**In the**
**Indiana Supreme Court**

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| Brian E Hardin,<br>Appellant,<br>v.<br>State of Indiana,<br>Appellee. | Court of Appeals Case No. 18A-CR-02629<br>Trial Court Case No. 55C01-1709-F2-1851 |

**Order**

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57. Being duly advised, the Court GRANTS the petition to transfer.

Done at Indianapolis, Indiana, on 6/23/2020.

/s/ Loretta H. Rush
Loretta H. Rush
Chief Justice of Indiana

App. 2

[SEAL]

IN THE
**Indiana Supreme Court**

Supreme Court Case No. 20S-CR-418

**Brian E. Hardin**,
*Appellant (Defendant),*

–v–

**State of Indiana**,
*Appellee (Plaintiff).*

Argued: September 26, 2019 | Decided June 23, 2020

Appeal from the Morgan Circuit Court,
No. 55C01-1709-F2-1851
The Honorable Matthew G. Hanson, Judge

On Petition to Transfer from the
Indiana Court of Appeals, No. 18A-CR-2629

**Opinion by Justice Goff**

Justice Massa concurs.
Justice Slaughter concurs with separate opinion.
Justice David concurs in part, dissents in part with separate opinion in which Chief Justice Rush joins.

**Goff, Justice.**

Both our federal and state constitutions provide protections from unreasonable searches and seizures. This case implicates those protections by raising the following question: Do law-enforcement officers violate either constitution by searching a person's vehicle when the person drives that vehicle up to his or her

house while officers are there executing a search warrant for the house that does not address vehicles? Based on the circumstances here, we answer "no" and affirm the trial court. In arriving at that answer, we provide guidance on the test applicable to these specific types of situations under the Fourth Amendment to the United States Constitution. We also survey our precedent under Article 1, Section 11 of the Indiana Constitution and provide generally applicable guidance on our totality-of-the-circumstances test.

**Factual and Procedural History**

Late one night in September 2017, a team of four law-enforcement officers prepared to execute a warrant to search Brian Hardin's home in Camby, Indiana. The search sprang from a multi-agency investigation into the alleged drug-dealing activities of several people, including Hardin. As part of this investigation, officers wiretapped one of Hardin's confederates, Jerry Hall, and intercepted communications between the two men regarding the purchase and distribution of methamphetamine. Officers also observed Hardin driving a truck, registered in his name, to his home in Camby and Hall's home in Indianapolis. Indiana State Police (ISP) Detective Joshua Allen put this information in an affidavit seeking a warrant to search Hardin's home for drugs and related items. The Morgan Superior Court issued the warrant but did not address the treatment of vehicles that might be found on the premises.

The four officers, including Detective Allen, forcibly entered Hardin's home, learned that no one else was there, and began their search. In the garage, they found digital scales and "heat seal bags that contained a crystal substance" which tested positive for methamphetamine. Tr. Vol. 2, p. 93. The officers also found syringes and two "pay and owe sheets," which Detective Allen described as ledgers to keep track of who owed money for drugs provided. *Id.* at 118. While the officers were at the home, Hardin's girlfriend and her daughter arrived, and the officers escorted them both inside the home for supervision. Also during the search, the officers learned from police executing a search warrant on Hall's home in Indianapolis that Hardin had recently obtained a large amount of methamphetamine from Hall.

Based on this information, Detective Allen and ISP Trooper John Patrick left in separate vehicles to try to find Hardin. ISP Detective Matt Fleener and ISP Trooper Kent Rohlfing stayed behind in case Hardin came back to the home.

While Detective Allen and Trooper Patrick looked for their suspect, Hardin returned home. Trooper Rohlfing, covering the front door of Hardin's home, saw a truck pull into the driveway and heard the overhead-garage door open. A few seconds later, Hardin opened the door between the garage and kitchen, which Detective Fleener was covering. Detective Fleener identified himself as a law-enforcement officer and quickly closed the gap between himself and a backpedaling Hardin. After a scuffle, Detective Fleener and Trooper Rohlfing

handcuffed Hardin and had him sit in a chair. They then called EMS to tend to Hardin's minor injuries and informed Detective Allen and Trooper Patrick that Hardin was in custody at the home.

Detective Allen and Trooper Patrick returned to the home, and Detective Allen searched the vehicle Hardin drove into his driveway—the same one officers observed him driving during previous surveillance. Detective Allen found 108 grams of crystal methamphetamine in a black bag underneath the driver's seat.

The State charged Hardin with two counts: dealing in methamphetamine and possession of methamphetamine. It also sought a habitual-offender enhancement, which it later dismissed.

Hardin filed a pretrial motion to suppress the evidence obtained during the search. Basing his argument on both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution, Hardin argued that the officers exceeded the scope of the warrant by searching his vehicle, which was not mentioned in the warrant. After a hearing, the trial court denied the suppression motion. Specifically, the trial court found that Hardin's vehicle, parked in the driveway to his home, was within the curtilage of the home and therefore fell within the scope of the warrant. Alternatively, the court found that probable cause and the automobile exception to the Fourth Amendment's warrant requirement supported the search of Hardin's vehicle. Hardin did not

seek interlocutory appeal, and the case proceeded to a bench trial.

At trial, Hardin objected to the introduction of the evidence obtained during the search of his vehicle, reiterating and incorporating the suppression arguments he previously made. The trial court overruled the objection and admitted the evidence. Ultimately, the court found Hardin guilty of both counts—dealing in and possession of methamphetamine—and sentenced him to an aggregate term of nearly twenty-two years.

Hardin appealed, challenging the admission of the evidence found in his vehicle based on the Fourth Amendment and Article 1, Section 11. The Court of Appeals affirmed in a split decision. *Hardin v. State*, 124 N.E.3d 117 (Ind. Ct. App. 2019). Relying on recent precedent from the Court of Appeals and the fact that Hardin did not challenge the trial court's finding that his vehicle was within the curtilage of his home, the majority found that the search did not violate the Fourth Amendment. *Id.* at 123–24. It likewise found no violation of Article 1, Section 11 based on the totality of the circumstances. *Id.* at 124. Judge Mathias, however, dissented. *Id.* at 125–26 (Mathias, J., dissenting). In concluding that the search violated both our federal and state constitutions, he focused on the relative ease with which the law-enforcement officers could have included a description of Hardin's vehicle in the warrant for the home and with which they could have obtained a separate warrant specifically for the vehicle. *Id* (Mathias, J., dissenting).

Hardin petitioned for transfer, which we now grant, thereby vacating the Court of Appeals opinion. *See* Ind. Appellate Rule 58(A).

**Standard of Review**

We review a trial court's ruling on the admissibility of evidence at trial for an abuse of discretion. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). "But the ultimate determination of the constitutionality of a search or seizure is a question of law that we consider de novo." *Id.*

**Discussion and Decision**

Hardin argues that the trial court should not have admitted the evidence found during the search of his vehicle because the search violated the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. He acknowledges that the law-enforcement officers obtained a warrant for his home and that the trial court found that his vehicle was within the home's curtilage when the officers searched it. Neither Hardin nor the State asks us to address whether the vehicle was parked within the home's curtilage, so we assume without deciding that the trial court correctly resolved that issue. Instead, Hardin contends that the search was constitutionally unreasonable and not supported by the warrant for his home, which addressed neither vehicles generally nor his vehicle specifically. We consider the

nuances of this argument under the Fourth Amendment and Article 1, Section 11 below.

## I. The search of Hardin's vehicle did not violate the Fourth Amendment because the vehicle fell within the scope of the warrant for Hardin's home.

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.

A warrant covering a house allows searches of things and places within the house that could contain the object of the search. *United States v. Ross*, 456 U.S. 798, 820–21 (1982) ("A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search."). The boundaries of a house for Fourth Amendment purposes extend beyond the physical structure of the house itself to include the curtilage—that is, "the area immediately surrounding and associated with the home." *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018) (citations omitted). Thus, the holding of *Ross* extends into the

curtilage, meaning that a warrant for a house generally allows searches of the things and places located in the curtilage that could contain the object of the search. *See Sowers v. State*, 724 N.E.2d 588, 590–91 (Ind. 2000). This case tests the limits of that established Fourth Amendment jurisprudence. Specifically, it requires us to answer the following question: When can police, armed with a warrant to search a home, search a vehicle located in the home's curtilage?[1]

In answering this question of first impression for our Court, "we consider the opinions and law of other jurisdictions as helpful to our analysis." *Ackerman v. State*, 51 N.E.3d 171, 180 (Ind. 2016). Other courts faced with this question have generally fallen into one of two broad groups, differing in whether they consider who owns or controls the vehicle to be searched.

Courts in one group don't consider ownership or control of the vehicle at all. They allow searches of any vehicle found on the premises for which a warrant has been issued.

- *See*, *e.g.*, *United States v. Singer*, 970 F.2d 1414, 1418 (5th Cir. 1992) ("This court has consistently held that a warrant

[1] The warrant here described the premises without placing any specific limitation on searches of vehicles. The inclusion of such a limitation in a warrant could change the analysis. *See United States v. Johnson*, 640 F.3d 843, 845–46 (8th Cir. 2011) (noting that warrants may contain limitations on vehicle searches, constraining officers' authority to search).

authorizing a search of 'the premises' includes vehicles parked on the premises.");

- *United States v. Armstrong*, 546 F. App'x 936, 939 (11th Cir. 2013) (unpublished) (stating that a search warrant for "the 'property' at the described location . . . is sufficient to support a search of a vehicle parked on the premises");
- *McLeod v. State*, 297 Ga. 99, 772 S.E.2d 641, 646 (2015) (citation omitted) ("Vehicles parked within the curtilage of a dwelling to be searched pursuant to a warrant may also be searched pursuant to that warrant.").
- *See generally* 2 Wayne R. LaFave, Search and Seizure § 4.10(c), at 955–56 (5th ed. 2012 & Supp. 2019) (noting that many decisions do not suggest a limitation to which vehicles on a property being searched pursuant to a warrant may be searched).

