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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	FOR PUBLICATION November 24, 2026 1:23 PM
v	No. 374225 Allegan Circuit Court
GARY CHRISTOPHER CARLSON, Defendant-Appellant.	LC No. 2023-026111-FC

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

TREBILCOCK, J.

At issue in this case is whether the seizure and subsequent search of defendant's cell phone violated the Fourth Amendment. We hold that, while the totality of the circumstances justified the warrantless seizure of his phone, the search did not pass constitutional muster because the underlying search warrant lacked sufficient particularity following our Supreme Court's recent decision in *People v Carson*, ___ Mich ___; ___ NW3d ___ (July 31, 2025) (Docket No. 166923). Accordingly, we reverse the trial court's denial of defendant's motion to suppress, vacate defendant's convictions, and remand for further proceedings consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant, Gary Christopher Carlson, met 14-year-old RN when her parents hired him to babysit her two-year-old sister, MK. RN's parents found sexually suggestive text messages from defendant on RN's cell phone. They reported the messages to the Allegan County Sherriff's Department, who reviewed her phone's contents. Police identified defendant's cell-phone number, and found messages from defendant instructing RN on how to delete texts and asking her to download a cell-phone application that would help conceal or delete their future messages. They also recovered texts from defendant in the deleted space on RN's phone, indicating that she deleted some messages as instructed.

Working alongside police, the parents asked defendant to come to their home about a week later, under the pretense that he would again babysit MK. Police were there waiting for him. Upon defendant's arrival, a detective patted him down, removed his cell phone from his pocket, and explained that they were investigating his texts with RN. Defendant admitted sending the texts in

question, confirmed they "should be" on his phone, and consented to police searching his texts with RN. Because he equivocated regarding any additional search of the phone, however, a detective decided to obtain a warrant before searching it and kept defendant's phone in the interim out of concern that he might otherwise try to delete evidence from it.

Police obtained a search warrant for defendant's phone the following day. That warrant, as discussed in greater length later, allowed officers to essentially search the phone's entirety—including all messages, pictures, and videos—without any stated limitation. The resulting search uncovered a "large collection" of child sexually abusive material (CSAM) in the form of pictures and videos, at least eight of which involved MK.

With that foundation, law enforcement officials obtained additional warrants to further search defendant's phone and house, and to collect his DNA. Ultimately, they discovered an extensive collection of CSAM and communications between defendant and other predators in which he bragged about his abuse of MK (and encouraged others to sign up for the babysitting website through which he gained access to her), as well as matched defendant's DNA to samples taken from areas of MK's home depicted in the CSAM he made of her. During a later interview with police, defendant admitted to soliciting and distributing CSAM.

The Allegan County Prosecutor's Office charged defendant with 26 criminal counts: nine counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1); eight counts of aggravated child sexually abusive activity, MCL 750.145c; eight counts of using a computer to commit a crime, MCL 752.796; and one count of accosting a child for immoral purposes, MCL 750.145a. After unsuccessfully moving to suppress the evidence seized from his phone, defendant pleaded no contest to all counts on the condition that he could appeal the denial of his suppression motion. The trial court accepted defendant's pleas, entered convictions, and sentenced him to serve $37\frac{1}{2}$ to 60 years for the CSC-I convictions, 12 to 25 years for the convictions of aggravated child sexually abusive activity, 10 to 20 years for the convictions of using a computer to commit crime, and 395 days for the accosting conviction. He now appeals on leave granted.

II. FOURTH AMENDMENT SEARCHES AND SEIZURES[1]

Defendant claims law enforcement officials violated his search and seizure rights guaranteed by the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1,

[1] We note that the prosecution failed to adhere to this Court's order directing it to (1) provide supplemental briefing on specified topics designed to aid our resolution of this appeal, and (2) appear at oral argument to answer our questions. In response to our subsequent order to show cause why we should not penalize the prosecution for these failures, the prosecutor explained they resulted from his own inadvertent mistake, compounded by a large caseload and issues arising from a filing-system transition within the Prosecutor's Office. Recognizing that human error happens, we accepted the prosecutor's explanations and declined to impose sanctions. But this case underscores the importance of prosecutors' offices implementing sufficient procedures to ensure they fulfil their obligation to comply with this Court's orders: in addition to risking penalties (including contempt) for defying this Court's authority, the prosecution's noncompliance here

