IN THE

Indiana Supreme Court

Supreme Court Case No. 20S-MI-289

State of Indiana,
Appellant (Plaintiff)

–v–

Tyson Timbs,
Appellee (Defendant)

Argued: February 4, 2021 | Decided: June 10, 2021

Appeal from the Grant Superior Court, No. 27D01-1308-MI-92

The Honorable Jeffrey D. Todd, Judge

On Direct Appeal

Opinion by Chief Justice Rush

Justices David and Goff concur.
Justice Slaughter concurs in the judgment with separate opinion.
Justice Massa dissents with separate opinion.

Rush, Chief Justice.

We chronicle and confront, for the third time, the State's quest to forfeit Tyson Timbs's now-famous white Land Rover. And, again, the same overarching question looms: would the forfeiture be constitutional?

Reminiscent of Captain Ahab's chase of the white whale Moby Dick,[1] this case has wound its way from the trial court all the way to the United States Supreme Court and back again. During the voyage, several points have come to light. First, the vehicle's forfeiture, due to its punitive nature, is subject to the Eighth Amendment's protection against excessive fines. Next, to stay within the limits of the Excessive Fines Clause, the forfeiture of Timbs's vehicle must meet two requirements: instrumentality and proportionality. And, finally, the forfeiture falls within the instrumentality limit because the vehicle was the actual means by which Timbs committed the underlying drug offense.

But, until now, the proportionality inquiry remained unresolved—that is, was the harshness of the Land Rover's forfeiture grossly disproportionate to the gravity of Timbs's dealing crime and his culpability for the vehicle's misuse? The State not only urges us to answer that question in the negative, but it also requests that we wholly abandon the proportionality framework from *State v. Timbs*, 134 N.E.3d 12, 35–39 (Ind. 2019). Today, we reject the State's request to overturn precedent, as there is no compelling reason to deviate from stare decisis and the law of the case; and we conclude that Timbs met his burden to show gross disproportionality, rendering the Land Rover's forfeiture unconstitutional.

Facts and Procedural History

In August 2013, the State filed a civil forfeiture complaint, alleging that Tyson Timbs had used his Land Rover to illegally purchase, possess, and

[1] Herman Melville, *Moby-Dick* 59 (Harrison Hayford & Hershel Parker eds., W.W. Norton & Co., Inc. 1967) (1851) ("[T]hat one most perilous and long voyage ended, only begins a second; and a second ended, only begins a third, and so on, for ever and for aye.").

deal narcotics. So began a legal saga—seven years and counting—to determine the constitutionality of forfeiting this vehicle.

After a hearing on the State's complaint, the trial court entered judgment for Timbs, concluding forfeiture of the Land Rover would be grossly disproportionate to his illegal conduct and so would violate the Eighth Amendment's Excessive Fines Clause. In a split opinion, the Court of Appeals affirmed. *State v. Timbs*, 62 N.E.3d 472, 473 (Ind. Ct. App. 2016).

This Court granted the State's transfer petition and reversed, holding the Excessive Fines Clause had yet to be incorporated against the states. *State v. Timbs* (*Timbs I*), 84 N.E.3d 1179, 1181–82 (Ind. 2017). We further held that the State had proven its entitlement to forfeit the Land Rover under Indiana law. *Id.* at 1184–85.

Timbs then successfully petitioned the Supreme Court of the United States for certiorari. The Court held that the Eighth Amendment's Excessive Fines Clause is an incorporated protection that applies to the States under the Fourteenth Amendment's Due Process Clause. *Timbs v. Indiana*, 139 S. Ct. 682, 687–91 (2019). So the Court vacated *Timbs I* and remanded the case. *Id.* at 691. In its opinion, however, the Supreme Court did not spell out **how** courts should determine whether an *in rem* fine is excessive. It left that task to us.

On remand, this Court held that the Excessive Fines Clause includes both instrumentality and proportionality limitations for use-based *in rem* fines like the forfeiture of Timbs's vehicle. *State v. Timbs* (*Timbs II*), 134 N.E.3d 12, 27 (Ind. 2019). And such fines are constitutional if two requirements are met: "(1) the property must be the actual means by which an underlying offense was committed; and (2) the harshness of the forfeiture penalty must not be grossly disproportional to the gravity of the offense and the claimant's culpability for the property's misuse." *Id.* at 27.

We decided that the Land Rover's forfeiture fell within the Excessive Fines Clause's instrumentality limit but remanded the case for the trial court to determine whether Timbs had overcome his burden to establish gross disproportionality. *Id.* at 39–40. This Court described the proportionality analysis as both factually intensive and dependent on the

totality of the circumstances—and distinct from the standard developed for the Cruel and Unusual Punishments Clause. *Id.* at 39. The State neither sought rehearing from this Court nor petitioned the Supreme Court of the United States for certiorari.

On remand, the trial court held another evidentiary hearing, issued fourteen pages of findings and conclusions, and determined that Timbs had shown gross disproportionality. The trial court's judgment meant that the relevant forfeiture statute, Indiana Code section 34-24-1-1(a)(1)(A), was unconstitutional as applied. The facts on which the trial court relied to render its decision are discussed in detail below.

The State subsequently filed this direct appeal, invoking this Court's mandatory and exclusive jurisdiction, as a statute was declared unconstitutional. *See* Ind. Appellate Rule 4(A)(1)(b).

Standard of Review

Timbs argues that the forfeiture statute is unconstitutional as applied to the facts of his case. The trial court agreed, determining that the forfeiture of his Land Rover—a use-based *in rem* fine—violated the Excessive Fines Clause.

An appellate court reviews the court's factual findings for clear error, Ind. Trial Rule 52(A), and its excessiveness decision de novo, *Timbs II*, 134 N.E.3d at 23. The statute is also presumed constitutional, with all doubts resolved in favor of its constitutionality. *Id.*

Discussion and Decision

The Eighth Amendment's Excessive Fines Clause limits the government's power to extract payment as punishment for an offense. U.S. Const. amend. VIII; *Austin v. United States*, 509 U.S. 602, 609–10 (1993). The Clause is a vital backstop for those instances where "the punishment is more criminal than the crime." *Timbs II*, 134 N.E.3d at 28 (quoting *United States v. 829 Calle de Madero*, 100 F.3d 734, 738 (10th Cir. 1996)).