Courts in the other group do consider ownership or control of the vehicle in determining whether it falls within the scope of the warrant. These courts differ slightly in how they describe the test, but they generally exclude guests' vehicles from the scope of a warrant for a home while allowing law-enforcement officers to search the vehicles of the home's owner or resident.

- *See*, *e.g.*, *United States v. Gottschalk*, 915 F.2d 1459, 1461 (10th Cir. 1990) (defining

the scope of a premises search warrant "to include those automobiles either actually owned or under the control and dominion of the premises owner or, alternatively, those vehicles which appear, based on objectively reasonable indicia present at the time of the search, to be so controlled");

- *United States v. Patterson*, 278 F.3d 315, 318 (4th Cir. 2002) (citing *Gottschalk*, 915 F.2d at 1461) (providing the same rule);
- *United States v. Duque*, 62 F.3d 1146, 1151 (9th Cir. 1995) (citation omitted) (holding that "a search warrant authorizing a search of a particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises");
- *United States v. Pennington*, 287 F.3d 739, 745 (8th Cir. 2002) (citation omitted) (noting that, even when not specifically listed in a warrant, "a vehicle found on the premises (except, for example, the vehicle of a guest or other caller) is considered to be included within the scope of a warrant authorizing a search of the premises");
- *United States v. Evans*, 92 F.3d 540, 543–44 (7th Cir. 1996) (stating that a warrant to search a house allows law enforcement to search a vehicle within the premises "unless [the vehicle] obviously belonged to someone wholly uninvolved in the

criminal activities going on in the house");[2]

- *State v. Patterson*, 304 Kan. 272, 371 P.3d 893, 899 (2016) (adopting the test as outlined by the Tenth Circuit in *Gottschalk*).
- *See generally* 2 LaFave, Search and Seizure § 4.10(c), at 955–56 (asserting that "the conclusion that a description of premises covers vehicles parked thereon should at least be limited to vehicles under the control (actual or apparent) of the person whose premises are described").

Although courts in this group initially spoke of searching vehicles of the homeowner rather than resident (such as a renter), they later interpreted the rule to cover both. *See*, *e.g.*, *Evans*, 92 F.3d at 543 ("We cannot think of any reason for distinguishing between an owner and a tenant, or for that matter between an owner or tenant on the one hand and a sublessee or intermittent occupant . . . on the other."); *United States v. Hohn*, 606 F. App'x 902, 909 (10th Cir. 2015) (unpublished).

We find that the better of these two approaches is to consider ownership or control of a vehicle in

[2] *Evans* appears to have shifted the Seventh Circuit's jurisprudence in this area toward a presumption that a vehicle found on premises subject to a search warrant may be searched, except in special situations. *Compare Evans*, 92 F.3d at 543–44, *with United States v. Percival*, 756 F.2d 600, 612 (7th Cir. 1985) (holding "that a search warrant authorizing a search of particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises").

determining whether it falls within the scope of a general premises warrant, excluding vehicles of guests or other visitors from the warrant's scope. Vehicles of guests and other visitors to a home are on the property only temporarily, whether it's to visit with a friend, to deliver a package, or for some other reason. When a warrant for a home fails to mention such a transient vehicle, the probable cause supporting the warrant does not extend to that vehicle which happens to be temporarily on the property when officers execute the warrant. *See* 2 LaFave, Search and Seizure § 4.10(c), at 956–57 ("[T]he probable cause determination made by the magistrate [regarding the home to be searched] does not extend to the vehicle the visitor has left outside."). However, the probable cause supporting a warrant for a home would extend to the owner or resident's vehicle given the close, long-term connections between the owner/resident, the home, and the vehicle. Thus, we conclude that a general warrant to search a specifically described premises like a home includes the ability to search vehicles within the curtilage that could contain the object of the search and that are "either actually owned or under the control and dominion of the premises owner [or resident] or, alternatively, those vehicles which appear, based on objectively reasonable indicia present at the time of the search, to be so controlled." *Gottschalk*, 915 F.2d at 1461. *Accord* 2 LaFave, Search and Seizure § 4.10(c), at 955–56 ("[T]he conclusion that a description of premises covers vehicles parked thereon should at least be limited to vehicles

under the control (actual or apparent) of the person whose premises are described.").[3]

This test is easily met here. Neither party challenges the trial court's finding that Hardin's vehicle was in the home's curtilage when law enforcement searched it, and the vehicle could contain the drugs and related items described in the search warrant. And three independent bases supported the connection between Hardin and his vehicle. First, police knew, based on their prior observations of Hardin and the vehicle's registration, that Hardin owned the vehicle. Second, police knew that the vehicle was under Hardin's control by their prior observations of him driving it combined with the fact that he drove it to his house right before the search. *See United States v. Rivera*, 738 F. Supp. 1208, 1218–19 (N.D. Ind. 1990) (upholding a search of a truck that officers had seen the defendant drive up the driveway of his house right before the search and on other, prior occasions). Third, even if the police didn't know that he owned and controlled the vehicle, his act of driving it into his own driveway right before the search represents an objectively reasonable indicator of his control over the vehicle. As a result, the general premises warrant permitting law enforcement's search of Hardin's home also supported law

[3] Applying this test under normal circumstances, a general warrant to search a home will cover a vehicle in a garage attached to the home or in the curtilage. *See State v. Lucas*, 112 N.E.3d 726, 730–31 (Ind. Ct. App. 2018) (upholding this type of search under a slightly tougher standard).

enforcement's search of his vehicle, and this search did not violate the Fourth Amendment.[4]

## II. The search of Hardin's vehicle did not violate Article 1, Section 11 because it was reasonable based on the totality of the circumstances.

Hardin also argues that the search of his vehicle violated Article 1, Section 11 of the Indiana Constitution. Although Article 1, Section 11 contains language nearly identical to the Fourth Amendment, we interpret Article 1, Section 11 independently. *See Shotts v. State*, 925 N.E.2d 719, 726 (Ind. 2010). In cases involving this provision of our Constitution, the State must show that the challenged police action was reasonable based on the totality of the circumstances. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). *See also Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013) (quoting *Duran v. State*, 930 N.E.2d 10, 17 (Ind. 2010)) ("'[W]e focus on the actions of the police officer,' and employ a totality-of-the-circumstances test to evaluate the reasonableness of the officer's actions.").

Important competing interests underlie this totality-of-the-circumstances test to determine reasonableness. On one hand, Hoosiers want to limit excessive intrusions by the State into their privacy. *See*, *e.g.*,

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[4] Because we find that the officers searched Hardin's vehicle pursuant to the warrant, we do not address Hardin's alternate argument concerning the automobile exception to the Fourth Amendment warrant requirement.

*State v. Washington*, 898 N.E.2d 1200, 1206 (Ind. 2008) (citing *State v. Quirk*, 842 N.E.2d 334, 339–40 (Ind. 2006)) ("The purpose of this section is to protect those areas of life that Hoosiers consider private from unreasonable police activity."); *Membres v. State*, 889 N.E.2d 265, 274 (Ind. 2008) (noting that the Article 1, Section 11 test "is designed to deter random intrusions into the privacy of all citizens"). And so we liberally construe Article 1, Section 11 to protect individuals. *Marshall v. State*, 117 N.E.3d 1254, 1261 (Ind. 2019) (quoting *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006)); *Grier v. State*, 868 N.E.2d 443, 444 (Ind. 2007) (citing *State v. Gerschoffer*, 763 N.E.2d 960, 965 (Ind. 2002)). On the other hand, Hoosiers are interested in supporting the State's ability to provide "safety, security, and protection from crime." *Holder*, 847 N.E.2d at 940 (quoting *Gerschoffer*, 763 N.E.2d at 966). By employing a totality-of-the-circumstances test, we aim to strike the proper balance between these competing interests in light of Article 1, Section 11's protection from unreasonable searches and seizures. *See id.* ("It is because of concerns among citizens about safety, security, and protection that some intrusions upon privacy are tolerated, so long as they are reasonably aimed toward those concerns.").

We provided a framework for conducting this totality-of-the-circumstances test for reasonableness in *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). *See also Watkins v. State*, 85 N.E.3d 597, 600 (Ind. 2017) (noting the comprehensive application of *Litchfield* to Article 1, Section 11 claims). While acknowledging the

possibility of "other relevant considerations under the circumstances," we stated that the reasonableness of a law-enforcement officer's search or seizure requires balancing 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." *Litchfield*, 824 N.E.2d at 361. When weighing these factors as part of our totality-of-the-circumstances test, we consider the full context in which the search or seizure occurs. *Garcia v. State*, 47 N.E.3d 1196, 1199 (Ind. 2016). *See also Austin*, 997 N.E.2d at 1034–37 (examining the challenged traffic stop and search as part of the longer chain of interactions between the defendant and law enforcement around the time of the stop and search); *Quirk*, 842 N.E.2d at 340–43 (same). So, we examine, at different points in our analysis, the perspectives of both the officer and the person subjected to the search or seizure. *Garcia*, 47 N.E.3d at 1199. And, while the existence of a valid warrant certainly plays an important role in our review, a warrant does not necessarily make all law-enforcement action related to the warrant reasonable. *Sowers*, 724 N.E.2d at 591. *See also Watkins*, 85 N.E.3d at 601–03 (analyzing whether law enforcement's method of executing a search warrant violated Article 1, Section 11). Thus, the *Litchfield* factors provide guidance and structure to our analysis of Article 1, Section 11 claims while staying true to considering the totality of the circumstances.

With this general guidance in mind, we now address the *Litchfield* factors, summarizing guiding principles specific to each and considering the facts here.

