## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

Timothy A. Brinegar,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

July 11, 2022

Court of Appeals Case No. 21A-CR-2788

Appeal from the Lawrence Superior Court

The Honorable Robert R. Cline, Judge

Trial Court Cause No. 47D02-1901-F2-155

**Mathias, Judge.**

[1] Timothy A. Brinegar appeals the Lawrence Superior Court's denial of his motion to suppress. Brinegar raises a single issue for our review, namely, whether the trial court erred when it denied his motion. We affirm.

## Facts and Procedural History

[2] In January 2019, Indiana State Police Detective Josh Allen received information that Brinegar was dealing methamphetamine out of Brinegar's residence in Lawrence County. On January 23, Detective Allen applied for a search warrant for Brinegar's residence. Detective Allen received the search warrant that evening and immediately executed the warrant.

[3] Brinegar was not at home when officers first arrived and began to search it. However, others who were present informed officers that Brinegar "would be returning shortly," and officers knew Brinegar would be driving a "white utility truck." Tr. p. 14.

[4] Shortly after the officers began searching the residence, an officer stationed at a nearby middle school observed a white utility truck pull into an alleyway that ran perpendicular to Brinegar's driveway. A police cruiser followed the utility truck down the alleyway, and State Police Trooper Caleb Garvin stood outside the residence near the alleyway. He observed Brinegar drive the white utility truck down the alleyway and pull the truck into the driveway of the residence. Brinegar then exited his vehicle without any prompting.

[5] Trooper Garvin immediately approached Brinegar and observed "a glass jar containing plant material that was consistent with marijuana" on the "driver's

side floorboard right by where" Brinegar's foot would have been. *Id.* at 50. Trooper Garvin further smelled "the odor of raw marijuana emanating from the vehicle." *Id.* at 51. As Brinegar was already outside the vehicle, Trooper Garvin patted him down and immediately felt a "large bundle of . . . hard-chunky substance which I recognized to be . . . methamphetamine" along with "a glass smoking device . . . consistent with the ingestion of methamphetamine" on Brinegar's person. *Id.* at 51-52. Trooper Garvin then reached into the vehicle to retrieve the marijuana. As he did so, "right there" underneath the driver's seat "was a zipper pouch that contained four . . . bags . . . [of] a crystal substance consistent with methamphetamine as well as digital scales." *Id.* at 52. "At that point," officers detained and arrested Brinegar. *Id.*

[6] Based on the contraband seized from his person and his vehicle, the State charged Brinegar with Level 2 felony dealing in methamphetamine, Level 3 felony possession of methamphetamine, and Class A misdemeanor possession of marijuana. The State also alleged Brinegar to be a habitual offender. Brinegar moved to suppress the evidence, which the trial court denied after a hearing. The trial court certified its order for interlocutory appeal, which we accepted. This appeal ensued.

## Standard of Review

[7] Brinegar appeals the trial court's denial of his motion to suppress evidence. As our Supreme Court has made clear:

> Trial courts enjoy broad discretion in decisions to admit or exclude evidence. *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014). When a trial court denies a motion to suppress evidence, we necessarily review that decision "deferentially, construing conflicting evidence in the light most favorable to the ruling." *Id.* However, we "consider any substantial and uncontested evidence favorable to the defendant." *Id.* . . . If the trial court's decision denying "a defendant's motion to suppress concerns the constitutionality of a search or seizure," then it presents a legal question that we review de novo. *Robinson*, 5 N.E.3d at 365.

*Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019).

## Discussion and Decision

[8] Brinegar asserts that officers unlawfully stopped his vehicle and, thus, the search of his vehicle, and the ensuing search of his person, violated his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. We address each of his arguments in turn.

### *Fourth Amendment*

[9] Brinegar's Fourth Amendment argument is controlled by our Supreme Court's analysis in *Hardin v. State*, 148 N.E.3d 932 (Ind. 2020). In *Hardin*, officers were executing a search warrant for the defendant's home when the defendant arrived in his vehicle and parked his vehicle in the curtilage of the home. Our Supreme Court initially recognized the general principle that "[a] warrant covering a house . . . extends into the curtilage." *Id.* at 939-40. The Court then held that that principle "extend[s] to the owner or resident's vehicle given the

close, long-term connections between the owner/resident, the home, and the vehicle." *Id.* at 941.

[10] Brinegar does not dispute that he parked his vehicle within the curtilage of his residence while the residence was being searched pursuant to a lawful warrant. Rather, Brinegar attempts to distinguish *Hardin* by asserting that he and his mother both testified at the motion to suppress hearing that there was a second police cruiser at the other end of the alleyway. Brinegar continues that, coupled with the police cruiser that followed him into the alleyway, the two cruisers effectively compelled him to stop his vehicle in his own driveway, and his vehicle otherwise would not have been in the curtilage of his residence.

