NO. 1040091

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TOMMY DARREN TYSON,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Joseph A. Evans

No. 20-1-02781-4

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Federal and Other Jurisdictions

Statutes

Rules and Regulations

I. INTRODUCTION

Tommy Tyson's sexual abuse of his adopted children AT and BT came to light through a series of events originating at ten-year-old AT's adoption celebration. There, a Court Appointed Special Advocate (CASA) saw a photograph of AT's penis on Tyson's phone. Tyson deleted the photograph when the CASA asked to see it again. The next day, a sheriffs' deputy accompanying CPS to Tyson's residence seized Tyson's phone to prevent further evidence destruction.

Police obtained warrants to search Tyson's phone and electronic devices based on three witnesses' observations of Tyson's efforts to delete files and hide his electronic devices, his confession to possessing a photograph of AT holding Tyson's penis, and his statements about potentially going to prison for his pornography. Police found hundreds of depictions of minors engaged in sexually explicit conduct on Tyson's hard drive. A search of Tyson's phone revealed photographs of Tyson

inserting his penis into AT's and BT's mouths. Both AT and BT disclosed sexual abuse.

Tyson fails to show a basis for review of the court of appeals' well-reasoned decision. The court correctly applied this Court's well-settled precedent in determining that the search warrants were supported by probable cause and sufficiently particular. The court also correctly held that the warrant authorizing search of Tyson's phone constituted an independent source permitting admission of the photographs of AT and BT. The independent source doctrine applied because the phone seizure did not affect the detective's decision to seek the warrant or the judge's authorization of the search. Tyson fails to show a basis for review under any of the RAP 13.4(b) criteria.

II. RESTATEMENT OF THE ISSUES

A. Did the court of appeals correctly find that information from three named, presumptively reliable citizen informants describing Tyson's witnessed efforts to destroy and hide evidence, his confession to possessing a photograph of AT holding Tyson's penis, and his statement about potentially going to prison established probable cause to search his electronic devices?

B. Did the court of appeals correctly hold that the warrant authorizing the search of Tyson's electronic devices was sufficiently particular when it successfully differentiated legal first-amendment protected materials from illegal child sexual abuse images?

C. Did the court of appeals correctly hold that the search warrant constituted an independent source permitting admission of photographs from Tyson's phone because the phone seizure did not influence either the detective's decision to seek the warrant or the judge's decision to authorize the warrant?

D. If review is granted, should this Court determine whether any error is harmless given the irrelevance of the phone seizure to the children's disclosures of abuse and Tyson's possession of depictions of minors engaged in sexually explicit conduct on a device other than his phone?

III. STATEMENT OF THE CASE

The State incorporates the summation of facts by the court of appeals and the State's recitation of facts in its Respondent's Brief below. *State v. Tyson*, 33 Wn. App. 2d 626, 631-34, 564 P.3d 248 (2025); Brief of Respondent at 3-10.

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IV. REASONS WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals Correctly Concluded that Probable Cause Authorized the Warrant for Tyson's Electronic Devices Based on Credible Information Provided by Three Presumptively Reliable Witnesses

The court of appeals correctly applied the *Aguilar-Spinelli* standard in finding the warrant for Tyson's phone, computer, and hard drive supported by probable cause. *Tyson*, 33 Wn. App. 2d at 636-38. Probable cause exists where facts and circumstances establish a reasonable inference that the defendant is involved in criminal activity and evidence of the crime can be found at the place to be searched. *State v. Scherf*, 192 Wn.2d 350, 363, 429 P.3d 776 (2018). Probable cause requires more than speculation or conjecture but does not require certainty. *State v. Chenoweth*, 160 Wn.2d 454, 476, 158 P.3d 595 (2007). Courts utilize common sense when evaluating whether a warrant affidavit establishes probable cause. *Id*. at 477.

The sufficiency of probable cause based on information provided by citizen informants is evaluated under the *Aguilar-Spinelli* standard. *State v. Ollivier*, 178 Wn.2d 813, 849, 312 P.3d

1 (2013).[1] The two-pronged test examines the informant's basis of knowledge and veracity. *Id*. The basis of knowledge requirement is satisfied by an informant's personal knowledge. *Id*. The veracity requirement is satisfied by information establishing the informant is credible or the information reliable. *Id*. at 849-50. Named citizen informants are presumptively reliable. *Id*. The defendant bears the burden of rebutting this presumption. *Id*.

