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IN THE
COURT OF APPEALS OF INDIANA

James Edward McGhee, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 10, 2022

Court of Appeals Case No.
22A-CR-152

Appeal from the Lake Superior
Court

The Honorable Michael S.
Bergerson, Senior Judge

Trial Court Cause No.
45G03-1908-MR-27

Mathias, Judge.

- [1] In the summer of 2020, James Edward McGhee, Jr. murdered Sidne Buchanan after the two attended a concert together. Because Buchanan was missing for several days and was last seen with McGhee, the FBI requested McGhee’s cell-site location information (“CSLI”) records from his cell-phone provider.

Buchanan's remains were eventually discovered in an Illinois forest preserve, and the State charged McGhee with her murder. Ultimately, a jury found McGhee guilty of murdering Buchanan.

- [2] McGhee appeals his conviction and argues that the admission of the CSLI records violated his rights under the [Fourth Amendment to the United States Constitution](#) and [Article 1, Section 11 of the Indiana Constitution](#). He also asserts the State tried him too late and that he was entitled to discharge under [Indiana Criminal Rule 4](#). Finding no reversible error, we affirm.

Facts and Procedural History

- [3] In July 2019, Buchanan went to a concert with McGhee. There, they had an altercation, and McGhee pushed Buchanan into a vehicle. McGhee was supposed to take Buchanan home after the concert, where she lived with her mother and two children. Instead, McGhee took her to his apartment. At some point, McGhee saw a picture on Buchanan's phone of her performing a sexual act with another man. McGhee and Buchanan "got into it," and McGhee "lost it." Tr. Vol. 8, p. 26. He used Buchanan's phone to call her ex-boyfriend and tell him that Buchanan and McGhee were now in a relationship. McGhee then beat Buchanan to death.
- [4] After killing Buchanan, McGhee met his friend, Kevin Thomas, and told him that he needed help because he "went too far." *Id.* Thomas met McGhee outside of McGhee's apartment, and the two drove around. While in the car,

McGhee told Thomas that he had killed Buchanan by “jump[ing] on her neck.” *Id.* at 27. He also said he “thought [Buchanan] was going to wake up, but she never” did. *Id.* McGhee and Thomas then proceeded to look for a location to hide Buchanan’s body.

[5] After finding a spot, the two returned to McGhee’s apartment. Upon entering the apartment, Thomas noticed that it was in disarray, which was unusual. He also noticed that McGhee’s mattress was recently spray-painted, which McGhee had done “to conceal blood splatters.” *Id.* at 36. And Thomas observed Buchanan’s badly beaten body on the floor. Thomas then watched McGhee stuff Buchanan’s body in a suitcase, which McGhee used to transport and dump Buchanan’s body in an Illinois forest preserve.

[6] Because Buchanan never returned home, her mother was worried. She attempted to contact McGhee several times but received no response. Eventually, when she was able to get ahold of McGhee, McGhee told her that he had dropped Buchanan off at her home after the concert, and he sent her a screenshot from his phone that purported to show him dropping Buchanan off at her home, but the date on the screenshot was not the correct date. Buchanan’s mother filed a missing-persons report with the Gary Police Department. Officers reached out to McGhee, and he told them that he had taken Buchanan to her home after the concert.

- [7] An FBI task force assumed jurisdiction over the investigation and submitted emergency requests for CSLI records to both Buchanan's and McGhee's cell-phone providers. According to those CSLI records, the last location of Buchanan's cell phone was at McGhee's apartment, and both Buchanan's and McGhee's cell phones "ping[ed]" near the apartment during the overnight hours following the concert. Tr. Vol. 6, p. 9. Based in part on this data, the FBI subsequently obtained search warrants for McGhee's apartment and cell phone records. While executing the warrant at the apartment, the FBI noticed that it smelled strongly of carpet cleaner and that some of the carpet was still wet. The FBI then collected several samples of the carpet, which later tested positive for Buchanan's blood.
- [8] In August 2019, after Thomas had helped lead the police to Buchanan's body, the State charged McGhee with murder and alleged that he was a habitual offender. Before trial, McGhee requested a speedy trial and moved to suppress the CSLI records obtained by the FBI prior to the issuance of the search warrants, but the trial court denied his motion. Also, McGhee filed a motion for discharge, which he later renewed and which the trial court ultimately denied, arguing that his right to a speedy trial under [Indiana Criminal Rule 4\(B\)](#) had been violated.
- [9] A jury found McGhee guilty of Buchanan's murder, and the trial court found him guilty of being a habitual offender. The court subsequently sentenced