### A. The Degree of Police Concern, Suspicion, or Knowledge

#### 1. Specific Guiding Principles

We begin our analysis by examining the law-enforcement officers' "degree of concern, suspicion, or knowledge that a violation has occurred." *Litchfield*, 824 N.E.2d at 361. In evaluating the officers' degree of suspicion, we consider all "the information available to them at the time" of the search or seizure. *Duran*, 930 N.E.2d at 18. This includes the officers' knowledge of the existence of a valid search warrant, which provides strong support for an officer's concern that a violation has occurred and that evidence of the violation will be found in the place identified in the warrant to be searched. *Watkins*, 85 N.E.3d at 601.[5]

#### 2. Application

Here, the search of Hardin's vehicle was supported not only by a warrant but also by very recent

[5] The focus of this factor can change slightly depending on the action challenged. For example, when a defendant challenges the reasonableness of an arrest-warrant execution, we do not test the arresting officer's concern that a violation has occurred. Instead, we test the officer's belief regarding the location and presence of the defendant. *Duran*, 930 N.E.2d at 18.

information indicating that evidence of criminal activity would be in the vehicle.

The officers had obtained a warrant for Hardin's home, and Hardin does not challenge the conclusion that he parked his vehicle within the curtilage of the home—an area that, at least for Fourth Amendment purposes, is considered "part of the home itself." *Collins*, 138 S. Ct. at 1670 (citation omitted). While the warrant did not specifically identify Hardin's vehicle, it provided strong support for the officers' belief that Hardin was involved in illegal drug activity in and around his home. Indeed, the search of the home prior to Hardin's arrival confirmed this belief when it revealed items consistent with dealing drugs. And in conducting surveillance prior to obtaining the warrant, officers observed Hardin driving his vehicle to and from his home, and they knew that the vehicle was registered to him.

In addition to the warrant, the officers also had recent information indicating that Hardin would have drugs in his vehicle. During the search of Hardin's home, the officers learned from police executing a separate warrant that Hardin had recently picked up a large amount of methamphetamine from Jerry Hall.

So, before officers searched Hardin's vehicle, they knew he was involved in illegal drug activities in and around his home, they found drug-related items in the home but a conspicuous absence of the drugs themselves, and they heard that Hardin had just received a large amount of methamphetamine. Hardin then drove

his vehicle up the driveway to his home. At this point, with all the information the officers knew, they had an extremely strong basis to believe that they would find drugs in Hardin's vehicle. *See* Tr. Vol. 2, p. 25 (Detective Allen testifying, "[W]hen we were done searching the house and we hadn't found [the methamphetamine], it . . . was my thought that [Hardin] would have that on his person. Which is common.").

### B. The Degree of Intrusion

#### 1. Specific Guiding Principles

The second *Litchfield* factor we consider is "the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities." *Litchfield*, 824 N.E.2d at 361. In the years since *Litchfield*, we have given several points of guidance regarding this factor.

First, we consider the degree of intrusion from the defendant's point of view. *Carpenter*, 18 N.E.3d at 1002. Thus, a defendant's consent to the search or seizure is relevant to determining the degree of intrusion. *Duran*, 930 N.E.2d at 18 n.4.

Second, when examining the degree of intrusion into the citizen's ordinary activities, we consider the intrusion into both the citizen's physical movements and the citizen's privacy. We have focused on the degree of intrusion into the defendant's physical movements in our traffic-stop cases. *See Austin*, 997 N.E.2d at 1035–36 (comparing the facts of that case with those

in *Quirk*); *State v. Hobbs*, 933 N.E.2d 1281, 1287 (Ind. 2010). And in our trash-search cases and others, we have focused on the intrusion into the defendant's privacy. *See Duran*, 930 N.E.2d at 18; *Litchfield*, 824 N.E.2d at 363–64. But both types of intrusions—into physical movement and privacy—are relevant to this *Litchfield* factor.[6]

Third, by focusing on the degree of intrusion caused by the method of the search or seizure, we're saying that how officers conduct a search or seizure matters. For example, we have found a high degree of intrusion when officers executed a search warrant using a battering ram, flash-bang grenade, and SWAT team as well as when officers conducted a warrantless strip search of a misdemeanor arrestee as a matter of course. *Watkins*, 85 N.E.3d at 601–02 (search warrant); *Garcia*, 47 N.E.3d at 1201–02 (citing *Edwards v. State*, 759 N.E.2d 626, 629 (Ind. 2001)) (strip search). In examining the way that officers conduct a search or seizure, we continue to consider the totality of the circumstances and look at "all of the attendant circumstances"—not a single aspect of the search or seizure

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[6] Considering privacy in this factor should not be confused with a test for reasonableness that focuses exclusively on the defendant's expectation of privacy, which we've expressly rejected. *Litchfield*, 824 N.E.2d at 359. Instead, as noted above, "`we focus on the actions of the police officer,' and employ a totality-of-the-circumstances test to evaluate the reasonableness of the officer's actions." *Austin*, 997 N.E.2d at 1034 (quoting *Duran*, 930 N.E.2d at 17). Considering how an officer's actions intrude on the defendant's privacy constitutes merely a piece of our totality-of-the-circumstances test.

in isolation. *Garcia*, 47 N.E.3d at 1202. This includes considering whether officers conduct their search or seizure pursuant to a warrant since a warrant informs the subject of the search or seizure of the limitations imposed on the officers' actions by a detached judicial officer. *See Carpenter*, 18 N.E.3d at 1002 (considering the lack of a warrant in examining the degree of intrusion).[7]

Fourth, privacy interests in vehicles do not render them beyond the reach of reasonable police activity. Hardin relies on our statement that "Hoosiers regard their automobiles as private and cannot easily abide their uninvited intrusion" to argue for a high degree of intrusion here. *See Brown v. State*, 653 N.E.2d 77, 80 (Ind. 1995). But Hardin reads *Brown* too broadly in connection with this factor. We agree that Hoosiers regard vehicles as private areas not subject to random police rummaging. *See Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006) ("Automobiles are among the 'effects' protected by Article 1, Section 11."). But that doesn't mean that vehicles are beyond the reach of reasonable law-enforcement activities. We've recognized that "[h]ouses and premises of citizens receive the highest protection," *Carpenter*, 18 N.E.3d at 1002 (citation

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[7] We hasten to reiterate that whether officers have a warrant is only one piece of the puzzle. Specifically regarding this degree-of-intrusion factor, officers may still greatly intrude on a person's ordinary activities when armed with a warrant. *See Watkins*, 85 N.E.3d at 601–02 (noting a high degree of intrusion despite the existence of a warrant). *See also Duran*, 930 N.E.2d at 18–19 (noting that the possibility that officers could have obtained a warrant did not reduce the degree of intrusion).

omitted), yet they are not completely off limits to law enforcement. Read in the proper context, *Brown* is more about low police suspicion or concern and a lack of law-enforcement needs (*Litchfield* factors one and three) than an overly excessive intrusion (this *Litchfield* factor). *Brown*, 653 N.E.2d at 80 (noting both the delay between when a similar-looking vehicle left a crime scene and when police found Brown's vehicle parked on a public street and searched it as well as the lack of need for an immediate, warrantless search). *See also Myers v. State*, 839 N.E.2d 1146, 1153–54 (Ind. 2005) (upholding a warrantless search of a vehicle and distinguishing *Brown* based in part on the low degree of suspicion that the vehicle searched in *Brown* contained contraband). Thus, while we continue to recognize that Hoosiers regard their vehicles as private, *Brown* does not provide an impenetrable shield for those vehicles.

With these specific guiding principles in mind, we turn to the facts of this case to determine the degree of intrusion.

### 2. Application

Here, considering all the attendant circumstances, the search of Hardin's vehicle resulted in a moderate degree of intrusion. We begin by recognizing the obvious intrusion into Hardin's privacy by the search of his vehicle. *Myers*, 839 N.E.2d at 1154 ("[T]he interior search of the defendant's personal car was likely to impose an intrusion. . . ."). However, the degree of that

intrusion was lessened by the way officers conducted the search. Hardin does not argue that the officers searched his vehicle in an egregious manner as could've been the case if officers had torn apart his seats or ripped out his dashboard looking for hidden compartments. *Cf. Bell v. State*, 818 N.E.2d 481, 486 (Ind. Ct. App. 2004) (finding a warrantless search unreasonable under Article 1, Section 11 based on the totality of the circumstances, but before *Litchfield*, when officers "dismantle[d] the vehicle's glove box and searched inside the vehicle's chassis"). Instead, the search appears to have been no more extensive than a visual inspection of the interior of the vehicle—something someone might do to find a credit card or french fry dropped between a seat and the center console. In addition to moderating the intrusion into Hardin's privacy, the officers did not intrude into his physical movements by searching his vehicle since he was already in police custody. *See Hobbs*, 933 N.E.2d at 1287. As a result, the officers' search of Hardin's vehicle resulted in a moderate intrusion.[8]

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[8] We also note that the officers possessed a warrant to search Hardin's home, and they searched his vehicle in connection with that warrant. However, a warrant does little to lessen the degree of intrusion into a person's privacy—from that person's perspective—when it authorizes a search as a matter of law rather than by its express language. The warrant here did not expressly reference Hardin's vehicle or any other vehicles, so we give it little weight in evaluating the degree of intrusion. But had the warrant expressly included Hardin's vehicle—something the officers could have easily requested—we would have given it more weight, and the admissibility of the evidence from the search may have been clearer.

### C. The Extent of Law-Enforcement Needs

#### 1. Specific Guiding Principles

We round out our analysis under the *Litchfield* framework by considering "the extent of law enforcement needs" related to the search or seizure. *Litchfield*, 824 N.E.2d at 361. 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. *Carpenter*, 18 N.E.3d at 1002; *Trimble v. State*, 842 N.E.2d 798, 804 (Ind. 2006).

