In the
Indiana Supreme Court

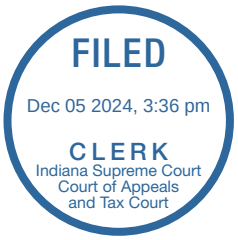
Brione Donta Jackson,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
22A-CR-02524

Trial Court Case No.
29D03-2203-F4-1271



Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 12/5/2024.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Goff, JJ., concur.
Rush, C.J., dissents from the denial of transfer with separate opinion in which Molter, J., joins.

Rush, Chief Justice, dissenting.

Article 1, Section 11 of the Indiana Constitution protects Hoosiers against unreasonable searches by law enforcement. When analyzing claims under this provision, the State has the burden of showing law enforcement's conduct was reasonable based on the totality of the circumstances. *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). This case presents an issue of first impression, implicating the reasonableness of an officer conducting a warrantless search of a car's locked trunk based only on the smell of burnt marijuana coming from the passenger compartment.

The Court's decision today avoids addressing this important issue, leaves standing an opinion that misstates the record, and fails to protect one of our citizens' constitutional rights. To fully comprehend the detrimental impact that denying transfer has on Indiana's search-and-seizure jurisprudence, it's important to know the facts underlying Brione Jackson's motion to suppress evidence seized from his trunk.

In March 2022, Jackson was staying with his girlfriend at a hotel in Carmel, Indiana. Around 2:40 a.m. on March 1, he was sitting in the driver's seat of his four-door sedan, meditating, and watching spiritual videos on his phone. A police officer patrolling the area noticed Jackson, stopped in the parking lot, and conducted "an investigative stop." Jackson, with his hotel key on his lap, opened the door to speak with the officer. At that point, the officer smelled "burnt marijuana emanating from the interior of the vehicle." The officer told Jackson he could "smell a little bit of weed" and then stated, "I don't care about that though." Jackson told him there wasn't any marijuana in the car but acknowledged there had been "probably like a week ago." Based on the odor, the officer called for backup.

Once a sergeant arrived, the officer made Jackson exit the car, placed him in handcuffs, and moved him to the back seat of a squad car. The officer then returned to Jackson's car and thoroughly searched the driver-side area, the passenger areas, and the interior storage compartments. After finding "[n]othing of a criminal nature," he immediately removed the keys from the ignition and opened the trunk. He rummaged through a backpack and mesh bag before lifting a large wooden box where he found

a handgun. After finding the gun, the sergeant told the officer that Jackson had been "banging on the windows" and was "real nervous." About twenty minutes after that, the officer first learned that Jackson had a carjacking conviction, which prohibited him from possessing a firearm. Later, while still in the parking lot, the officer applied for, obtained, and executed a search warrant to collect DNA from inside Jackson's cheek.

Jackson was ultimately charged with Level 4 felony unlawful possession of a firearm by a serious violent felon. Before trial, he moved to suppress the handgun seized from his trunk, arguing in part that the warrantless search violated his rights under Article 1, Section 11. The trial court denied that motion, and a panel of our Court of Appeals affirmed on interlocutory appeal. *Jackson v. State*, No. 22A-CR-2524, at *1 (Ind. Ct. App. Oct. 4, 2023) (mem.).

A review of the panel's decision establishes that transfer is warranted for at least two reasons. In finding the trunk search reasonable, the panel relied heavily on Jackson's purported "change of demeanor." *Id.* at *4–5. The body camera footage, however, unequivocally shows that the sergeant who witnessed this change of demeanor told the searching officer about it only after he had finished searching the trunk.[1] For this reason alone, transfer should be granted. *See* Ind. Appellate Rule 57(H)(6). Setting aside this flawed reliance, the panel effectively held that it is reasonable for law enforcement to conduct a warrantless search of a car's trunk based only on the smell of burnt marijuana coming from the passenger compartment. *Jackson*, No. 22A-CR-2524 at *5. That holding resolves an important question of law under Article 1, Section 11 that has

[1] Though the State did not raise, and the panel did not address, the collective-knowledge doctrine, it would not apply here. The sergeant was not standing near the car and did not assist in the search in any way. Thus, his knowledge cannot be imputed to the searching officer. *See, e.g.*, *State v. M.J.M.*, 837 N.E.2d 223, 226 (Ind. Ct. App. 2005) (recognizing that "collective knowledge cannot be relied upon after the fact"), *trans. denied*; *United States v. Ledford*, 218 F.3d 684, 689 (7th Cir. 2000) (noting that when one officer alone conducts a search, their knowledge is "the sole relevant subject of inquiry").

not been, but should be, decided by this Court. *See* App. R. 57(H)(4).[2] And, for reasons articulated below, I would grant transfer and hold that the warrantless search of Jackson's trunk violated his constitutional rights.