McGhee to sixty years for murder, which the court increased by twenty years for the habitual offender adjudication. This appeal ensued.

Discussion and Decision

I. Admission of the CSLI Records

[10] On appeal, McGhee first asserts that the trial court erred when it admitted into evidence the CSLI records obtained by officers without a warrant. “The general admission of evidence at trial is a matter we leave to the discretion of the trial court.” *Clark v. State*, 994 N.E.2d 252, 259–60 (Ind. 2013). “However, when a challenge to an evidentiary ruling is predicated on the constitutionality of a search or seizure of evidence, it raises a question of law that is reviewed de novo.” *Curry v. State*, 90 N.E.3d 677, 683 (Ind. Ct. App. 2017), *trans. denied*. “The State has the burden to demonstrate that the measures it used to seize information or evidence were constitutional.” *Id.*

A. Fourth Amendment

[11] McGhee first argues his [Fourth Amendment](#) rights were violated when the FBI obtained his initial CSLI records without a warrant. The [Fourth Amendment to the United States Constitution](#) provides:

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.

[12] This generally “requires police to obtain a search warrant from a neutral, detached magistrate prior to undertaking a search of either a person or private property.” *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018). But “that requirement is subject to certain carefully drawn and well-delineated exceptions.” *Id.* (quotations omitted). One such exception occurs “when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. [These] exigencies include the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm, or prevent the imminent destruction of evidence.” *Carpenter v. United States*, 138 S. Ct. 2206, 2222–23 (2018) (cleaned up). Further, in determining whether the exigent-circumstances exception applies, courts look to the totality of the circumstances to decide whether police “faced an emergency that justified acting without a warrant.” *Missouri v. McNeely*, 569 U.S. 141, 149 (2013).

[13] We hold that exigent circumstances justified the warrantless acquisition of McGhee’s CSLI records. When officers made the initial request for the CSLI records, Buchanan had been missing for over forty-eight hours, and it was undisputed—including by McGhee—that she had last been with McGhee before her disappearance. Buchanan’s mother also testified that Buchanan, who was supposed to attend a family get-together after the concert, never returned

home. Further, neither Buchanan's family nor friends had heard from her, and Buchanan was uncharacteristically silent on social media during those forty-eight hours. Buchanan's mother also testified that she was initially unable to get in touch with McGhee regarding Buchanan's whereabouts.

[14] Moreover, the FBI and Buchanan's mother had good reason to doubt McGhee's eventual assertion that he had dropped Buchanan off at home immediately after the concert. Specifically, McGhee sent Buchanan's mother a screenshot from his phone that purported to show that he had dropped Buchanan off at her home, but the date on the screenshot was not the correct date. Also, witnesses had reported seeing the altercation between McGhee and Buchanan at the concert venue before seeing McGhee push Buchanan into a vehicle.

[15] The officers were also aware that McGhee had a violent criminal history with women. McGhee was on probation for criminal confinement at the time of Buchanan's disappearance, and one of the investigating FBI officers was familiar with McGhee through two prior personal contacts, including a domestic battery incident and an incident where McGhee allegedly kidnapped and threatened to harm his own child. And officers reasonably believed that, if they wanted to find Buchanan alive, they did not have time to wait for a warrant to obtain McGhee's CSLI records. Tr. Vol. 2 pp. 209–10.

