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IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,

Appellant-Plaintiff/Cross-Appellee,

v.

Tala M. Jones,

Appellee-Defendant/Cross-Appellant.

June 27, 2022

Court of Appeals Case No. 21A-CR-2254

Appeal from the Wayne Superior Court

The Honorable Gregory A. Horn, Judge

Trial Court Cause No. 89D02-1903-F2-1

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff/Cross-Appellee, the State of Indiana (State), and Appellee-Defendant/Cross-Appellant, Tala Jones (Jones), appeal the trial court's rulings on Jones' Motion to Suppress.

[2] We affirm in part, reverse in part, and remand for trial.

ISSUES

[3] The State presents this court with one issue, which we restate as: Whether our federal or state Constitution required suppression of physical evidence obtained through a *Miranda* violation.

[4] Jones raises one issue on cross-appeal, which we restate as: Whether her federal or state constitutional right to be free from unreasonable search and seizure was violated when her vehicle was searched after she admitted marijuana was located there.

FACTS AND PRODECURAL HISTORY

[5] Around 1:00 a.m. on March 10, 2019, Officer Paul Hutchinson (Officer Hutchinson) of the Richmond Police Department (RPD) observed Jones driving a vehicle alone on Main Street in Richmond, Indiana. Officer Hutchinson had stopped Jones several times before and knew that her driver's license was suspended. Officer Hutchinson initiated a traffic stop. Jones stopped her vehicle on Main Street between 22nd and 23rd Streets.

[6] Before making contact with Jones, Officer Hutchinson confirmed that Jones' driver's license was indeed suspended. Officer Hutchinson approached Jones' driver's side window and asked Jones for her driver's license. Jones replied that she did not have her driver's license with her. At that point, Officer Hutchinson confronted Jones with the fact that she was operating her vehicle while her driver's license was suspended. Officer Hutchinson returned to his cruiser, and after once again confirming that Jones' license was suspended, requested that a tow truck be sent to the location of the traffic stop. Although it is unclear from the record precisely when, another RPD officer arrived to assist Officer Hutchinson.

[7] Officer Hutchinson returned to Jones' vehicle, told her that her vehicle was going to be towed, and had her exit the vehicle. Officer Hutchinson asked Jones if there was anything in the vehicle, and Jones replied that there was marijuana in there. The officer assisting Officer Hutchinson quickly located suspected marijuana on top of the vehicle's center console. After the suspected marijuana was found, Officer Hutchinson handcuffed Jones. Officer Hutchinson asked Jones if there was anything else in the car. Jones replied that she had a gun on her person, and when asked where it was, she informed the officer that the firearm was in her bra strap. Officer Hutchinson removed a handgun from Jones' bra strap. Officer Hutchinson then asked Jones if she had anything else on her person, and Jones replied that she had heroin and crack

cocaine hidden on the other side of her bra. Officer Hutchinson removed suspected heroin and crack cocaine from Jones' bra strap. Officer Hutchinson then provided Jones with the advisements outlined in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[8] On March 11, 2019, the State filed an Information, which it amended on August 27, 2021, charging Jones with Level 3 felony dealing in a narcotic drug, Level 3 felony dealing in cocaine, Class A misdemeanor carrying a handgun without a license, and Class A misdemeanor dealing in marijuana. On September 5, 2021, Jones filed a motion to suppress, arguing that neither Officer Hutchinson's decision to tow Jones' vehicle nor the inventory search of Jones' vehicle that netted the marijuana had been done pursuant to an established RPD policy or procedure. Jones also argued that the suspected marijuana, heroin, and crack cocaine, as well as the handgun, were the fruit of the poisonous tree of Jones' statements made before she had received her *Miranda* advisements.

[9] On September 7, 2021, the trial court held a hearing on Jones' motion at the conclusion of which the trial court partially granted Jones' motion to suppress. The trial court ruled that Officer Hutchinson had validly decided to tow Jones' vehicle pursuant to his community caretaking function; Jones was in custody after she admitted that there was marijuana in her vehicle but that she had then volunteered the information that she had a gun in her bra; the suspected drugs

in her bra had been discovered as a direct result of a *Miranda* violation; and that the Indiana Constitution required suppression of the suspected drugs found in Jones' bra. The result of these rulings is that the trial court suppressed Jones' statement that she had drugs in her bra as well as the suspected heroin and cocaine, but it did not suppress her statement that there was marijuana in the car or the suspected marijuana found in the car.[1] On September 22, 2021, the State filed a motion to reconsider, which, after hearings on October 6 and 11, 2021, the trial court denied.