In *Timbs II*, this Court held that analyzing challenges to *in rem* actions, or actions against property, can involve a dual inquiry under the Excessive Fines Clause. *Id.* at 27. We first look to whether the property was the "instrument" by which the crimes underlying the State's forfeiture case were committed. *Id.* at 28–31. If so, we next consider whether, under the totality of the circumstances, the punitive value of the *in rem* fine was "grossly disproportional" to the gravity of the underlying offenses and the owner's culpability for the property's criminal use. *Id.* at 35.

Here, there is no dispute that Timbs's Land Rover was an instrumentality of the crime, as it was the actual means by which his dealing offense was committed. *See id.* at 31. The parties disagree, however, on proportionality—specifically, whether Timbs overcame the high burden to show that forfeiture of the vehicle was grossly disproportionate to the gravity of the underlying offense and his culpability for the Land Rover's misuse. Timbs says he did; the State argues he did not.

And the State presents an additional, broader argument. Devoting nearly half its brief to challenging *Timbs II*, the State urges us to overturn our excessiveness framework in favor of an instrumentality-only test or, at a minimum, use the same gross-disproportionality standard courts have developed in Cruel and Unusual Punishments Clause cases.

As explained below, because the State presents no compelling reason to deviate from stare decisis and the law of the case, this Court rejects the invitation to overturn its recent precedent. And an independent, de novo review of the undisputed factual findings leads us to conclude that Timbs met his high burden to show gross disproportionality.

But to provide context for this decision, we begin with an overview of *Timbs II* and the reasons underlying its holdings.

I. *Timbs II* established the proportionality framework for use-based *in rem* fines.

Just over two years ago, the Supreme Court of the United States unanimously held that the Eighth Amendment's prohibition on excessive fines applies to the states. *Timbs*, 139 S. Ct. at 691. That decision, however, left open a critical question: how should a court determine whether a use-based *in rem* forfeiture is excessive? *See id*. On remand, this Court provided the answer. *Timbs II*, 134 N.E.3d at 21.

Then, as now, the parties disagreed on how to measure excessiveness. *See id.* at 24. The State urged the Court to adopt an instrumentality-only test for *in rem* fines—one that would simply look at whether the property was an instrument of the crime. *Id.* And if it was, then the forfeiture wouldn't run afoul of the Excessive Fines Clause. *Id.* Timbs, on the other hand, argued that the Clause includes not only an instrumentality limitation but also a proportionality one. *Id.* Ultimately, this Court agreed with Timbs. *Id.* at 27.

This Court explained that, to satisfy the Excessive Fines Clause's instrumentality test, the property must be the "actual means" by which the relevant crimes were committed. *Id.* at 30–31. And we concluded Timbs's Land Rover was the instrument of his predicate dealing offense. *Id.* at 31.

We then explained, in significant detail, why the excessiveness inquiry for use-based *in rem* fines also entails a proportionality analysis. *Id.* at 31–35. We evaluated other jurisdictions that have considered the issue, the text and history of the Excessive Fines Clause, the history of traditional *in rem* forfeitures, and relevant Supreme Court precedent. *Id.* at 26–27, 31–35. And like the vast majority of courts to address the question, we concluded that gross—not strict—disproportionality was the appropriate standard for assessing the excessiveness of *in rem* forfeitures. *Id.* at 35. Such a standard reflects two important principles about the relationship between an offense and the degree of punishment imposed by the *in rem* fine: that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature" and "any judicial determination

regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.* (quoting *United States v. Bajakajian*, 524 U.S. 321, 336 (1998)).

We next noted that the nature of *in rem* fines required the inquiry to focus on three major considerations: the harshness of the punishment, the severity of the offenses, and the claimant's culpability. *Id.* at 35–38. Specifically, we look to the totality of the circumstances and analyze whether the forfeiture's punitive value "is grossly disproportional to the gravity of the underlying offenses and the owner's culpability for the property's criminal use." *Id.* at 35. We described the inquiry as "fact intensive" and spelled out various nonexclusive factors courts could take into account when applying the standard. *Id.* at 35–38.

Regarding the culpability consideration, we suggested courts focus on "the claimant's blameworthiness for the property's use as an instrumentality of the underlying offenses." *Id.* at 37. Under the harshness-of-the-punishment consideration, a court could consider the property's role in the underlying offense; its use in other activities, criminal or lawful; the extent to which its forfeiture would remedy the harm caused; the property's market value; other sanctions imposed; and the effects the forfeiture will have on the claimant. *Id.* at 36. And when examining the severity of the underlying offenses, courts can look to the seriousness of the offense, considering statutory penalties; the seriousness of the specific crime committed compared to other variants of the offense, looking at sentences imposed; the harm caused by the crime committed; and the relationship of the offense to other criminal activity. *Id.* at 37.

After outlining the gross-disproportionality standard's three major considerations, along with the various factors that could fall under them, *Timbs II* explained why the Excessive Fines Clause's proportionality limit is distinct and independent from that of the Cruel and Unusual Punishments Clause. *Id.* at 38–39. In doing so, we relied on the structure and language of the Eighth Amendment, a fine's economic nature, the type of conduct a fine punishes, and U.S. Supreme Court precedent. *Id.*

But one question remained. Did the Land Rover's forfeiture fit within the Excessive Fines Clause's proportionality limit? Or, more specifically, was the harshness of the *in rem* fine grossly disproportionate to the gravity

of Timbs's underlying dealing offense and his culpability for the vehicle's corresponding criminal use?

Because the trial court did not have the benefit of that analytical framework, the record did not contain enough facts for us to answer that question. *Id.* at 39. We accordingly remanded the case to the trial court to determine whether Timbs had overcome his burden to establish gross disproportionality. *Id.*

II. The State presents no compelling grounds to overturn *Timbs II*.

Before addressing the State's challenge to the trial court's application of the *Timbs II* proportionality framework, we address its threshold argument: that *Timbs II* was decided incorrectly and should be overturned.

Specifically, the State asks us to abandon the proportionality framework from *Timbs II* in favor of an instrumentality-only test for *in rem* forfeitures. And it further argues that, should this Court choose to retain a gross-disproportionality standard, it should adopt the one that applies when determining whether there has been a violation of the Cruel and Unusual Punishments Clause of the Eighth Amendment.