[16] Accordingly, McGhee’s argument that the FBI’s conduct was not justified by exigent circumstances is unavailing.¹ The totality of circumstances show that Buchanan’s disappearance created an exigent circumstance, and officers reasonably believed that the immediate acquisition of Buchanan’s and McGhee’s CSLI records was essential to resolving the exigency. *See, e.g., Govan v. State*, 116 N.E.3d 1165, 1174 (Ind. Ct. App. 2019) (finding that the totality of the circumstances demonstrated an exigency that justified the warrantless acquisition of the defendant’s cell-phone location data when the officers had reason to believe that the defendant had committed violent felonies and presented an ongoing threat to the lives and safety of others), *trans. denied*; *Johnson v. State*, 117 N.E.3d 581, 584–85 (Ind. Ct. App. 2018) (finding that the totality of the circumstances demonstrated an exigency that justified the warrantless acquisition of the defendant’s cell-phone location data), *trans. denied*. Thus, the warrantless search and seizure of McGhee’s CSLI records did

¹ To the extent McGhee cites *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (holding that the collection of historical CSLI over the course of a substantial period of time—127 days—constituted a [Fourth Amendment](#) search), and *United States v. Hammond*, 996 F.3d 374, 391–92 (7th Cir. 2021) (holding that the collection of real-time CSLI over the course of several hours did not constitute a [Fourth Amendment](#) search), we cannot say those cases require reversal. For example, unlike here, the exigent-circumstances exception was not a factor in the holdings of either case. Also, contrary to McGhee’s assertions, both cases recognized that, although the Government generally needs a warrant to obtain CSLI records, case-by-case exceptions—such as exigent circumstances—“may support a warrantless search of an individual’s [CSLI records] under certain circumstances.” *Carpenter*, 138 S. Ct. at 2222–23 (“[I]f law enforcement is confronted with an urgent situation, such fact-specific threats will likely justify the warrantless collection of CSLI.”); *see Hammond*, 996 F.3d at 384.

not violate his [Fourth Amendment](#) rights, and trial court did not abuse its discretion in admitting those records into evidence.²

B. Article 1, Section 11

[17] McGhee next argues the warrantless seizure of his CSLI records violated his rights under [Article 1, Section 11 of the Indiana Constitution](#), which also protects citizens of Indiana from unreasonable searches and seizures. Although its text mirrors the [Fourth Amendment](#), we interpret [Article 1, Section 11](#) of our Constitution separately and independently. *Triblet v. State*, 169 N.E.3d 430, 436 (Ind. Ct. App. 2021), *trans. denied*. When a [Section 11](#) claim is raised, the State must show that the police conduct was reasonable under the totality of the circumstances. *Id.* In evaluating the reasonableness of police conduct, we consider 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 or seizure imposes on the citizen’s ordinary activities; and (3) the extent of law enforcement needs. *Id.*

² Given our holding on this issue, we need not consider McGhee’s arguments regarding the fruit-of-the-poisonous tree doctrine. Also, the State has a compelling argument that the warrantless acquisition of McGhee’s CSLI records is harmless. The prejudice against McGhee arose not from his location data in isolation but in the overlap of his location data with Buchanan’s location data. But McGhee has no standing under the [Fourth Amendment](#) to challenge the seizure of Buchanan’s data, and McGhee has never disputed that he went back to his apartment the evening after the concert.

- [18] Regarding the degree of concern, suspicion, or knowledge of a violation, we look at “the reasonableness of the officers’ assumptions, suspicions, or beliefs based on the information available to them at the time.” *Shorter v. State*, 151 N.E.3d 296, 304 (Ind. Ct. App. 2020) (quotation marks omitted), *trans. denied*. Here, the degree of suspicion weighed heavily in the State’s favor. Again, Buchanan was missing for over forty-eight hours and was last seen with McGhee, who was known to have a violent criminal history. The State also presented evidence that the two fought after the concert, and neither Buchanan’s family nor friends heard from her—especially when she was supposed to attend an important family get-together and was usually active on social media. Further, Buchanan’s mother testified that Buchanan never returned home and that she was initially unable to contact McGhee regarding her daughter’s whereabouts. When Buchanan’s mother was able to eventually contact McGhee, she—along with the FBI—had good reason to doubt his story that he had dropped Buchanan home after the concert.
- [19] Next, we consider the degree of intrusion. “The degree of intrusion is assessed from the defendant’s point of view.” *Bell v. State*, 144 N.E.3d 791, 800 (Ind. Ct. App. 2020). Here, the degree of intrusion is moderate because the intrusion was the capture of his location data logged by his cell provider, which would otherwise be private. Importantly the data was obtained from his third-party cellphone service provider, rather than from McGhee’s cellphone itself. The FBI requested CSLI records that were maintained by McGhee’s cell phone