[10] The State now appeals, and Jones cross-appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[11] The State appeals pursuant to Indiana Code section 35-38-4-2(a)(5) following the trial court's grant of Jones' motion to suppress which effectively precluded any further prosecution of the Level 3 felony dealing heroin and cocaine charges. In reviewing a trial court's grant of a motion to suppress, we must determine whether the record contains substantial evidence of probative value supporting the trial court's decision. *State v. Renzulli*, 958 N.E.2d 1143, 1146 (Ind. 2011). We will not reweigh the evidence and will consider any conflicting

[1] The State does not appeal the suppression of Jones' statement that she had heroin and cocaine in her bra.

evidence most favorably to the trial court's ruling. *Id*. Where, as here, the State appeals from a negative judgment, to obtain reversal it must show that the trial court's suppression ruling was contrary to law, "meaning that the evidence was without conflict and all reasonable inferences led to a conclusion opposite that of the trial court." *State v. Diego*, 169 N.E.3d 113, 116 (Ind. 2021). While we evaluate the trial court's findings of fact deferentially, we review its conclusions of law de novo. *State v. Brown*, 70 N.E.3d 33, 335 (Ind. 2017).

II. *Fifth Amendment*

[12] The State contends that the Fifth Amendment does not require the suppression of the heroin and cocaine garnered from Jones' unwarned statement that she had drugs in her bra. The trial court's suppression ruling was grounded chiefly on state constitutional grounds. We address the State's argument, as it was preserved for our review, Jones has raised arguments in response, and it will inform our subsequent analysis under the Indiana Constitution.

[13] The Self-Incrimination Clause of our federal constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself[.]" U.S. CONST. amend. V. The State's Fifth Amendment argument relies chiefly on *United States v. Patane*, 542 U.S. 630, 124 S.Ct. 2620, 159 L.Ed.2d 667 (2004). In *Patane*, the United States Supreme Court considered whether law enforcement's failure to provide a criminal suspect with the

warnings prescribed by *Miranda* requires suppression of the physical fruits of the suspect's unwarned but voluntary statements. *Patane*, 542 U.S. at 633-34. While investigating Patane's alleged violation of a restraining order, officers became aware that Patane, a convicted felon, might be in illegal possession of a firearm. *Id*. at 634-35. The officers went to Patane's house, and after speaking to Patane, placed him under arrest for violating the restraining order. *Id*. at 635. Patane interrupted an officer who was attempting to provide him with his *Miranda* advisements, and the officer never completed the warnings. *Id*. Patane was then asked about the firearm, which he admitted was in his bedroom. *Id*. The firearm was seized, and Patane was indicted on a federal firearm possession charge. *Id*. Patane successfully sought suppression of the firearm evidence, a ruling which was upheld by the Circuit Court based on its reasoning that a failure to warn pursuant to *Miranda* was itself a violation of a suspect's Fifth Amendment self-incrimination rights which warranted application of the fruit of the poisonous tree doctrine and the exclusionary rule to any physical evidence garnered from the *Miranda* violation. *Id*. at 635-36.

[14] Upon the Government's appeal, the Supreme Court held that a *Miranda* violation does not require the suppression of any physical evidence flowing from that violation. *Id*. at 636-37. Focusing on the use of the word "witness" in the Fifth Amendment's Self-Incrimination Clause, the Court held that the "core protection" provided by the Clause, which the prophylactic *Miranda* rule

is designed to protect, is a prohibition on compelling a criminal defendant from testifying against himself at trial, a right which "cannot be violated by the introduction of nontestimonial evidence obtained as a result of voluntary statements." *Id*. at 637, 641, 643-44. The Court affirmed that the Self-Incrimination Clause, and the *Miranda* rule by extension, is fundamentally a trial right, and that, therefore, a mere failure to warn a suspect of his *Miranda* rights does not violate a suspect's constitutional rights or even the *Miranda* rule. *Id*. at 641. Due to the nature of the right, the Court held that

> [p]otential violations occur, if at all, only upon the admission of unwarned statements into evidence at trial. And, at that point, the exclusion of unwarned statements is a complete and sufficient remedy for any perceived *Miranda* violation.