For his part, Timbs contends that the State "recycles" the arguments this Court already rejected in *Timbs II*. According to Timbs, the State has failed to explain why this Court should depart from the principles of stare decisis and the law of the case to overturn its previous decision. We agree with Timbs.

Stare decisis is a "maxim of judicial restraint supported by compelling policy reasons of predictability." *Snyder v. King*, 958 N.E.2d 764, 776 (Ind. 2011). Under the doctrine, a court will overturn a rule established by precedent only when there are "urgent reasons and a clear manifestation of error." *Clifton v. McCammack*, 43 N.E.3d 213, 220 (Ind. 2015) (quoting *Snyder*, 958 N.E.2d at 776).

Then there's the similar, but distinct, concept of the law of the case. Under that doctrine, a court will not revisit issues already determined in a

previous appeal in the same case. *Wells Fargo Bank, N.A. v. Summers*, 974 N.E.2d 488, 502 (Ind. Ct. App. 2012), *trans. denied*. Rather, that previous decision "governs the case throughout all of its subsequent stages, as to all questions which were presented and decided, both directly and indirectly." *Maciaszek v. State*, 113 N.E.3d 788, 791 (Ind. Ct. App. 2018). Indiana applies this doctrine "in its strictest sense," though a court may reconsider a prior decision under "extraordinary circumstances." *Ind.-Ky. Elec. Corp. v. Save the Valley, Inc.*, 953 N.E.2d 511, 518 (Ind. Ct. App. 2011), *trans. denied.*

Thus, to deviate from stare decisis and the law of the case, the Court must have a compelling reason to do so. The State, however, has not provided one. Indeed, the State even acknowledged at oral argument that it cannot point to anything that should pull this Court away from these important, well-established principles; and so this Court will not revisit the gross-disproportionality framework set forth in *Timbs II*.

Ultimately, *Timbs II*'s adoption of the gross-disproportionality analysis was based on a number of reasons—signals from the U.S. Supreme Court that proportionality was a necessary piece of the excessiveness inquiry for *in rem* fines; the recognition that almost all courts have rejected the State's proposed instrumentality-only test;[2] the fact that modern *in rem* forfeitures are divorced from their historical roots; and the text and history of the Excessive Fines Clause. Nothing persuades us that those reasons now, a mere nineteen months after *Timbs II* was handed down, lack merit.

We now independently apply the test *Timbs II* developed.

[2] We recognized that while courts' excessiveness tests vary in structure, courts to address the issue have "almost uniformly" decided that the Excessive Fines Clause includes a proportionality inquiry. *Timbs II*, 134 N.E.3d at 26 (citing numerous cases). And it remains true that the only "instrumentality test" adopted by courts looks "beyond the relationship between the property and the offense," as that inquiry also considers the owner's role and culpability. *Id.* at 26–27 (citing *United States v. Chandler*, 36 F.3d 358, 365 (4th Cir. 1994)).

III. Our independent application of the *Timbs II* gross-disproportionality framework leads us to the same conclusion as the trial court.

On remand, the trial court held an evidentiary hearing so the parties could supplement the existing record. Three witnesses testified. Tyson Timbs described his journey through addiction, recovery, and reintegration, as well as the hardships created by the State's seizure of his vehicle. Jason Phillips provided expert testimony about the Land Rover's value on the date it was seized. And Christina Byers gave testimony as to the obstacles offenders face as they seek to reintegrate into society after being prosecuted and sentenced. The State neither called any witnesses nor presented any evidence.

The trial court subsequently issued a fourteen-page order with findings and conclusions, determining that Timbs had "by a significant margin" overcome his burden to establish gross disproportionality. The State disputes this determination. Though it doesn't challenge the court's factual findings, the State argues that the trial court misapplied the *Timbs II* framework and that each of the three major considerations—Timbs's culpability, the harshness of the punishment, and the severity of the offense—weighs in favor of proportionality. For his part, Timbs contends that the trial court "faithfully" applied the factually intensive, totality-of-the-circumstances standard from *Timbs II*.

After carefully and independently analyzing the unchallenged facts under the gross-disproportionality framework, we agree with the trial court: Timbs met the high burden of showing gross disproportionality.

A. The trial court issued findings on the events preceding the vehicle's forfeiture, Timbs's criminal proceedings, and the impact of the seizure.

The trial court's findings first detailed the circumstances that led to Timbs's arrest. The court noted that Timbs was addicted to opiates after being prescribed hydrocodone in 2007, leading him to buy drugs on the

street. In January 2013, Timbs received life insurance proceeds after his father passed, with which he purchased a Land Rover. Timbs spent the remainder of the proceeds—about $30,000—on heroin, and the majority of the miles Timbs put on the vehicle were from out-of-town trips to buy drugs. Later, an acquaintance contacted Timbs and asked if he would sell some heroin. Timbs agreed; and the acquaintance arranged for Timbs to meet the buyer, who was an undercover officer. The officer bought heroin from Timbs twice. Timbs drove the Land Rover to the first buy, selling two grams for $225; Timbs walked to the second buy and sold the officer another two grams for $160. While driving the vehicle to the third planned buy, police pulled Timbs over, arrested him, and seized the vehicle, which was worth at least $35,000 at the time.

The court's findings then focused on Timbs's criminal proceedings. The State charged Timbs with two B-felony counts of dealing in a controlled substance and one count of D-felony conspiracy to commit theft. Under an agreement, Timbs pleaded guilty to one dealing count and the conspiracy count. The court imposed the agreed-upon sentence: six years' imprisonment with one year on home detention and the remainder suspended to probation. Timbs was also assessed $1,203 in various costs and fees.

The trial court's findings next explained the impact of the State's seizure on Timbs and how Timbs has fared since. The court pointed out that at the time of his arrest, Timbs was unemployed and "broke," with the Land Rover as his only asset. Following his plea agreement, Timbs successfully completed his house arrest, avoided any probation violations, committed no crimes, participated in treatment programs, and assisted with drug task forces. Timbs has also held down several jobs. But being without his vehicle made it harder for Timbs to earn a living and reintegrate into society. His current position is a one-hour drive from his home; and during the years the State seized his Land Rover, he has had to borrow his aunt's car to get to work and fulfill other obligations, as there is no public transportation system operating from his home to work.

With these undisputed factual findings in hand, we now conduct our own analysis of the three major considerations of the *Timbs II* proportionality framework.

