[CAPTION]

MOTION TO SUPPRESS EVIDENCE (STATEMENT AS PRODUCT OF ILLEGAL ARREST)

The Defendant, by counsel, respectfully requests this Court to suppress as evidence in this cause items illegally seized from Defendant's (PICK ONE: apartment, car, person, etc.) and statements made by the Defendant at the time of, or subsequent to his/her arrest in this cause. In support of this Motion, the Defendant states the following:

1. On [insert date], the State charged the Defendant with [insert offenses].
2. On [insert date], police officers, without lawful authority, arrested the Defendant for [insert offenses].
3. After being arrested, the Defendant made statements to the police officers.
4. After being arrested, the police searched the Defendant, finding and seizing [insert property taken].
5. The police were without lawful authority to arrest the Defendant because:

[SELECT APPROPRIATE PARAGRAPH]

a. At the time of his/her arrest, the police lacked probable cause that the Defendant was violating any law either federal, state or local, and thus, violated the Defendant's Fourth Amendment rights by arresting him/her. Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); Knowles v. Iowa, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998); I.C. 35-33-1-1.

b. The arrest was for a misdemeanor not committed in the presence of the arresting officers and was made without any warrant in violation of I.C. 35-33-1-1.

c. The arrest warrant did not substantially comply with the statutory requirements for a telephonic arrest warrant, and thus, was invalid.

d. The arrest warrant issued was so invalid that the officers could not have reasonably relied on the arrest warrant, and thus, the arrest violated the Fourth Amendment of the U.S. Constitution.

e. The police used unlawful means to effectuate the arrest of the Defendant, thus violating his Fourth Amendment right.

f. Considering the totality of the circumstances, the detention, arrest and seizure of the Defendant was unreasonable, and violated Article I, Section 11 of the Indiana Constitution.

g. The statements made by the Defendant must be suppressed because they were a product of the illegal arrest, detention and seizure of the Defendant. Kaupp v. Texas, 538 U.S. 626, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003); Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975).

h. The property seized by the police must be suppressed because it was obtained as a result of the illegal arrest. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

WHEREFORE, Defendant moves this Court to find that his/her arrest was illegal, because of the absence of authority or probable cause to effectuate it, and to suppress from introduction into evidence in this cause, the following:

A. Physical evidence discovered directly and indirectly as a result of the illegal arrest and detention;

B. Statements, utterances, reports of gestures and responses by Defendant during the detention which followed his/her arrest;

C. Testimony of witnesses who viewed the Defendant during his/her detention following the arrest, as well as the testimony of witnesses discovered as a result of the arrest, provided that Defendant has the right to call said witnesses to testify for the purpose of protecting his/her constitutional rights;

D. Photographs, fingerprints and other information, the product of the processing of Defendant following his/her arrest, and the fruits thereof; and

E. All other knowledge and the fruits thereof, witnesses, statements, whether written, oral or gestural and physical evidence that is the direct and indirect product of the arrest.

(Signature)

REFERENCES **CASEBANK Z.9.d; Z.9.e; Z.9.f**

U.S. Constitution, 4th, 5th, 6th and 14th Amendments

Indiana Constitution, Article 1, Section 11

I.C. 35-33-2-1 (requirements for an arrest warrant).

I.C. 35-33-1-1 (requirements for warrantless arrests).

I.C. 9-30-2-2 (prohibiting officer not in uniform or in marked car to make an arrest).

CASE LAW

UNLAWFUL ARREST

Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) (where police had home surrounded and there was no suggestion that anyone inside home was in danger, entry into home to make warrantless arrest for aiding in murder was unconstitutional). See also Kirk v. Louisiana, 536 U.S. 635, 122 S.Ct. 2458, 153 L.Ed.2d 599 (2002); Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984).

Johnson v. State, 747 N.E.2d 623 (Ind.Ct.App. 2001) (police may not enter home to effectuate misdemeanor arrest absent exigent circumstances or another exception to the warrant requirement). See also Willis v. State, 780 N.E.2d 423 (Ind.Ct.App. 2002).