In reviewing the extent of law-enforcement needs, we look to the needs of the officers to act in a general way. *See Marshall*, 117 N.E.3d at 1262 (recognizing the "need to enforce traffic-safety laws"); *Austin*, 997 N.E.2d at 1036 (recognizing the need to combat drug trafficking).

But we also look to the needs of the officers to act in the particular way and at the particular time they did. *See Duran*, 930 N.E.2d at 19 (finding "[t]he law enforcement needs were not pressing" to execute an arrest warrant when the officers had shaky information on the location of the subject and he was not a flight risk); *Myers*, 839 N.E.2d at 1154 (upholding a search of a vehicle based in part on elevated law-enforcement needs when the vehicle's owner was not under arrest and might have driven the vehicle away). In considering the needs of law-enforcement officers in this more specific way, however, we take a practical approach and do not require officers to undertake duplicative tasks.

*See Garcia*, 47 N.E.3d at 1203 (quoting *Guilmette v. State*, 14 N.E.3d 38, 42 (Ind. 2014)) (noting that it "would be extremely cumbersome to require law enforcement to take the 'belt-and-suspenders' approach of applying for an independent warrant anytime they wish to examine or test a piece of evidence they have already lawfully seized").

**2. Application**

Here, the officers had a moderate need to search Hardin's vehicle immediately when he arrived at his home.

Regarding the broad need to act in this situation, we've recognized that law-enforcement needs in combating drug trafficking—"from individual operators to large-scale, corporate-like organizations"—are great. *Austin*, 997 N.E.2d at 1036. The officers here knew of Hardin's methamphetamine-dealing activities from their previous surveillance, and they found evidence of those activities in Hardin's home. Thus, the officers had a general need to stop Hardin's criminal activities.

Hardin argues, however, that the officers did not have a pressing need to immediately search his vehicle, so they should have obtained a separate warrant. This presents a closer question. On one hand, officers may not have had a pressing need to search the vehicle because Hardin was secured and unable to drive the vehicle away. Also, given the number of law-enforcement agencies and officers involved in executing two

search warrants simultaneously, it seems plausible—at least on this record—that the officers at the scene could have called on additional officers to get a separate warrant for the vehicle. On the other hand, there were only four officers present at the scene. They had to secure the people on the property (Hardin, Hardin's girlfriend, and Hardin's girlfriend's daughter) and the property itself, assist EMS personnel, and respond to anyone that might show up later. *See* Tr. Vol. 2, pp. 124–25 (noting that Hardin's mother and her husband arrived at Hardin's home toward the end of the search). And one officer injured his rotator cuff while entering Hardin's home, which impacted his ability to physically secure people. If no other officers were able to assist, it may not have been practical to obtain a separate warrant for the car, increasing the need to immediately search it.

However close a question the officers' immediate needs were, we cannot ignore the other facts of the situation. The officers had a warrant for the home, and Hardin drove his vehicle into the home's driveway, which neither party disputes was part of the curtilage. Requiring the officers to obtain a separate warrant for Hardin's vehicle in this situation would amount to adopting the "cumbersome . . . 'belt-and-suspenders' approach" we rejected in *Garcia* and *Guilmette*. *See Garcia*, 47 N.E.3d at 1203 (quoting *Guilmette*, 14 N.E.3d at 42).

With the officers' general need to combat drug trafficking and their warrant for the home, the officers

had at least a moderate need to search Hardin's vehicle.

### D. Balancing the Totality of the Circumstances

Balancing the three *Litchfield* factors based on the totality of the circumstances, we find this search reasonable. **First**, based on the warrant and developments from other investigations, the officers had an extremely high degree of concern that Hardin's vehicle contained illegal drugs. This factor weighs heavily in the State's favor. **Second**, while officers intruded on Hardin's privacy by searching his vehicle, they reduced the degree of that intrusion by exercising restraint in conducting their search. Their search also did not intrude on Hardin's physical movements since he had already been detained. Thus, while officers moderated the intrusion, they still intruded into his ordinary activities, and this factor weighs moderately in Hardin's favor. **Third**, given the general need to combat drug trafficking and their possession of a warrant for Hardin's home, officers had at least a moderate need to search Hardin's vehicle when they did. This factor weighs moderately in the State's favor. On balance, the moderate intrusion here did not outweigh the law-enforcement concerns and needs, and the search did not violate Article 1, Section 11 of the Indiana Constitution.

**Conclusion**

The Fourth Amendment to the United States Constitution and Article 1, Section 11 protect against unreasonable searches and seizures. The search here did not violate the Fourth Amendment because the law-enforcement officers knew that Hardin owned and controlled the vehicle searched and objectively reasonable indicia showed the same, so the vehicle in this situation fell within the scope of the warrant for the home. The search did not violate Article 1, Section 11 because the high degree of law-enforcement concern and moderate law-enforcement need outweighed the moderate intrusion caused by the search, so the search was constitutionally reasonable based on the totality of the circumstances. Thus, we affirm the trial court's admission of the evidence obtained from the search of the vehicle.

Massa, J., concurs.

Slaughter, J., concurs with separate opinion.

David, J., concurs in part, dissents in part with separate opinion in which Rush, C.J., joins.

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**Slaughter, J., concurring.**

I agree that the warrantless search of Hardin's vehicle did not violate his rights under the Fourth Amendment to the United States Constitution or its counterpart in the Indiana Constitution. I join the Court's opinion because I agree with its legal analysis, including how it applied our three-factor *Litchfield* test to Hardin's claims under Article 1, Section 11 of our state constitution. See *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005).

I write separately, however, to highlight a recurring problem with *Litchfield.* In the fifteen years since we decided *Litchfield*, our case reports have ballooned with examples of ongoing uncertainty among litigants and lower courts with how to apply its three factors for assessing whether challenged law-enforcement activity violates our constitution. See, e.g., *State v. Washington*, 898 N.E.2d 1200 (Ind. 2008) (applying *Litchfield* to undisputed facts, trial court granted motion to suppress, court of appeals affirmed 2–1, and Supreme Court reversed trial court 3–2); *Webster v. State*, 908 N.E.2d 289 (Ind. Ct. App. 2009) (applying *Litchfield*, trial court denied motion to suppress, and court of appeals reversed 2–1).

This longstanding uncertainty is evident here. Although the underlying facts are undisputed, respected jurists at all levels of our judiciary have arrived at different conclusions about what *Litchfield* means for Hardin. The nine judges who have reviewed his case have looked at the same facts and applied the same legal standard. Yet we have reached widely varying conclusions about the legal consequence of these uncontested facts. I cannot imagine a clearer sign of precedent in need of reconsideration.

Under *Litchfield*, no one can predict how courts will decide a given case with a given set of facts. The resulting uncertainty is not good for law enforcement, which needs clear rules so it can conform its conduct to the law. It is not good for individuals, who need clear guidance on whether law enforcement has violated their rights. And it is not good for courts, which must vindicate these rights. In practice, *Litchfield* amounts to a legal Rorschach test—an "eye-of-the-beholder" inquiry incompatible with the rule of law. The problem, I submit, lies not with the disputed constitutional provision but with the test we have devised for interpreting it. Like most totality-of-the-circumstances tests that balance multiple factors, *Litchfield* is not susceptible to a clear application that produces an obvious legal out-come.

Going forward, I hope the opportunity arises to consider a bright-line rule as a successor test to *Litchfield* for interpreting Article 1, Section 11—one consistent with our framers' constitution and with the

text, history, and structure of this constitutional provision.

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**David, Justice, concurring in part, dissenting in part.**

I concur in Part I of this opinion and wish to commend the majority's well-reasoned Fourth Amendment analysis. I respectfully dissent from Part II, however, because our state's constitution provides heightened protections for Hoosiers and, in my view, the facts of this particular case weigh differently than the majority's conclusion. I would find that the evidence obtained from Hardin's vehicle must be suppressed because the search was unreasonable under Article 1, Section 11 of the Indiana Constitution.

As the majority correctly recites, even though the language in Article 1, Section 11 of the Indiana Constitution closely tracks the language of the Fourth Amendment, our state's courts interpret the Section separately and independently from the Fourth Amendment. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). Section 11's purpose is "to protect from unreasonable police activity those areas of life that Hoosiers regard as private." *Brown v. State*, 653 N.E.2d 77, 79 (Ind. 1995) (citing *Moran v. State*, 644 N.E.2d 536, 540 (Ind. 1994)). Our Court has previously determined that the reasonableness of a search or seizure turns "on a balance of: 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." *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). Bearing these factors in mind, the State must demonstrate that the police conduct at issue was reasonable under a totality of the circumstances. *Robinson*, 5 N.E.3d at 368 (quoting *State v. Washington*, 898 N.E.2d 1200, 1205-06 (Ind. 2008), *reh'g denied*). Importantly, however, these factors are non-exclusive. *See Jacobs v. State*, 76 N.E.3d 846, 852 (Ind. 2017).

In the present case, I believe a warrant not only *could* have been obtained, but that it should have been obtained. Much like the majority, I agree that this case demands careful application of our precedent in *Litchfield.* Respectfully, however, I would balance these factors in a way similar to our Court of Appeals colleague Judge Mathias and find that the search of Hardin's vehicle was unreasonable. *See Hardin v. State*, 124 N.E.3d 117, 125–26 (Ind. Ct. App. 2019) (Mathias, J., dissenting). Thus, I would suppress the evidence and remand for a new trial.

The first factor we analyze under *Litchfield* is the degree of concern, suspicion, or knowledge that a violation occurred. 824 N.E.2d at 361. Admittedly, there was a high degree of concern that Hardin was dealing in methamphetamine. The record indicates plenty of validly obtained intelligence that he was discussing buying and selling the drug with another party. While I agree with the majority's conclusion that "very recent information indicat[ed] that evidence of criminal

activity would be in the vehicle" (Slip Op. at 13), I disagree that the search of Hardin's vehicle was supported by the warrant obtained in this case because the vehicle was neither mentioned in the warrant nor was it present at the onset of the search. Thus, although there was a high degree of concern that a crime was being committed, there are other factors in play that must be analyzed.