B. We independently evaluate Timbs's culpability, the harshness of the punishment, and the severity of the offense and reach the same conclusions as the trial court.

The trial court applied the undisputed facts to the *Timbs II* considerations and concluded that Timbs's culpability was high, the Land Rover's forfeiture was more punitive than remedial, and the severity of the underlying dealing offense was minimal.

The State takes issue with the court's treatment of the latter two considerations—the harshness of the punishment and the offense's severity—while neither party disagrees with the court's conclusion regarding Timbs's blameworthiness. Although this Court acknowledges several flaws in the trial court's order, our de novo proportionality analysis leads us to largely share the court's view on the challenged *Timbs II* considerations. Specifically, in light of the undisputed facts, we also conclude that, while Timbs was very blameworthy for the property's misuse, the *in rem* fine was overly harsh, and the dealing crime was of lesser severity.

Our own analysis begins with Timbs's blameworthiness. Though this is the last factor discussed in *Timbs II*, we address it first today, as both parties agree on how that consideration should be evaluated.

1. Timbs's culpability

Neither the State nor Timbs disputes the trial court's conclusion as to this first consideration. The court observed that Timbs's culpability is on the "high end of the spectrum" because he has always acknowledged that he used the Land Rover, which he owns, to commit the underlying offense of dealing.

As explained in *Timbs II*, "[t]he culpability consideration focuses on the claimant's blameworthiness for the property's use as an instrumentality of the underlying offenses." 134 N.E.3d at 37. On the low end of the culpability spectrum are claimants "entirely innocent of the property's misuse," *id.*, while on the high end are those "who used the property to commit the underlying offenses," *id.* at 38. Timbs falls into the latter category, and so we conclude that Timbs was highly culpable.

2. Harshness of the punishment

After addressing culpability, we move on to the *in rem* fine's harshness, taking into account the following factors from *Timbs II*: the Land Rover's role in the underlying offense; its use in other activities, criminal or lawful; the extent to which its forfeiture would remedy the harm caused; the vehicle's market value; other sanctions imposed on Timbs; and the effects the forfeiture will have on him. *Id.* at 36. The trial court initially pointed out that Timbs used the Land Rover to commit the underlying dealing offense and other unlawful activities, including his out-of-town drug purchases, which rendered the forfeiture less harsh. But the trial court determined that several other facts weighed in favor of finding the vehicle's forfeiture more punitive than remedial: the forfeiture didn't do anything to remedy the harm caused by a "victimless" crime, the vehicle's market value was significantly greater than the maximum fine for the underlying offense, other burdensome sanctions were also imposed, and the forfeited vehicle was the only asset of a destitute man.

The State contends the trial court's harshness analysis was incorrect. Specifically, the State argues that the forfeiture remedied the harm caused by stopping Timbs from using the car to buy and sell drugs; most of the miles on the Land Rover were related to illegal conduct; the value of the Land Rover at the time of seizure was not "extraordinarily high" when compared to Timbs's crimes; and the forfeiture didn't have a "grave" negative effect on Timbs because he had access to his aunt's vehicle for employment and treatment. Much of the State's argument, however, focuses on the trial court's conclusion that Timbs's crime was "victimless." To that end, the State contends that Timbs aggravated Indiana's serious

drug-trafficking problem and that "the trial court's reasoning implies that whenever an offense does not have an identifiable victim the Eighth Amendment forecloses as grossly disproportionate any sanction the State might impose."

For his part, Timbs asserts that the State mischaracterizes the trial court's harshness analysis. He argues that the trial court never implied that any sanction violates the Excessive Fines Clause whenever an offense doesn't have an identifiable victim. Rather, according to Timbs, the court acknowledged the seriousness of drug-related offenses but, in conducting its totality-of-the-circumstances analysis, simply recognized that Timbs's predicate crime didn't harm a specific victim. Timbs also points out that the Land Rover's market value of $35,000 was quite high; he was subject to other sanctions, such as house arrest, probation, and the payment of costs and fees; and the forfeiture had considerable negative effects on both him and his aunt, from whom he borrowed a car.

After weighing the factors that fall under the harshness consideration, this Court agrees with Timbs and the trial court: the forfeiture of the Land Rover was significantly more punitive than remedial. In explaining how we reach this conclusion, we also address some of the State's concerns regarding the trial court's harshness analysis.

First, the State is correct to contend that Timbs's crime was not "victimless." Courts have pointed out that distributing or possessing even small amounts of drugs threatens society. *See, e.g.*, *United States v. Green*, 532 F.3d 538, 549 (6th Cir. 2008) (noting that "[s]ociety as a whole is the victim when illegal drugs are being distributed in its communities"); *Taylor v. Lewis*, 460 F.3d 1093, 1099 (9th Cir. 2006) (discounting defendant's argument that possessing a small amount of drugs was a "victimless crime"). And we agree with those general statements. But, contrary to the State's claim, the trial court did not endorse a blanket rule that if a crime didn't have a discernible victim, then a forfeiture must be grossly disproportionate. Rather, the trial court's analysis focused on a fact that even the State's brief seems to acknowledge: Timbs's crime did "not involve specific injuries to specific victims." And such an analysis—focusing on the specific harms of specific acts—is in line with the Supreme

Court's reasoning in *United States v. Bajakajian*, 524 U.S. 321 (1998). In *Bajakajian*, the Supreme Court pointed out that currency-reporting crimes might generally include serious violations by "tax evaders, drug kingpins, or money launderers" but did not impute to the defendant the offenses of others and rather considered what specific harms his specific acts had caused. *Id.* at 338–39, 339 n.14; *see also Commonwealth v. 1997 Chevrolet*, 160 A.3d 153, 190–92 (Pa. 2017) (noting that for a proportionality analysis, "generic considerations of harm" are "largely unhelpful" because "all crimes have a negative impact in some general way to society").