Casselman v. State, 472 N.E.2d 1310 (Ind.Ct.App. 1985) (police may not use force to enter home to execute a civil order of arrest).

Adkisson v. State, 728 N.E.2d 175 (Ind.Ct.App. 2000) (the police cannot cause a suspect to come to the threshold of the home and then enter the home without a warrant).

Conwell v. State, 714 N.E.2d 764 (Ind.Ct.App. 1999) (police officer used excessive force when applying choke hold to prevent Defendant from swallowing drugs); see also Grier v. State, 868 N.E.2d 443 (Ind. 2007).

Timmons v. State, 734 N.E.2d 1084 (Ind.Ct.App. 2000) (improperly issued telephonic arrest warrant required suppression of officer's observations of the Defendant upon arrest).

CONNECTION BETWEEN UNLAWFUL ARREST AND STATEMENT

Taylor v. State, 464 N.E.2d 1333 (Ind.Ct.App. 1984) (where only 45 seconds elapsed from police arriving at scene and holding the Defendant at gunpoint, statement made to police did not purge taint of illegal arrest).

Timmons v. State, 734 N.E.2d 1084 (Ind.Ct.App. 2000) (although the Defendant's statements made outside of home were independent of unlawful warrantless arrest in his home, the police observation of the Defendant's intoxicated demeanor outside of the home after illegal entry into home was fruit of illegal entry).

State v. Foster, 950 N.E.2d 760 (Ind.Ct.App. 2011) (there was very little lapsed time between arrest and Defendant's statements in the police car, and there is little doubt that Defendant's statements came from the exploitation of the unlawful arrest; giving of *Miranda* warnings did not constitute an intervening circumstance); see also Joseph v. State, 975 N.E.2d 420 (Ind.Ct.App. 2012).

N.S. v. State, 25 N.E.3d 198 (Ind.Ct.App. 2015) (in determining the admissibility of evidence obtained as result of unlawful search or seizure, courts generally consider the time elapsed between the illegality and the acquisition of the evidence, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct; while a companion may possess independent knowledge, she is an "independent source" of information discovered as result of illegal search or seizure, such that companion's testimony is admissible only if the illegal search or seizure did not produce a "lead" to law enforcement).

GOOD FAITH

U.S. v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (the good faith exception to the exclusionary rule permits admission of evidence seized pursuant to a properly issued, but subsequently invalidated search warrant; however, the good faith exception will not apply if: 1) the warrant is based on false information knowingly or recklessly supplied by law enforcement; 2) the warrant is facially deficient; 3) the issuing magistrate is not detached and neutral; or 4) the affidavit or sworn testimony upon which probable cause rests is so lacking in indicia of probable cause as to render official belief in the existence of the warrant unreasonable). See also Doss v. State, 649 N.E.2d 1045 (Ind.Ct.App. 1995).

Herring v. U.S., 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009) (when police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply; thus, officer's reliance on dispatch's mistaken assertion that there was an arrest warrant for the Defendant was in good faith; no suppression of evidence found during search incident to illegal arrest); See also Shotts v. State, 925 N.E.2d 719 (Ind. 2010).

Rice v. State, 916 N.E.2d 296 (Ind.Ct.App. 2009) (court refused under state constitution to apply Herring, which expanded good faith doctrine; if court were to apply good faith exception in this case and hold it was objectively reasonable for officer to rely on a warrant supported by an affidavit wholly lacking probable cause, officers would have no incentive to discover and attest to facts amounting to probable cause in future affidavits, the defendant's right to seek review of probable cause determination would be empty and exclusionary rule would have no meaning).

Membres v. State, 889 N.E.2d 265 (Ind. 2008) (Indiana Supreme Court's decision in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), requiring articulable reasonable suspicion prior to a trash search, is a new rule of state criminal procedure that does not affect the reliability of the fact-finding process, and thus is not to be applied retroactively; officers who pulled trash prior to Litchfield were relying on the established law at that time).