provider as a routine part of its recordkeeping. That request neither required McGhee to surrender his cell phone nor caused any intrusion upon his person or property, and McGhee makes no argument that the request disrupted his activities. Thus, the degree of intrusion into McGhee’s life was moderate because of the privacy of the information obtained. *See, e.g., McCowan v. State*, 10 N.E.3d 522 (Ind. Ct. App. 2014) (holding that the degree of intrusion was low because the police retrieved the CSLI not from the defendant but from his cell-phone provider, which kept those records in the normal course of its business), *summarily aff’d in relevant part by McCowan v. State*, 27 N.E.3d 760 (Ind. 2015); *see also Zanders v. State*, 73 N.E.3d 178 (Ind. 2017) (holding that the degree of intrusion was low because the information the police obtained from the defendant’s cell-phone provider—historical CSLI—was less sophisticated, did not locate the defendant but only the cell towers that connected his calls, and was not generated automatically), *vacated*, 138 S. Ct. 2702 (2018), *remanded to* 118 N.E.3d 736 (Ind. 2019) (declining to revisit [the Court’s] state constitutional holding).

[20] Last, as with the degree of suspicion and the degree of intrusion, we conclude that the extent of law enforcement needs weighs in favor of reasonableness. “These law-enforcement needs exist not only when officers conduct investigations of wrongdoing but also when they provide emergency assistance or act to prevent some imminent harm.” *Hardin v. State*, 148 N.E.3d 932, 946 (Ind. 2020). Here, the officers reasonably believed Buchanan to be in imminent

danger. *See, e.g., McCowan*, 10 N.E.3d at 534 (recognizing that “the extent of law enforcement needs was great when . . . the police were searching for a recently missing individual who could be in danger or had been the victim of foul play”). Indeed, by the time the FBI had assumed the case and requested McGhee’s CSLI records, Buchanan had been missing for over forty-eight hours and local law enforcement had been actively searching for her. Moreover, she was last seen with McGhee, who was on probation for criminal confinement at the time of Buchanan’s disappearance. Thus, because the State has shown that the FBI’s conduct was reasonable under the totality of the circumstances, the warrantless search and seizure of McGhee’s CSLI records did not violate McGhee’s rights under [Article 1, Section 11 of the Indiana Constitution](#).

[21] In sum, the FBI’s warrantless seizure of McGhee’s CSLI records did not violate McGhee’s rights under the [Fourth Amendment](#) or [Article 1, Section 11](#). Consequently, McGhee has not established that the trial court abused its discretion in admitting those records into evidence.

II. Speedy Trial

[22] McGhee also asserts that the trial court erred when it granted the State’s motion to continue his trial date outside of the timeframe required by his speedy-trial request. The right of an accused to a speedy trial is guaranteed by the United States and Indiana Constitutions. [U.S. Const. amend VI](#); [Ind. Const. art. 1, § 12](#). [Indiana Criminal Rule 4](#) implements those rights and generally requires a

criminal defendant to be brought to trial within seventy days of his speedy-trial request. [Ind. Criminal Rule 4\(B\)\(1\)](#).

