (1984) (home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense has been committed). See also Haley v. State, 696 N.E.2d 98 (Ind.Ct.App. 1998); Hanna v. State, 726 N.E.2d 384 (Ind.Ct.App. 2000); Willis v. State, 780 N.E.2d 423 (Ind.Ct.App. 2002).

PROBATION SEARCHES

United States v. Knights, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001) (only "reasonable suspicion," rather than probable cause, and no warrant is required for a law enforcement officer to search a probationer's residence, where a court has conditioned probation on consent to search; the probationer's expectation of privacy is diminished by being subject to search by law enforcement as a condition of probation). See also State v. Schlechty, 926 N.E.2d 1 (Ind. 2010). But see State v. Vanderkolk, 32 N.E.3d 775 (Ind. 2015) (home detention participant had agreed to written conditions of is participation that consented only to searches of his home upon probable cause, and therefore warrantless and suspicionless search by community corrections officers was not permitted).

Griffin v. Wisconsin, 483 U.S. 868, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) (probationer's home is protected by the Fourth Amendment's requirement that searches be reasonable; special needs of probation system make the warrant requirement impracticable and justify the replacement of probable cause by "reasonable grounds").

Nowling v. State, 955 N.E.2d 854 (Ind.Ct.App. 2011) (fact that probationer's drug counselor claimed probationer lived in "la la land" about his addictions and probationer's status as a high-risk probationer did not constitute reasonable suspicion to search probationer's room), *aff'd on reh'g*, 961 N.E.2d 34 (Ind.Ct.App. 2012).

Purdy v. State, 708 N.E.2d 20 (Ind.Ct.App. 1999) (condition of probation requiring probationer to submit to search without reasonable suspicion is overly broad; however, search of home was reasonable because it was based on reasonable suspicion; State also demonstrated that warrantless search of probationer was a true probation search and not an improper investigation search). See also Rivera v. State, 667 N.E.2d 764 (Ind.Ct.App. 1996).

Hensley v. State, 962 N.E.2d 1284 (Ind.Ct.App. 2012) (at the point police began their own investigatory search without the probation officer, the officer's search ceased being a probationary search and was unreasonable).

Fitzgerald v. State, 805 N.E.2d 857 (Ind.Ct.App. 2004) (provision that the probationer waive his right against unreasonable searches was invalid despite the State's argument that reasonableness is inherently required; at minimum, there must be reasonable suspicion that conditions of probation are being violated in order for probation search to be reasonable; in this regard, a general or routine sweep for probation compliance checks, as was case in Purdy, will not suffice).

Carswell v. State, 721 N.E.2d 1255 (Ind.Ct.App. 1999) (condition that the probationer submit to warrantless searches was not invalid on its face, despite the fact that it contained no language dealing with reasonableness because the reasonableness standard is implied). See also Bonner v. State, 776 N.E.2d 1244 (Ind.Ct.App. 2002).

Kopkey v. State, 743 N.E.2d 331 (Ind.Ct.App. 2001) (trial court did not err in denying Defendant's motion to suppress laboratory results of chemical analysis of two urine samples obtained by community corrections officers that revealed that Defendant had recently used cocaine where Defendant voluntarily consented to random drug tests as a condition of home detention).

Micheau v. State, 893 N.E.2d 1053 (Ind.Ct.App. 2008) (probation officer's "home visit" for safety reasons was reasonable despite the presence of police where he made police get a warrant as soon as they found evidence of a crime).

Polk v. State, 739 N.E.2d 666 (Ind.Ct.App. 2000) (where police officers did not know that the defendant was a probationer, the police did not have reasonable suspicion to stop the defendant because he was in high crime neighborhood). See also People v. Robles, 23 Cal. 4th 789; 3 P.3d 311 (Cal. 2000) (to justify search of residence on ground that one occupant is subject to probation search condition, officers conducting search must be aware of search condition at time of search).

Shelton v. State, 26 N.E.3d 1038 (Ind.Ct.App. 2015) (reasonable suspicion existed for warrantless search of Defendant's home, as a condition of serving time through community corrections, where police corroborated details of an anonymous tip).