IN THE

Indiana Supreme Court

Supreme Court Case No. 20S-CR-616

James Combs,
Appellant (Defendant below),

–v–

State of Indiana,
Appellee (Plaintiff below).

Argued: December 10, 2020 | Decided: June 3, 2021

Appeal from the Boone Superior Court
No. 06D02-1702-F3-134
The Honorable Bruce E. Petit, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 19A-CR-1991

Opinion by Justice Massa

Chief Justice Rush and Justice David concur.
Justice Slaughter concurs in the judgment with separate opinion.
Justice Goff dissents with separate opinion.

Massa, Justice.

James Combs was driving his company van when he swerved off the road and demolished a utility box. He then drove to his nearby home. The responding officer found Combs just as he parked in his front driveway. The officer ultimately took Combs to the hospital for a blood test. After they left, other officers towed the van as evidence of leaving the scene of an accident. Before the tow, they conducted an inventory search, which revealed pills in a bag under the driver's seat.

Combs was charged with several offenses, including four based on the pills. After he unsuccessfully moved to suppress the pills, a jury convicted him of all but one charge. On appeal, a panel concluded the pills should have been suppressed. Finding the van's seizure and search lawful, we affirm the trial court.

Facts and Procedural History

In the late afternoon of February 11, 2017, Combs was driving north on Lafayette Avenue in Lebanon, Indiana. He was in a yellow Ford van that prominently advertised the company he ran with his wife—Combs Gold & Stuff, a pawn shop and gold-buying business. In addition to the name, the van included the company's phone number, address, and slogans, making it "a mobile billboard." Tr. Vol. II, p.62.

While speeding, Combs came upon stopped traffic near the Lebanon Street Department. He swerved to his right to avoid hitting the vehicle in front of him, driving off the road and demolishing a utility box. Witnesses called 911 to report the crash. Combs exited the van, viewed the scene, took pictures, and rummaged around under the driver's seat. He then drove away, over the objections of witnesses, to his home in Clear Vista Estates, a nearby neighborhood.

Officer James Koontz of the Lebanon Police Department quickly arrived at the crash scene. He spoke with a witness, who described the van as "yellow" with "Combs on the side" and pointed him toward Clear Vista. Tr. Vol. III, p.21. As he drove through the neighborhood, a family

who saw the van pointed Officer Koontz in its direction. The van had also left a "a fluid trail" that helped guide Officer Koontz. Tr. Vol. II, p.9. Officer Koontz spotted a van that matched the witness' description in a driveway and pulled in behind it as Combs was stepping out of it. After exiting his vehicle, Officer Koontz "could see the side of the van." *Id.*, p.10. He observed "[t]he front driver's side tire was flat and [there was] a clear fluid trail from the roadway, up the driveway, to the van." *Id.* The grill and bumper were also damaged.

Officer Koontz began speaking with Combs, who quickly admitted to the crash and leaving the scene. By then, witnesses to the crash had arrived. One witness informed Officer Koontz that Combs may have been trying to hide something in the van. Officer Koontz asked Combs if he could look inside the van, and Combs initially consented. But after Officer Koontz refused to allow Combs to hand him items from the van, Combs withdrew his consent, and there was no search. Based on witness statements and his interactions with Combs, Officer Koontz believed Combs was intoxicated. He administered three field sobriety tests, and Combs failed two of them (although his breathalyzer test was negative for alcohol).

By this point, other Lebanon officers had arrived at Combs' home, including Lieutenant Rich Mount. He asked Combs for permission to look inside the van, and Combs consented to a search under the seats. Officer Koontz found a bag under the driver's seat, but Combs did not consent to him opening it, so the search stopped. Combs agreed to a blood test, so Officer Koontz took him to a hospital. The remaining officers decided to tow the van as evidence of Combs leaving the crash, so they inventoried it. Under the driver's seat, they found a black bag that contained, among other things, various pills that were later determined to be alprazolam, hydrocodone, and oxycodone (both 7.5- and 10-milligram doses). The officers seized the pills but turned over the bag and its other contents to Combs' wife before the van was towed.

The State ultimately charged Combs with nine counts, the first four based on the pills. Counts I through III—possession of a narcotic drug as a Level 3 felony in violation of Indiana Code sections 35-48-4-6(a) and

(d)(2)—were based on the hydrocodone, 10-milligram oxycodone, and 7.5-milligram oxycodone pills, respectively. Count IV—possession of a controlled substance as a Level 6 felony in violation of Indiana Code section 35-48-4-7(a)—was based on the alprazolam. Count VIII was leaving the scene of an accident as a Class B misdemeanor in violation of Indiana Code sections 9-26-1-1.1(a)(4) and (b).[1]

Combs unsuccessfully moved to suppress the pills under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.[2] The case proceeded to trial, where a jury found Combs guilty of all counts except Count IV. Combs appealed, arguing, among other things, that the trial court erroneously admitted the pills.