Regarding *Litchfield*'s second factor—the degree of intrusion the method of a search or seizure imposes on a citizen's ordinary activities—I believe the search was highly intrusive for several reasons. Our Court's decision in *Brown v. State*, 653 N.E.2d 77 (Ind. 1995), provides a solid foundation for analyzing this factor. While the *Brown* decision predates the formal totality of the circumstances test announced in *Litchfield*, the case nonetheless turns on the reasonableness of police behavior with respect to "those areas of life that Hoosiers regard as private." *Id.* at 79 (citation omitted). In that case, a police officer seized a vehicle that was thought to have been used in a robbery. After impounding the vehicle, the officer began looking for evidence of the robbery. During that search, Brown arrived and was placed under arrest, and the officer discovered incriminating evidence. Brown challenged the admissibility of the evidence on Article 1, Section 11 grounds, but his motion to suppress was denied and he was ultimately convicted. *See id.* at 79, 81.

On transfer, our Court held the search of the automobile was unreasonable under Article 1, Section 11 based on several, fact-specific circumstances. *Id.* at 80.

Of particular note, our Court observed that "there was little likelihood that the car would be moved and thus lost to the police." *Id.* Additionally, "[t]here was neither a shortage of time nor an emergency," and "the police were not engaged in a community caretaking function." *Id.* Our Court also declared, "With respect to automobiles generally, it may safely be said that Hoosiers regard their automobiles as private and cannot easily abide their uninvited intrusion." *Id.*

While I agree with the majority's conclusion that "*Brown* does not provide an impenetrable shield" for Hoosiers' vehicles (Op. at 16), I read *Brown* for the broader proposition that courts should give pause whenever police engage in searches of a vehicle without a warrant or under the guise of a valid exception to the warrant requirement. My concern extends to other vehicles that may have arrived at Hardin's residence during the search. Would police have carte blanche access to any vehicle that comes on to the property during a warrant's execution? While certainly the State would say "no" to parcel delivery trucks or utility maintenance vehicles, the lines start to blur when it comes to a visiting friend or the occasional person that uses a stranger's driveway to turn their vehicle around. Would these individuals be at risk of a sudden search of their vehicle because they happened to be in the wrong place at the wrong time?

For these reasons, I would conclude there was a high degree of intrusion. True, the police did not use flash-bang grenades, *see Watkins v. State*, 85 N.E.3d 597, 601 (Ind. 2017), nor did police rip apart the car

to discover evidence, *see Bell v. State*, 818 N.E.2d 481, 486 (Ind. Ct. App. 2004). And though it is also true that Hardin was under arrest at the time of the search, this is just one consideration when evaluating the level of intrusion imposed by a particular search. The fact remains that Hardin was secured, mere feet away as the officer rifled through his truck, and there was neither a shortage of time nor an emergency. Given *Brown*'s broad statement that Hoosiers regard their vehicles as private, I believe these facts elevate the degree of intrusion.

Finally, with regard to the extent of law enforcement needs, I return again to the fact that Hardin had already been detained. It would have been a minor inconvenience for the police to obtain a separate warrant for the vehicle. In fact, prior opinions of this Court instruct that it would have been "best practice" for the police to take the additional step of obtaining a warrant. Our opinion in *Brown*, for example, explained, "Judicial approval makes it much more likely that the police are doing everything possible to make certain that the search is appropriate." 653 N.E.2d at 80. Stated differently, seeking and securing a warrant based on probable cause increases the odds police conduct will be viewed as reasonable. Indeed, the "preference for warrants is based on the belief that a neutral and detached magistrate is more likely to be a fair evaluator of the relevant circumstances than the police officer actively involved in investigating a particular crime." *Id.*; *see also Lacey v. State*, 946 N.E.2d 548, 553 (Ind. 2011) (finding constitutional uncertainty is

minimized when police obtain express judicial authorization).

Beginning from this proposition—that it is best practice for officers to obtain a warrant—and ending with the facts that Hardin was no longer a flight risk and the vehicle was not going anywhere, I would find that the extent of law enforcement needs in this situation was extremely low. Though combatting the use and sale of drugs in our communities is certainly of utmost importance, I cannot agree that, on these facts, this factor weighs at all in the State's favor.

On balance, I believe the search was unreasonable under Article 1, Section 11 of the Indiana Constitution because, although the degree of concern or suspicion was relatively high, both the level of intrusion and needs of law enforcement weigh heavily against the State. I would suppress the evidence obtained from Hardin's vehicle and remand this matter for a new trial.

Rush, C.J., joins.

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**IN THE**
**COURT OF APPEALS OF INDIANA**

| | |
|---|---|
| Brian E. Hardin,<br>*Appellant-Defendant*,<br>v.<br>State of Indiana,<br>*Appellee-Plaintiff*. | May 29, 2019<br>Court of Appeals Case No. 18A-CR-2629<br>Appeal from the Morgan Circuit Court<br>The Honorable Matthew G. Hanson, Judge<br>Trial Court Cause No. 55C01-1709-F2-1851 |

**Brown, Judge.**

Brian E. Hardin appeals his conviction for dealing in methamphetamine as a level 2 felony. He raises one issue which we revise and restate as whether the trial court abused its discretion in admitting evidence obtained from a vehicle located on the premises of a residence for which a search warrant was issued. We affirm.

### *Facts and Procedural History*

In September 2017, Indiana State Police Detective Joshua Allen was involved in an investigation into the finance and delivery of methamphetamine in Morgan County and surrounding counties. The main target of the investigation was Jerry Hall. Intercepted communications from a wiretap brought law enforcement's attention to Hardin.

On September 26, 2017, Detective Allen completed an affidavit in support of a search warrant for Hardin's residence and asserted in part:

> Surveillance was able to identify Hardin going to and from [Hall's] residence. Surveillance was able to identify Hardin going to 5426 Collett Drive East Camby, Morgan County, Indiana. Hardin's vehicle was also seen parked at 5426 Collett Drive East Camby, Indiana in the early morning hours of 09.26.20117 [sic]. This officer was able to identify this vehicle as Hardin's through the Indiana Bureau of Motor Vehicles Information and Hardin has been seen driving the vehicle.
>
> On 09/25/2017, Brian Hardin had conversations with Jerry Hall in reference to dealing methamphetamine. Hardin indicated he was out dealing methamphetamine and picking up money. Hardin's cellular telephone location put him in the area of Martinsville Morgan County Indiana during this conversation. Brian Hardin has had several intercepted telephone calls reference to him being involved

> in the conspiracy to deal methamphetamine with Jerry Hall.

State's Suppression Hearing Exhibit 2.

The court issued a search warrant, which states in part:

> You are therefore AUTHORIZED AND ORDERED, in the name of the State of Indiana, with the necessary and proper assistance, to enter into (upon) the following described residence, to-wit: single story gray sided residence, with a partial brick front, and attached garage, and partially covered front porch with the numeric 5426 attached located at 5426 Collett Drive East, Camby, Morgan County, Indiana. . . .

State's Suppression Hearing Exhibit 1.

Detective Allen, Indiana State Trooper Kent William Rohlfing, Detective Matt Fleener, and Indiana State Trooper John Patrick, arrived at Hardin's residence to execute the search warrant around 11 p.m. on September 26, 2017. Officers initially cleared the residence for subjects and then began searching for evidence and found plastic bags, heat seal bags that contained a crystal substance, digital scales, syringes, and two pieces of paper consistent with what Detective Allen knew to be a "pay and owe sheet." Transcript Volume II at 118. At some point, Hardin's girlfriend arrived at the residence and indicated that Hardin was picking up food at McDonald's. Trooper Patrick and Detective

Allen left in separate vehicles to attempt to locate Hardin.

Trooper Rohlfing observed Hardin arrive in a pickup truck and heard the garage door open at the same time as a vehicle pulled into the driveway. Trooper Rohlfing heard the door open and heard Detective Fleener identify himself as State Police and tell Hardin to show his hands. Hardin backpedaled in a quick manner, threw two McDonald's cups in the air, tripped, fell, kicked his arms and legs, and scooted along the ground. Detective Fleener "was able to get on top of [Hardin], basically in a full mount position," and Hardin continued to scream and kick. *Id.* at 74. Hardin eventually was able to spin to his stomach and raise himself off the ground. Trooper Rohlfing, who had injured his shoulder gaining entry to the residence, placed his foot on the back of Hardin's head and pushed him straight to the ground, stopping the fight.

Trooper Rohlfing called Trooper Patrick and Detective Allen to inform them that Hardin was in custody at the residence, and Trooper Patrick and Detective Allen returned to the residence. Meanwhile, other officers located approximately $327,000 in cash and over a pound of methamphetamine in executing the search warrant on Hall's residence. Detective Allen performed a search of Hardin's vehicle and found more than 100 grams of methamphetamine in a bag underneath the driver's seat.

On September 28, 2017, the State charged Hardin with Count I, dealing in methamphetamine as a level

2 felony, and Count II, possession of methamphetamine as a level 3 felony. On November 2, 2017, the State alleged that Hardin was an habitual offender. On April 17, 2018, Hardin filed a motion to suppress all evidence seized in the search of his home because "the search went beyond the scope of items and areas allowed to be searched by the Search Warrant . . . and a search of the vehicle which [he] had driven to the scene was searched without probable cause or authorization by a search warrant." Appellant's Appendix Volume II at 21.

On July 11, 2018, the court held a hearing on Hardin's motion at which Detective Allen testified. On July 18, 2018, the court denied Hardin's motion to suppress. Specifically, the court's order found that Hardin's vehicle "rested in the driveway and was therefore on the curtilage of the residence" and that "the search warrant that only described the residence of [Hardin] authorized the search of the vehicle while it remained within the curtilage of the residence." *Id.* at 61. The court also found that the automobile exception applied to the search of the vehicle.