Id. at 641-42 (cleaned up).

[15] Reasoning that, because a prophylactic rule such as *Miranda,* which may be invoked by a suspect prior to trial, sweeps beyond the actual protections of the Self-Incrimination Clause, any further extension of the rule must be justified by the necessity for protecting the actual right against compelled self-incrimination. *Id*. at 639. The Court found no justification for a blanket rule excluding the physical fruit of a *Miranda* violation, which it concluded would further neither the "Fifth Amendment goal of assuring trustworthy evidence" or "any deterrence rationale." *Id*. at 639-40. In addition, because a mere failure to

warn did not constitute a constitutional violation, the Court found that there was no conduct to deter by applying the fruit of the poisonous tree doctrine. *Id*. at 641-42. The Court further observed that the Self-Incrimination Clause is self-executing, containing its own exclusionary rule within its text through its express prohibition on compelling a suspect's testimony at any criminal trial, and that this "explicit textual protection supports a strong presumption against expanding the *Miranda* rule any further." *Id*. at 640.

[16] Here, the parties do not dispute that Jones' statement that she had drugs in her bra was a *Miranda* violation. However, in light of *Patane*, we agree with the State that the Fifth Amendment does not require the suppression of the physical evidence garnered as a result of that *Miranda* violation, namely, the heroin and cocaine retrieved from Jones' bra. *See Brown v. Eaton*, 164 N.E.3d 153, 166 n.16 (Ind. Ct. App. 2021) (citing *Patane* to reject civil forfeiture defendant's argument that his cell phone data, as the product of a *Miranda* violation, was subject to exclusion under the fruit of the poisonous tree doctrine and holding that the Fifth Amendment "does not prohibit the State from using the physical fruits of unwarned but voluntary statements against the defendant"), *trans. denied*; *Delatorre v. State*, 903 N.E.2d 506, 508 (Ind. Ct. App. 2009) (relying on *Patane* and holding that even if Delatorre's unwarned statement during a traffic stop that he had a gun in his car had been obtained in violation of *Miranda*, the gun itself was not subject to suppression), *trans. denied; Hirshey v. State,* 852 N.E.2d

1008, 1015 (Ind. Ct. App. 2006) (citing *Patane* for the proposition that "*Miranda* only requires suppression of statements, not physical evidence"), *trans. denied*.

[17] Jones' counsel acknowledged at the hearing on the State's Motion to Reconsider that "if *Patane* were the only controlling case I could concede that that would be [an] issue with control and we wouldn't have an exclusion of physical evidence." (Tr. p. 82). On appeal, Jones draws our attention to the fact that *Patane* was a plurality opinion. Inasmuch as Jones suggests that we are less bound by *Patane* due to its status as a plurality opinion, we reject that contention. The holding of a plurality opinion of the United States Supreme Court is "determined by 'the least common denominator,' *i.e.*, the position taken by the Justices who based their acquiescence in the decision on the narrowest grounds." *Frame v. State*, 587 N.E.2d 173, 175 (Ind. Ct. App. 1992) (quoting *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 993, 51 L.E.2d 260 (1977)). It is only where there is no lowest common denominator or narrowest ground that we do not find a Supreme Court plurality opinion to be controlling. *Ackerman v. State*, 51 N.E.3d 171, 180 (Ind. 2016). Jones does not contend that *Patane* presents us with such a scenario, and our decisions in *Brown*, *Delatorre*, and *Hirshey* lead us to conclude that this court has had no difficulty discerning and applying *Patane*'s holding.

[18] Jones also argues that "*Patane* applies to the admission of physical fruits from voluntary statements" and that her "statements about drugs were involuntary

because police pressured her into complying by showing their power over her and twice pressing her for evidence while she was in the officers' complete control." (Appellee's Br. pp. 10, 11). In assessing the voluntariness of a defendant's self-incriminating statement, we look to the totality of the circumstances to determine whether the statement was procured through "coercion or other improper influence so as to overcome the free will of the accused." *State v. Banks*, 2 N.E.3d 71, 81 (Ind. Ct. App. 2014) (noting that the inquiry may involve consideration of whether the statement was induced by violence, threats, or other improper influences), *trans. denied*.