We also acknowledge the State's argument that its seizure of the vehicle did not have a negative impact on Timbs since he had access to his aunt's car for employment and treatment purposes. But the trial court made the opposite factual finding—that the forfeiture disrupted Timbs's ability to maintain employment and seek addiction treatment. And the State never claims this particular finding is clearly erroneous because it lacks evidentiary support—nor could it, given the witnesses' testimony at the latest forfeiture hearing.[3]

And, contrary to the State's position, we conclude that the $35,000 market value of the vehicle and the other sanctions imposed on Timbs point to the punitive, rather than remedial, nature of the forfeiture. As *Timbs II* explained, it's appropriate to evaluate the market value of the forfeiture relative to the owner's economic means—because "taking away the same piece of property from a billionaire and from someone who owns nothing" do not reflect equal punishments. 134 N.E.3d at 36. And, here, taking away a $35,000 asset from someone who owned nothing else was significantly punitive. Likewise, imposing the forfeiture on top of other sanctions—sanctions that included six years of restricted liberty as

[3] This case is unique in that the trial court and the parties have the benefit of seeing how the forfeiture actually affected Timbs, given the span of several years between the seizure of the Land Rover and the entry of the judgment now being appealed. Under normal circumstances, however, when looking to the "effects the forfeiture will have on the claimant," *Timbs II*, 134 N.E.3d at 36, any post hoc observations or arguments will not be possible—rather, it will be a forward-looking inquiry as to how the claimant will fare should the forfeiture take place.

well as $1,200 in fees and costs—shows that the vehicle's seizure was not for remedial purposes.

Ultimately, our review of the relevant harshness factors leads us to the same conclusion reached by the trial court: the forfeiture of Timbs's Land Rover was considerably punitive. We acknowledge that the Land Rover's role in the underlying offense and its use in other criminal activities shows that, to some degree, the seizure was remedial. But the other factors—the extent to which the vehicle's forfeiture would remedy the harm caused; the Land Rover's market value; other sanctions imposed on Timbs; and the effects the forfeiture will have on him—reveal that the purpose of the use-based *in rem* forfeiture was to significantly punish Timbs.

3. Severity of the offense

After addressing the harshness of the punishment, we move on to the severity of the offense. And in evaluating that next consideration, the trial court assessed factors from *Timbs II*: the seriousness of the statutory offense, considering statutory penalties; the seriousness of the specific crime committed compared to other variants of the offense, taking into account any sentences imposed; the harm caused by the crime committed; and the relationship of the offense to other criminal activity. After examining those factors, the court concluded that the severity of Timbs's offense was minimal. The trial court acknowledged the predicate offense, B-felony dealing in a controlled substance, has a significant potential punishment. But the court decided other facts showed that Timbs's crime wasn't very serious: Timbs wasn't a drug "kingpin"; he received the minimum sentence; his crime didn't cause harm; and his other related criminal activity was "victimless."

The State argues that the trial court's severity-of-the-offense analysis was flawed. It points out that Timbs's drug-dealing offense, a Class B felony, carried a possible prison sentence of twenty years, along with a maximum fine of $10,000. And the State disputes that Timbs's offense was a less serious variant of the crime—rather, the State contends that Timbs was on a path to engaging in increasingly dangerous criminal activity to fund his addiction. The State stresses that Timbs, by buying drugs for

personal use, contributed more than $30,000 to Indiana's heroin trade and that, for these criminal activities, criminal sentencing laws could have imposed hundreds of thousands of dollars in fines and placed him in prison for the rest of his life.[4]

Timbs, on the other hand, believes the trial court's analysis of the severity-of-the-offense analysis was proper. He points out that the predicate offense for his forfeiture case is the act of selling two grams of heroin and acknowledges, at the time, the maximum sentence for the crime was twenty years' imprisonment and a $10,000 fine. Timbs argues, though, that those maximum punishments don't shed much light on the seriousness of his particular crime. He notes that, in his case, the State agreed that the minimum sentence was appropriate; and so, when compared to the maximum sentence available, the sentence actually imposed confirms that his misconduct was at the low end of the spectrum. And though Timbs does not dispute that he spent considerable money to feed his heroin addiction, he asserts the State overstates the scale of his criminal activity and the harm it caused. According to Timbs, if this Court adopts the State's position, the "sky's the limit" when it comes to taking the property of someone suffering from addiction.

After weighing the factors that fall under the severity-of-the-offense consideration, we agree with Timbs and the trial court: the severity of the underlying offense was minimal. Again, the Court does not endorse a view that Timbs's criminal activities were "victimless." Nor do we take a

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[4] The State explicitly states it does not challenge the trial court's findings. But in its reply brief, the State points to a "disputed factual issue" that "was not addressed by the trial court at all." According to the State, the evidence shows that at least one other person regularly accompanied Timbs on his trips and that this person also purchased heroin for personal use. Timbs, on the other hand, contends that the "record says nothing" about whether his companion also made heroin purchases on the trips.

Neither party disputes, nor could they, that the appropriate standard for reviewing the trial court's factual findings is clear error. Under that standard, we neither reweigh the evidence nor determine the credibility of witnesses. *Hughes v. City of Gary*, 741 N.E.2d 1168, 1172 (Ind. 2001). Here, the State essentially asks us to reweigh the evidence in pointing out that the court didn't make a particular factual finding on whether Timbs's traveling companion also made heroin purchases. Under the proper standard of review, we will not do so.

position that drug-dealing crimes are always of lesser severity. Rather, as *Timbs II* pointed out, "the sentence **actually imposed** may provide even more precise insight into the offense's severity, including whether the offender 'fit into the class of persons for whom the [criminal] statute was principally designed.'" 134 N.E.3d at 37 (alteration in original and emphasis added) (quoting *Bajakajian*, 524 U.S. at 338). And, here, the sentence Timbs received—one that the State agreed was appropriate—was six years' imprisonment with five years suspended to probation and one year executed on home detention. For a B-felony dealing offense, that is indeed the minimum sentence. *See* Ind. Code §§ 35-48-4-2(a)(1), -50-2-5 (2012). *Timbs II* explained that "the maximum statutory penalty for an offense suggests the appropriate sentence for those who commit the worst variants of the crime." 134 N.E.3d at 37. Thus, it follows that Timbs, in receiving the minimum sentence, committed a crime that was much less severe "relative to other potential violators," *Bajakajian*, 524 U.S. at 339 n.14.

Further, we acknowledge that Timbs spent much of his own money to feed his heroin addiction and that assessing criminal activity beyond the predicate offense is appropriate. But these actions were not, as the State claims, a "staggering volume of criminal conduct" that was "extremely serious." Addiction often involves many separate instances of criminal conduct, as individuals inevitably obtain illicit substances to feed their habit, sometimes over lengthy periods of time. According to the State, these personal struggles should automatically render any predicate offense on the severe end of the spectrum, which, in turn, would tip the scales toward finding an *in rem* forfeiture proportional. We cannot endorse this position. Of course, the property of those suffering from addiction is not always insulated from forfeiture if that property is used in a crime. But, by the same token, addiction is not a categorical means to inflate the seriousness of a predicate offense. Here, for example, Timbs's drug purchases did not amplify the severity of his later dealing crime. They rather explained why he agreed to sell a small amount of drugs to an undercover officer—to help feed his addiction.