A search or seizure violates Article 1, Section 11 unless the State can "show that the challenged police action was reasonable based on the totality of the circumstances." *Hardin*, 148 N.E.3d at 942. In determining whether the State has met this burden, we "consider each case on its own facts and construe the constitutional provision liberally so as to guarantee the rights of people against unreasonable searches and seizures." *Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006). By examining each case on its own facts, we strive to balance competing interests—protecting Hoosiers from "excessive intrusions by the State into their privacy" and supporting the "State's ability to provide 'safety, security, and protection from crime.'" *Hardin*, 148 N.E.3d at 942–43 (quoting *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006)).

To balance these interests and determine whether law enforcement's conduct was reasonable, we generally weigh three factors: (1) "the degree

[2] Jackson also moved to suppress the evidence under the Fourth Amendment. In affirming the trial court's decision on those grounds, the panel decided another issue of first impression in effectively holding that the smell of burnt marijuana coming from a car's passenger compartment gives law enforcement probable cause to conduct a warrantless search of the trunk. *Jackson*, No. 22A-CR-2524 at *3–5. Until today, the only other court to explicitly hold the same is Maryland's intermediate appellate court. *Wilson v. State*, 921 A.2d 881, 892–93 (Md. Ct. Spec. App. 2007). Every other jurisdiction to address this issue has found probable cause when there is evidence of suspicious activity related to the trunk or corroborating evidence of contraband found either in the passenger compartment or on an occupant. *See, e.g.*, *United States v. Loucks*, 806 F.2d 208, 209–11 (10th Cir. 1986); *United States v. Caves*, 890 F.2d 87, 89, 91 (8th Cir. 1989); *United States v. Mans*, 999 F.2d 966, 969 (6th Cir. 1993); *United States v. Turner*, 119 F.3d 18, 20–21 (D.C. Cir. 1997); *United States v. Carter*, 300 F.3d 415, 422 (4th Cir. 2002); *United States v. Kizart*, 967 F.3d 693, 696–97 (7th Cir. 2020); *State v. Ireland*, 706 A.2d 597, 601 (Me. 1998); *State v. Longo*, 608 N.W.2d 471, 474 (Iowa 2000); *State v. Betz*, 815 So. 2d 627, 633 (Fla. 2002); *Harrison v. State*, 7 S.W.3d 309, 311 (Tex. Ct. App. 1999). In line with that reasoning, at least four jurisdictions have held that law enforcement lacked probable cause to search a car's trunk based only on the smell of burnt marijuana in the passenger compartment. *United States v. Nielsen*, 9 F.3d 1487, 1491 (10th Cir. 1993); *State v. Farris*, 849 N.E.2d 985, 996 (Ohio 2006); *Commonwealth v. Garden*, 883 N.E.2d 905, 913 (Mass. 2008), *superseded by statute on other grounds as recognized in Commonwealth v. Long*, 128 N.E.3d 593, 599–600 (Mass. 2019); *State v. Schmadeka*, 38 P.3d 633, 638 (Idaho Ct. App. 2001).

of concern, suspicion, or knowledge that a violation has occurred"; (2) "the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities"; and (3) "the extent of law enforcement needs." *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). In conducting this analysis, "we consider the full context in which the search or seizure occurs," meaning "[w]e examine, at different points in our analysis, the perspectives of both the officer and the person subjected to the search or seizure." *Hardin*, 148 N.E.3d at 943.

Here, an analysis of the three factors establishes that the State has not shown the officer's conduct was reasonable.

I. The degree of concern, suspicion, or knowledge that a violation occurred was low when the officer searched the trunk.

When evaluating law enforcement's degree of suspicion, we consider their "assumptions, suspicions, or beliefs based on the information available to them at the time." *Duran v. State*, 930 N.E.2d 10, 18 (Ind. 2010). The State argues that this factor supports finding the search reasonable because the odor of burnt marijuana gave the officer probable cause to search Jackson's car, including the locked trunk. I disagree, as this argument overlooks the full context in which the search occurred.