[19] Here, the facts surrounding Officer Hutchinson's questioning of Jones are not in controversy. After stopping Jones and briefly inquiring about the status of her driver's license, Officer Hutchinson returned to his patrol car and requested a tow truck. Officer Hutchinson then returned to Jones, informed her that her vehicle would be towed, and asked her to step out of the car. Officer Hutchinson asked Jones if she had anything illegal in the car, and Jones informed him that there was marijuana there. After the marijuana was found, Jones was placed in handcuffs and advised that she was under arrest for marijuana possession. Officer Hutchinson then asked Jones if she had anything else in her vehicle, to which she replied that she had a gun in her bra. After retrieving the gun, Officer Hutchinson then asked Jones whether she had anything else in her bra, to which Jones replied that she had heroin and crack

cocaine on the other side of her bra. Officer Hutchinson retrieved the drugs and then advised Jones of her *Miranda* rights.

[20] We can discern no threats, coercion, or other improper influences in Officer Hutchinson's interaction with Jones that produced her admission to the drugs in her bra. Contrary to Jones' assertions on appeal, simply being handcuffed does not render a statement involuntary. *See Wolfe v. State*, 426 N.E.2d 647, 654 (Ind. 1981) (concluding that the mere fact that Wolfe was handcuffed with his hands behind his back did not render his statement involuntary). Neither can we credit Jones' assertion that being asked a series of three questions in the presence of two officers over a relatively brief period of time rendered her statement involuntary. *See Scott v. State*, 924 N.E.2d 169, 175 (Ind. Ct. App. 2010) (concluding Scott's admission to the presence of two handguns in his house was voluntary under the totality of the circumstances which included the presence of three armed officers and one plainclothes detective, where no one suggested he had to answer questions and the entire encounter lasted around seventeen minutes), *trans. denied*; *Gauvin v. State*, 878 N.E.2d 515, 522-23 (Ind. Ct. App. 2007) (holding that statements obtained in violation of *Miranda* were nevertheless voluntary where there was no evidence that the statements were obtained by violence, threats, or promises, even though the detective's questions were aggressive and accusatory), *trans. denied*. Inasmuch as Jones argues that we should assume coercion from the *Miranda* violation, we have recognized

that unwarned statements are not necessarily involuntary for purposes of Fifth Amendment analysis. *See Lyons v. State*, 503 N.E.2d 928, 931 (Ind. Ct. App. 1987) (quoting *Oregon v. Elstad*, 470 U.S. 298, 310, 105 S.Ct. 1285, 1294, 84 L.Ed.2d 222 (1985), for the proposition that the "failure of police to administer *Miranda* warnings does not mean that the statements received have actually been coerced" and concluding that Lyons' unwarned statements were nevertheless voluntary). Because Jones' statements were voluntary, we conclude that even though the heroin and cocaine located in her bra were found after she gave statements in violation of *Miranda*, that physical evidence was not subject to suppression under the Fifth Amendment. *Patane*, 542 U.S. at 636-37.

III. *Article 1, Section 14*

[21] The State also challenges the trial court's conclusion that our state Constitution required suppression of the heroin and cocaine found in Jones' bra. Article 1, Section 14 of the Indiana Constitution provides in relevant part that "[n]o person, in any criminal prosecution, shall be compelled to testify against himself." The State contends that Article 1, Section 14 is interpreted in the same manner as the Fifth Amendment and urges us that *Patane* is equally applicable to a state constitutional claim. Jones contends, and the trial court concluded, that the right to be free from self-incrimination conferred by the Indiana Constitution is broader than that provided by the Fifth Amendment, *Patane* does not control, and that the heroin and cocaine were properly

suppressed. Neither this court nor our supreme court has decided the issue of whether Article 1, Section 14 requires the suppression of physical, nontestimonial evidence procured in violation of Indiana's Self-Incrimination Clause.[2]

[22] The task of interpreting our state Constitution has been described by our supreme court as one involving

> a search for the common understanding of both those who framed it and those who ratified it. In construing the Indiana Constitution, we look to the language of the text in the context of the history surrounding its drafting and ratification, the purpose and structure of our constitution, and case law interpreting the specific provisions. The actual language, however, is particularly valuable because it tells us how the voters who approved the Constitution understood it, whatever the expressed intent of the framers in debates or other clues.