Our Court of Appeals found that Combs' federal constitutional rights were violated. *Combs v. State*, 150 N.E.3d 266 (Ind. Ct. App. 2020), *trans. granted*, 157 N.E.3d 527. It concluded "the towing and impound search . . . were merely pretextual means by which officers could search the [van] to find incriminating evidence." *Id.* at 275. Because "Combs admitted that he was going to contact law enforcement regarding the accident . . . it [was] not clear why the officers needed the van to solve the crime." *Id.* at 276. The "indicia of pretext" meant "the search . . . was unreasonable" and "impermissible under the open view and plain view doctrines and the Fourth Amendment." *Id.* Because the pills should have been suppressed, the panel reversed Combs' convictions for Counts I, II, and III. *Id.* at 277. It declined to address his state constitutional argument, *id.* at 274 n.5, and rejected his other arguments, *id.* at 281–82.

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[1] The other counts were: Count V, operating a vehicle while intoxicated endangering a person as a Class A misdemeanor in violation of Indiana Code section 9-30-5-2(b); Count VI, operating a vehicle while intoxicated as a Class C misdemeanor in violation of Indiana Code section 9-30-5-2(a); Count VII, operating a vehicle with a schedule I or II controlled substance or its metabolite in the body as a Class C misdemeanor in violation of Indiana Code section 9-30-5-1(c); and Count IX, public intoxication as a Class B misdemeanor in violation of Indiana Code section 7.1-5-1-3(a)(1).

[2] Although the trial court certified its order denying Combs' suppression motion for interlocutory appeal, the Court of Appeals declined to accept jurisdiction.

The State petitioned for transfer, which we granted.[3] *See* Ind. Appellate Rule 58(A).

Standard of Review

Generally, "[t]rial courts have broad discretion to admit or exclude evidence," and we review for abuse of that discretion. *Satterfield v. State*, 33 N.E.3d 344, 352 (Ind. 2015). However, "when a challenge to an evidentiary ruling is based 'on the constitutionality of the search or seizure of evidence, it raises a question of law that we review *de novo*.'" *Johnson v. State*, 157 N.E.3d 1199, 1203 (Ind. 2020) (quoting *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017)), *cert. denied*, --- S. Ct. ---- (2021), No. 20-7612, 2021 WL 2044617 (U.S. May 24, 2021).

Discussion and Decision

Combs asserts that the police violated his Fourth Amendment rights by seizing and searching his van without a warrant. The Fourth Amendment—incorporated against the states through the Fourteenth Amendment—protects people against unreasonable searches and seizures. U.S. Const. amend. IV; *Berry v. State*, 704 N.E.2d 462, 464–65 (Ind. 1998). Because it "generally requires warrants for searches and seizures," *Johnson*, 157 N.E.3d at 1203, "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*

[3] Because we only address whether the pills should have been suppressed, we summarily affirm the panel's disposition of Combs' other arguments. *See* Ind. Appellate Rule 58(A)(2). We agree with the panel that Combs waived his state constitutional argument, *see* App. R. 46(A)(8)(a), so we only address his federal constitutional argument. Combs' briefing on this argument largely lacked the "cogent reasoning" required by Appellate Rule 46(A)(8)(a). But his noncompliance with that rule was not "sufficiently substantial to impede our consideration" of his argument, *Davis v. State*, 265 Ind. 476, 478, 355 N.E.2d 836, 838 (1976), largely because of his pretrial suppression motion. And because we prefer to resolve cases on their merits, we address the substance of his argument. *See Pierce v. State*, 29 N.E.3d 1258, 1268 (Ind. 2015).

v. State, 63 N.E.3d 329, 331 (Ind. 2016) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)).

When police seize and then search a vehicle, "both measures must be reasonable—that is, executed under a valid warrant or a recognized exception to the warrant requirement." *Wilford v. State*, 50 N.E.3d 371, 374 (Ind. 2016). One exception to the warrant requirement arises when an incriminating object is in plain view. Another arises when police inventory a seized object. Because both exceptions apply here, Combs' Fourth Amendment rights were not violated.

