

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Stacy R. Uliana
Bargersville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Evan Matthew Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Timothy Deshay Blackwell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 24, 2023

Court of Appeals Case No.
22A-CR-2677

Appeal from the Hendricks Circuit
Court

The Honorable Daniel F. Zielinski,
Judge

Trial Court Cause No.
32C01-2011-F2-38

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] In this discretionary interlocutory appeal, Timothy Deshay Blackwell appeals the trial court's denial of his motion to suppress a statement he gave to police following his arrest. He raises the following two restated issues:

I. Did police have probable cause to stop and arrest Blackwell?

II. Did Blackwell knowingly and voluntarily waive his *Miranda* rights under the Indiana Constitution where law enforcement read Blackwell his rights and he acknowledged that he understood them but law enforcement did not thereafter obtain an express waiver of rights from him?

[2] We affirm.

Facts & Procedural History

[3] On the morning of November 13, 2020, Indiana State Police (ISP) Trooper Brad Smith stopped a commercial semi-tractor trailer hauling private vehicles on Interstate 70 in Hendricks County for an inspection. Based on criminal indicators he observed, and after speaking with the driver and reviewing his paperwork, Trooper Smith became suspicious about a Corvette that was on the transport. Trooper Matthew Wilson's certified narcotics K-9 officer circled the trailer and gave a positive alert to the Corvette, which was searched after receiving consent from the driver hauling the vehicles. Four pounds of cocaine and ten pounds of methamphetamine were discovered in a false compartment. Trooper Wilson applied for and received a GPS warrant allowing placement of a tracking device on the Corvette, which was being hauled to ADESA, an auto

auction facility in Plainfield. Officers placed some of the seized drugs inside the Corvette, which was loaded back on the trailer for delivery to ADESA.

[4] Police called the phone number listed on the paperwork for the Corvette to confirm delivery, and when the transport arrived at ADESA, Blackwell was present to receive the Corvette. Surveillance officers observed Blackwell exit his vehicle and pay the transport driver. Around this time, a flat-bed tow truck arrived and loaded up the Corvette. Officers followed as the tow truck, along with Blackwell in his own vehicle, left ADESA and headed east. The tow truck pulled into an address on Gladstone Avenue in Indianapolis, where the Corvette was unloaded. Meanwhile, Blackwell, who a local detective working with ISP recognized and identified from previous experiences, pulled into the driveway of his residence, which was “very close in proximity” to the Gladstone address. *Transcript* at 11. When Blackwell left his residence a few minutes later in his vehicle, Trooper Wilson stopped him. Blackwell was arrested and taken into custody “for taking delivery and possession [] of” the drugs that were in the Corvette. *Id.* at 8.

[5] Blackwell was transported to an ISP Post for questioning. At the start of the recorded interview, ISP Sergeant Taylor Shafer asked Trooper Wilson whether Blackwell had “been Mirandized already” during his arrest, and Trooper Wilson answered in the affirmative. *Exhibit 1* at 1:25. Sergeant Shafer then said to Blackwell, “I’m just gonna go ahead and do this again even though you’ve already been [Mirandized] once” and thereafter verbally read Blackwell his *Miranda* rights from a card that Sergeant Shafer was holding in his hand. *Id.* at

1:29. At the end of the advisements, Sergeant Shafer asked Blackwell if he understood, and Blackwell replied, “Yes.” *Id.* at 1:55. At that point, Wilson and Shafer began the interview, which Metro Drug Task Force Detective Brian Stewart later joined. Initially, Blackwell stated he went to the car auction to pick up a vehicle for a friend and knew little about it, but he eventually admitted to paying the car hauler, signing someone else’s name on the paperwork for receipt of the Corvette, paying the tow truck driver, knowing that drugs were inside the vehicle and, on more than one occasion, taking delivery of drugs that were concealed in vehicles.