Bonner v. Daniels, 907 N.E.2d 516, 519-20 (Ind. 2009) (cleaned up); *see also Price v. State*, 622 N.E.2d 954, 957 (Ind. 1993) ("Interpretation of the Indiana Constitution is controlled by the text itself, illuminated by history and by the purpose and structure of our constitution and the case law surrounding it."). The jurisprudence interpreting Article 1, section 14 is underdeveloped as compared to that of other portions of Indiana's Bill of Rights. *See Ajabu v. State*,

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[2] In *Hirshey,* we cited *Patane* in upholding the trial court's denial of defendant's motion to suppress and merely concluded that Hirshey had "cited no cases indicating that the Indiana Constitution requires a different result." *Hirshey*, 852 N.E.2d at 1015.

693 N.E.2d 921, 931 (Ind. 1998) (observing that since 1964, when the Fifth Amendment was held to be applicable to state court proceedings through the Fourteenth Amendment, self-incrimination issues have been presented to Indiana state courts mainly under the Fifth Amendment). In rendering our conclusions today regarding the parameters of Section 14, we rely exclusively on state law grounds. *See generally* Hon. Loretta H. Rush & Marie Forney Miller, *A Constellation of Constitutions: Discovering & Embracing State Constitutions as Guardians of Civil Liberties*, 82 Alb. L. Rev. 1353 (2019) (stressing the importance of basing judicial opinions on state law grounds to ensure the vitality and independence of state constitutions and to protect civil liberties).

[23] We begin with an examination of the language of the text of Article 1, Section 14, which prohibits the State from compelling a criminal defendant "to *testify* against himself." (Empasis added). It is a cardinal principle of constitutional construction that we consider words used in their ordinary sense. *Ajabu*, 693 N.E.2d at 929 (construing Section 14 in the context of a request for counsel made by someone other than the defendant). In *Ajabu*, the court noted that its examination of the 1850-51 constitutional debates uncovered no discussion of Section 14, leading it to conclude that, in construing that provision, there was no reason to give the words of Section 14 any unusual usage. *Id*. at 929-30. Neither party has offered us a text-based argument, let alone identified any ambiguity in the language of the text of Section 14 that leads to their desired

interpretation. We find the language used in Section 14 to be unambiguous for our present purposes. To "testify" is to "give evidence as a witness." Black's Law Dictionary (11th ed. 2019). This definition, coupled with the context of Section 14's application to "any criminal prosecution[,]" leads us to conclude that the text of Indiana's Self-Incrimination Clause is concerned only with testimonial evidence presented at a criminal trial. Therefore, a plain reading of the constitutional provision does not support an argument that we should interpret Section 14 to mandate exclusion of nontestimonial evidence flowing from a violation of its privilege against self-incrimination.

[24] The case law of our state reinforces this plain reading. Our supreme court has observed that "the purpose underlying an Indiana constitutional provision is critical to ascertaining what the particular constitutional provision was designed to prevent." *Ajabu*, 693 N.E.2d at 930 (internal quote omitted). Case law predating the incorporation of the analogue federal right into state proceedings is particularly helpful in discerning the parameters of an Indiana constitutional privilege. *Id*. Almost on the eve of incorporation, our supreme court held in *Alldredge v. State*, 156 N.E.2d 888, 894 (Ind. 1959), that Section 14 was not implicated where "no legal process was used to force testimony from the accused as a witness." In construing Section 14 in *Ross v. State*, 182 N.E.2d 865, 868-69 (Ind. 1932), our supreme court observed that "the phrase 'testify against himself' must not be extended irrationally to cover situations clearly

outside the plain meaning and policy back of the privilege" which it declared, drawing on *Wigmore on Evidence* (2d Ed.) vol. 4 § 2263, was a prohibition on the "employment of legal process *to extract from the person's own lips* an admission of his guilt[.]" (Emphasis in original). The *Ross* court also cited with approval an earlier case, *O'Brien v. State*, 25 N.E.137, 139 (1890), for the proposition that the Section 14 privilege against self-incrimination is limited to "testimonial compulsion." *Id*. at 869. The *Ross* court succinctly held that "[t]he essence of the privilege is freedom from testimonial compulsion." *Id*.