I. The police lawfully seized Combs' van as evidence under the Fourth Amendment's plain view exception.

Police, acting under a valid warrant or Fourth Amendment exception, can seize a vehicle as evidence of a crime.[4] *See Trent v. Wade*, 776 F.3d 368, 387 (5th Cir. 2015) ("[V]ehicles also may be seized if . . . they are contraband in plain view of an officer."); *People v. Zamora*, 695 P.2d 292, 296–97 (Colo. 1985) (car lawfully seized as instrumentality of a crime); *State v. Mitchell*, 266 S.E.2d 605, 608 (N.C. 1980) ("A car reasonably believed to be the fruit, instrumentality or evidence of a crime can be seized whenever found in plain view."); *State v. Lewis*, 258 N.E.2d 445, 447–49 (Ohio 1970) (car lawfully seized as instrumentality of a crime). When this occurs, the seizure must be reviewed like any other. *See, e.g.*,

[4] Police often impound vehicles pursuant to their community caretaking function, a broad label for actions that are not rooted in criminal investigation but still "enhance and maintain the safety of communities." *Fair v. State*, 627 N.E.2d 427, 431 (Ind. 1993). This Court has established a two-prong test to determine whether an impound pursuant to this function is reasonable. *Id.* at 433; *Wilford v. State*, 50 N.E.3d 371, 375–76 (Ind. 2016). But because "the community caretaking function is 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute,'" *Fair*, 627 N.E.2d at 433 (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)), the test is inapplicable here.

United States v. Sanchez, 612 F.3d 1, 2 (1st Cir. 2010) (applying plain view exception to seized motorcycle).

The plain view exception to the Fourth Amendment's warrant requirement allows police to warrantlessly seize an object if they "are lawfully in a position from which to view the object, if its incriminating character is immediately apparent, and if [police] have a lawful right of access to the object." *Warner v. State*, 773 N.E.2d 239, 245 (Ind. 2002) (citing *Horton v. California*, 496 U.S. 128, 135–37 (1990)). It "stands for the premise that objects which are in plain view of an officer who rightfully occupies a particular location can be seized without a warrant and are admissible as evidence." *Sloane v. State*, 686 N.E.2d 1287, 1291 (Ind. Ct. App. 1997), *trans. denied*, 690 N.E.2d 1189. Seizures under this exception are "scrupulously subjected to Fourth Amendment inquiry." *Soldal v. Cook County*, 506 U.S. 56, 66 (1992). Here, the exception's three requirements were satisfied, so police lawfully seized Combs' van.

A. The police lawfully viewed Combs' van.

Under the plain view exception, police must have lawfully viewed the object. *Warner*, 773 N.E.2d at 245. In other words, they must not have engaged in an "unlawful trespass" to discover it. *Soldal*, 506 U.S. at 66. Here, Officer Koontz was on Combs' front driveway when he fully saw the van and realized it had crashed into the utility box and then left the scene.

"[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). This special status extends beyond the home's physical frame to the curtilage, "the area 'immediately surrounding and associated'" with it. *Id.* (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). However, the curtilage is not impenetrable. *See id.* at 8. So long as police "do no more than any private citizen," their presence generally does not run afoul of the Fourth Amendment. *Kentucky v. King*, 563 U.S. 452, 469–70 (2011); *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021). They must "limit their entry to places visitors would be expected to go, such as walkways, driveways, and porches." *Trimble v. State*, 842 N.E.2d 798, 802 (Ind. 2006); *see also United States v. Contreras*, 820 F.3d 255,

261 (7th Cir. 2016) ("[Police] may walk up to any part of private property that is otherwise open to visitors or delivery people."). And "there is no Fourth Amendment protection for activities or items that, even if within the curtilage, are knowingly exposed to the public." *Trimble*, 842 N.E.2d at 802; *see also California v. Ciraolo*, 476 U.S. 207, 213 (1986) ("That the area is within the curtilage does not itself bar all police observation.").

Assuming Combs' front driveway was curtilage, Officer Koontz's presence was lawful.[5] When he arrived, Officer Koontz pulled into Combs' driveway and stepped out of his car, which allowed him to fully view the van. He then began speaking with Combs, who had just exited the van. Officer Koontz, like anyone seeking to speak with the van's driver, pulled into the front driveway. And when he saw Combs in the driveway, he reasonably spoke with Combs there. Officer Koontz used "the ordinary means of access" to view the van. *Trimble*, 842 N.E.2d at 802.