§ 11. Searches and seizures are distinct from one another: the former "compromises the individual interest in privacy," whereas the latter "deprives the individual of dominion over his or her person or property." *Horton v California*, 496 US 128, 133; 110 S Ct 2301; 110 L Ed 2d 112 (1990). The lawfulness of either, however, "depends on its reasonableness." *People v Moorman*, 331 Mich App 481, 485; 952 NW2d 597 (2020) (quotation marks and citations omitted). The trial court denied defendant's motion to suppress on Fourth Amendment grounds. We review that decision de novo. *People v Mazzie*, 326 Mich App 279, 289; 926 NW2d 359 (2018).

A. WARRANTLESS SEIZURE OF DEFENDANT'S PHONE

Defendant first argues the warrantless seizure of his cell phone violated the Fourth Amendment. We disagree.

The police undisputedly lacked a warrant when they seized defendant's phone. Ordinarily, the seizure of personal property without a valid warrant is "per se unreasonable" under the Fourth Amendment. *United States v Place*, 462 US 696, 701; 103 S Ct 2637; 77 L Ed 2d 110 (1983). The United States Supreme Court has explained, however, that when police "have probable cause to believe that a container holds contraband or evidence of a crime, but have not secured a warrant," the Fourth Amendment "permit[s] seizure of the property, pending issuance of a warrant to examine its contents, if the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present." *Id*.; see also *People v Evans*, ___ Mich App ___, ___; ___ NW3d ___ (May 8, 2025) (Docket No. 371021); slip op at 4 (citing this standard within the context of a warrantless cell phone seizure).

Defendant does not challenge the court's finding that RN's text messages provided police probable cause to believe defendant's phone contained evidence of a crime—i.e., accosting RN, a minor. At issue, rather, is whether police had reason to believe he would try to destroy evidence contained on his phone, such that exigent circumstances permitted the warrantless seizure. We hold that they did.

Courts consider the totality of the circumstances when deciding whether exigent circumstances justified an officer's warrantless action. *Evans*, ___ Mich App at ___; slip op at 4. In cases involving the potential destruction of evidence, officers that "have not actually observed an attempted destruction of evidence" may nonetheless "conduct a warrantless seizure if they present facts indicating more than a mere possibility that there is a risk of the immediate destruction or removal of evidence." *Id*. (quotation marks and citation omitted). That is, the police must have "an objectively reasonable basis to believe the risk of destruction or removal of evidence is imminent," i.e., "that immediate action is necessary before they can obtain a warrant[.]" *People v*

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hampered our review of an alleged constitutional violation implicating the validity of defendant's 26 felony convictions, all of which involve crimes against children. We thus emphasize our expectation that, in all matters, the prosecutors' offices in this State will devote careful attention and resources to ensuring their compliance with this Court's orders and, more generally, their adequate defense of lower court judgments they desire to enforce.

Blasius, 435 Mich 573, 594; 459 NW2d 906 (1990). We judge such reasonableness from the officer's perspective. *Evans*, ___ Mich App at ___; slip op at 4.

While the ease of deleting electronic evidence is relevant when considering whether the totality of the circumstances justify the warrantless seizure of a phone, *id*. at ___; slip op at 7-8, that the evidence is contained on a portable electronic device does not, by itself, constitute a sufficient exigent circumstance, *id*. at ___; slip op at 7. Additional relevant circumstances can include, by way of example, a defendant's knowledge that his or her device contains evidence of a crime, knowledge that police are actively investigating that crime, and the defendant's reluctance to turn over his or her device to police. See *id*. at ___; slip op at 7-8.