[25] In light of this long-standing Indiana precedent and the text of Section 14 itself, we cannot conclude that Indiana's Self-Incrimination Clause was designed to prevent the admission of nontestimonial evidence resulting from its violation. The drugs found in Jones' bra are physical evidence and are nontestimonial in nature. *See Smith v. State*, 496 N.E.2d 778, 784 (Ind. Ct. App. 1986) (collecting cases for examples of physical, nontestimonial evidence such as handwriting samples, fingerprints, and urinalysis results). Therefore, they were not subject to exclusion, and we conclude that the trial court's suppression order was contrary to law. *See Diego*, 169 N.E.3d at 116.

[26] Jones contends that we should uphold the trial court's suppression ruling because "Indiana's exclusionary rule was explicitly founded upon Article 1, Section 14" and cites *Mers v. State*, 482 N.E.2d 778 (Ind. Ct. App. 1985), and *Callender v. State*, 138 N.E. 817 (Ind. 1922), in support. (Appellee's Br. p. 13).

However, we do not believe that the cases cited by Jones provide strong support for her contention that Indiana's exclusionary rule was explicitly founded upon Article 1, Section 14. In *Callender*, our supreme court cited the Fourth Amendment, Article 1, Section 11, Article 1, Section 14, and several state statutes in holding that evidence seized without a valid search warrant could not be used against Callender at trial. *Callender*, 138 N.E. at 818-19. The court did not explicitly apply Section 14 or explain its relevance to the exclusion of evidence garnered by an invalid search warrant, and, thus, it is unclear what role Article 1, Section 14 played in its holding. *Id*. The *Mers* court observed in a footnote that *Callender* was based on Sections 14 and 11 and had held that "the protections against being forced to testify against oneself require the courts to follow the following rule: 'If the property was secured by search and seizure under the pretext of a search warrant, which was invalid for any reason, then the property so seized could not be used as evidence against the appellant, and its admission over his objection was prejudicial error.'" *Mers*, 482 N.E.2d at 782 n.6 (quoting *Callender*, 138 N.E. at 818).

[27] Jones presents us with no Indiana cases analyzing the *Callender* court's reliance on Article 14. Our own research revealed that, while our supreme court has subsequently noted *Callender*'s citation of Article 14, no discussion or analysis of that citation for purposes of the exclusionary rule has been forthcoming. *See*, *e.g.*, *Benefiel v. State*, 578 N.E.2d 338, 344 (Ind. 1991) (simply noting that Justice

Willoughby had relied on "the Indiana Bill of Rights §§ 11 and 14" in authoring *Callender* and adopting the exclusionary rule). We also find it significant that just two years after *Callender* was handed down, Justice Willoughby did not mention Section 14 when he concluded in *Batts v. State*, 144 N.E. 23, 25 (Ind. 1924), that

> [i]f it is true that the Batts had in their car intoxicating liquor at the time of their arrest, it is also true, according to the testimony of the sheriff and his deputies, that the sheriff in accomplishing its capture violated the constitutional rights of the appellant as guaranteed by article 1, § 11, of the Constitution of Indiana (Burns' 1914, § 56); *Callender v. State* (Ind. Sup.) 138 N. E. 817.

We conclude that, given the lack of discussion, application, or analysis of Section 14 in *Callender*, the *Mers* decision, and Jones by extension, overstates *Callender*'s reliance on Section 14, and we are not convinced that these cases support Jones' proposition that Section 14 mandates the exclusion of physical evidence in the manner she proposes.

[28] Neither are we persuaded by Jones' citation to other jurisdictions that have rejected *Patane* on state constitutional grounds. In *Ajabu*, our supreme court observed that it had looked to other states' constitutional doctrine in interpreting the self-incrimination right under the Indiana Constitution, but that, at the end of the day, "the result in this case must be driven by what is most appropriate under the Indiana Constitution." *Ajabu*, 693 N.E.2d at 934.

Having examined the text of Section 14, its purpose, and the relevant Indiana case law, we conclude that it is most appropriate under the Indiana Constitution to conclude that physical evidence must not be excluded from trial if it was procured from a violation of the Section 14 privilege against self-incrimination.