Officer Koontz's "legitimate investigatory purpose," *id.*, for being on the driveway did not make his presence unlawful. He was not unreasonably conducting a search by looking for evidence in a manner that exceeded his "implied license" to enter the driveway like a private citizen. *Jardines*, 569 U.S. at 9–10; *cf. Collins v. Virginia*, 138 S. Ct. 1663, 1668, 1670–71 (2018) (officer went off the main route to the front door to examine a partially enclosed portion of the driveway, where he pulled a tarp off a motorcycle). Because he confined his actions to those of a private

[5] It is not a foregone conclusion that Combs' front driveway was curtilage, even though it was—at least physically—"intimately linked to the home." *California v. Ciraolo*, 476 U.S. 207, 213 (1986). The Supreme Court of the United States has provided four non-exclusive factors to help determine whether an area is curtilage: its proximity to the home, its location in an enclosure surrounding the home, its uses, and steps taken to protect it from public view. *United States v. Dunn*, 480 U.S. 294, 301 (1987); *see also Holder v. State*, 847 N.E.2d 930, 936 (Ind. 2006) (acknowledging and applying the *Dunn* factors). The first heavily weighs in favor of curtilage, as the front driveway is attached to the home. The remaining weigh against. The driveway is not within an enclosure surrounding the home, its uses are open, and Combs took no steps to protect it from public view. But because "these factors are useful analytical tools," not a rigid test, *Dunn*, 480 U.S. at 301, we err on the side of caution and assume it was curtilage for our analysis.

citizen, Officer Koontz was lawfully on Combs' driveway when he viewed the van.

B. The van's incriminating character was immediately apparent.

When police lawfully view the object, its "incriminating character" must be "immediately apparent," *Warner*, 773 N.E.2d at 245, so there is no uncertainty about its "probative value," *Horton*, 496 U.S. at 137. Police must have probable cause to believe the object is contraband or evidence of a crime without conducting a further search of the object. *Arizona v. Hicks*, 480 U.S. 321, 323, 326 (1987); *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993).

Probable cause exists "when the totality of the circumstances establishes 'a fair probability' . . . of criminal activity, contraband, or evidence of a crime." *Hodges v. State*, 125 N.E.3d 578, 581–82 (Ind. 2019) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). We view the totality of the circumstances "from the standpoint of an objectively reasonable police officer." *Id.* at 582. And when "a seizure of items in plain view is supported by probable cause, an inquiring court will not look behind that justification." *Sanchez*, 612 F.3d at 6. Subjective intentions are irrelevant when analyzing probable cause. *Whren v. United States*, 517 U.S. 806, 813 (1996). Because probable cause must exist when the seizure occurs, the object's ultimate admission as evidence at trial does not impact this analysis.[6] *See Hodges*, 125 N.E.3d at 582.

The van's incriminating character was immediately apparent. As soon as Officer Koontz exited his vehicle, he saw the van's damaged front and

[6] The dissent goes beyond considering whether the van would be useful in prosecuting Combs to considering whether it ended up being strictly necessary. A reasonable officer, of course, would consider the instrument used to commit a crime—here, the van—to be useful at the time of the seizure. But a reasonable officer could not predict what would be strictly necessary. *See United States v. Belt*, 854 F.2d 1054, 1055–56 (7th Cir. 1988) (upholding impoundment of car as evidence despite the existence of witness testimony because the defendant could deny the allegations at trial).

confirmed it had left the fluid trail, objective signs of a recent head-on collision. The fact that Officer Koontz had to exit his vehicle to fully see the van and its damage is inconsequential. While he could not have moved or otherwise manipulated it, *Hicks*, 480 U.S. at 324–25, he could lawfully change his position to better view it, *United States v. Sanchez*, 955 F.3d 669, 676–77 (8th Cir. 2020) ("[O]fficers may . . . change position when conducting an exterior examination."), *cert. denied*, 141 S. Ct. 930.

He also realized the van matched the witness' description, which included the van's color and "Combs" marking. The witness was "a disinterested third-party," *Johnson*, 157 N.E.3d at 1204, who saw the collision and remained at the scene to speak with the responding officer. Officer Koontz had little reason to doubt the veracity of the description. *See id.*; *Duran v. State*, 930 N.E.2d 10, 17 (Ind. 2010).

Given the totality of the circumstances—the obvious damage, the fluid trail, the disinterested witness' description, and the van's distinct design—we have little trouble concluding any reasonable officer would have immediately developed probable cause that the van crashed into the utility box and left the scene, a criminal offense.[7] As such, it was evidence of that offense.[8]

C. The police had a lawful right of access to the van.

Police must "have a lawful right of access to the object." *Warner*, 773 N.E.2d at 245. This requirement "asks, in effect, whether the police had to

[7] We understand that leaving the scene of an accident as a Class B misdemeanor is not the most serious offense in the Indiana Code. Certainly, there are times when the seriousness of the offense matters. *See, e.g.*, *Duncan v. Louisiana*, 391 U.S. 145, 159 (1968) (noting the Sixth Amendment's right to a jury trial is not implicated for "petty crimes or offenses"). But it does not matter here. *See United States v. Sanchez*, 612 F.3d 1, 6 (1st Cir. 2010) (applying plain view exception to seized motorcycle that was evidence of criminal licensing violations).