Merritt v. State, 803 N.E.2d 257 (Ind.Ct.App. 2004) (if the good faith exception is not argued by the State in a memorandum in opposition to motion to suppress or at suppression hearing, it is waived and cannot be advanced on appeal).

Jaggers v. State, 687 N.E.2d 180 (Ind. 1997) (officer who personally visited marijuana plots just a few hours earlier testified that the plots were near the Defendant's residence, but actually plots were at least two to six miles away from the home; because this was a misleading statement, the good faith exception could not save the warrant). See also Newby v. State, 701 N.E.2d 593 (Ind.Ct.App. 1998).

Hayworth v. State, 904 N.E.2d 684 (Ind.Ct.App. 2009) (because informant's tip of an active meth lab was not corroborated, search warrant was improperly issued; officer's admissions at suppression hearing (i.e., that informant had *not* told him that she had seen Defendant manufacture or use methamphetamine) amount to deliberate, reckless, or grossly negligent conduct; thus, good faith doctrine was inapplicable).

State v. Mason, 829 N.E.2d 1010 (Ind.Ct.App. 2005) (where the police failed to adequately investigate all the information provided by an informant, the good faith exception could not save the warrant). See also Cartwright v. State, 26 N.E.3d 663 (Ind.Ct.App. 2015).

Figert v. State, 686 N.E.2d 827 (Ind. 1997) (because the warrant was issued based solely on the officer's opinion, the officer's reliance could not be deemed objectively reasonable under Leon; if probable cause could be so easily imputed from one dwelling to another through overbroad application of the good faith exception, nothing would prevent searches of residences merely because of the fortuity of their proximity to illegal conduct).

Hensley v. State, 778 N.E.2d 484 (Ind.Ct.App. 2002) (where nothing in the affidavit linked the Defendant's alleged purchase of drugs to the premises described in the warrant, no reasonable officer could have relied on the search warrant in good faith).

Brown v. State, 905 N.E.2d 439 (Ind.Ct.App. 2009) (good faith exception rests upon the affidavit or sworn testimony presented before the warrant has been issued; State cannot backfill with previously undisclosed hearsay evidence to show good faith in the execution of a defective warrant; here, good faith inapplicable where officers should have known there was no probable cause to support warrant).

Hudson v. Michigan, 547 U.S. 586, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006) (violation of knock and announce rule does not require suppression of evidence under Fourth Amendment).

Blakenship v. State, 5 N.E.3d 779 (Ind.Ct.App. 2014) (even if dog sniff-search of hotel hallway violated Defendant's rights under Article I, Section 11, police officers acted in good faith when they executed search warrant of hotel room, where there was no evidence that officers had knowledge, or should be charged with knowledge, that the sniff-search in the hallway may have been unconstitutional).

NOTE:

There is an argument that no good faith exception exists under the Indiana Constitution. Relying on Article I, Sections 11 and 14 of the Indiana Constitution, the Indiana Supreme Court adopted the exclusionary rule long before the Fourth Amendment exclusionary rule was applied to the States in Mapp v. Ohio, 367 U.S.643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Membres v. State, 889 N.E.2d 265, 274 (Ind. 2008) (citing to Callender v. State, 193 Ind. 91, 96-97, 138 N.E. 817, 818-19 (1923); State v. Canelo, 653 A.2d 1097 (N.H. 1995) (New Hampshire rejects good faith as incompatible with and detrimental to the right of privacy and prohibition against search warrant without probable cause contained within the New Hampshire Constitution). In the very least, the Indiana Supreme Court must determine whether the U.S. Supreme Court's expansion of the good faith doctrine in Herring, supra, does not apply in Indiana. Rice v. State, 916 N.E.2d 296 (Ind.Ct.App. 2009) (court refused under state constitution to apply Herring, which expanded good faith doctrine).