We agree with the trial court that, under the totality of the circumstances, the detective here had an objectively reasonable basis to believe the warrantless seizure of defendant's cell phone was necessary to prevent the destruction of evidence. Although the detective did not witness defendant attempt to destroy evidence on the phone, he knew defendant had previously acted in ways that demonstrated a desire to destroy evidence of his conversations with RN: defendant asked RN how often her father read her messages, instructed her to delete their conversations, and encouraged her to download a cell-phone application to conceal or delete future messages. The texts from defendant on RN's phone were indisputably sexual in nature, and RN's deletion of some of them gave the detective reason to believe defendant's phone could contain additional evidence no longer recoverable from RN's. Defendant makes no claim, and we see no indication, that he lacked knowledge of RN's age when he sent the texts. And once police confronted defendant at RN's home, he knew they were investigating him for wrongdoing. Considering these circumstances, together with "the ease of deleting evidence from cell phones," *id*. at ___; slip op at 8, the detective reasonably concluded that there existed an imminent risk defendant would destroy evidence from his phone if police did not seize it pending receipt of a search warrant.

Our inquiry does not end there, however, because an otherwise valid warrantless seizure "may still be unreasonable if police fail to obtain a warrant within a reasonable period of time." *Id*. "There is no bright-line rule for determining when a delay becomes unreasonable"; rather, "courts assess the reasonableness of a seizure by weighing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Id*. (quotation marks and citation omitted). Factors relevant to this analysis include "the brevity of the seizure, the strength of the State's basis for the seizure, the degree and significance of the interference with the defendant's property, and whether the police diligently pursue[d] their investigation." *Id*. (quotation marks and citation omitted; alteration in original).

The delay between the detective's seizure of defendant's phone and receipt of the search warrant was less than 24 hours. That is well within the bounds of reasonableness. Indeed, this Court in *Evans* recently upheld as reasonable a five-day delay between the warrantless seizure of a defendant's cell phone and the police's acquisition of a search warrant. *Id*. at ___; slip op at 8-9. Like in *Evans*, the police here: (1) had probable cause to believe defendant's phone contained evidence of a crime (which "provid[ed] the state with a higher interest in preserving the phone to avoid destruction of evidence"), *id*. at ___; slip op at 8, and (2) did not search defendant's phone until after obtaining the warrant (such that the seizure impacted only his possessory, not privacy, interests), *id*. at ___; slip op at 8-9.

Disagreeing, defendant insists the Fourth Amendment required police to obtain a warrant before seizing his phone. But none of his authorities—*Place*, *Riley v California*, 573 US 379; 134 S Ct 2473; 189 L Ed 2d 430 (2014), and *People v Zabavski*, unpublished per curiam opinion of the Court of Appeals, issued April 3, 2019 (Docket No. 338317)—involved the exigent-circumstances exception to the warrant requirement. Nor can we agree with his assertion that the week delay between RN's parents reporting the messages and the seizure of defendant's phone created exigency. True, "acting without a warrant is not justified if the police created the exigency by either acting, or threatening to act, in violation of the Fourth Amendment." *Evans*, ___ Mich App at ___; slip op at 4-5. But the detective testified at the suppression hearing that he only knew defendant's phone number before seizing the phone (not the make and model of the associated device), which in his experience was often insufficient to secure a warrant. And even if the detective could have obtained a warrant to seize defendant's phone based on the number alone, "law enforcement officers are under no constitutional duty to call a halt to criminal investigation the moment they have the minimum evidence to establish probable cause." *Id*. at ___; slip op at 10 (cleaned up). We do not "[f]ault[] the police for failing to apply for a search warrant at the earliest possible time after obtaining probable cause," because doing so "imposes a duty that is nowhere to be found in the Constitution." *Id*. (quotation marks and citation omitted).

In sum, the police had probable cause to believe defendant's phone contained evidence of a crime, the totality of the circumstances provided them a reasonable basis to believe the warrantless seizure of his phone was necessary to prevent destruction of evidence while they pursued a search warrant, and the delay between them seizing the phone and obtaining the warrant was not unreasonable. The warrantless seizure of defendant's phone therefore did not violate the Fourth Amendment.