[8] We emphasize the need for probable cause of a crime. *See Horton v. California*, 496 U.S. 128, 130 (1990). Not every prohibited act involving a vehicle satisfies this requirement. For example, probable cause that a vehicle was used to commit a traffic violation codified as a civil infraction would not suffice.

commit a trespass" to access the object. *Sanchez*, 612 F.3d at 6; *see also United States v. Wells*, 98 F.3d 808, 810 (4th Cir. 1996) (finding requirement satisfied because agents "were lawfully searching" an apartment when they found a firearm); *United States v. Naugle*, 997 F.2d 819, 823 (10th Cir. 1993) (finding requirement satisfied because "the gun was in the closet where the officer was permitted to be, and he did nothing more than reach out to the box containing the gun"). As previously discussed, Officer Koontz was lawfully present on Combs' driveway. He did not have to trespass or take any other prohibited action to access the van.

The incriminating nature of Combs' van was immediately apparent, and Officer Koontz lawfully viewed and could lawfully access the van. It is inconsequential that Officer Koontz did not order the tow. Although he could have towed the van, he was also investigating Combs' possible intoxication and was not required to put this investigation on hold. It was permissible for him to continue it and allow the other officers on the scene to handle the van.[9]

II. Once seized, the police lawfully inventoried Combs' van.

The search of a vehicle—like its seizure—must be lawful. *Wilford*, 50 N.E.3d at 374; *Fair v. State*, 627 N.E.2d 427, 435 (Ind. 1993). Inventory searches, as the name suggests, occur when police inventory the contents of a seized object, often a vehicle, and are "a well-recognized exception to the warrant requirement." *Taylor v. State*, 842 N.E.2d 327, 330 (Ind. 2006). They protect the vehicle's owner and the police by providing a record of the vehicle's contents. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976); *Wilford*, 50 N.E.3d at 374.

[9] Of course, the outcome may have been different had Officer Koontz been the only officer on the scene, he left, and then other officers arrived to tow the van without a warrant. *See Middleton v. State*, 714 N.E.2d 1099, 1103 (Ind. 1999).

When police lawfully seize a vehicle—through either their community caretaking or criminal investigatory function—the ensuing inventory search "must be conducted pursuant to standard police procedures." *Fair*, 627 N.E.2d at 435. These "procedures must be rationally designed to meet the objectives that justify the search in the first place" while sufficiently limiting officer discretion. *Id.* (internal citation omitted). This ensures "the inventory is not a pretext 'for a general rummaging in order to discover incriminating evidence.'" *Id.* (quoting *Florida v. Wells*, 495 U.S. 1, 4 (1990)). However, an "expectation of finding criminal evidence" does not invalidate an otherwise "lawful inventory search." *United States v. Lopez*, 547 F.3d 364, 372 (2d Cir. 2008); *see also United States v. Arrocha*, 713 F.3d 1159, 1164 (8th Cir. 2013); *United States v. Lumpkin*, 159 F.3d 983, 987 (6th Cir. 1998).

At the time of the seizure, the Lebanon Police Department's written, three-page tow policy allowed officers to impound vehicles "needed for evidence." Ex. Vol. VI, p.5.[10] When this occurred, officers were required to complete "a vehicle impound and inventory form" with "a complete inventory" before "releasing the vehicle to the towing service." *Id.*, p.6. And officers were required to open and inventory unlocked containers. This policy sufficiently regulated the towing and search of Combs' van. Its plain language made clear that the officers had to provide thorough information about impounded vehicles and all their contents, including unlocked containers like bags. And it did not leave their discretion unchecked. For example, it specifically prohibited opening and inventorying locked containers without consent or a warrant.

The officers followed the written policy. They conducted a thorough inventory and detailed their discoveries, including the pills, on the necessary form before towing the van. *Cf. Fair*, 627 N.E.2d at 436 (noting inventory was conducted by investigating officer who only focused on contraband, there was no evidence of completed formal inventory sheets,

[10] Although the policy was not admitted at trial, it was admitted at the suppression hearing, and the trial court granted Combs' request for an ongoing objection to the admission of evidence from the search of the van.

it was unclear the vehicle was actually impounded, and the policy was not sufficiently established). While the inventory was conducted on Combs' driveway, *see id.* (search conducted at crime scene was one indicia of pretext), the policy required an inventory before the van was released to the towing service, and it was reasonable for it to occur there.