The court of appeals correctly determined that the *Aguilar-Spinelli* test was satisfied in Tyson's case. *Tyson*, 33 Wn. App. 2d at 638. CASA James Benoit witnessed Tyson's possession of a photograph of ten-year-old AT's penis on his phone. Ex. 2, pg. 2-5. After CPS removed the children from Tyson's home, Travis Tyson saw Tyson delete items from his computer and hide

[1] The *Aguilar-Spinelli* standard is based on *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and *Spinelli v. United States*, 393 U.S. 410, 413, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). *State v. Lyons*, 174 Wn.2d 354, 359, 275 P.3d 314 (2012).

electronics in the yard. *Id*. Tyson told Travis that he was concerned about "questionable" pornography on his devices, asking him to take his computer and hard drive when Travis returned to Idaho. *Id*. He also asked Travis and his mother if they would care for his children if he went to prison. *Id*. The following day, Tyson dropped off his hard drive and computer at Janis Rawlin-Ercambrack's house and told her they contained a photograph of AT holding Tyson's penis. *Id*.

A commonsense evaluation of the totality of this information establishes a reasonable inference that Tyson was hiding his electronics because he would go to prison if police found his sexually explicit images of children. *Scherf*, 192 Wn.2d at 363; *Chenoweth*, 160 Wn.2d at 476-77. The court of appeals correctly determined that probable cause was established, and the *Aguilar-Spinelli* test satisfied based on presumptively credible, named citizens with personal knowledge. *Tyson*, 33 Wn. App. 2d at 638-39.

Tyson wrongly contends that *Aguilar-Spinelli* requires a witness to have actually seen an indisputably illegal image. Petition for Review (Pet.) at 37-38. This is inaccurate. The knowledge requirement is satisfied by a witness's personal knowledge of the facts reported or when the affidavit contains "sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity," evidence of which can be found at the place to be searched. *Ollivier*, 178 Wn.2d at 849. There is no requirement that the informant must witness the crime itself. If this were the rule, warrants for clandestine crimes such as murder and sexual abuse could rarely be obtained.

The court of appeals' decision does not conflict with *State v. Lyons*, 174 Wn.2d 354, 275 P.3d 314 (2012), as Tyson contends. Pet. at 40. The *Lyons* Court held that a confidential informant's tip was deficient for lack of information about whether the crime had recently occurred. *Lyons*, 174 Wn.2d at 362-63, 368. It did not create a requirement that an informant

personally witness the crime. *Id*. The *Lyons* holding is inapplicable to the information provided by Benoit, Travis, or Rawlin-Ercambrack, who clearly communicated recent events.

Tyson also wrongly contends the informant's knowledge is insufficient if there is a possible innocent explanation for the information provided. Pet. at 38. This too is incorrect. Probable cause exists when the facts and circumstances establish a reasonable probability of criminal activity. *Scherf*, 192 Wn.2d at 363. Citizen-provided information does not have to foreclose possible explanations inconsistent with criminal conduct. *See State v. Graham*, 130 Wn.2d 711, 725, 927 P.2d 227 (1996). An extremely unlikely innocent explanation for Tyson's possession of multiple sexual photographs of AT, Tyson's frantic efforts to hide and destroy evidence, and his awareness that he might go to prison for what he possessed did not nullify probable cause.

The court of appeals correctly determined that the named citizen informants in Tyson's case were presumptively reliable. *Tyson*, 33 Wn. App. 2d at 638. Tyson has not rebutted that

presumption. *Ollivier*, 178 Wn.2d at 849-50. The record does not support Tyson's contention that Travis in particular did not satisfy *Aguilar-Spinelli*'s credibility requirement. Pet. at 39. Tyson's contention the two were estranged is rebutted by Travis's days-long presence at Tyson's home to celebrate AT's adoption. Ex. 2, pg. 2-5. The claim Travis was motivated by animus is rebutted by his comments that he was "struggling" as Tyson's brother with his decision to contact police but was concerned for the children's safety. *Id*. Tyson does not show the court of appeals erred in finding *Aguilar-Spinelli* satisfied.

The combined information from Benoit, Rawlin-Ercambrack, and Travis Tyson constituted powerful evidence that Tyson possessed illegal child sexual abuse images, believed police might obtain those images, and was doing everything he could to prevent detection. The court of appeals correctly determined that *Aguilar-Spinelli* was satisfied and the warrant sufficiently supported by probable cause. *Tyson*, 33 Wn. App. 2d

at 636-38. Tyson fails to show a basis for review under RAP 13.4(b).

B. The Court of Appeals Correctly Determined That the Warrant Authorizing Search of Tyson's Devices Was Sufficiently Particular Because It Differentiated Between Illegal Materials and Constitutionally-Protected Materials

The court of appeals correctly applied this Court's precedent in finding the first warrant for Tyson's electronic devices sufficiently particular. *Tyson*, 33 Wn. App. 2d at 639. The appellate court also appropriately found review of the second and third warrants procedurally barred. *Id*. at 641. There is no basis for review.

1. The court of appeals correctly determined that the first warrant was sufficiently particular

The court of appeals correctly applied this Court's precedent to the first warrant permitting search of Tyson's devices. *Tyson*, 33 Wn. App. 2d at 639. The federal and state constitutions require that a warrant particularly describe the place to be searched and the items to be seized. *State v. Perrone*, 119 Wn.2d 538, 545, 834 P.2d 611 (1992). Sufficient particularity is

achieved if the warrant "is as specific as the circumstances and the nature of the activity under investigation permit." *Id*. at 547.

Warrants for electronic devices containing First Amendment protected materials are subject to a heightened particularity standard. *State v. Besola*, 184 Wn.2d 605, 607, 611, 359 P.3d 799 (2015). This standard is met when the warrant particularly describes the items to be seized in a manner sufficiently distinguishing them from legally-possessed materials. *Id*. at 610. A warrant is overbroad when it permits the collection of items that are legal to possess and unconnected to the crimes under investigation. *Id*. at 612-13.

Warrants authorizing searches for child sexual abuse images are made sufficiently particular by reference to a narrowly drafted statutory definition which unambiguously limits the search for evidence of the cited crime. *Besola*, 184 Wn.2d at 614-16. A warrant limiting a search to images that meet the definition of sexually explicit conduct under RCW 9.68A.011, by definition illegal, is sufficiently particular. *Id*. The

warrant in Tyson's case contained this limitation, providing sufficient distinction between legal and illegal materials. Ex. 2, pg. 1; *Besola*, 184 Wn.2d at 607. The court of appeals correctly determined the warrant was sufficiently particular based on this key limitation. *Tyson*, 33 Wn. App. 2d at 640-41.

The court of appeals correctly rejected Tyson's contention that the warrant was invalid under *State v. Keodara*, 191 Wn. App. 305, 364 P.3d 777 (2015), *review denied*, 185 Wn.2d 1028, 377 P.3d 718 (2016). *Tyson*, 33 Wn. App. 2d at 640. The *Keodara* Court invalidated a warrant which did not limit the search to items for which there was probable cause. *Keodara*, 191 Wn. App. at 314. The opinion did not pronounce any requirement that police identify where items are located on a device prior to search. Such a requirement would be impossible. Nor is a warrant required to contain a temporal limitation unless logically related to the crime under investigation. *See*, *e.g.*, *id*. at 316; *United States v. Lazar*, 604 F.3d 230, 238 (6th Cir. 2010).

Tyson fails to establish any basis for review under RAP 13.4(b).[2] The court of appeals' decision is consistent with well-established law.

2. The court of appeals appropriately declined to review the second and third warrants

Tyson did not challenge the particularity of the second and third warrants in the trial court and failed to establish manifest constitutional error warranting review on appeal. *Tyson*, 33 Wn. App. 2d at 641 n.4. Appellate courts generally decline to review unpreserved errors unless the appellant establishes manifest constitutional error. RAP 2.5(a); *State v. Kirkman*, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007). The court of appeals in Tyson's case appropriately exercised its discretion in declining to consider procedurally barred claims. *Boyd v. Davis*, 127 Wn.2d 256, 265, 897 P.2d 1239 (1995). There is no RAP 13.4(b)

[2] Tyson also claims without citation to the record that the State conceded at the trial court that the first warrant was improper. *See*, *contra* CP 258; *see also* RP(11/07/22) 45. Tyson's unsupported assertion should not be considered.

basis for review of the appellate court's discretionary decision to decline review of the second and third warrants.[3]

C. The Court of Appeals Correctly Concluded the Search of Tyson's Phone was Constitutionally Permissible

The court of appeals correctly concluded that the admission of evidence from Tyson's phone was independently justified by the valid warrant authorizing search of the device. *Tyson*, 33 Wn. App. 2d at 631, 641-43. That search occurred after Deputy Edwin Astorga's lawful seizure of the phone.

1. Probable cause supported the seizure of Tyson's phone

The seizure of property generally requires probable cause and a warrant. *Chenoweth*, 160 Wn.2d at 464-65. Tyson conceded there was probable cause but contended the seizure was invalid without a warrant. Wash. Court of Appeals oral

[3] Should this Court grant review of the court of appeals' particularity determination with respect to the first warrant, the State agrees with Tyson that this Court would then consider whether the subsequent warrants are impermissible "fruit" of the first warrant or constitute an independent source for the admission of evidence. *See* Pet. at 32.

argument, *State v. Tyson*, No. 58888-9 (Jan. 28, 2025) at 2 min., 55 sec. through 4 min., 15 sec., *audio recording by* TVW, Washington State's Public Affairs Network, http://www.tvw.org.

Tyson's concession to probable cause is well founded. Deputy Astorga was aware of facts, and their associated reasonable inferences, establishing that: (1) CASA Benoit had seen a photograph depicting AT purposefully manipulating his clothing to display his penis; (2) AT lied by saying the photograph depicted a "pinky" and he did not know the child depicted; (3) AT's reaction exhibited his awareness that Tyson did not want a CASA to know about the photograph; (4) Tyson quickly deleted the photograph to prevent further examination by Benoit; (5) AT and Tyson had given conflicting explanations for the photograph; (6) Tyson's admission that the photograph depicted AT demonstrated he both knew about and purposefully kept the photograph on his phone; and (7) that Tyson's explanation the photograph resulted from the boys "playing

around" established it had not been created for medical or other legitimate purposes. CP 307; Ex. 1, pg. 6-7; RP(11/07/22) 19. Deputy Astorga also learned from CPS that there was a history of sexual abuse allegations at Tyson's residence. *Id*. A commonsense assessment of the totality of the facts known to Deputy Astorga established probable cause to seize the phone. *Scherf*, 192 Wn.2d at 363. Its warrantless seizure was justified by exigent circumstances and the plain view exception.

2. Deputy Astorga's seizure of Tyson's phone was justified by exigent circumstances

The warrant requirement "yield[s] when exigent circumstances demand that police act immediately." *State v. Muhammad*, 194 Wn.2d 577, 596, 451 P.3d 1060 (2019) (plurality). Immediate action is required when delay would permit the transport, destruction, or concealment of evidence. *Id*. at 597; *State v. Tibbles*, 169 Wn.2d 364, 370, 236 P.3d 885 (2010). Evidence on mobile phones is uniquely susceptible to destruction. *Riley v. California*, 573 U.S. 373, 388-89, 393-94, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014); *United States v.*

Babcock, 924 F.3d 1180, 1194 (11th Cir. 2019). Under certain circumstances, it is constitutionally permissible for police to secure cell phones without a warrant to prevent this outcome. *Riley*, 573 U.S. at 388, 393-94.

Exigent circumstances exist when a police officer reasonably fears that evidence will be destroyed. *State v. Counts*, 99 Wn.2d 54, 62, 659 P.2d 1087 (1983). Fear is reasonable when "specific, articulable facts, along with 'reasonable inferences therefrom,' justify the warrantless intrusion." *Muhammad*, 194 Wn.2d at 597. Facts supporting exigency include suspect behavior indicating intent to hide and destroy evidence, or that the evidence may be moved, concealed, or destroyed. *See id*. at 598. Whether exigent circumstances exist is based on assessment of "the totality of the situation in which the circumstance arose." *State v. Smith*, 165 Wn.2d 511, 518, 199 P.3d 127 (2002).

Specific articulable facts justified Deputy Astorga's seizure of Tyson's phone based on exigency. Deputy Astorga knew Tyson had already destroyed evidence. CP 307; Ex. 1, pg.

6-7; RP(11/07/22) 19. He could reasonably assume CPS's removal of the children would put increasing pressure on Tyson to take further similar actions. When Deputy Astorga inadvertently encountered Tyson's phone, he rightly concluded that the small movable device could easily be hidden, destroyed, or remotely wiped in the time it took him to obtain a warrant. RP(11/07/22) 17. The totality of these facts and circumstances established that his fear was reasonable and justified a seizure based on exigency. *Smith*, 165 Wn.2d at 518; *Muhammad*, 194 Wn.2d at 597.

Tyson wrongly argues the seizure was unreasonable because police theoretically could have obtained a warrant. Pet. at 6. But exigency requires that obtaining a warrant was impractical, not impossible based on a hindsight assessment. *Tibbles*, 169 Wn.2d at 369-70; *Muhammad*, 194 Wn.2d at 597. Deputy Astorga was not investigating when he entered Tyson's home to ensure the safety of CPS and the children during the removal process. RP(11/07/22) 14, 17; Ex. 1, pg. 6-7. But he

inadvertently encountered Tyson's phone in plain view. Ex. 1, pg. 6-7; RP(11/07/22) 16-17. He aptly realized it both contained evidence and could easily be destroyed, even in the time needed to obtain a warrant telephonically. *Id*.

Nor was obtaining a warrant prior to Deputy Astorga's entry into Tyson's home practical. The focus at that point was on removing the children safely; Deputy Astorga happened to be twice dispatched to make sure this occurred. Ex. 1, pg. 6-7; RP(11/07/22) 14, 17. A theoretical, hindsight argument that police somehow should have initiated and been farther along in a criminal investigation, obtaining a warrant even prior to the children's removal, was unrealistic and did not invalidate the exigency Deputy Astorga faced.

Tyson wrongly relies on the decision in *Tibbles*. Pet at. 6. That case addressed whether the odor of cannabis established exigency to search during a routine traffic stop. *Tibbles*, 169 Wn.2d at 371. Unlike securing a phone from a suspect who has already destroyed evidence and now faces the increasing

likelihood police will detect sexual abuse, there was no "particular haste," in obtaining a warrant for Tibble's vehicle. *Id*.

The *Muhammad* decision is more instructive. There, the Court held that exigent circumstances justified the warrantless "ping" of Muhammad's phone because he was in flight and "might have been in the process of destroying evidence" in his vehicle. *Muhammad*, 194 Wn.2d at 598. But police had earlier obtained a warrant for Muhammad's car and had prior opportunities to execute the warrant. *Id*. at 581-82. This circumstance did not invalidate the ensuing exigency when Muhammad fled. Deputy Astorga, like the police in *Muhammad*, acted permissibly within the unique circumstances presented.

3. The plain view exception also justified Deputy Astorga's seizure of Tyson's phone

Deputy Astorga's seizure was also justified by the plain view doctrine. The doctrine applies when: (1) police have a valid justification to be in an otherwise protected area; and (2) police are immediately able to recognize evidence associated with criminal activity. *State v. Morgan*, 193 Wn.2d 365, 369, 440 P.3d

136 (2019). The first factor is met because Deputy Astorga was lawfully in Tyson's home based on consent and his community caretaking function. CP 292-93 (FF 4); Ex. 1, pg. 7; RP(11/07/22) 15; RCW 26.44.050; RCW 43.185C.260; *State v. Weller*, 185 Wn. App. 913, 344 P.3d 695 (2015), *review denied*, 183 Wn.2d 1010 (2015); *State v. Bowman*, 198 Wn.2d 609, 618, 498 P.3d 478 (2021).

The second factor is met because Deputy Astorga immediately recognized Tyson's phone as evidence associated with criminal activity. *Morgan*, 193 Wn.2d at 369; RP(11/07/22) 15; Ex. 1, pg. 7. Officers permissibly in a private area are "'entitled to keep [their] senses open to the possibility of contraband, weapons, or evidence of crime.'" *Id*. (quoting *State v. Lair*, 95 Wn.2d 706, 719, 630 P.2d 427 (1981)). "Objects are immediately apparent" as evidence "when, considering the surrounding circumstances, the police can reasonably conclude that the subject evidence is associated with a crime." *State v.*

Elwell, 199 Wn.2d 256, 268, 505 P.3d 101 (2022) (quoting *Morgan*, 193 Wn.2d at 372).

Information learned on scene may contribute to an officer's immediate recognition of evidence so long as the officer does not physically manipulate an object or search. *Weller*, 185 Wn. App. at 925-27; *Elwell*, 199 Wn.2d at 267. When Tyson's mother said the phone belonged to Tyson, Deputy Astorga immediately recognized it as evidence of criminal activity, knowing the photograph could likely still be recovered from the device. Ex. 1, pg. 7; RP(11/0722) 16. Consequently, its collection was authorized under the plain view exception.