B. SCOPE OF SEARCH WARRANT

Defendant next claims the initial search warrant for his cell phone lacked constitutionally sufficient particularity, because it essentially permitted police to search through the entirety of his phone's contents. On this point, the Supreme Court's *Carson* decision compels us to agree.

1. OVERVIEW OF RELEVANT LEGAL PRINCIPLES

"[T]he general rule is that officers must obtain a warrant for a search to be reasonable under the Fourth Amendment." *People v Hughes*, 506 Mich 512, 525; 958 NW2d 98 (2020). Such a warrant, in turn, must fulfil the Fourth Amendment's particularity requirement, "which mandates that a warrant '*particularly* describ[e] the place to be searched, and the persons or things to be seized.' " *Carson*, ___ Mich at ___; slip op at 10-11 (alteration in original), quoting US Const, Am IV. To do so, the warrant "must state with particularity not only the items to be searched and seized, but also the alleged criminal activity justifying the warrant." *Hughes*, 506 Mich at 538. "That is, some context must be supplied by the affidavit and warrant that connects the particularized descriptions of the venue to be searched and the objects to be seized with the criminal behavior that is suspected, for even particularized descriptions will not always speak for themselves in evidencing criminality." *Id*. The particularity requirement's purpose "is to provide reasonable guidance to the officers executing the search with regard to the items to be seized and to prevent unfettered discretion in this determination." *People v Hellstrom*, 264 Mich App 187, 192-193; 690 NW2d 293 (2004).

These "general Fourth Amendment principles apply with equal force to the digital contents of a cell phone," *Hughes*, 506 Mich at 527, which implicate extensive privacy interests as detailed by the United States Supreme Court in *Riley*, *id*. at 526-527, 553. Regarding the particularity requirement, specifically, "an officer's search of seized digital data, as with any other search conducted pursuant to a warrant, must be reasonably directed at finding evidence of the criminal activity identified within the warrant." *Id*. at 542-543. Courts reviewing search warrants for particularity focus on "practical accuracy" rather than "technical precision." *Carson*, ___ Mich at ___; slip op at 17.

Our Supreme Court's recent decision in *Carson* illustrates these principles. The warrant there directed the search of the defendant's "cellular device" for "[a]ny and all records or documents pertaining to the investigation of Larceny in a Building and Safe Breaking." *Id*. at ___; slip op at 13. It allowed officers to seize items necessary to access the phone (like passwords), "electronically stored communications or messages" (like email), and "[a]ny and all data including text messages, text/picture messages, pictures and videos, address book, any data on the SIM card if applicable, and all records or documents which were created, modified, or stored in electronic or magnetic form and any data, image, or information that is capable of being read or interpreted by a cellular phone or a computer."

The *Carson* Court held the warrant lacked sufficient particularity, reasoning that a "practical reading of the search warrant" would not "sufficiently inform an executing officer how to reasonably conduct a limited and constitutionally particular search." *Id*. at ___; slip op at 17. That is, the warrant did not "inform the executing officers how to reasonably direct their search at uncovering evidence related to the criminal activity identified in the warrant." *Id*. (cleaned up). And even assuming the warrant's single reference to the crimes under investigation—larceny and safe breaking—limited its scope in some way, that necessary inclusion did not render the warrant constitutionally particular. *Id*. at ___; slip op at 19. This was so, the Court explained, because the warrant's "authorization to search every nook and cranny of the cell-phone data for 'any and all records or documents' and 'any and all data' related to safebreaking and larceny provide[d] no meaningful constraint." *Id*. "Although such a wide-ranging search might uncover incriminating evidence," the Court cautioned, "such exploratory rummaging [was] not reasonably directed at obtaining evidence of safebreaking or larceny." *Id*. (quotation marks and citation omitted).

Though *Carson* does not set forth a "per se rule of specificity that applies to all cell-phone searches," *id*., the Court noted that "a search warrant should be as particular as the circumstances presented permit and consistent with the nature of the item to be searched," *id*. at ___; slip op at 20. Ultimately, the search warrant there was overly broad because "[i]t allowed officers to comb through every conceivable type of information on the cell phone limited only, at best, to evidence 'pertaining to the investigation of Larceny in a Building and Safe Breaking.' " *Id*. at ___; slip op at 24.