On September 11, 2018, the court held a bench trial. Hardin's counsel objected to the admission of the evidence found in his vehicle and argued a violation of the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution, and the court overruled the objection. The court found Hardin guilty of Counts I and II, and the State dismissed the habitual offender enhancement. The court found that Count II merged with

Count I, and sentenced Hardin to twenty-two years executed.

***Discussion***

The issue is whether the trial court erred in admitting certain evidence. Although Hardin originally challenged the admission of the evidence through a motion to suppress, he now challenges the admission of the evidence at trial. Thus, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence. *See Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). "Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion and reverse only if a ruling is 'clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights.'" *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014) (quoting *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013)). "[T]he ultimate determination of the constitutionality of a search or seizure is a question of law that we consider de novo." *Id.*

In ruling on admissibility following the denial of a motion to suppress, the trial court considers the foundational evidence presented at trial. *Id.* If the foundational evidence at trial is not the same as that presented at the suppression hearing, the trial court must make its decision based upon trial evidence and may consider hearing evidence only if it does not conflict with trial evidence. *Guilmette*, 14 N.E.3d at 40 n.1.

Hardin raises arguments under: (A) the Fourth Amendment of the United States Constitution; and (B) Article 1, Section 11 of the Indiana Constitution.

A. *Fourth Amendment*

Under the Fourth Amendment to the U.S. Constitution, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. CONST. amend. IV. The United States Supreme Court has held:

> A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the

> case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

*United States v. Ross*, 456 U.S. 798, 820-821, 102 S. Ct. 2157, 2170-2171 (1982).

In *Sowers v. State*, 724 N.E.2d 588, 590 (Ind. 2000), *cert. denied*, 531 U.S. 847, 121 S. Ct. 118 (2000), the Indiana Supreme Court addressed "whether the Fourth Amendment permits police officers who secure a lawful warrant for a residence at a specific address to search a tent in the backyard of that dwelling." The Court observed that the United States Supreme Court had explained that the purpose of the requirement in the Fourth Amendment prohibiting the issuance of any warrant except upon particularly describing the place to be searched and the persons or things to be seized was the prevention of general or wide-ranging exploratory searches. 724 N.E.2d at 589 (citing *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S. Ct. 1013 (1987)). The Court noted that "[i]t is sufficient that a warrant describe the place to be searched in terms that an officer 'can with reasonable effort ascertain and identify the place intended.'" *Id.* (quoting *Steele v. United States*, 267 U.S. 498, 503, 45 S. Ct. 414 (1925)). The Court held:

> In *Ross*, the Supreme Court held that "a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found." 456 U.S. at 821, 102 S. Ct. 2157. We agree with the courts that conclude the same

reasoning applies to the yard and outbuildings of a single residence. As the Ninth Circuit put it:

> We are unable to identify a privacy based reason why this principle should be restricted to the inside of a residence and stop at the residence's threshold to the backyard, or curtilage. If a search warrant specifying only the residence permits the search of 'closets, chests, drawers, and containers' therein where the object searched for might be found, so should it permit the search of similar receptacles located in the outdoor extension of the residence. . . .

*United States v. Gorman*, 104 F.3d 272, 275 (9th Cir. 1996). The Ninth Circuit further observed, correctly as far as we can determine, that "[e]very published opinion addressing the issue has concluded that a warrant authorizing the search of a residence automatically authorizes a search of the residence's curtilage." *Id.*

Every value furthered by the Fourth Amendment remains intact if a proper warrant for the search of a single residence also permits a search of the yard or curtilage at the designated address. The proper procedures to invoke judicial supervision have been followed, and a proper justification for the intrusion has been established. The only issue is whether a warrant is overbroad in its geographic scope

or intentionally restricted to a house itself. Neither is true here, given the designation of the property to be searched as a "residence" at a single specified address.

Finally, the authorities seem unanimous in permitting similar searches. "Curtilage" originally appears to have meant the area within a fence surrounding a structure, but is now used in this context without regard to whether what is usually termed the "yard" is fenced or not. *See*, *e.g.*, *United States v. Brown*, 822 F. Supp. 750, 754 (M.D. Ga. 1993), *aff'd*, 50 F.3d 1037 (11th Cir. 1995) (table) ("The search warrant in this case authorized intrusion into the area of highest expectation of privacy. It seems logical and reasonable that a search warrant that authorizes intrusion on this greater area of privacy would include authorization for intrusion in the lesser area of privacy, the backyard."); *Barton v. State*, 161 Ga. App. 591, 288 S.E.2d 914, 915 (1982) (observing that "'[p]remises' contemplates the entire living area used by occupant" and upholding search of a shed twenty feet behind the house); *State v. Basurto*, 15 Kan. App. 2d 264, 807 P.2d 162, 165 (1991), *aff'd*, 249 Kan. 584, 821 P.2d 327 (199 1) (upholding search of a shed in the backyard of a residence, observing "[t]here appears to be little doubt that a search warrant which describes only the residence of a defendant will authorize the search of any vehicles or buildings within the 'curtilage' of that residence"); *State v. Vicars*, 207 Neb. 325, 299 N.W.2d 421, 425-26 (1980) (upholding search of calf shed located on the

> other side of a chain link fence and 100 feet from residence); *State v. Trapper*, 48 N.C. App. 481, 269 S.E.2d 680, 684 (1980) (holding that a warrant for search of house trailer also permitted search of tin shed approximately thirty feet from trailer); *State v. Stewart*, 129 Vt. 175, 274 A.2d 500, 502 (1971) (upholding search of a tree located in the backyard of a residence).
>
> Like the barn, garage, shed, and tree in the cited cases, Sowers' tent was a structure within the curtilage of a dwelling for which the police secured a valid search warrant. As a result, when police obtained a valid warrant to search the residence at 801 West Neely Street, they were also authorized to search the tent in the backyard of the residence. The search of Sowers' tent and the seizure of items found in the tent did not violate the Fourth Amendment under these curtilage cases. We see no reason to disagree with these authorities and find no defect in a search that was properly authorized. Indeed, a police officer specifically advised the issuing judicial official that Sowers was in a tent in the backyard of the residence.

*Id.* at 590-591.

Hardin concedes that "[a] proper warrant for search of a single residence also allows a search of the yard or curtilage of the designated address" and that "the front porch, side garden, or yard, or a driveway is an area properly considered as part of curtilage." Appellant's Brief at 10-11. Hardin does not challenge the trial court's finding that he parked his vehicle

within the curtilage.[1] Rather, he appears to focus his argument on the idea that the search warrant did not explicitly list the vehicle.

While Hardin asserts that Indiana courts have not considered the question of whether a vehicle located on the premises falls within the scope of a search warrant when the vehicle is not mentioned in the warrant, the State points to *State v. Lucas*, 112 N.E.3d 726 (Ind. Ct. App. 2018). In *Lucas*, Lafayette Police Sergeant Matthew Gard obtained a search warrant for Lucas's home which provided for a search of the home with an attached two car garage for evidence relating to an assault and/or theft. 112 N.E.3d at 728. During the execution of the warrant, Sergeant Gard found a black vehicle in the garage, looked inside, saw a large mound in the back seat which had been covered by a blanket, reached inside a partially opened window, and moved the blanket to reveal a large paper bag containing what Sergeant Gard suspected was synthetic marijuana. *Id.* The trial court granted Lucas's motion to suppress, ruling in relevant part "that the officer's entry into the vehicle and moving of the blanket exceeded

[1] Without citation to the record, Hardin asserts that "the vehicle was not on the premises during the execution of the Search Warrant" and that "Hardin was not near the vehicle when he drove it up." Appellant's Brief at 14. Hardin does not develop a cogent argument regarding these assertions. Further, he asserts that the automobile exception does not apply and cites *Collins v. Virginia*, 138 S. Ct. 1663 (2018). In *Collins*, the Supreme Court addressed "whether the automobile exception justifies the invasion of the curtilage" and declined "Virginia's invitation to extend the automobile exception to permit a warrantless intrusion on a home or its curtilage." 138 S. Ct. at 1671, 1673.

the scope of the warrant and all evidence seized as a result of said action is suppressed." *Id.* at 729.

On appeal, we observed that it appeared that Indiana state courts had not decided the precise issue of whether the Fourth Amendment permits an officer who has procured a search warrant for a home and garage to also search any vehicles found on the premises. *Id.* at 730. We noted that the Seventh Circuit had held that, "while a vehicle is less fixed than a closet or cabinet, it is 'no less fixed than a suitcase or handbag found on the premises, both of which can readily be searched under *Ross* if capable of containing the object of the search." *Id.* (quoting *United States v. Percival*, 756 F.2d 600, 612 (7th Cir. 1985)). We stated that, "[o]bserving the trend in other jurisdictions upholding such searches, the *Percival* court held that 'a search warrant authorizing a search of particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises.'" *Id.* (quoting *Percival*, 756 F.2d at 612). We observed that *Percival* has subsequently enjoyed support in our federal circuit and district courts. *Id.* (citing *United State v. Evans*, 92 F.3d 540, 543 (7th Cir. 1996) (search of trunk of vehicle in attached garage pursuant to warrant for house "with detached garage"), *cert. denied* 519 U.S. 1020, 117 S. Ct. 537 (1996); *United States v. Rivera*, 738 F. Supp. 1208, 1218 (N.D. Ind. 1990) (search of truck in driveway pursuant to warrant for home's premises)). We acknowledged that Hoosiers have a heightened expectation of privacy in their vehicles, but found the reasoning of the Seventh Circuit in

*Percival* to be persuasive and held that, under the Fourth Amendment, a search warrant authorizing a search of a particularly described premises permits the search of vehicles owned or controlled by the owner of, and found on, the premises. *Id.*

In light of the foregoing, we conclude that the search of Hardin's vehicle did not violate the Fourth Amendment. *See Rivera*, 738 F. Supp. at 1218 (holding that, "[w]hile the better practice would have been to include a description of the defendant's vehicle in the warrant, such a practice is not mandated in every instance by the fourth amendment" and that the search of the defendant's truck in the driveway was within the scope of the search warrant issued for his premises); *see also* WAYNE R. LAFAVE, 2 SEARCH & SEIZURE § 4.10(c) (5th ed.) ("Ordinarily, a description in a warrant of a dwelling at a certain place is taken to include the area within the curtilage of that dwelling, so that it would cover a vehicle parked in the driveway rather than the garage. ").[2]

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[2] To the extent Hardin cites *State v. Gosch*, 339 P. 3d 1207 (Idaho Ct. App. 2014), *review denied*, we find that case distinguishable. Unlike in the present case, there was no finding by the trial court in *Gosch* that the vehicle which was searched was within the curtilage of the residence. The court in *Gosch* ultimately concluded that the vehicle in that case was properly searched under the automobile exception to the warrant requirement. *See* 339 P.3d at 1212-1213.