IV. *Vehicle Search*

[29] On cross-appeal, Jones challenges the trial court's conclusion that her car was properly searched and that, therefore, the marijuana found there need not be suppressed. The trial court's determination rested on Officer Hutchinson's authority to tow Jones' vehicle pursuant to his community caretaking function. Jones frames the issue of the search of her car as an inventory search and argues that the State failed to show that the decision to tow and the inventory search were done following an established RPD policy, all in violation of both our federal and state Constitutions. The State counters that Jones' vehicle was validly searched based on probable cause after Jones admitted there was marijuana located there. These are matters which we review de novo. *Myers v. State*, 839 N.E.2d 1146, 1150 (Ind. 2005). We may consider any legal theory supported by the record in upholding a trial court's suppression decision. *Faris v. State*, 901 N.E.2d 1123, 1126 (Ind. Ct. App. 2009), *trans. denied*. Therefore, we are not constrained in our analysis by the trial court's rationale. In addition, upon review of a trial court's denial of a motion to suppress, we construe

conflicting evidence in the light most favorable to the ruling, and we consider any substantial and uncontested evidence favorable to the defendant. *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019). We do not reweigh the evidence or judge witness credibility. *Id*.

A. *Fourth Amendment*

[30] The Fourth Amendment to our federal Constitution provides as follows:

> 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 warrantless search or seizure is per se unreasonable, and the State bears the burden to show that one of the well-delineated exceptions to the warrant requirement applies. *Osborne v. State*, 63 N.E.3d 329, 331 (Ind. 2016). One exception to the warrant requirement is the "automobile exception", which our supreme court in *State v. Hobbs*, 933 N.E.2d 1281, 1285 (Ind. 2010), characterized as follows:

> The "automobile exception" to the warrant requirement allows police to search a vehicle without obtaining a warrant if they have probable cause to believe evidence of a crime will be found in the vehicle. This doctrine is grounded in two notions: 1) a vehicle is readily moved and therefore the evidence may disappear while a warrant is being obtained, and 2) citizens have lower expectations of privacy in their vehicles than in their

> homes . . .[T]he exception is grounded in the mobility of the vehicle and its location in a public area, not on whether the issue arises in the context of an arrest or a traffic stop.

Id. at 1285 (cleaned up).

[31] In *Hobbs*, officers surveilled Hobbs' workplace prior to serving him with an arrest warrant in another matter. *Id*. at 1284. During the stakeout, the officers observed Hobbs exit his workplace and place an object in his car. *Id*. Officers served Hobbs with the arrest warrant inside his place of business. *Id*. After Hobbs refused consent to search his car, a canine officer alerted on the car. *Id*. A search of the vehicle netted a cooler containing scales, sandwich bags, rolling papers, and marijuana. *Id*. Hobbs was charged with Class A misdemeanor possession of marijuana and paraphernalia and successfully moved the trial court for suppression of the evidence found in his vehicle. *Id*.

[32] In reversing the trial court, our supreme court found the search valid under the automobile exception to the Fourth Amendment because the officers' observation of Hobbs placing something in his car and the subsequent dog sniff provided the requisite probable cause to believe that drugs were inside. *Id*. at 1286. In response to Hobbs' argument that he was unable to control the vehicle at the time of the search, the court concluded that "the automobile exception does not require that there be an imminent possibility the vehicle may be driven away." *Id*. Rather, for a search to come within the exception, all that is

required is that the vehicle is inherently mobile "whether or not a driver is behind the wheel or has ready access[,]" and "this inherent mobility is enough to conduct a warrantless search under the automobile exception." *Id*. Based on the facts that Hobbs' operational vehicle was in a public place and the officers had probable cause that the car contained evidence of a crime, the court concluded that there was no Fourth Amendment violation in the search of Hobbs' car. *Id*. at 1286-87.

[33] The same is true here. Jones' admission to Officer Hutchinson that there was marijuana in her car provided the officer with probable cause to search the vehicle. *See Gibson v. State*, 733 N.E.2d 945, 952 (Ind. Ct. App. 2000) (concluding that Gibson's admission that he had marijuana in his van provided the police with probable cause to search his van for contraband). After Jones informed the officer there was marijuana in her car, establishing probable cause to search, it became immaterial that the officer had originally intended to conduct an inventory search. Jones' car was mobile, as evinced by the fact that she had been observed driving it, and she was stopped on a public street. There was no violation of Jones' Fourth Amendment right resulting from the search of her car.

