

[CAPTION]

MOTION TO SUPPRESS INTERCEPTED COMMUNICATIONS

The Defendant, by counsel, respectfully requests this Court, pursuant to IC 35-33.5-4-4, to suppress as evidence against him/her all intercepted communications to which he/she was a party and all evidence and testimony derived from the intercepted communications. In support of the Motion, the Defendant states the following:

1. The communication was intercepted in violation of IC 35-33.5-4-1 in that: [SELECT FROM THE FOLLOWING]

a. The interception did not occur within ten (10) days after the Court issued the warrant or extension.

b. The interception was not conducted in a manner that minimized the interception of communication that was clearly irrelevant to the investigation of the designated offense.

c. The interception did not terminate upon completion of the authorized objective or within thirty (30) days after the interception began. [Whichever occurs first].

d. The authorizing Court granted more than three (3) extensions.

2. The warrant or extension under which the communication was intercepted is insufficient on the face of the warrant or extension in that it did not meet the requirements of I.C. 35-33.5-3-1 or I.C. 35-33.5-3-2.

3. The interception was not made in conformity with the warrant or extension.

4. A material defect, such as the failure to comply with the requirements that limit the use of authorized interceptions, exists in the application, the warrant, or the process of executing the warrant [SPECIFY THE DEFECT].

5. The prosecutor did not seek review of the warrant by the Indiana Court of Appeals as required by Criminal Rule 25.

6. [STATE ANY OTHER GROUNDS THAT CAN BE A BASIS FOR SUPPRESSION].

7. The search warrant was not supported by probable cause, and thus, violated the Fourth

Amendment of the U.S. Constitution.

8. The search to obtain the intercepted communications was unreasonable, and thus, violated Article I, Section 11 of the Indiana Constitution.

9. The Defendant requests, pursuant to IC 35-33.5-4-5(a), that this Court make available for inspection to the Defendant, or his attorney, any part of the interception or evidence derived from the interception that the Court determines to be in the interest of justice.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to suppress as evidence against him/her all intercepted communications to which he/she was a party and all evidence or testimony derived from the intercepted communications, make available for inspection any part of the interception or evidence determined to be in the interest of justice, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK Z.10.a.1

- I.C. 35-33.5 *et seq.* (Interception of telephonic or telegraphic communications)
- I.C. 35-33.5-2-1 (process for applying for warrant; installing/operating tapping equipment).
- I.C. 35-33.5-2-2 and 35-33.5-2-3 (requirement of application for or extension of warrant).
- I.C. 35-33.5-2-3.5 (procedure for issuance of a warrant without affidavit).
- I.C. 35-33.5-2-4 (required report by prosecutor to legislative council).
- I.C. 35-33.5-2-5 (required report by Court to state court administration).
- I.C. 35-33.5-3-1 *et. seq.* (duties and required determinations of the Court in issuing warrants and extensions).
- I.C. 35-33.5-4-1 (time limitations of warrants).
- I.C. 35-33.5-4-3 (inventory and notice of warrant to party).
- I.C. 35-33.5-4-4 (Suppression of evidence; basis).
- Kerr, Indiana Practice, Criminal Procedure (Pretrial), Vol. 16, Chap. 2 §2.2d(8), pg. 124

CASE LAW

Katz v. United States, 389 U.S. 347, 88 S.Ct 507, 19 L.Ed.2d 576 (1967) (searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under Fourth Amendment, subject only to a few specifically established and well delineated exceptions).

State v. Lombardo, 738 N.E.2d 653 (Ind. 2000) (Indiana Wiretap Act is sufficiently clear and definite to warn person of ordinary intelligence that act of intentionally wiring hidden tape recorder to document private telephone conversations between spouse and third parties, without their knowledge or permission, is prohibited; the Legislature did not intend to directly incorporate Federal Wiretap Act statutory or case law into Indiana's Act but instead meant to exempt from its provisions federal law enforcement surveillance activities within Indiana's borders).

Henson v. State, 790 N.E.2d 524 (Ind.Ct.App. 2003) (although government played no part in illegally intercepting telephone call, illegally intercepted telephone conversation should be suppressed; Title III of Omnibus Crime Control and Safe Streets Act shields an individual's private communications from disclosure, regardless of whether a private party or government intercepts the communication; suppression of evidence of illegally intercepted telephone call and any evidence derived there from is also consistent with constitutional protections established in Article One, Section Eleven of Indiana Constitution).

Kyllo v. U.S., 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001) (where the Government uses a device that is not in general public use to explore details of a home that would previously have been unknowable without physical intrusion, the surveillance is a search and is presumptively unreasonable without a warrant).

State v. Haldeman, 919 N.E.2d 539 (Ind. 2010) (although Indiana Criminal Rule 25 requires that where a circuit or superior court issues a warrant for a wiretap, the prosecuting attorney shall file a petition for review of the warrant for wiretap with the Court of Appeals within ten days of the issuance of the warrant, failure of the prosecutor to do so will be deemed harmless if the underlying warrant is not defective).

Dommer v. Dommer, 829 N.E.2d 125 (Ind.Ct.App. 2005) (the purposes of the Omnibus Crime Control and Safe Streets Act are to protect the privacy of wire and oral communications and to delineate on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized).