



**OFFICE OF THE PROSECUTING ATTORNEY
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46TH JUDICIAL CIRCUIT
DELAWARE COUNTY, INDIANA**

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FOR IMMEDIATE RELEASE

From: Eric M. Hoffman, Prosecuting Attorney
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Date: August 4, 2023

**JURY CONVICTS
KENNETH HERBERT OF 2016 BRUTAL MURDER OF HIS WIFE**

Muncie Indiana – Today a Delaware County jury deliberated for approximately 3 hours before convicting Kenneth W. Herbert (DOB 12/13/1968) of Count 1, Murder, a Felony. A copy of the Affidavit of Probable Cause for Arrest is attached. Delaware Circuit Court No 2. Judge Kimberly Dowling sentencing for September 18, 2023. Pursuant to Indiana law murder is punishable by 45 – 65 years in prison and up to a \$10,000 fine.



Kenneth W. Herbert

After the verdict was returned, Delaware County Prosecuting Attorney Eric Hoffman said “Although justice was delayed in this case, it certainly wasn’t denied. Herbert will finally be held accountable for his horrendous crime. I am proud of Deputy Prosecutor Joe Orick, Prosecutor’s Investigators Lana Kasinger and Joni Wells, and Detective John Branson of the Delaware County Sheriff’s Office for their hard work and dedication in this case.”

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STATE OF INDIANA) IN THE DELAWARE COUNTY COURT SYSTEM 339
DELAWARE COUNTY) 2021 TERM

AFFIDAVIT OF PROBABLE CAUSE FOR ARREST WITHOUT WARRANT

COMES NOW: John Branson, a police officer of the Delaware County Sheriff's Office, and being first duly sworn upon oath, deposes and says that the following described person was arrested, without Warrant upon the charge(s) and circumstances herein after stated, and makes this affidavit for the purpose of establishing probable cause for said arrest.

NAME OF ARRESTEE: Kenneth W. Herbert D.O.B. 12-13-68

ADDRESS OF ARRESTEE: 2126 S Walnut St Muncie, IN 47302

DATE OF ARREST: March 4, 2021 TIME OF ARREST: 1308 AM PM

CHARGES:	<u>Murder 35-42-1-1</u>	a class	<u>Felony</u>	<input checked="" type="checkbox"/>	<u>Misdemeanor</u>	<input type="checkbox"/>
	_____	a class	<u>Felony</u>	<input type="checkbox"/>	<u>Misdemeanor</u>	<input type="checkbox"/>
	_____	a class	<u>Felony</u>	<input type="checkbox"/>	<u>Misdemeanor</u>	<input type="checkbox"/>
	_____	a class	<u>Felony</u>	<input type="checkbox"/>	<u>Misdemeanor</u>	<input type="checkbox"/>
	_____	a class	<u>Felony</u>	<input type="checkbox"/>	<u>Misdemeanor</u>	<input type="checkbox"/>
	_____	a class	<u>Felony</u>	<input type="checkbox"/>	<u>Misdemeanor</u>	<input type="checkbox"/>

The basis and reasons why this officer believes that said arrestee committed the aforesaid offense(s) in Delaware County, State of Indiana, are as follows:

On June 20, 2016, at approx. 2:40 am, Kimberly Herbert was brought to IU Health Ball Memorial Hospital by her husband, Kenneth Herbert.

Medical Records: Upon her arrival at BMH, Kimberly was observed by hospital personnel to be wrapped in white sheet, unresponsive and in cardiac arrest.

Medical staff also observed dried blood on Kimberly's face, and blood oozing out of Kimberly's mouth. CPR was immediately begun. Hospital staff also attempted to intubate Kimberly; however, that attempt was unsuccessful due to the Kimberly's jaw being clenched shut. Despite these efforts, Kimberly was pronounced deceased shortly after her arrival at BMH. According to medical records obtained from BMH, Kenneth Herbert told hospital staff, "I don't know what happened, I think someone beat her up." Kenneth also told hospital staff that at around 11:00 pm the night before, Kimberly was "gurgling," and that at 2:00 am he called a friend to give him and Kimberly a ride to the hospital.