- [6] On November 16, 2020, the State charged Blackwell with Level 2 felony dealing in cocaine (Count 1) and Level 2 felony dealing in methamphetamine (Count 2). In January 2021, the State added a habitual offender charge.¹
- [7] On March 16, 2022, Blackwell filed a motion to suppress, asserting that he was “illegally seized” in violation of the Fourth Amendment to the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution as the police had no reasonable suspicion to stop and detain him. *Appendix* at 135. He argued that he committed no crime, traffic infraction, or ordinance violation and should have been free to leave. He also argued that, while in custody,

¹ The record reflects that on August 16, 2021, the State, after “receipt of confirmatory lab results,” filed a motion to amend Count 1 to Level 2 felony dealing in a narcotic drug, namely fentanyl. *Appendix* at 74-75. The trial court granted the motion. However, the CCS does not reflect that the State filed an amended charge, *see id.* at 2 (showing charges as dealing in cocaine and methamphetamine), and the parties and the trial court addressed the matter below as possession of cocaine and methamphetamine. We will do the same in our decision today.

police “illegally obtained” statements from him in violation of the Fifth Amendment to the U.S. Constitution and Article 1, Section 14 of the Indiana Constitution because they questioned him without properly advising him of his *Miranda* rights. *Id.*

- [8] On August 1, 2022, the court held a hearing on the motion to suppress. Trooper Wilson testified consistent with the above, and Blackwell’s video-recorded interview was admitted into evidence. Trooper Wilson testified that Blackwell had committed a crime at ADESA when he received and made payment to the driver of the transport for the Corvette that had drugs in it, and that officers had probable cause to stop and arrest him for possession of the drugs.
- [9] Blackwell argued that the police lacked reasonable suspicion for the traffic stop in Marion County, as all he did was pay a transport driver to haul a vehicle to Hendricks County, and he was never in possession of the Corvette or drugs. He further asserted that, even if the court determined that the stop was valid, his statements should be suppressed because he was not asked whether he was willing to waive his rights. Thus, according to Blackwell, the State did not prove that he voluntarily and intelligently waived his rights.
- [10] The State responded that Trooper Smith observed Blackwell receive and pay for – and thereby “take possession of” – the Corvette that contained cocaine and methamphetamine, and thus probable cause existed to stop and arrest him. *Id.* at 18. With regard to Blackwell’s challenge to his *Miranda* warnings, the State

maintained that, under Indiana law, there is no requirement that an officer explicitly ask the individual if he is waiving his rights and, rather, the inquiry is whether the person's waiver of rights was voluntary under the totality of the circumstances.

[11] After taking the matter under advisement, the trial court issued an order on August 17, 2022, denying Blackwell's motion to suppress. The court found that ISP had probable cause to stop and arrest Blackwell because it had been previously established that the Corvette – which Blackwell had “arrived to pick up” at ADESA – was concealing cocaine and methamphetamine. *Appendix at 95*. With respect to the *Miranda* warnings, the court found:

Defendant clearly was advised of his [*M*]iranda warnings, and Defendant acknowledged that he understood his rights. Defendant was not coerced to make any statements. It is clear Defendant understood his rights, and waived those rights when giving statements to the arresting officers.

Given the totality of the circumstances, the Court finds Defendant's statements were voluntarily made after having been advised of his constitutional rights[.]

Id.

[12] Blackwell filed a motion to certify the order, therein identifying the issues to be addressed on interlocutory appeal:

a. Whether under the Indiana Constitution, the State [met] its burden of proving beyond a reasonable doubt Blackwell knowingly and voluntarily waived his *Miranda* rights when law

enforcement did not ask Blackwell whether he was waiving them or present him with a written waiver.

b. Whether evidence Blackwell paid to retrieve a car that was shipped from out of state constituted probable cause to arrest him for possession of the drugs that were found inside of it, even though he never took physical possession of the car.

Id. at 100. The trial court granted Blackwell’s motion, and we accepted jurisdiction. Blackwell now appeals.

Discussion & Decision

[13] An appellate court reviews the denial of a motion to suppress similar to other sufficiency matters. *Isley v. State*, 202 N.E.3d 1124, 1129 (Ind. Ct. App. 2023), *trans. denied*. We must determine whether substantial evidence of probative value exists to support the trial court’s decision. *Id.* We do not reweigh evidence, and we construe any conflicting evidence in favor of the trial court’s decision. *Id.* (quotations omitted). However, we consider any substantial and uncontested evidence favorable to the defendant. *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019) (internal quotations omitted). “[W]ithin this sufficiency review, we review all issues of law de novo.” *Hartman v. State*, 988 N.E.2d 785, 788 (Ind. 2013).