[11] Brinegar's argument is contrary to our standard of review. At the close of the hearing on the motion to suppress, the trial court stated that it did not believe Brinegar's and his mother's testimonies about the second police cruiser in the alleyway. Tr. pp. 92-93. Specifically, the court stated that it had reviewed a security video recording of Brinegar's driveway as he came down the alleyway and pulled into it. That video evidence showed the police cruiser that had followed Brinegar into the alleyway, but there was no second police cruiser visible in the video. Significantly, the court added that there also were not "headlights shining on the front of his vehicle" despite it being night, and there also were no "flashing . . . police lights" at the other end of the alleyway. *Id.* We have likewise reviewed that video, and we agree with the trial court's assessment.

[12] Thus, Brinegar's argument that he was compelled to park his car in the curtilage of his residence by a second police cruiser is not supported by the evidence most favorable to the trial court's judgment. Instead, his argument is simply a request for this Court to reweigh the evidence, which we will not do. As Brinegar is unable to distinguish our Supreme Court's holding in *Hardin*, we affirm the trial court's denial of his motion to suppress under the Fourth Amendment.

### *Article 1, Section 11*

[13] Brinegar also argues that the search of his vehicle violated his rights under Article 1, Section 11 of the Indiana Constitution. That provision was also before our Supreme Court in *Hardin*:

> 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.").
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> 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., 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.

148 N.E.3d at 942-43.

[14] In balancing the *Litchfield* factors in *Hardin*, our Supreme Court concluded that the degree of police concern, suspicion, or knowledge was "extremely strong" because the officers had obtained a warrant based on fresh information and had located contraband pursuant to that warrant inside the defendant's home prior to his arrival. *Id.* at 944. The Court concluded that "the search of [the defendant's] vehicle resulted in a moderate degree of intrusion," as it was an "obvious intrusion into [his] privacy." *Id.* at 946. However, that degree of intrusion "was lessened by the way officers conducted the search," which "appear[ed] to have been no more extensive than a visual inspection." *Id.* And the Court held that the needs of law-enforcement officers to search the defendant's vehicle was "moderate" based on the "general need to combat drug trafficking" and the existing "warrant for the home." *Id.* at 948. Thus, the Court

concluded that, on balance, the defendant's Article 1, Section 11 rights were not violated by the search of his vehicle. *Id.*

[15] So too here. The degree of police concern, suspicion, or knowledge that Brinegar was at least in possession of narcotics was extremely strong. Detective Allen had received fresh information that Brinegar was involved in the dealing of narcotics out of his residence, which resulted in a search warrant that officers executed as soon as they received it. While, unlike the facts in *Hardin*, officers had not discovered contraband in Brinegar's residence at the time of his arrival in his truck, also unlike the facts in *Hardin* Trooper Garvin immediately observed a glass jar of marijuana inside Brinegar's vehicle when Brinegar exited the vehicle.

[16] As for the degree of intrusion, it was moderate. Officers entered the private space of Brinegar's vehicle. However, like in *Hardin*, Brinegar's vehicle was already in the curtilage of a residence for which the officers had a lawful warrant,[1] and the search of Brinegar's vehicle appears to have been no more than a visual inspection before contraband was plainly seen by Trooper Garvin. Indeed, given the readiness in which Trooper Garvin observed the marijuana, describing the degree of intrusion here as moderate is generous to Brinegar.

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[1] For the same reasons we rejected Brinegar's argument under the Fourth Amendment, we likewise reject his assertion that the degree of intrusion here was heightened by his assertions of a second police cruiser in the alleyway and a coerced stop of his vehicle.

[17] Finally, the needs of law-enforcement officers to search Brinegar's vehicle were more substantial here than they were in *Hardin*. While the general need to combat drug trafficking and an existing warrant for the home were as significant for the search of Brinegar's vehicle as they were for the defendant's vehicle in *Hardin*, here, unlike in *Hardin*, officers plainly viewed contraband within Brinegar's vehicle immediately after he exited it. Thus, the officers had a specific and known need to search Brinegar's vehicle to seize that contraband.

[18] Balancing the *Litchfield* factors under Article 1, Section 11, we readily conclude that the search of Brinegar's vehicle was reasonable, and, thus, his Article 1, Section 11 rights were not violated. We therefore affirm the trial court's denial of his motion to suppress under the Indiana Constitution.

## Conclusion

[19] For all of the above reasons, we affirm the trial court's denial of Brinegar's motion to suppress.

[20] Affirmed.

Brown, J., and Molter, J., concur.