Accordingly, our review of the severity-of-the-offense factors leads us to reach the same conclusion as the trial court: the severity of Timbs's

offense was minimal. We acknowledge that the potential penalties for the crime were considerable. But the remaining factors—the seriousness of Timbs's specific crime, for which he received the minimum possible sentence; the harm caused by dealing two grams of heroin to an undercover police officer; and the relationship of the dealing to Timbs's earlier actions in purchasing drugs to feed his addiction—reveal the minimal severity of Timbs's offense.

C. Upon weighing the considerations, we conclude that Timbs met his burden to show gross disproportionality.

After considering the major proportionality considerations—that is, the harshness of the punishment, the severity of the offense, and the claimant's culpability—the trial court determined that Timbs had shown gross disproportionality. Our independent weighing of the considerations yields the same result.

As explained above, even though Timbs's blameworthiness was high, the *in rem* forfeiture was highly punitive and thus overly harsh, and the severity of the crime underlying the forfeiture case was minimal. After weighing these factors, we conclude that, under the totality of the circumstances, the harshness of the Land Rover's forfeiture was grossly disproportionate to the gravity of the underlying dealing offense and his culpability for the vehicle's corresponding criminal use. In other words, Timbs met his burden.

To be sure, the Land Rover's forfeiture is not unconstitutional just because Timbs was poor. Or because he suffered from addiction. Or because he dealt drugs to an undercover officer and not someone who would use them. And it's not simply because the vehicle's value was three-and-a-half times the maximum fine for the underlying offense. Or because he received the minimum possible sentence for his crime and wasn't a sophisticated, experienced dealer. Or because the car, his only asset, was essential to him reintegrating into society to maintain employment and seek treatment. Rather, it's the confluence of **all** these facts that makes Timbs the unusual claimant who could overcome the high hurdle of showing gross disproportionality.

Importantly, the facts are undisputed. After the latest forfeiture hearing—during which the State neither called witnesses nor moved to admit evidence—the trial court entered factual findings that neither party claimed were clearly erroneous. Analyzing those facts under the totality-of-the-circumstances proportionality framework leads us to the gross-disproportionality conclusion we reach today.

And such a conclusion will not upend forfeitures in Indiana. The State contends that if this Court rules in Timbs's favor, it would essentially render unconstitutional "most forfeitures premised on drug-trafficking offenses." To the contrary, the *Timbs II* proportionality framework is factually intensive and dependent on the totality of the circumstances. Nothing compels a different drug dealing case, with different facts, to automatically be decided in favor of the claimant just because Timbs cleared the high threshold to show gross disproportionality. True, trial courts will ask the same questions for any proportionality challenge to a use-based *in rem* fine. How harsh is the forfeiture? How serious was the predicate offense? And how blameworthy was the owner for the property's involvement in the crime? The answers, however, will depend on the particular facts of the case.[5]

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[5] We acknowledge Justice Slaughter's concern that the Court's application of the *Timbs II*'s disproportionality framework reveals the "inevitable and incurable flaw with totality-of-the-circumstances tests," which allow trial court judges "to reverse engineer the desired outcomes." *Post*, at 1. But totality-of-the-circumstances tests have been—and continue to be—used in many contexts. *See, e.g.*, *Howes v. Fields*, 565 U.S. 499, 509 (2012) (perception of a suspect's freedom of movement during an interrogation); *Illinois v. Gates*, 462 U.S. 213, 230–35 (1983) (probable cause to issue a warrant based on an informant's tip); *Schneckloth v. Bustamonte*, 412 U.S. 218, 226–27 (1973) (voluntariness of a consent to search). We have tasked our skilled and experienced judges to apply these multi-factored tests faithfully; and there is no reason to believe that, in applying the *Timbs II* framework, judges will engage in what the concurrence describes as "eye-of-the-beholder jurisprudence." *Post*, at 2.

Here, in the context of civil forfeiture, where private property rights are at stake, careful balancing of many factors is not only demanded by our Constitution but also solicited by the U.S. Supreme Court. Indeed, although the U.S. Supreme Court in *Austin* declined to establish its own multi-factored test for determining whether a forfeiture is excessive, it encouraged lower courts to "consider what factors should inform such a decision." *Austin*, 509 U.S. at 622. And, as we recognized in *Timbs II*, the *Austin* Court emphasized that its decision did not limit a court from considering multiple factors when determining whether a forfeiture is excessive. *Id.* at 623 n.15; *Timbs II*, 134 N.E.3d at 25.

Conclusion

Applying the proportionality framework set forth in *Timbs II*, we conclude that Timbs met his high burden to show that the harshness of his Land Rover's forfeiture was grossly disproportionate to the gravity of the underlying dealing offense and his culpability for the vehicle's misuse. Accordingly, we affirm the trial court; and the seven-plus-year pursuit for the white Land Rover comes to an end.

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

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Slaughter, J., concurring in the judgment.

The excessiveness test we announced in *State v. Timbs*, 134 N.E.3d 12 (Ind. 2019), and apply today has two dimensions: instrumentality and proportionality. See *id.* at 28. Instrumentality is not at issue here because Timbs acknowledges using the forfeited vehicle to traffic heroin. But proportionality is. I dissented in *Timbs* because the Eighth Amendment does not—either as written or as interpreted by the Supreme Court of the United States—require proportionality as part of the excessiveness inquiry for *in rem* forfeitures. *Id*. at 40–41 (Slaughter, J., dissenting). But my view did not prevail, and our Court's proportionality requirement is the law of this case. Thus, I accept here (albeit reluctantly) our holding that forfeiting a criminal instrumentality is excessive if grossly disproportionate to the underlying offense.

I concur in today's judgment because the Court's application of our newly minted test is at least plausible and defensible. It is not, to be sure, the only permissible application of our test. And I am not even sure it is the best application. But by crafting a test that relies so heavily on a judge's subjective sensibilities, the Court has removed the inquiry almost entirely from a judge's core area of expertise—objective analysis—and placed it instead where judges have no special insight: where only highly subjective, value-laden judgments prevail. By doing so, we have created a test largely insulated from principled debate and review.