I. Probable Cause

[14] Blackwell asserts that his confession was “a direct product of his illegal detention” such that the trial court should have suppressed it. *Appellant’s Brief* at

24. More specifically, he maintains that his arrest² was not supported by probable cause.³

[15] A warrantless arrest is permissible under the Fourth Amendment if the officer has probable cause to believe the defendant has committed a felony. *Govan*, 116 N.E.3d at 1174. Probable cause exists if, at the time of the arrest, the officer has knowledge of facts and circumstances that would warrant a person of reasonable caution to believe that the suspect has committed the criminal act in question. *Tigner v. State*, 142 N.E.3d 1064, 1069 (Ind. Ct. App. 2020); *Govan*, 116 N.E.3d at 1174. The amount of evidence necessary to meet the probable cause requirement is determined on a case-by-case basis. *Decker v. State*, 19 N.E.3d 368, 377 (Ind. Ct. App. 2014), *trans. denied*. The assessment is grounded in notions of common sense, not mathematical precision. *Id.* We have described that probable cause exists when the totality of the circumstances establishes a fair probability – not proof or a prima facie showing – of criminal

² The circumstances surrounding Trooper Wilson’s stop of and encounter with Blackwell are not included in the record before us. Although Blackwell primarily argued below that a lack of reasonable suspicion existed for the stop, on appeal, both parties appear to frame and discuss the issue in terms of whether probable cause existed for Blackwell’s arrest.

³ It is not clear whether Blackwell’s lack-of-probable-cause claim is made under the Fourth Amendment or Article 1, Section 11 of the Indiana Constitution, or both. Blackwell cites to the Fourth Amendment but discusses an Article 1, Section 11 case. Our Supreme Court has directed that, although the language of Article 1, Section 11 is nearly identical to the Fourth Amendment, the two are to be interpreted and analyzed separately. *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020); *see also Govan v. State*, 116 N.E.3d 1165, 1174-75 (Ind. Ct. App. 2019) (separately analyzing probable cause for arrest under federal and state constitutional provisions), *trans. denied*. As Blackwell does not develop an argument with respect to the three-factored totality of the circumstances test used to determine reasonableness of a search or seizure under the Indiana Constitution, *see Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005), we find he has waived any claim under Article 1, Section 11. Ind. Appellate Rule 46(A)(8).

activity, contraband, or evidence of a crime. *Tigner*, 142 N.E.3d at 1069 (quotations omitted). We review the determination of probable cause de novo, and an officer's subjective belief regarding whether probable cause existed has no legal effect. *Id.*

[16] Blackwell acknowledges that he “picked up the Corvette and paid to transport it to the house on Gladstone Street” but argues that these circumstances would not “warrant a person of reasonable caution to believe that [he] knew there was a large amount of drugs hidden within it” or that he intended to take possession of the drugs, emphasizing that he never personally took physical control of the car, nor did he have it towed to his house. *Appellant's Brief* at 9, 23. Blackwell maintains that the police did not have “any evidence connecting [him] to the Gladstone home or to the actual drugs in the car,” and, without that, “the police did not have probable cause that he intended to take possession of the drugs rather than just transport a car for someone else.” *Reply Brief* at 17. We are unpersuaded by these arguments.

[17] During the inspection of the transport vehicle on I-70, officers became suspicious about the Corvette based on various observed criminal indicators, the officer's conversation with the driver, and the paperwork produced for the Corvette. A K-9 alerted to the presence of drugs, and the Corvette was searched, resulting in the discovery of pounds of methamphetamine and cocaine. Blackwell was at ADESA to accept the Corvette when the transport arrived. He paid the transport driver, and the Corvette was placed on a tow truck that Blackwell had arranged to come to ADESA and take the Corvette to

an address on Gladstone Street, which was in close proximity to his own residence. Blackwell and the tow truck left ADESA at the same time and headed to the same vicinity. A local drug interdiction detective working with ISP recognized Blackwell from previous encounters with or surveillance of him. We agree with the State that, on these facts, a person of reasonable caution in the officers' position could have concluded that Blackwell knowingly took possession⁴ and control over the Corvette that he knew had drugs concealed within it. That is, we find that the totality of the circumstances establish a fair probability of criminal activity.