[23] However, among other reasons for extension of that timeframe, [Indiana Criminal Rule 4\(D\)](#) provides as follows:

If when application is made for discharge of a defendant under this rule, the court be satisfied that there is evidence for the state, which cannot then be had, that reasonable effort has been made to procure the same and there is just ground to believe that such evidence can be had within ninety (90) days, the cause may be continued

[24] As we have explained:

Thus, in order to grant a continuance as provided in [Rule 4\(D\)](#), the trial court must be satisfied that the State made a reasonable effort to procure the evidence. Whether the requested delay is reasonable should be judged according to the circumstances of the particular case. In addition, we evaluate the reasonableness of the State's request for a trial delay in light of the information known or available to it at the time of the request. As a general rule, a trial court's decision to grant a [Rule 4\(D\)](#) continuance is reviewed for an abuse of discretion.

[Dilley v. State](#), 134 N.E.3d 1046, 1049–50 (Ind. Ct. App. 2019) (citations omitted).

[25] Here, McGhee was arrested in August 2019. On October 1, 2019, he requested a speedy trial; therefore, the seventy-day clock began to run on that date and would have expired on December 10, 2019. The trial court set McGhee's trial

to commence on November 18, 2019, a date within the seventy-day period. Shortly before that date, the State filed a motion to continue McGhee's trial pursuant to [Criminal Rule 4\(D\)](#) based on the unavailability of a forensic laboratory report and an essential witness. The trial court granted that motion and set the new date for January 13, 2020.

[26] On appeal, McGhee argues the trial court abused its discretion when it granted the State's motion to continue because (A) the State made no reasonable effort to procure the forensic laboratory report or its essential witness, Stacy Bozinovski, and (B) the State failed to comply with the directives of [Indiana Code section 35-36-7-2](#).³ We address each of McGhee's contentions in turn.

A. Reasonable Efforts

[27] We first hold that the State satisfied the reasonable-effort requirement of [Criminal Rule 4\(D\)](#). Here, an autopsy was performed on Buchanan's remains in August 2019, but, due to their advanced decomposition, Buchannan's cause of death could not be determined. An anthropologist was consequently called to help determine Buchanan's cause of death. But, before the anthropologist could

³ McGhee also argues the State failed to comply with [Indiana Trial Rule 53.5](#). Appellant's Br. at 39. However, he does not explain how the State failed to comply with the trial rule, and he has, therefore, waived his claim for our review. See [Ind. Appellate Rule 46\(A\)\(8\)\(a\)](#). McGhee's waiver notwithstanding, for the same reasons the State showed reasonable efforts under [Criminal Rule 4](#), it showed good cause under [Trial Rule 53.5](#). See [Ind. Trial Rule 53.5](#) ("Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence.").

assist in this case, Buchanan's remains had to be cleaned of all remaining flesh. On November 13, 2019, a few days before McGhee's initial trial date, the State learned that Buchanan's remains were still in the process of being cleaned and that the forensic laboratory report, which would have explained Buchanan's cause of death, would not be ready by the initial trial date. Moreover, the State learned that Bozinovski, a forensic scientist and DNA analyst, would be on medical leave and unavailable to testify during the month of December. At that point, the State promptly filed its motion to continue.

[28] A few days before the seventy-day deadline, the State received the forensic laboratory report. McGhee then filed a motion for discharge, which he also later renewed, arguing that the continuance was not justified since the report was completed prior to the seventy-day deadline. However, contrary to McGhee's assertion, the fact that the State ultimately received the forensic laboratory report prior to the seventy-day deadline does not demonstrate that the State failed to take reasonable steps to procure that evidence. Rather, as discussed above, laboratory testing of Buchanan's remains began well before McGhee's initial trial date. Also, the State only filed its motion to continue after it had learned that the report would not be ready on time, and the State filed that motion based on the information known or available to it at that time. *See Dilley*, 134 N.E.3d at 1050.