Though I concur in the Court's judgment, I write separately to highlight my deep concerns with what our excessiveness test means and how lower courts will apply it in future cases. In practice, our test is likely so manipulable that future applications to the same or similar facts will yield different legal conclusions from case to case. It is hardly surprising that some will assign varying weights to the relevant factors and subfactors, thus balancing the scales differently. That is the nature of the beast—malleable contextual standards often produce variable results, an inevitable and incurable flaw with totality-of-the-circumstances tests. See generally Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989). Viewed charitably, these tests reflect the reality that individual judges have different values and apply their values differently

to reach differing legal results. Viewed cynically, these tests allow judges to reverse engineer the desired outcomes.

As discussed below, variable legal results are no less likely where, as here, the facts are uncontested, and the only issue is their legal consequence. When different judges view agreed facts through the refracting lens of a multifactor-totality test, they seldom reach the same legal outcome—a regrettable byproduct of what I described previously as an "'eye-of-the-beholder' jurisprudence". *Timbs*, 134 N.E.3d at 40 (Slaughter, J., dissenting). The lack of uniformity and resulting uncertainty arising from such factor-dependent standards are hard to square with the rule of law. Our test's uncertain application will leave litigants with little notice, trial courts with little guidance, and appellate courts with little restraint when applying our test in future cases.

* * *

Under *Timbs*, we ask not only whether forfeited property was the instrumentality of a crime but, relevant here, whether the forfeiture is grossly disproportionate to the gravity of the offenses and the claimant's culpability. *Id.* at 35 (majority opinion). As we said in *Timbs*, the gross-disproportionality prong of our excessiveness inquiry turns on three factors:

- the culpability of the claimant for misusing the forfeited property,
- the harshness of the forfeiture, and
- the gravity of the claimant's underlying offenses.

Id. at 35–38. For a forfeiture to withstand an excessiveness challenge, "the harshness of the forfeiture penalty must not be grossly disproportional to the gravity of the offense and the claimant's culpability for the property's misuse." *Id*. at 27. This inquiry is "fact intensive and depends on the totality of the circumstances". *Id*. at 35–36.

The first proportionality factor is culpability, which asks whether Timbs is to blame for the misuse of his vehicle in connection with the underlying criminal offenses. The parties and the Court all agree that Timbs was "highly culpable" on this record. *Ante*, at 13. But unlike this

factor, the remaining two factors—harshness of the forfeiture and gravity of the offenses—do not point to just one obvious legal outcome.

A

The first disputed excessiveness factor is the forfeiture's harshness, which in turn depends on at least six subfactors:

- the extent to which forfeiture of the property would remedy the harm caused,
- the property's role in the underlying offenses,
- the property's role in other activities,
- the property's market value,
- other sanctions imposed,
- the forfeiture's effects.

Timbs, 134 N.E.3d at 36. Applying these subfactors, the Court holds that forfeiture of the vehicle was "considerably punitive" and that the purpose of the forfeiture was to "significantly punish" Timbs. *Ante*, at 16.

Although the Court's application is defensible, others would have been permissible. As the State urged, another valid application would have been that the forfeiture of Timbs's vehicle was overwhelmingly remedial and did not significantly punish him in purpose or effect. The "harshness" section of today's opinion focuses on the "specific harms of specific acts". *Ante*, at 14. But one could take a broader view of harm to say that forfeiture of the vehicle had a substantial remedial effect by depriving Timbs of the instrumentality he used overwhelmingly for criminal activity. It was the vehicle with which he committed the underlying felony offenses of dealing heroin and conspiring to commit theft. And it was what he used to make dozens of lengthy trips to buy heroin to feed his drug habit. Indeed, his recurring trips to meet his heroin supplier "accounted for most of the 16,000 miles Timbs put on the vehicle over four months." *Timbs*, 134 N.E.3d at 21. On this record, another court could reasonably hold that the remedial effect of this subfactor alone so dominates the others as to establish that the vehicle's forfeiture was substantially remedial in nature and not unduly harsh.

Likewise, another court might decline to find that forfeiting the vehicle was "considerably punitive". *Ante*, at 16. Although the vehicle was Timbs's only appreciable asset with a market value of approximately $35,000, *ante*, at 14, its value is not exceptionally high. And this is particularly true when comparing its market value to the "value" of Timbs's wrongdoing—not just the two felonies for which he was convicted, but the significant other (uncharged) criminal activity Timbs committed with the vehicle. In just four months' time, Timbs poured more than $30,000 into Indiana's heroin trade. *Timbs*, 134 N.E.3d at 21. After committing $30,000 of "wrongdoing", the State seized the $35,000 vehicle that was the instrumentality of his offenses. Given the near parity of these sums—the extent of Timbs's criminal activity versus the value of his vehicle—another court might reasonably conclude that forfeiting this instrumentality was neither harsh nor disproportionate at all, much less grossly so.

The same is true of the Court's conclusion that the forfeiture's effects on Timbs were harsh. The trial court found that forfeiture of his vehicle made it "harder" for Timbs to keep a job and "more difficult" for him to attend drug treatment. All of this may be true, but another court might observe that they did not keep Timbs from holding down several jobs since his arrest or from participating in various treatment programs. Even without his own vehicle, Timbs has had access to his aunt's car to "get to work" and to fulfill his "other obligations." The fact that getting by without his own vehicle has been more challenging for Timbs does not mean another court would necessarily conclude that his higher burden was insurmountable, or that forfeiting the vehicle was so harsh as to render it, in the Court's words, "considerably punitive." *Ante*, at 16.

Thus, although I find the Court's analysis of the harshness factor defensible, I am compelled to recognize that we (or a lower court) could have reached the opposite conclusion on this record.

B

The other disputed excessiveness factor is the gravity or severity of the offenses for which Timbs used the vehicle. The Court holds that Timbs's predicate "offense" (singular) was of "minimal severity". *Ante*, at 19. Here,

the State conceded that Timbs's dealing offense should receive the lowest possible sentence. But a court could also view his multiple "offenses" (plural) as relevant to the severity analysis—not just the two felonies for which Timbs was convicted but also the uncharged offenses Timbs used his vehicle to commit over his four-month, nearly 16,000-mile "crime spree". As we held in *Timbs*, the severity analysis includes "the relationship of the offense to other criminal activity." 134 N.E.3d at 37. And as the Court acknowledges today, "assessing criminal activity beyond the predicate offense is appropriate." *Ante*, at 18. Under these benchmarks, a court might reasonably view Timbs's "other criminal activity" as both considerable and serious.