4. The court of appeals correctly determined the valid warrant independently authorized the admission of evidence from Tyson's phone

The court of appeals correctly determined that the valid warrant alone authorized the admission of photographs from Tyson's phone showing his sexual abuse of AT and BT. *Tyson*, 33 Wn. App. 2d at 631, 641-43. The seizure was immaterial to this determination. *Id*. at 643. Rather, the court held that the

warrant was an independent source justifying the admission of evidence. *Id*. at 642. This Court's precedent was correctly applied and supported the court's conclusion.

The independent source doctrine is a well-recognized exception to the exclusionary rule. *State v. Betancourth*, 190 Wn.2d 357, 365, 413 P.3d 566 (2018). The doctrine provides that evidence tainted by police error is admissible if ultimately obtained pursuant to a valid warrant or other lawful means. *Id*. at 364-65 (citing *State v. Gaines*, 154 Wn.2d 711, 718, 116 P.3d 993 (2005)). The "determinative question" for application of the doctrine is "whether the challenged evidence was discovered through a source independent from the initial illegality." *Id*. at 365. Courts analyzing this question consider whether the unlawfully-obtained information affected: (1) the magistrate's decision to issue the warrant; or (2) the decision of the state agent to seek the warrant. *Id*. If neither entity was affected by the initial error, the search warrant is an independent source. *Id*.

The court of appeals correctly concluded both factors were met in Tyson's case. *Tyson*, 33 Wn. App. 2d at 643. Police did not search the phone after its seizure until a valid warrant was obtained. CP 208, 293-84 (FF 14, 18). Accordingly, the phone seizure did not produce "fruit of the poisonous tree" affecting either law enforcement's decision to seek a warrant or the judge's decision to issue a warrant. *Tyson*, 33 Wn. App. 2d at 643.

In other words, the phone seizure itself was irrelevant to whether there was probable cause to search. Probable cause was based on CASA Benoit's observations of the photograph on Tyson's phone, Tyson's confession he possessed a photograph of AT holding Tyson's penis, Tyson's extensive efforts to hide his electronics because of the illicit images they contained, and Tyson's comments about going to prison, revealing the criminal nature of the evidence he was attempting to destroy. Ex. 2, pg. 2-5. These facts were "independent from" the phone seizure and "independent from" the decisions to seek and to authorize the warrant. *Betancourth*, 190 Wn.2d at 365. The admission of

evidence from the phone was accordingly independent from the phone seizure.

The court of appeals' decision is consistent with this Court's precedent. The independent source doctrine in *Betancourth* was applied to phone records initially seized erroneously. *Betancourth*, 190 Wn.2d at 373. This Court held that a subsequently-issued valid warrant permitted the admission of evidence within those records. *Id*. Police were not required to return and reobtain the records. *Id*. at 371; *accord State v. Miles*, 159 Wn. App. 282, 286-87, 244 P.3d 1030 (2011). Rather, they were treated as lawfully obtained and searched by the valid warrant. *Betancourth*, 190 Wn.2d at 370.

Like the phone records in *Betancourth*, the evidence in Tyson's phone remained unchanged by the passage of time. The subsequently-obtained valid warrant authorized the phone's search and the admission of evidence. Police were not required to return and reobtain the phone. Nor were they required to treat the phone as if it had been lost or destroyed. Relying on

Betancourth, the court of appeals correctly determined the "evidence obtained from the cell phone is admissible under the independent source doctrine." *Tyson*, 33 Wn. App. 2d at 643.

Tyson does not challenge the court of appeals' application of *Betancourth*. Pet. at 10-12. Rather, he makes two unrelated arguments. First, Tyson contends that police would not have sought a warrant to search the phone absent its seizure. Pet. at 11. This contention is unsupported. Police had the same motivation to search the phone for child sexual abuse images regardless of when it was seized.