The need to "guard against claims of theft, vandalism, or negligence," *Colorado v. Bertine*, 479 U.S. 367, 372–73 (1987), was heightened, as the van prominently advertised its use by a gold-buying business, indicating it might have contained valuables. And Combs had even informed the officers there was "a substantial amount of gold" in it. Tr. Vol. II, p.16. It is inconsequential that the officers turned over the black bag and its other contents—including gold jewelry—to Combs' wife. Their policy did not prevent them from ensuring these smaller, valuable items did not remain in the van. Their decision to take extra precautions was reasonable.

Although the officers anticipated finding contraband in the van, they did not search "in bad faith or for the **sole** purpose of investigation." *Bertine*, 479 U.S. at 372 (emphasis added). Their decision to impound the van as evidence, as explained above, was lawful, and their policy required an inventory. And they recognized the need to ensure the van's contents were documented, especially given the presence of valuables. Their inevitable partial investigatory motive did not invalidate an otherwise reasonable and lawful inventory search.[11] *See Lopez*, 547 F.3d at 372.

The police properly inventoried Combs' van pursuant to their department's thorough and reasonable policy, so the search was lawful.

[11] There was unfortunate testimony by Lieutenant Mount acknowledging he could have obtained a search warrant, but that doing so was "a pain in the ass." Tr. Vol. III, p.169. The coarseness of the assertion notwithstanding, the constitutional analysis remains unaffected. The question we answer today is not "Could police have secured a warrant?" but, rather, "Did they have to?" Indeed, the plain view exception is "justified by the realization that resort to a neutral magistrate under such circumstances would often be impracticable and would do little to promote the objectives of the Fourth Amendment." *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993).

Conclusion

The seizure and search of Combs' van fell under recognized exceptions to the Fourth Amendment's warrant requirement. Thus, the police lawfully discovered the pills. The judgment of the trial court is affirmed.

Rush, C.J., and David, J., concur.
Slaughter, J., concurs in the judgment with separate opinion.
Goff, J., dissents with separate opinion.

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Slaughter, J., concurring in the judgment.

I agree that the trial court's judgment for the State should be affirmed. But I do so for different reasons than the Court. Rather than reach the merits of Combs's constitutional claims, I would hold that he waived those claims and thus did not satisfy his burden on appeal of establishing that the inventory search of his vehicle was illegal.

The Court holds, rightly, that Combs waived his state constitutional claim. *Ante*, at 5 n.3. I would go further and hold that he waived his Fourth Amendment claim, too. The entirety of his federal constitutional argument consisted of the following sentence: "This Court should reverse the trial court's order denying Defendant's Motion to Suppress based on the law and factual circumstances in this case, notwithstanding Lieutenant Mount's rationale that requesting a warrant is 'a pain in the ass.'"

By no plausible yardstick does this bare assertion amount to the "cogent reasoning" our rules require. Ind. Appellate Rule 46(A)(8)(a). Combs's undeveloped "argument", such as it is, neither identifies the governing legal standard nor explains how the factual record in this case satisfies that standard and entitles him to relief. Thus, I agree with the Court that the State is entitled to judgment. Though I do not quarrel with how the Court resolved the merits, I would not treat Combs's federal claim as preserved and worthy of merits review.

Applying waiver doctrine to parties' arguments is not a judicial "gotcha" aimed at unfairly trapping unwary litigants. Insisting that litigants develop their arguments serves two valuable purposes: fairness to opposing counsel and efficiency in judicial decision-making. Developed arguments allow adversaries to respond meaningfully to each other and allow courts to fully address issues without undue commitment of judicial resources. There are only so many hours in the day, and the time we spend on undeveloped arguments necessarily means less time for deciding claims by parties who followed the rules. We disserve opposing parties and our system of appellate review when we indulge litigants whose claims were barely raised or not raised at all.

Goff, J.

I respectfully dissent.

In this case, the Court finds that police may seize and inventory a van as an instrumentality of a class-B misdemeanor leaving the scene of an accident. But what need is there to seize the entire van when the driver admitted to the offense and when police thoroughly documented the structural damage to the van with photographs? In my opinion, there is none. Because the State failed to show that the van itself would prove useful in solving a crime, and because the Court's decision today will unnecessarily extend the government's reach into our private lives, I respectfully dissent.

I. The plain-view doctrine doesn't justify the police's seizure of the van.

The touchstone of the Fourth Amendment is reasonableness. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). And there's "no ready test for determining reasonableness other than by balancing the need to search or seize against the invasion which the search or seizure entails." *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (cleaned up). "The scheme of the Fourth Amendment becomes meaningful only when . . . the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in **light of the particular circumstances**." *Id*. (emphasis added).