I affirm under penalty of perjury that the foregoing is true and accurate to the best of my information and belief.

DATE: March 4, 2021 Officer: /S/John Branson Ma # 549

JUDICIAL DETERMINATION

The undersigned, being a judicial officer of Delaware County, and having reviewed the foregoing affidavit, now determines that probable cause existed for the arrest of said arrestee, and now fixes bail in the penal sum of \$ no bond

Dated: 3-5-21 Signed: [Signature] Title: Judge Cy

PRE-INITIAL HEARING INFORMATION

Pre-initial Hearing Date: 3-8-2021 Charges to be filed by Date: March 11, 2021 Time: 8:30

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NARRATIVE CONTINUED:

Kenneth Herbert Interview;

On June 20, 2016, an investigator with the Muncie Police Department conducted an interview with Kenneth Herbert. During that interview, Kenneth stated that he and Kimberly had been drinking alcohol and arguing the day before her death (June 29th) at their home, located at 1324 S. Elm, Muncie, IN. Kenneth stated that at one point during their arguing, he left the residence to drive around for a little bit. Kenneth stated that when he returned to the house, he saw Kimberly on the neighbor's porch, using the neighbor's phone. Kenneth then stated that after using the neighbor's phone, Kimberly left the area and walked somewhere. Kenneth stated that Kimberly eventually returned home later. After she returned home, Kimberly was standing in front of the air conditioner in the living room and said that she was having trouble breathing. Kenneth said that he then asked Kimberly if she wanted him to call for an ambulance, but that she said she just wanted to lay down. Kenneth advised that at that point (approx. 11:00 pm), he and Kimberly laid down on the floor in the living room and went to sleep. Kenneth stated that he was awoken some time later by the sound of Kimberly "gurgling." Kenneth stated that he then saw a foul smelling, black substance coming out of Kimberly's mouth. At that point, rather than call for ambulance or driving Kimberly to the hospital himself, Kenneth called his friend, Josh Barnes, and asked Barnes to come over and help him. A short time later, Barnes arrived at the house. Barnes then took Kimberly and Kenneth to the hospital. Kenneth admitted that prior to leaving for the hospital, he put some of the items that he had used to clean up the substance coming out of Kimberly's house in the washing machine and washed them. While speaking with investigators, Kenneth initially denied that any physical altercation had taken place between him and Kimberly. However, he did state that they had been arguing for an extended period of time; and that he recently "went and got divorce papers." Kenneth also stated that about a week before Kimberly's death, she had struck him in the head with a coffee mug. Kenneth eventually stated that he and Kimberly had hit each other in the past.

Autopsy:

Following Kimberly's death, an autopsy was performed by forensic pathologist Dr. Jolene Clouse. Dr. Clouse documented several injuries that she observed to Kimberly's head, neck, torso and extremities, including multiple hemorrhages, abrasions and contusions. Dr. Clouse also noted that Kimberly had suffered from a laceration to her liver. Dr. Clouse determined that Kimberly died as a result of multiple traumatic blunt force injuries.

Witness #1: In January of 2021, an interview was conducted with Witness #1, who is a family member of Kimberly Herbert. Witness #1 described the relationship between Kimberly and Kenneth as abusive and violent. Witness #1 stated that in the evening on the night before her death, Kimberly called him/her. During this phone call, Kimberly was hysterical and sounded like she was having trouble breathing. Kimberly told Witness #1 that Kenneth had beat her so bad that she was having trouble walking. Kimberly also told Witness #1 that Kenneth had stomped on her stomach. Witness #1 stated that they advised Kimberly to call for an ambulance and that they would meet her at the hospital; however, Witness #1 did not end up going to the hospital due to their fear of Kenneth.