B. *Article 1, Section 11*

Article 1, Section 11 of the Indiana Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Although its text mirrors the federal Fourth Amendment, we interpret Article 1, Section 11 of our Indiana Constitution separately and independently. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). "When a defendant raises a Section 11 claim, the State must show the police conduct 'was reasonable under the totality of the circumstances.'" *Id.* (quoting *State v. Washington*, 898 N.E.2d 1200, 1205-1206 (Ind. 2008), *reh'g denied*). Generally, "[w]e consider three factors when evaluating reasonableness: '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.* (quoting *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005)).

As for the degree of concern, suspicion, or knowledge that a violation had occurred, the record reveals that officers had conducted surveillance of

Hardin and Hall and had information that Hardin was dealing methamphetamine. Regarding the degree of intrusion, Hardin was under arrest and officers had a search warrant and searched his vehicle which was parked in his driveway. With respect to the extent of law enforcement needs, the record reveals that law enforcement gathered information that Hardin was dealing methamphetamine and involved in the finance and delivery of methamphetamine in Morgan County and surrounding counties. Under the totality of the circumstances, we conclude that the search of the vehicle was reasonable and did not violate Article 1, Section 11 of the Indiana Constitution.

### ***Conclusion***

For the foregoing reasons, we affirm Hardin's conviction.

Affirmed.

May, J., concurs.

Mathias, J., dissents with opinion.

IN THE
**COURT OF APPEALS OF INDIANA**

| | |
|---|---|
| Brian E. Hardin,<br>*Appellant-Defendant*,<br><br>v.<br><br>State of Indiana,<br>*Appellee-Plaintiff*. | Court of Appeals Case<br>No. 18A-CR-2629 |

**Mathias, Judge, dissenting.**

Because I believe that the police search of Hardin's automobile was improper under both the Fourth Amendment and Article 1, Section 11, I respectfully dissent.

Interpreting the Fourth Amendment, the United States Supreme Court has held that "[a] lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search." *United States v. Ross*, 456 U.S. 798, 820–21 (1982). This is only common sense. The police should not be required to obtain a separate warrant to open a chest found inside the home for which they have already obtained a search warrant. And in *Sowers v. State*, 724 N.E.2d 588, 590 (Ind. 2000), our supreme court noted that "'[e]very published opinion addressing the issue has concluded that a warrant authorizing the search of a residence automatically authorizes a search of

the residence's curtilage.'" (quoting *United States v. Gorman*, 104 F.3d 272, 275 (9th Cir. 1996)). As the Ninth Circuit put it:

> If a search warrant specifying only the residence permits the search of 'closets, chests, drawers, and containers' therein where the object searched for might be found, so should it permit the search of similar receptacles located in the outdoor extension of the residence. . . .

*Gorman*, 104 F.3d at 275 (quoted in *Sowers*, 724 N.E.2d at 590). Following this reasoning, our supreme court in *Sowers* held that a warrant authorizing the search of a specific residence also authorized the search of a tent located in the backyard:

> Like [a] barn, garage, shed, and tree . . . , Sowers' tent was a structure within the curtilage of a dwelling for which the police secured a valid search warrant. As a result, when police obtained a valid warrant to search the residence . . . , they were also authorized to search the tent in the backyard of the residence.

*Sowers*, 724 N.E.2d at 591. But our supreme court has never extended this to include the search of an automobile located on the premises of the residence authorized to be searched.

A panel of this court took that step in *State v. Lucas*, 112 N.E.3d 726, 730 (Ind. Ct. App. 2018), which held that "a search warrant authorizing a search of a particularly described premises permits the search of

vehicles owned or controlled by the owner of, and found on, the premises." I believe this is a step too far, at least under the circumstances of the present case.

As stated by Professor LaFave, the analogy between an automobile and other chattel located on a premises is "less than perfect." Wayne R. LaFave, Search & Seizure § 4.10(c) (Update 2018).

> Certainly a vehicle, even one parked in a garage, has a lesser connection with the premises than "desks, cabinets, closets and similar items," and thus one might question whether a showing of probable cause as to certain premises should inevitably be deemed to cover a vehicle (even of the occupant) that happens to be parked on the property at the time the warrant is served. . . . Moreover, it must be remembered that the Fourth Amendment requirement of particularity varies to some degree by what is reasonably practicable. A requirement that warrants for premises describe not only the premises generally but every conceivable hiding place therein would impose an intolerable burden; by comparison, *it would seem relatively easy to include a description of the occupant's vehicle in the warrant if the warrant were intended to extend to the car*.

*Id*. (emphasis added) (footnotes omitted). I too believe that, if the police wish to search a vehicle located on a residence, they should simply include this request in the application for a search warrant. This is not an unreasonable burden.

More importantly, I believe that the search of Hardin's automobile was unreasonable under Article 1, Section 11 of the Indiana Constitution. As acknowledged by the majority, Indiana courts interpret Article 1, Section 11 independently from the Fourth Amendment, despite their textual similarities. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). Under Article 1, Section 11, the State must show that the police conduct was reasonable under the totality of the circumstances. *Id*. Our supreme court has directed us to consider three factors when determining whether the police conduct was reasonable: (1) the degree of concern, suspicion, or knowledge that a violation occurred; (2) the degree of intrusion the method of search or seizure imposes on the ordinary activities of the subject of the search; and (3) the extent of law enforcement needs. *Id*.

Here, I agree with the majority that the first factor weighs in favor of reasonableness. The police had strong evidence that Hardin was dealing in methamphetamine. However, with regard to the second factor, the degree of intrusion is relatively high. Although Hardin was already in custody, the police fully searched his automobile. As our supreme court has stated before: "'Hoosiers regard their automobiles as private and cannot easily abide their uninvited intrusion[.]'" *Myers v. State*, 839 N.E.2d 1146, 1153 (Ind. 2005) (quoting *Brown v. State*, 653 N.E.2d 77, 80 (Ind. 1995)). The search of an automobile based on a warrant that makes no mention of the curtilage, much less of an automobile parked on the curtilage, constitutes a high degree of intrusion. Lastly, with regard to the needs of

law enforcement, I disagree with my colleagues and believe that this factor weighs heavily against a finding of reasonableness. I acknowledge that the police had information that Hardin was involved with the delivery and the financing of delivery of methamphetamine in Morgan and surrounding counties. But at the time of the search of the vehicle, Hardin was already in custody, and the police had gathered enough evidence to obtain a search warrant. It would have been a minimal burden for the police to have secured the car and quickly obtained a warrant to search the vehicle.

In short, I am of the opinion that the police acted unreasonably by searching Hardin's vehicle simply because he drove it into the driveway of his home while a search warrant was being executed at the home, especially when he was immediately taken into custody. It would have been simple for the police to have obtained another warrant authorizing the search of the vehicle. But they did not, and I honor the distinction between homes and motor vehicles for purposes of search and seizure. I therefore believe that the search of the vehicle was unreasonable and therefore contrary to Article 1, Section 11 of the Indiana Constitution. And I respectfully dissent from the majority's holding otherwise.

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| **STATE OF INDIANA** | ) | **IN THE MORGAN** |
| **COUNTY OF MORGAN** | ) | **COUNTY CIRCUIT** |
| | ) | **COURT** |
| | ) | |
| | ) | **CASE NO: 55C01-** |
| | ) | **1709-F2-001851** |

**STATE OF INDIANA**

**VS.**

**BRIAN E. HARDIN**

**DOB: 06/23/1977 SSN: xxx-xx-9049**

**JUDGMENT AND ORDER RE: SENTENCING**

On October 10, 2018, the Court conducted a Sentencing Hearing in this case. On September 11, 2018, the Court found the Defendant guilty of the criminal offense of:

> Count 1: 35-48-4-1.1(a)(2)/F2: Dealing in Methamphetamine/Amount of 10 or more grams; 35-48-4-6.1(a)
>
> Count 2: F3: Possession of Methamphetamine Possession of 28 or more grams of methamphetamine.

**The Court now orders:**

**FINE & COSTS:** The Defendant is fined in the sum of $1.00 plus 185.00 court costs and 200 countermeasure fee. The fine and costs shall be:

☑ paid out of bond in this case.

**SENTENCE:** The Defendant is sentenced to **imprisonment** in the Indiana Department of Correction for Count 1 for a period of 7920 Day(s) with jail time credit 92 actually plus 31 credit served prior to sentencing. There is no sentence for Count 2 as it merges with Count 1

☑ The Sentence shall be served consecutive with Parke County pending offense

**The Court further orders:**

☑ That Habitual Count of the Information be dismissed at the request of the State of Indiana.

☑ BAIL: Released to fines and court costs and remainder to poster

**The Court recommends:**

The Defendant shall be confined under NA security.