Ordinarily, a seizure "carried out on a suspect's premises without a warrant is *per se* unreasonable." *Coolidge v. New Hampshire*, 403 U.S. 443, 474 (1971). However, there are several "narrow and well-delineated exceptions" to this warrant requirement. *Flippo v. West Virginia*, 528 U.S. 11, 13 (1999) (per curiam). Because Lieutenant Mount determined that it would be a "pain in the ass" to obtain a warrant to seize Combs's van, Tr. Vol. 3, p. 169, this Court can only affirm the admission of the evidence

obtained from the seizure if it fits within one of these narrow exceptions to the warrant requirement.

The Court finds that the seizure of the van was proper under the plain-view doctrine. As one of the narrow and well-delineated exceptions, the plain-view doctrine allows police to seize property without a warrant where (1) the police are lawfully present, (2) the "incriminating character" of the evidence is "immediately apparent," and (3) the police have a "lawful right of access to the object itself." *Horton v. California*, 496 U.S. 128, 136–37 (1990) (citations omitted).

I agree with the Court that the first and third elements of the plain-view exception are met in this case, but I cannot agree with its holding as to the "immediately apparent" prong. This prong requires police officers to "have probable cause to believe the evidence will prove useful in solving a crime." *Taylor v. State*, 659 N.E.2d 535, 538 (Ind. 1995). Of course, "this does not mean that the officer must 'know' that the item is evidence of criminal behavior." *Id.* at 539. Rather, it "requires only that the information available to the officer would lead a person of reasonable caution to believe the items could be useful as evidence of a crime." *Id.* In the end, "a practical, nontechnical probability that incriminating evidence is involved is all that is required." *Id.* (citation and quotation marks omitted). Given the particular circumstances at hand, including the government's need for the entire van and the degree of invasion the seizure entailed, I would not find the seizure reasonable.[1]

In this case, the officers were investigating the crime of leaving the scene of an accident, a class-B misdemeanor. *See* Ind. Code § 9-26-1-1.1(b) (2017). The officers could plainly see the damage (the evidence of the crime) on the exterior of the van and took photographs of that damage. No one testified that any aspect of the van aside from its exterior

[1] My goal in writing separately is not to hamstring police investigations, but rather to protect an important constitutional right. Our nation has a "strong preference" for warrants and the use of warrants "greatly reduces the perception of unlawful or intrusive police conduct." *Illinois v. Gates*, 462 U.S. 213, 236 (1983).

condition would be useful as evidence of the crime of leaving the scene of an accident.[2] What's more, Combs had already admitted to the accident and to leaving the scene. When police have sufficient photographic evidence of the crime, and where the suspect himself admitted to the offense, I question whether a person of reasonable caution would find seizure of the van itself as useful in proving the crime.[3] *Cf. Cardwell v. Lewis*, 417 U.S. 583, 591 (1974) (concluding that the prior impoundment of an automobile didn't render the examination of the exterior of the car, which could have been done on the spot, unreasonable).[4] As such, the need to seize the entire van was low. The degree of invasion, on the other hand, was high. Not only did the seizure lead the officers to rifle through the entire van while it was parked in Combs's driveway, it also deprived Combs and his family of a company car that was important to their livelihood. Considering these circumstances, I don't find the seizure reasonable.

Since the police didn't need the entire van as evidence, what explains the officers' decision to seize it? The testimony of Lieutenant Mount sheds some light on the decision. "It just so happened in this situation that **we started working another suspicion of whatever**," he stated, "we had leaving the scene." Tr. Vol. 2, p. 68 (emphasis added). Similarly, Officer Koontz testified that he decided to search the van "based on [the]

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[2] To be sure, Lieutenant Mount did testify that the police **could** seize the van because it was evidence of a crime. But when questioned as to what evidence the police hoped to obtain from the car, Lieutenant Mount merely referenced the pieces of the van that had been left at the scene of the accident.

[3] It bears noting that the basic leaving-the-scene-of-an-accident offense is a class-B misdemeanor. Ind. Code § 9-26-1-1.1(b) (2017). As such, the punishment cannot exceed a $1,000 fine and 180 days in jail. I.C. § 35-50-3-3.