[29] Also, McGhee's assertions regarding Bozinovski's availability are unpersuasive. "When the unavailable evidence is a particular witness, the 'reasonable effort'

requirement of [Rule 4(D)] is satisfied where the State is not at fault for the absence of the witness.” *Griffin v. State*, 695 N.E.2d 1010, 1013 (Ind. Ct. App. 1998). As discussed above, the State sought a continuance because the forensic laboratory report detailing Buchanan’s cause of death would not be completed before the initial trial date in November. The State then explained that Bozinovski would be on medical leave and unavailable to testify during the month of December, which is when the seventy-day clock was set to expire. Thus, because the State was not at fault for the absence of the witness, the trial court was within its discretion to extend the speedy-trial period.

[30] In sum, because the reason for the State’s request for a continuance was that there was evidence for the State that—despite the State’s best efforts—would not be available by the initial trial date, but would be available after December 2019, we conclude that the continuance of McGhee’s trial date to just over thirty days—rather than the ninety days permitted by Rule 4(D)—beyond the seventy-day period did not violate McGhee’s right to a speedy trial.

B. Ind. Code § 35-36-7-2

[31] We next turn to McGhee’s second speedy trial claim: whether the State failed to comply with Indiana Code section 35-36-7-2. In particular, McGhee argues that the State failed to comply with subdivision (a) of the statute, which provides:

A prosecuting attorney may move to postpone the trial of a criminal cause because of the absence of a witness whose name is

endorsed on the indictment or information, if he makes an official statement:

(1) containing the requirements of subsections (b)(1) and (b)(2) of section 1 of this chapter;

(2) showing that the absence of the witness has not been procured by the act of the prosecuting attorney;

(3) stating the facts to which he believes the witness will testify, and include a statement that he believes these facts to be true; and

(4) stating that the prosecuting attorney is unable to prove the facts specified in accordance with subdivision (3) through the use of any other witness whose testimony can be as readily procured.

Subsections (b)(1) and (b)(2) require the prosecutor to show the name and address of the witness, if known, and indicate the probability of procuring the witness's testimony within a reasonable time. [I.C. § 35-36-7-1](#).

[32] Here, in its motion to continue and at a January 7, 2020, hearing on McGhee's motion for discharge, the State explained that Bozinovski, a witness whose name is endorsed on the information, was unavailable to testify in December 2019. At the hearing, the State also described how Bozinovski, who performed the DNA analysis in this case, was supposed to testify about the DNA test results and her "method of DNA analysis or statistical calculation," which was "fairly new." Tr. Vol. 2, pp. 52–53. As such, the State sufficiently demonstrated

that it would be unable to prove the facts to which Bozinovski would testify through the use of any other witness, especially since Bozinovski performed the DNA analysis in this case. Further, as described above, the State showed that it did not procure the absence of Bozinovski and that she could be procured to testify within a reasonable time—after December 2019 and within the ninety days permitted by [Criminal Rule 4\(D\)](#).

- [33] Next, although the State allegedly failed to show Bozinovski’s address, if known, as well as state that it believed the facts to which she was supposed to testify were true, [Indiana Code section 35-36-7-2](#) “does not restrict the trial court’s discretionary powers.” *Crocker v. State*, 563 N.E.2d 617, 620 (Ind. Ct. App. 1990), *trans. denied*. Rather, the statute

merely compels the granting of a continuance under certain clearly delineated circumstances. In general, when such motion for continuance is not based upon statutory grounds or is not made in compliance with the statute, the granting of the continuance lies within the broad discretion of the trial court and will not be reversed on appeal absent an abuse of discretion prejudicing the complaining party.

Id. at 621 (quotation marks omitted).

- [34] Here, it was well within the trial court’s discretion to grant the continuance even if the State failed to comply with each technical aspect of [Indiana Code section 35-36-7-2](#). Moreover, McGhee has made no showing that he was prejudiced by the trial court’s decision to grant the State’s motion to continue in

any way. Thus, we hold that the trial court did not abuse its discretion on this issue.

Conclusion

[35] For all of these reasons, we hold that the trial court did not abuse its discretion when it admitted McGhee's CSLI records into evidence or when it granted the State's motion to continue. We affirm McGhee's conviction for murder and his adjudication as a habitual offender.

[36] Affirmed.

Riley, J., and Brown, J., concur.