The executed sentence be served in: Indiana Department of Correction

**DATE: 10/10/2018**

/s/ [Illegible]
**Judge Matthew G. Hanson**
**Morgan County Circuit Court**

DISTRIBUTION:

RJO,FILE Prosecuting Attorney Court Services

☐ Defendant ☐ Counsel, Glen E Koch, II

☐ Probation Dept. ☐ Home Detention Officer

☐ Sheriff ☐ Ind.DepartmentofCorrection

☐ Other: _____ ☐ Bail Bond Agent, Lewis Ed Parker

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|---|---|
| STATE OF INDIANA | MORGAN COUNTY CIRCUIT COURT |
| COUNTY OF MORGAN | CAUSE NO: 55C01-1709-F2-1851 |

STATE OF INDIANA

v.

BRIAN HARDIN

**ORDER ON MOTION TO SUPPRESS**

(Filed Jul. 18, 2018)

COMES NOW THE COURT and having held a hearing on July 11, 2018, on the Defendant's Motion to Suppress and on the State's Motion to Revoke Bond and the State appearing by way of Robert Cline, and the Defendant appearing in person and with counsel John Boren and the Court having heard argument and testimony, the Court now finds as follows:

FACTS

1) That on or about July 25, 2017 Det. Joshua Allen arrested Elba Davis who was then incarcerated for Dealing in Methamphetamine. (State's Ex. 2).

2) That Davis indicated that he had been purchasing several ounces of methamphetamine from the Defendant on a daily basis. (*Id.*).

3) That Davis agreed with law enforcement to place a phone call to the Defendant in order to arrange a methamphetamine deal between Davis and the Defendant. (*Id.*).

4) That Davis and the Defendant arranged a methamphetamine deal, but the Defendant ultimately did not appear for the arranged deal. (*Id.*).

5) That on September 20, 2017 Det. Allen was authorized by a Marion County Judge to intercept telephone calls of specific targets of an investigation. (*Id.*).

6) That on September 21, 2017 the Indiana State Police began intercepting telephonic communications from Jerry Hall, who was identified as a source of supply of methamphetamine. (*Id.*).

7) That during the telephone intercepts, the Defendant had communications with the target Hall. (*Id.*).

8) That one intercepted communication revealed that the Defendant agreed to sell the target Hall one (1) pound of methamphetamine for $6500. (*Id.*).

9) That surveillance of the target Hall's residence showed the Defendant visiting Hall's residence. (*Id.*).

10) That surveillance showed the Defendant visiting a residence at 5426 Collett Drive East Camby, Indiana, which Det. Allen testified to be the Defendant's residence. (*Id*.).

11) That Det. Allen testified that the residence lies within a residential neighborhood.

12) That size of the lot on which the residence sits measured approximately one (1) acre. (Def. Ex. A 9:13-16).

13) That a driveway on the residence leads to a garage that is attached to the residence. (*Id.* at 9:21-24).

14) That the surveillance also showed the Defendant driving a vehicle that Det. Allen identified as a silver-gold Chevrolet registered to the Defendant through the Indiana Bureau of Motor Vehicles. (State's Ex. 2).

15) That Det. Allen testified that the Defendant had an on-going business relationship with Hall in which the Defendant and Hall would sell the each other methamphetamine.

16) That several intercepted telephone calls indicated that the Defendant and Hall were conspiring to deal methamphetamine. (*Id*.).

17) That on September 26, 2017, (Def. Ex. A 4:10-14), Det. Allen, State Trooper Kent Rohlfing, State Trooper Matt Fleener, and State Trooper John Patrick executed a search warrant for Defendant's residence at 5426 Collett Drive East Camby, Indiana (State's Ex. 1).

18) That Det. Allen testified that law enforcement found in the garage digital scales and a vacuum sealed bag containing a crystalline substance that was later confirmed to be methamphetamine.

19) That Det. Allen further testified that syringes were found in a bedroom of the residence.

20) That Det. Allen testified that the Defendant was not present at the residence when the search warrant was executed.

21) That Det. Allen testified that while he and the other officers executed the search warrant on the Defendant's residence, a search warrant was also executed on Hall's residence in Indianapolis.

22) That Det. Allen testified that the search of Hall's residence recovered approximately $370,000 in cash and thirty (30) pounds of meth.

23) That Det. Allen testified that Hall, after being advised of his Miranda rights, admitted he had recently dealt with the Defendant.

24) That during the execution of the search warrant, the Defendant's daughter and girlfriend arrived at the residence. (Def. Ex. A 5:19-24).

25) That Det. Allen testified that the Defendant's girlfriend had informed him that the Defendant was driving to McDonald's while the officers searched the residence.

26) That Det. Allen left the residence to look for the Defendant while the remaining officers stayed at the residence. (Def. Ex. A 6:21-25).

27) That while Det. Allen searched for the Defendant, the Defendant returned to the residence and was apprehended by Trooper Fleener and Trooper Rohlfing. (*Id.* at 7:10-25, 8:1-10).

28) That the defendant's vehicle was parked approximately 25 feet from the garage in the driveway. (*Id.* at 12:3-11).

29) That Det. Allen testified that the officers found and seized a black pouch underneath the vehicle's driver seat.

30) That Det. Allen further testified that the pouch contained approximately 120 grams of methamphetamine.

## ISSUES

I. Was the vehicle reasonably searched pursuant to the search warrant?

31) That the search warrant for the residence was properly issued and supported.

32) That like a front porch, side garden, or yard, a driveway is an area properly considered curtilage. *Collins v. Virginia*, 138 S. Ct. 1663, 1671 (2018) (citing *Florida v. Jardines*, 569 U.S. 1, 6-7 (2013)).

33) That "a proper warrant for the search of a single residence also permits a search of the yard or curtilage at the designated address." *Sowers v. State*, 724 N.E.2d 588, 590 (Ind. 2000).

34) That in *Sowers v. State*, the Supreme Court of Indiana held that a tent placed in the backyard of a residence was a structure within the curtilage of the residence. 724 N.E.2d at 591.

35) That the Court in *Sowers* relied on *State v. Basurto*, 807 P.2d 162, 165 (Kan. Ct. App.

1991), *aff'd*, 821 P.2d 327 (Kan. 1991), that upheld a search of a shed in the backyard of a residence. The Indiana Supreme Court quoted the opinion as follows: "[t]here appears to be little doubt that a search warrant which describes only the residence of a defendant will authorize the search of any vehicles or buildings within the 'curtilage' of that residence."

36) That the Defendant's vehicle in the present case rested in the driveway and was therefore on the curtilage of the residence.

37) That the search warrant that only described the residence of the Defendant authorized the search of the vehicle while it remained within the curtilage of the residence.

II. Was there probable cause for law enforcement to search the vehicle?

38) The Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution protects persons from unreasonable searches and seizures. *See* U.S. Const. amend. IV; Ind. Const. Art. 11, § 11.

39) A warrantless search is reasonable "only if it falls within a specific exception to the warrant requirement." *Riley v. California*, 134 S.Ct. 2473, 2482 (2014) (citing *Kentucky v. King*, 563 U.S. 452, 459 (2011)).

40) That a warrantless search of an automobile may be reasonable when the search is conducted pursuant to the automobile exception

and supported by probable cause. *Collins*, at 1669.

41) That the automobile exception is based on the ready mobility of a vehicle and a person's lessened expectation of privacy due to pervasive governmental regulation of vehicles. *Id.* at 1669 (quoting *California v. Carney*, 471 U. S. 386, 390 (1985)).

42) That the "ready mobility" aspect of the automobile exception refers to the inherent mobility of an operational or potentially operational motor vehicle and does not require an additional likelihood of the vehicle being driven away. *Myers v. State*, 839 N.E.2d 1146, 1152 (Ind. 2005); *see also State v. Hobbs*, 933 N.E.2d 1281, 1286 (Ind. 2010) (citing *Myers* at 1152); *Meister v. State*, 933 N.E.2d 875, 879 (Ind. 2010) (quoting *Myers* at 1152).

43) That the vehicle was readily mobile as evidenced by the Defendant driving it to the residence before his arrest.

44) That "every value furthered by the Fourth Amendment remains intact" if the curtilage of a designated residence is searched pursuant to a proper warrant for the designated residence. *Sowers* at 590.

45) That there existed no heightened expectation of privacy while the car remained on the curtilage because law enforcement possessed a lawful right of entry to the residence and curtilage.

46) That probable cause exists where the facts and circumstances known to law enforcement "of which they had reasonably trustworthy information" are sufficient in themselves to "warrant a man of reasonable caution in the belief that 'an offense has been or is being committed.'" *Brinegar v. United States*, 338 U.S. 160, 175 (1949) (quoting *Carroll v. United States*, 267 U.S. 132, 165 (1925)).

47) That there existed probable cause to issue the search warrant for the residence and the execution of the warrant returned controlled substances and items used in dealing controlled substances.

48) That law enforcement found digital scales and a vacuum sealed bag containing a crystalline substance that was later confirmed to be methamphetamine at the residence.

49) That Hall, after being advised of his Miranda rights, admitted he had recently dealt with the Defendant.

50) That there existed probable cause for law enforcement to believe the car held controlled substances, items used to store controlled substances, or currency that may be proceeds of controlled substance sales based on the search of the residence and Hall's admissions upon his arrest.

51) That the automobile exception applied to the search of the Defendant's vehicle.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

52) That the Defendant's Motion to Suppress be denied.

53 That this case is scheduled for a final pretrial on the 8th day of August, 2018 at 10:00 a.m. a.m./p.m. in the Morgan County Circuit Court, Martinsville IN 46151.

So ordered this: **July 18, 2018**

/s/ Matthew G. Hanson
Matthew G. Hanson
Judge, Morgan County
Circuit Court

File
Robert Cline
Brian Hardin
John Boren