Second, Tyson contends the seizure is not independent from the warrant because it caused him to destroy evidence, hide evidence, and make incriminating statements, facts used to support probable cause in the warrant affidavit. Pet. at 12. There is also no merit to this argument. Even if unsupported, seizure of an object does not mean police must ignore a suspect's later incriminating acts and statements. "Fruit of the poisonous tree" is evidence derived from police error, not a suspect's later

independent acts. *See State v. Mayfield*, 192 Wn.2d 871, 889, 434 P.3d 58 (2019); *State v. McGee*, 3 Wn.3d 855, 868, 557 P.3d 688 (2024). Evidence resulting from a person's independent acts is attenuated from prior police error. *Id*. For example, a suspect's decision to push an officer into traffic during an illegal detention constitutes a legal basis to arrest and search. *McGee*, 3 Wn.3d at 868 (discussing *State v. Rousseau*, 40 Wn.2d 92, 95-96 241 P.2d 447 (1952)). Similarly, a suspect's freely-provided confession after being released from an unlawful arrest is admissible. *Mayfield*, 192 Wn.2d at 897-98 (discussing *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 9 L.Ed.2d 441 (1963)).

No state agent was present when Tyson deleted computer files, gave his electronics to Rawlin-Ercambrack, and made incriminating statements. These actions resulted from his own free will. *See Mayfield*, 192 Wn.2d at 889; *McGee*, 3 Wn.3d at 868. Similarly, no state agent caused CASA Benoit, Travis, or Rawlin-Ercambrack to contact authorities with their concerns. Accordingly, no authority prohibited police from obtaining a

search warrant supported by these facts. Tyson's contention that his own behavior was a "derivative link" to the phone seizure is unsupported.[4]

The court of appeals correctly determined that the independent source doctrine applied to the warrant authorizing search of Tyson's phone. *Tyson*, 33 Wn. App. 2d at 631, 641-43. Like in *Betancourth*, the initial warrantless seizure did not lead to "fruit of the poisonous tree derived from the initial unlawful seizure." *Betancourth*, 190 Wn.2d at 372. Because the phone was not searched until a warrant was obtained, the seizure itself did not invade Tyson's private affairs. *State v. Bowman*, 198 Wn.2d 609, 618, 498 P.3d 478 (2021) (a search occurs when police intrude into a person's private affairs). And it did not affect either law enforcement's decision to seek the warrant or the issuing judge's decision to authorize the warrant. *Betancourth*, 190 Wn.2d at 365-66. For these reasons, Tyson fails to establish that

[4] Tyson's claim the phone was not searched for three years is also incorrect. CP 203, 208.

review of the court of appeals' independent source analysis is warranted under RAP 13.4(b).

D. If Review is Accepted, This Court Should Determine Whether Any Error is Harmless

Constitutional errors are subject to harmless error review. *State v. Coristine*, 177 Wn.2d 370, 389, 300 P.3d 400 (2013). Reversal is unwarranted if the appellate court is convinced beyond a reasonable doubt the fact finder would have reached the same result had the error not occurred. *State v. Jones*, 168 Wn.2d 713, 724, 230 P.3d 576 (2010). This is the case here.

At his bench trial, Tyson stipulated to: (1) the photos from his phone depicting the rape of AT and BT; (2) photos and videos from his hard drive depicting minors engaged in sexual intercourse; and (3) AT's and BT's disclosures of sexual abuse. CP 39-42. If the phone was seized in error, Tyson's possession of depictions of minors engaged in sexually explicit conduct conviction remains because he stipulated to qualifying images from his hard drive. CP 40; RCW 9.68A.070(1)(a); RCW 9.8A.011(7)(a)-(e). If the warrant was insufficiently particular,

Tyson's child molestation convictions remain because he stipulated to the children's disclosures. CP 41. Those disclosures were not proximately caused by the phone seizure or warrant-authorized searches of Tyson's devices, but rather arose from AT's and BT's free and independent decision to disclose abuse. *McGee*, 2 Wn.3d at 868 (discussing *State v. Childress*, 35 Wn. App. 314, 317, 666 P.2d 941 (1983) (holding that a child's independent disclosure of sexual abuse was attenuated from an unconstitutional search)).

For all of these reasons, if this Court accepts review, the Court must also determine the appropriate remedy if error occurred.

V. CONCLUSION

For the foregoing reasons, Tyson fails to establish any basis for review under RAP 13.4(b). This Court should deny review.

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RESPECTFULLY SUBMITTED this 28th day of May, 2025

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5-28-25	*s/Therese Nicholson*
Date	Signature

PIERCE COUNTY PROSECUTING ATTORNEY

May 28, 2025 - 2:53 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,009-1
Appellate Court Case Title:	State of Washington v. Tommy Darren Tyson
Superior Court Case Number:	20-1-02781-4

The following documents have been uploaded:

- 1040091_Answer_Reply_20250528145159SC056390_4896.pdf
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