[18] Blackwell's arrest was supported by probable cause, and the court did not err in denying Blackwell's request to suppress his post-arrest statements on this basis.

II. Waiver of Miranda

[19] Article 1, Section 14 of the Indiana Constitution provides that "[n]o person, in any criminal prosecution, shall be compelled to testify against himself."

Blackwell asserts that, even if we find that his arrest was supported by probable cause, his statements should be suppressed under Article 1, Section 14 because the officers failed to obtain an express waiver of *Miranda* rights from him.

Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), a person who is subject to custodial interrogation must first be warned that he has the right to remain

⁴ As the State observes, a conviction for possessing contraband may rest on proof of constructive possession, which may exist when the person has both the capability and intent to maintain dominion and control over it. See *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We are satisfied that the facts and circumstances here indicate that Blackwell had both the capability and intent to maintain control over the drugs in the Corvette.

silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning. *Id.* at 479. After such warnings have been given, and such opportunity afforded, the individual may waive these rights and agree to answer questions or make a statement. *State v. Banks*, 2 N.E.3d 71, 78 (Ind. Ct. App. 2014), *trans. denied*.

[20] A waiver of one’s *Miranda* rights occurs “when the defendant, after being advised of those rights and acknowledging that he understands them, proceeds to make a statement without taking advantage of those rights.” *Id.* (citing *Treadway v. State*, 924 N.E.2d 621, 635 (Ind. 2010)). The State must prove beyond a reasonable doubt that the defendant voluntarily waived his rights. *Risinger v. State*, 137 N.E.3d 292, 296 (Ind. Ct. App. 2019), *trans. denied*; *Banks*, 2 N.E.3d at 80.

[21] Blackwell’s contention is that the State failed to prove that he waived his rights because “law enforcement did not obtain an express waiver from [him].” *Appellant’s Brief* at 10. However, our Supreme Court has held that “an express oral or written statement is not required to establish a knowing and voluntary waiver of rights – valid waivers may be implied.” *D.M. v. State*, 949 N.E.2d 327, 339 (Ind. 2011) (citing *Berghuis v. Thompkins*, 560 U.S. 370, 130 S. Ct. 2250, 2261 (2010)); *see also N.B. v. State*, 971 N.E.2d 1247, 1256 (Ind. Ct. App. 2012), *trans. denied*. The Court has explained:

Generally, a valid implied waiver occurs where a suspect who has been advised of his or her *Miranda* rights and has acknowledged

an understanding of those rights makes an uncoerced statement without taking advantage of them.

In determining the voluntariness of a *Miranda* waiver, we examine the totality of the circumstances surrounding the interrogation to determine whether the suspect's choice was the product of a free and deliberate choice rather than intimidation, coercion, or deception and whether the waiver was made with a full awareness of both the nature of the rights being abandoned and the consequences of the decision to abandon them.

D.M., 949 N.E.2d at 339 (quotations omitted) (emphasis added); *see also Carter v. State*, 730 N.E.2d 155, 157 (Ind. 2000) (recognizing that totality of circumstances test determines whether *Miranda* rights were voluntarily waived, and an express oral or written waiver of rights is not necessary to establish waiver of *Miranda* rights).

[22] Blackwell points out that, under federal law, the State need only prove waiver of *Miranda* rights by a preponderance of the evidence – and need not show an express waiver⁵ – but, in contrast, Indiana requires the State to prove waiver of *Miranda* rights beyond a reasonable doubt. He maintains that “[i]mplied waivers do not show voluntariness beyond a reasonable doubt” and urges we

⁵ *See Berghuis*, 560 U.S. at 384.

“should hold that . . . the State must show an explicit waiver” of *Miranda* rights. *Appellant’s Brief* at 14-15.

[23] As discussed above, our courts have repeatedly held that an express waiver is not required and have directed that a totality-of-the-circumstances test is the proper analysis. This analysis has not been limited only to federal Fifth Amendment claims. *See e.g., D.M.*, 949 N.E.2d at 339 (recognizing that the right against self-incrimination exists under both Fifth Amendment and Article 1, Section 14 and finding that express oral or written statement is not required to establish waiver of rights); *N.B.*, 971 N.E.2d at 1256 (assessing whether juvenile’s rights were validly waived under Indiana statute and finding juvenile impliedly waived his rights). We decline to impose a bright-line requirement that an express statement of waiver of one’s *Miranda* rights is necessary under Article 1, Section 14.