[4] In *Cardwell v. Lewis*, the Supreme Court noted that "nothing from the interior of the car and no personal effects, which the Fourth Amendment traditionally has been deemed to protect, were searched or seized and introduced in evidence." 417 U.S. 583, 591 (1974). "With the 'search' limited to the examination of the tire on the wheel and the taking of paint scrapings from the exterior of the vehicle left in the public parking lot," the high Court "fail[ed] to comprehend what expectation of privacy was infringed." *Id.*

information" provided by a witness that Combs had tried to hide something within the van. Tr. Vol. 3, p. 36. That something, of course, turned out to be the black bag containing drugs which elevated Combs's criminal activity from a minor traffic misdemeanor to a felony. And, because Combs rescinded his consent to search the vehicle when police asked to open the black bag, the officers either had to seize the van as evidence of leaving the scene or get a search warrant. Because the latter option, according to Lieutenant Mount, would have been a "pain in the ass," the officers pursued the former option.[5] Id. at 169. Indeed, the officers didn't decide to seize the van until after Combs had rescinded his consent to search the van.[6]

Beyond the consequences for Combs, the Court's decision today has larger implications for police search-and-seizure practices—practices which, in my opinion, will likely lead to further government intrusion into private lives. Under the Court's view, for example, a police officer could, without a warrant, seize an entire car after stopping an unlicensed eighteen-year-old who took his parent's car on a joy ride as evidence of violating our motor-vehicle laws. *See* I.C. § 9-24-18-1(a) (prohibiting driving a motor vehicle without a license). After all, police could recover evidence potentially useful in solving the crime, including fingerprints and DNA evidence on the driver's side seat, steering wheel, and gearshift. At least in that situation, the evidence would be located inside the car and would require an evidence technician to collect. Here, by contrast, all of

[5] Ordinarily, such a degree of law-enforcement candor is both laudable and appreciated by a court when reviewing a police investigation. Here, unfortunately, I must conclude that the officer simply allowed his personal convenience to trump the requirements of the Constitution. Had the officers taken the time to apply for a search warrant, it seems clear to me that it would have been granted. After all, Combs failed two field sobriety tests and his breathalyzer test was negative for alcohol. And, later that same day, tests performed at the hospital confirmed that Combs was positive for opiates.

[6] While several courts have held that when "a seizure of items in plain view is supported by probable cause, an inquiring court will not look behind that justification," *United States v. Sanchez*, 612 F.3d 1, 6 (1st Cir. 2010) (citing cases), I fail to see how a court can ignore a clear desire to obtain evidence unrelated to the crime at issue when it examines the reasonableness of a seizure in light of the particular circumstances of the case. The statements made by the officers in this case aren't dispositive of the issue, but where police have a clear ulterior motive, it does no service to the administration of justice to turn a blind eye.

the damage was clearly visible on the exterior of the car. And the photographs taken to document this damage were the **only** physical evidence admitted at trial. In fact, there's no evidence at all that police investigated the van any further after they had seized it and found the illegal drugs. And after only two days, they returned the van to Combs's father.

II. The evidence obtained from the inventory search was inadmissible.

Because I would find that the seizure of the van was unconstitutional, I would also find that the evidence obtained during the inventory search should have been excluded as fruit of the poisonous tree. The exclusionary rule excludes from a criminal trial any evidence seized from the defendant in violation of his Fourth Amendment rights and any fruits of such evidence. *Alderman v. United States*, 394 U.S. 165, 171 (1969). "[W]hen an illegal search has come to light, [the State] has the burden of persuasion to show that its evidence is untainted." *Id.* at 183.

Here, the State didn't show that the discovery of the evidence fell under an exception to the exclusionary rule. And there is nothing to show that police derived the evidence from an independent source or that it was an inevitable discovery. *See Segura v. United States,* 468 U.S. 796, 805 (1984) (evidence obtained from an illegal search need not be excluded where it is also provided by an independent source); *Nix v. Williams,* 467 U.S. 431, 444 (1984) (evidence need not be excluded where its discovery was inevitable). Instead, the officers' discovery of the drugs and firearms was a direct result of the improper seizure of the van.

Finally, contrary to the Court's assertion, the inventory search was **not**, in fact, conducted in accordance with the Lebanon Police Department's Standard Operating Guidelines. Under those Guidelines, a vehicle may be towed if it "[i]s **needed** for evidence." Ex. Vol. 6, p. 5 (emphasis added). Even if the police had probable cause (which, admittedly, is a flexible concept) to believe the van would prove useful in solving the crime, any argument that it was "needed" for evidence strains credulity. In addition to photographic evidence of the van's damage, the police had multiple eyewitnesses who could identify the van by its distinctive markings. What's more, Combs himself admitted that he had an accident and left the scene. In my view, the van simply wasn't "needed" as evidence; rather,

the photographs and the admission from Combs were more than sufficient to convict him of leaving the scene of an accident.

Conclusion

The touchstone of the Fourth Amendment is reasonableness. Because I believe the seizure of Combs's van was unreasonable, and thus violated his Fourth Amendment rights, I would reverse his convictions for the three counts of possession of a narcotic drug and remand for further proceedings.