[34] Jones contends that we must examine the propriety of Officer Hutchinson's decision to tow the car. However, although Officer Hutchinson had originally intended to tow Jones' car and informed her of that fact, there was no

requirement that the tow decision be made before the officer was permitted to ask Jones whether she had anything in the car. *See State v. Washington*, 898 N.E.2d 1200, 1204-05 (Ind. 2008) (concluding that under the Fourth Amendment, an officer engaged in a valid traffic stop may ask whether the driver has any weapons, drugs, or anything else that could harm the officer, even if those questions are unrelated to the purpose of the stop). Therefore, we do not find the officer's decision to tow to be relevant. In addition, inasmuch as Jones contends that this was an inventory search because the officer assisting Officer Hutchinson had already started searching her car before she made the admission to the marijuana, we disagree with her factual premise. Officer Hutchinson did not testify that the assisting officer had already begun searching Jones' car when she admitted to the marijuana. Rather, he testified that the search of Jones' car took place after he had decided to tow, he told Jones her car would be towed, he asked her if there was anything in the vehicle, she made the admission, and the assisting officer then found the marijuana. This evidence supports a reasonable inference that the search of Jones' car had not begun before she made the admission to the marijuana, and it is the reading we must give to the evidence pursuant to our standard of review. *Marshall*, 117

N.E.3d at 1258. Accordingly, we conclude that the search of Jones' vehicle did not violate her Fourth Amendment rights.[3]

B. *Article 1, Section 11*

[35] Article 1, Section 11 of the Indiana Constitution provides as follows:

> 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.

[36] Although the text of Section 11 is identical to the Fourth Amendment, we evaluate a search under our state constitution based on the "'reasonableness' of the conduct of the law enforcement officers under the circumstances, rather than on the expectation of privacy that is commonly associated with analysis under the Fourth Amendment." *Wilkinson v. State*, 70 N.E.3d 392, 405 (Ind. Ct. App. 2017). We determine the reasonableness under the totality of the circumstances of a search or seizure by 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

[3] Due to our resolution of the issue, we need not further address Jones' argument that the search of her car was invalid under the inventory search exception to the warrant requirement.

ordinary activities, and 3) the extent of law enforcement needs." *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

[37] The *Hobbs* court also addressed a claim that the search of his vehicle violated Section 11. *Hobbs*, 933 N.E.2d at 1287. Considering the totality of the circumstances, the supreme court concluded that the search was reasonable because Hobbs' normal activities were not disrupted; Hobbs was already under arrest for a different crime and would remain in custody whether the search took place or not; based on the dog alert, the officers had a high degree of confidence the vehicle contained evidence of a crime; and that the "same considerations underlying the federal automobile exception support[ed] permitting the officers to secure the evidence without delay." *Id*.

[38] Here, the officers had a high degree of certainty that Jones' car contained evidence of a crime when she admitted there was marijuana inside. At the time of the search, Jones had already been detained for a valid traffic stop, and there is no evidence that the officers had completed the business of the traffic stop when Jones was asked whether she had anything in her car. Therefore, the degree of additional intrusion of the search, which took place quickly after she admitted to the presence of the marijuana, was minimal. Lastly, in light of *Hobbs*, we conclude that, because Jones' car was mobile and in a public place, the rationale supporting the Fourth Amendment automobile exception meant that law enforcement's needs were sufficiently valid to render the search

reasonable. *See id*. Finding no violation of Jones' Article 1, Section 11 rights, we uphold the trial court's denial of her motion to suppress the marijuana found in her car.

CONCLUSION

[39] Based on the foregoing, we conclude that any violation of Jones' right to be free from self-incrimination under the Fifth Amendment or Article 1, Section 14 did not require suppression of the physical fruits of that violation. Therefore, we reverse the trial court's suppression of the suspected heroin and cocaine. We further conclude that the search of her vehicle violated neither her federal nor her state constitutional rights to be free from unreasonable search and seizure. As a result, we affirm the trial court's denial of Jones' request to suppress the suspected marijuana found in her car.

[40] Affirmed in part, reversed in part, and remanded for trial.

[41] May, J. and Tavitas, J. concur