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NARRATIVE CONTINUED:

Witness #2

In January of 2021, an interview was conducted with Witness #2, who was a neighbor of Kimberly and Kenneth. Witness #2 stated that Kimberly had come to their house in the afternoon on the day before her death "in a fit of terror." Witness #2 described Kimberly as screaming and crying, and she looked like she was scared. Kimberly also appeared to be in pain, was holding her side and was having trouble breathing. While standing on Witness #2's front porch, Kimberly asked to use Witness #2's phone. Kimberly then made a phone call with Witness #2's phone. During that call, Witness #2 heard Kimberly state that Kenneth had knocked her down and kicked her in her side multiple times. After hearing this, Witness #2 asked Kimberly if they could call 911, but Kimberly said she did not want 911 called. Witness #2 advised that while Kimberly was using Witness #2's cell phone, Kenneth came out of his residence. Kenneth then said, "If she's calling the cops, then you're dead to me." Witness #2 said that they took this comment as a threat, but that they were not surprised because Kenneth has a bad temper. Witness #2 stated that Kenneth then got in his vehicle and drove away. At that point, Kimberly then went back to her house. That was the last time Witness #2 saw Kimberly alive.

Witness #3

In February of 2021, a phone interview was conducted with Witness #3, who is related to members of Kimberly's family. Witness #3 stated that he/she received a phone call from Kimberly in the evening before her death. During this call, Kimberly was crying and asked Witness #3 if they would come get her. Witness #3 stated that they were about to leave their house to come get her when they received another call from Kimberly saying that she did not want Witness #3 to come get her. The next morning, Witness #3 received a phone call from a family member advising that Kimberly was dead.

Josh Barnes Interview

In November of 2020, an interview was conducted with Josh Barnes, who was a friend of both Kimberly and Kenneth. Barnes advised that on the day before Kimberly's death, he went over to Kimberly and Kenneth's house because Kenneth had asked him to go buy him and Kimberly cigarettes. Barnes stated that when he initially arrived at the house, he saw Kimberly. At that point, Kimberly was holding her side and appeared to be in pain. Kimberly then told him, "He got me good today." Barnes then left to go buy cigarettes. While doing that, Barnes received a phone call from Kenneth. According to Barnes, Kenneth was angry and was asking Barnes if Kimberly was with him/her. Barnes advised Kenneth that Kimberly was not there. Barnes then brought the cigarettes back to Kenneth. As Barnes was pulling back up to the house, he saw Kimberly on a neighbor's porch using the neighbor's cell phone.

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NARRATIVE CONTINUED:

Barnes advised that he was awoken early the next morning by a phone call. Barnes stated that he had several missed calls from Kenneth. Barnes then spoke with Kenneth, who asked Barnes to come over because Kimberly was sick and puking. Barnes then went to Kimberly and Kenneth's house. When Barnes arrived at the house, he saw Kimberly laying on the floor in the living room wrapped in a blanket. Barnes stated that he pulled back the sheet to see if Kimberly was alright. When doing that, Kimberly felt cold and did not appear to be breathing. Barnes stated that he asked Kenneth why he did not call 911, and that Kenneth responded, "Two violent felons in the house and she's like this." Barnes then picked Kimberly up to carry her outside to his truck. Barnes stated that when he was doing this, Kimberly felt rigid. Barnes stated that he then drove Kimberly and Kenneth to the hospital.
Barnes advised investigators that Kenneth did not go to Kimberly's funeral. Barnes also stated that Kenneth never admitted to him that he had killed Kimberly; but that Kenneth had told him that "the bitch got what she deserved."
On March 4, 2021 at 1308 hours, Kenneth Herbert was apprehended at 4500 Dan Patch Circle, Anderson, IN. He was brought to DCSO where he was mirandized and he refused to talk. He was arrested for Murder and transported to DCSO Jail and released to Corrections Officers.