Trafficking in a schedule I controlled substance is a serious offense in Indiana, a Class B felony. Ind. Code § 35-48-4-2(a)(1) (2012). Such substances, which include heroin and other opioids, have a high potential for abuse, and the opioid crisis has hit many states, including Indiana, especially hard. See generally Ind. State Dep't of Health, Drug Overdose Epidemic in Indiana: Behind the Numbers (2019). Opioids have imposed enormous health, safety, and economic costs. Another court might reasonably conclude that Timbs's trafficking offense is no less serious because of the mere fortuity that he sold heroin to an undercover agent rather than to a readily discernible victim. That his offense "didn't harm a specific victim", *ante*, at 14, does not necessarily diminish its gravity or deleterious effect on society generally.

The Court downplays the vast amount of Timbs's illicit activity by observing that he was simply an addict who sold heroin "to help feed his addiction": "Timbs's drug purchases did not amplify the severity of his later dealing crime. They rather explained why he agreed to sell a small amount of drugs to an undercover officer—to help feed his addition." *Ante*, at 18. That may be true, but our test does not require downplaying such facts. Another court might reasonably conclude that the evolution of Timbs's criminal activity—from using heroin to peddling it—does not diminish the severity of his criminality. The same is true of Timbs's light sentence. His dozens of (uncharged) drug-possession offenses cannot figure into his criminal sentence, but they can be highly relevant to the

severity prong of our excessiveness inquiry—depending on the viewpoint of who applies the test.

In other words, another court facing a forfeiture challenge on the same facts might conclude that Timbs's conduct was highly severe, thus reaching a conclusion opposite of today's.

* * *

I am all for revisiting our test in *Timbs*, 134 N.E.3d 12, at the appropriate time, unless the Supreme Court beats us to the punch. For now, however, I accept that our holding in *Timbs* is the law of this case and agree that the Court's application of our multifactor balancing test is defensible. While I likely would have weighed these factors differently than the Court, the arbitrary nature of our test means it is not susceptible to principled, bright-line distinctions—any more than are disputes among sports fans armed with reams of statistical data over which athlete is best (or better than another) at his position, on his team, of all time. Like agreed facts, raw statistics may be a given, but what those data show and what conclusions they drive are in the eye of the beholder.

For example, Cubs and Cardinals fans likely have their own views of whether Greg Maddux or Bob Gibson was the better pitcher. Gibson was more dominant and threw harder. Maddux threw with more finesse, painting the corners with off-speed pitches. Maddux has 355 career wins to Gibson's 251, but Maddux played six more seasons. Maddux has 3,371 career strikeouts to Gibson's 3,117. But Gibson has the lower ERA (earned run average)—2.91 versus Maddux's 3.16. Compare Bob Gibson, https://www.mlb.com/player/bob-gibson-114756 [https://perma.cc/5HWA-6VWZ], with Greg Maddux, https://www.mlb.com/player/greg-maddux-118120 [https://perma.cc/36JL-CMAF]. Which athlete prevails in such "debates" is the source of endless back-and-forth among baseball fans in local watering holes.

In contrast, the legal debate before us is not for fun or sport. It involves the serious business of pronouncing what the law is—what it permits, what it requires, what it forbids. The law we interpret for the public we serve demands more than our subjective "totality" test can sustain.

For these reasons, I concur in the Court's judgment but do not join its opinion.

Massa, J., dissenting.

The Court offers a compelling case for letting the beleaguered Tyson Timbs keep his Land Rover after all these years. And the opinion, much to its credit, goes the extra mile in its concluding paragraphs to note and predict that Timbs will be the rare heroin dealer able to show gross disproportionality when his car is forfeited. Still, I respectfully dissent.

The forfeiture here was indeed harsh, perhaps even mildly disproportionate, given all the facts in mitigation. But I part ways with the Court's holding that it was grossly so. Such a conclusion can only be sustained by finding the severity of the underlying felony to be "minimal," as the Court holds today. I am skeptical that dealing in heroin can ever be a crime of minimal severity. No narcotic has left a larger scar on our state and region in recent years, whether overly prescribed or purchased illicitly on the street.[1]

Nor can I join the opinion's characterization of the tenacity of three different elected attorneys general as being akin to Ahab's monomaniacal pursuit of Moby Dick. The analogy is emotive and appealing but takes no notice of the State's motivation to vindicate a larger constitutional principle. Much of the State's briefing urges a reconsideration of our holding in *State v. Timbs* (*Timbs II*), 134 N.E.3d 12, 27 (Ind. 2019), adopting a proportionality rather than instrumentality test when applying the Eighth Amendment to *in rem* forfeitures. The Supreme Court of the United

[1] Heroin, along with prescription and synthetic opioids, ushered in a national crisis. Ctrs. for Disease Control and Prevention, *Understanding the Epidemic*, https://www.cdc.gov/drugoverdose/epidemic/index.html (last reviewed Mar. 17, 2021), archived at https://perma.cc/D8HM-BE7Y. In addition to causing more than 500,000 deaths since 1999, *see id.*, these opioids have derailed the lives of countless addicts and gutted communities, *see* Sam Quinones, *Dreamland: The True Tale of America's Opiate Epidemic* 5–9 (2015).

States has never answered that precise question;[2] perhaps now it will have another opportunity to paint a brighter line, thanks to the State's persistent advocacy.

[2] The Court first held in *Austin v. United States*, 509 U.S. 602, 604 (1993), that the Excessive Fines Clause applies to *in rem* forfeitures. Then in *United States v. Bajakajian*, 524 U.S. 321, 333–34 (1998), it adopted a proportionality test for criminal *in personam* forfeitures. But it has never formally adopted a proportionality test for *in rem* forfeitures. *See Austin*, 509 U.S. at 627–28 (Scalia, J., concurring in part and in the judgment). Only lower courts have adopted it, as we did in *State v. Timbs* (*Timbs II*), 134 N.E.3d 12, 27 (Ind. 2019).