2. ANALYSIS

Defendant concedes that police could lawfully search the text messages in his cell phone between himself and RN for evidence of accosting. He maintains, however, that the warrant was insufficiently particular and allowed "exploratory rummaging in violation of the Constitution." Under *Carson*, we must agree.

The search warrant at issue here directs the search of a Samsung Galaxy phone as follows:

a. Seize and examine by persons qualified to conduct said investigation any voice messages, photographs or other possible digital evidence located in above listed cellular telephone;

b. Open and document any text messages or call lists that may exist in above listed cellular telephone[;]

c. Call logs to include incoming, outgoing and missed calls;

d. Phonebook and contacts to include phone numbers and email addresses;

e. SMS/MMS messages and attached multimedia files both incoming and outgoing;

f. Secondary SMS applications and messages to include (list suspected secondary texting apps, KIK, text now, meet me, snapchat etc) and others;

g. Emails on the cellular telephone's memory including incoming and outgoing;

h. Pictures and all EXIF information to include geo tagging information in these files[;]

i. Videos and any related geo tagging information;

j. Audio files to include any voicemail or voice notes stored on the device;

k. Secondary phone number accounts such as Skype, Line 2 and other applications that can assign a second roaming phone number;

l. WiFi network information to include SSIP (Network Name) and GPS information of the network;

m. GPS directions stored on the cellular phone;

n. Internet history and usage to include websites visited, search terms and "apps" on the cellular telephone;

o. Open and search any inboxes, messages and saved information on any storage device found within the cellular phone;

p. Seize all contraband data known to be illegal found on the cellular phone or inserted data storage card.

This warrant is plainly overbroad. At top, it does not identify the crime or crimes under investigation, which *Carson* instructs "is necessary . . . ." *Id*. at ___; slip op at 19. Equally problematic, it allowed police to essentially electronically dig through every aspect of defendant's phone without any limiting language, such as that tying the review of the phone contents to the alleged victim, the type of unlawful conduct suspected, or a time period (see, e.g., "*any* voice messages, photographs or other possible digital evidence"; "*any* text messages or call lists"). (Emphasis added.) Boilerplate language like this is exactly what our Supreme Court deemed insufficiently particular in *Carson*. *Id*. at ___; slip op at 16-19. Indeed, it appears to us that the warrant at issue here was lifted directly from a template because police failed to alter form-warrant language to the facts of this case. Specifically: (1) "Secondary SMS applications and messages to include *(list suspected secondary texting apps, KIK, text now, meet me, snapchat etc)* and others," and (2) "WiFi network information to include SSID *(Network Name)* . . . ." (Emphasis added.)

We acknowledge that the breadth of an allowable search warrant can vary based on the type of crime under investigation, the evidence sought, and the electronic device at issue. See *id*. at ___; slip op at 20, 23. And "[t]he need for specificity about the types of data expected to be encountered and searched must be weighed against the fact that law enforcement often will not be certain what evidence exists and where it will be located." *Id*. at ___; slip op at 22. But police nonetheless have an "obligation to provide the most specific description possible and to support a request to search each category of data mentioned in a warrant affidavit." *Id*. Magistrates, for their part, cannot "approve boundless searches of electronic data when the information available provides a basis for a more reasonably tailored search." *Id*. Here, the search warrant could (and should) have identified the suspected crimes and conduct, made a connection between sexually suggestive conversations with a minor and the likelihood of CSAM as part of those communications, identified in some way the likely victim or victims, and included the temporal limitation known to police (i.e., the several-week period during which defendant messaged RN and had physical access to her and MK). This level of specificity, in many cases, is readily discernible and will not impair an investigation.