[24] Blackwell argues, alternatively, that even if we conclude an explicit waiver of rights is not required, the trial court abused its discretion in finding that he knowingly and voluntarily waived his rights under the circumstances here. We review the trial court’s determination of voluntariness as any other sufficiency matter. *Risinger*, 137 N.E.3d at 296. We will not reweigh the evidence and will affirm the trial court’s finding if it is supported by substantial evidence. *Id.* Blackwell highlights that Sergeant Shafer never asked him whether he waived his rights or presented him with a waiver form to sign and argues that he “simply did not do enough” to establish beyond a reasonable doubt that

Blackwell knowingly, intelligently and voluntarily waived his rights. *Appellant's Brief* at 21. We disagree.

[25] We find that Blackwell's case presents a similar set of circumstances as we encountered in *Strickland v. State*, 119 N.E.3d 140 (Ind. Ct. App. 2019), *trans. denied*. In that case, police executed a search warrant of a motel room, where Strickland, who police knew from prior encounters, was reported to be in possession of drugs. Strickland, along with her son and her son's friend, were in the room when police arrived. Officers handcuffed all three occupants of the room, and Officer Tom O'Neil read *Miranda* rights from a card that he held in his hand to the three individuals. He then separately asked each one if they understood the rights, and each indicated that they did. Strickland's son and friend were allowed to leave but Strickland spoke to police while in the motel room, and the State ultimately charged her with various drug charges. She subsequently filed two motions to suppress, including one in which she claimed that her statements should be suppressed because she was not properly *Mirandized*. Following a suppression hearing, the trial court denied Strickland's motion to suppress.

[26] Following trial, Strickland appealed. She argued that, although evidence was presented that Officer O'Neil read the *Miranda* rights to her and that she acknowledged them, the State did not present evidence that she understood the warning and "intended to waive those rights." 119 N.E.3d at 149 (quoting *Appellant's Brief*). The *Strickland* court recognized that "an express written or oral waiver of rights is not necessary to establish waiver" and found that

Strickland “acknowledged and understood the *Miranda* advisement given to her by Officer O’Neil” and presented no evidence “to indicate officers coerced her statements.” *Id.* at 148, 149. The court concluded that Strickland had validly waived her rights such that her statements were properly admitted into evidence.

[27] Here, Trooper Wilson indicated to Sergeant Shafer in the ISP interview room that Blackwell had been advised of his *Miranda* rights at the time of his arrest. Nevertheless, Sergeant Shafer elected to re-advise Blackwell of those rights. As did the officer in *Strickland*, Sergeant Shafer, while reading from a card, verbally advised Blackwell of his *Miranda* rights. We note that our courts have “emphasize[d] that an oral advisement, whether or not accompanied by the use of a form, is the preferred method of ensuring an accused’s constitutional rights.” *See State v. Keller*, 845 N.E.2d 154, 163 (Ind. Ct. App. 2006) (finding defendant did not knowingly and intelligently waive his constitutional rights where he was not orally advised of his rights, was provided a form which he read and signed, but never was asked or indicated that he understood the document). After reading the rights, Sergeant Shafer asked Blackwell if he understood those rights, and Blackwell answered that he did. In the videotaped interview, Blackwell appeared coherent and alert. He demonstrated no difficulty in understanding or responding to questions. And as in *Strickland*, there is no evidence that the officers coerced Blackwell’s affirmation of his understanding of his rights or his statements.

[28] Based on the totality of circumstances, we are satisfied that Blackwell was advised of his *Miranda* rights and voluntarily chose to engage in an interview with police without asserting those rights. In short, a valid waiver occurred. *See Carter*, 730 N.E.2d at 158 (finding valid waiver of *Miranda* rights occurred where the rights were read on two occasions to defendant, and he said he understood those rights and wished to give a statement). Accordingly, we affirm the trial court's denial of Blackwell's motion to suppress as it pertains to his waiver of *Miranda* rights.

[29] Judgment affirmed.

May, J. and Foley, J., concur.