In finding the search warrant here valid, the trial court erroneously relied on the supporting probable-cause affidavit to supply some of that missing information. To be sure, "a facially invalid search warrant *may* be saved by incorporated documents." *People v Brcic*, 342 Mich App 271, 279; 994 NW2d 812 (2022). For courts to properly consider a supporting affidavit, however, the warrant must include "appropriate words of incorporation" that "direct the officers executing a search warrant to refer to [the] affidavit for guidance and not merely state an affidavit was used to establish probable cause." *Id*. (quotation marks and citation omitted). Such " 'appropriate words of incorporation' are limited to phrases that reflect the magistrate's explicit intention to incorporate an affidavit or other supporting document for the purpose of providing particularity in describing the place to be searched and the items to be seized under the authority of a search warrant." *Id*. at 282 (quotation marks omitted).

The search warrant at issue here contains no such incorporating language. Its single reference to the affidavit merely instructs officers to "[l]eave a copy of this warrant with affidavit attached and tabulation (a written inventory) of all property taken with the person from whom the property was taken or at the premises." That language, itself, is not an "affirmative or explicit reference[] to the affidavit" sufficient for incorporation. *Id*. at 280. The trial court therefore erred by considering it in the first instance.

* * *

Standing alone, the search warrant was plainly overbroad—it "allowed officers to comb through every conceivable type of information on the cell phone," without any limitation. *Carson*, ___ Mich at ___; slip op at 24. "[S]uch wide-ranging exploratory rummaging," our Supreme Court cautioned, "is constitutionally intolerable and clearly violates the Fourth Amendment." *Id*. The trial court thus erred by finding the warrant sufficiently particular and further erred to the extent it denied defendant's motion to suppress on that basis. We must therefore reverse the trial court's denial of that motion and remand for further proceedings consistent with this opinion. That, in turn, requires us to vacate defendant's convictions.[2]

III. CONCLUSION

For these reasons, we reverse the trial court's denial of defendant's motion to suppress, vacate his convictions, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Trebilcock
/s/ Brock A. Swartzle

[2] The prosecution did not argue on appeal that any exceptions to the exclusionary rule apply, and failed to accept our invitation to address the applicability of any exceptions with supplemental briefing prior to oral argument. We therefore decline to address that issue on its behalf, see *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009), though the prosecution may raise those arguments below in the trial court's discretion. Additionally, in light of our resolution of the search-warrant issue, we need not address defendant's sentencing challenge.

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Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

ACKERMAN, J. (*concurring in the judgment*).

I concur in the result reached by the majority: The trial court's denial of defendant's motion to suppress must be reversed, and his convictions must be vacated. As the majority notes, our Supreme Court recently explained that "[s]pecifying the crime under investigation [in a search warrant] is necessary." *People v Carson*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166923); slip op at 19. See also *United States v Galpin*, 720 F3d 436, 445 (CA 2, 2013) ("[A] warrant must identify the specific offense for which the police have established probable cause."). This warrant did not identify the suspected offenses and was therefore defective. We need say no more. I therefore would not reach the majority's additional conclusion that the warrant also authorized an impermissibly broad search of defendant's phone.

That additional question is, in my view, more complicated than the majority's analysis suggests. The warrant in *Carson* identified larceny in a building and safe breaking, neither of which is committed through a phone. Here, by contrast, police were investigating sexually suggestive messages defendant had sent to a 14-year-old girl. Defendant had instructed the girl to delete their messages and encouraged her to download an application to conceal future communications. Indeed, some messages had already been deleted. Given those circumstances, investigators might reasonably have looked beyond defendant's messages with the girl, including at communications through other applications or with other individuals, as well as pictures and other data on the phone.

Of course, a warrant must identify the suspected offenses and connect the authorized search to them. But the permissible scope of a search necessarily depends on the nature of the suspected

crime and the evidence sought. A search warrant authorizing the review of all text messages, for example, may be impermissibly broad in an investigation of larceny or safe breaking but reasonable in an investigation of criminal conduct carried out through text messages. The breadth of the warrant alone therefore cannot answer the question. And particularly in cases involving the sexual exploitation of children, I would be reluctant to impose unnecessary limitations on law enforcement's ability to uncover evidence that offenders may have concealed across different applications and types of data.

Because the warrant's failure to identify the offenses under investigation is sufficient to resolve this case, I would leave the additional question for another day. I therefore concur only in the result.

/s/ Matthew S. Ackerman