When the officer conducted the investigatory stop, there was no degree of concern, suspicion, or knowledge that a violation had occurred. Jackson was simply sitting in his parked car in a hotel parking lot, where he had been staying with his girlfriend, meditating and watching spiritual videos on his phone. Jackson's car was backed into the parking spot, which "drew" the officer's "attention," but so too were each of the other cars parked on the same side of the lot. Additionally, this parking lot was not in a high-crime area. Though the officer testified that the Carmel Police Department had "a significant history of investigating criminal activities" in the lot, the trial court found the officer "was unable to substantiate the basis of his opinion on that issue." To that point, Jackson produced evidence that the department had recorded only one incident at the

location in the last five years. But apparently because Jackson "looked like a deer in headlights" when the officer drove through the parking lot—which is reasonable under these circumstances—the officer conducted an investigatory stop.

Yet once Jackson opened his door and the officer smelled burnt marijuana, he had a higher degree of suspicion that a violation had occurred—that Jackson was smoking marijuana. Indeed, the smell of burnt marijuana coming from a car permits a trained officer to search its "open interior." *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). But that degree of suspicion dissipated after the officer thoroughly searched and found nothing incriminating in the car's driver-side area, passenger areas, or interior storage compartments. At that point, as the trial court found, the officer had "no reason to believe that [Jackson had] done anything illegal or that there [was] any illegal substance in the vehicle since the area from which the smell was emanating yielded no contraband." As the court also found, people don't "normally smoke marijuana in their trunk" nor do they "drive around with burning marijuana in their trunks." These factual findings, which the State does not challenge, all establish that the degree of suspicion was low when the officer conducted the warrantless search of Jackson's trunk.

For these reasons, the first factor supports finding the officer's conduct unreasonable. The same is true for the second factor.

II. The degree of intrusion into Jackson's physical movements and privacy was high.

We examine the degree-of-intrusion factor from Jackson's "point of view," considering "the intrusion into both" his "physical movements" and "privacy." *Hardin*, 148 N.E.3d at 944. The State acknowledges that searching Jackson's car imposed "a degree of intrusion into his ordinary activities" but maintains "the degree of these intrusions was low." I disagree. Despite not being under arrest, Jackson's physical movements were entirely restricted by being handcuffed and placed in a squad car.

And the officer rummaged through the trunk of Jackson's car after finding nothing incriminating in the passenger compartment.

The State asserts that it was reasonable to handcuff and detain Jackson during the search "because officers knew he had a prior conviction for carjacking, a violent offense." This is not true based on the record. The body camera footage indisputably shows that, about ten minutes after completing the search, the officer told his sergeant he was "still trying to determine" whether Jackson had a conviction that qualified him as a serious violent felon. And nearly ten minutes after that, the officer was still trying to make that determination when he first mentioned the carjacking conviction. Putting aside the State's troubling mischaracterization, Jackson cooperated "with the [o]fficer at all times," including when he was handcuffed, "detained for investigation," and placed in the back seat of a squad car. From that point on, Jackson's physical movement was entirely restricted.

Moreover, considering all the attendant circumstances, the intrusion into Jackson's privacy was significant. Though it's true that "privacy interests in vehicles do not render them beyond the reach of reasonable police activity," we've recognized that "Hoosiers regard vehicles as private areas not subject to random police rummaging." *Id.* at 945. To that end, we have found that the degree-of-intrusion factor weighed against the State when law enforcement conducted "a visual inspection of the interior of the vehicle" at a time when the defendant was under arrest. *Id.* at 946. The degree of intrusion here was considerably higher. While Jackson sat handcuffed in the back of a squad car, the officer thoroughly searched his car's interior and found nothing incriminating. And the officer then removed the key from the ignition, opened the trunk, and rummaged through it based only on detecting the odor of burnt marijuana in the passenger compartment.

Ultimately, from Jackson's point of view, the search of his trunk resulted in a significant degree of intrusion. And so, this factor also supports finding the officer's conduct unreasonable. The third factor does as well.

III. The extent of law enforcement's needs was low when the officer searched the trunk.

When evaluating the extent of law enforcement needs, we "look to the needs of the officers to act in the particular way and at the particular time they did." *Id.* at 947. The State argues law enforcement's needs were high because the officer smelled burnt marijuana and "had a compelling need to further investigate Jackson's car for narcotics because drugs are highly fungible, a vehicle is inherently mobile, and the evidence needed to be secured." I disagree, as nothing in this record supports a compelling need to conduct a warrantless search of Jackson's trunk.

Though law enforcement has a strong need to investigate drug offenses, this need can be "tempered by the minor nature of the offense" being investigated. *Nance v. State*, 216 N.E.3d 464, 484 (Ind. Ct. App. 2023); *cf. Brinegar v. United States*, 338 U.S. 160, 183 (1949) (Jackson, J., dissenting) (explaining courts should consider the "gravity of the offense" and that while a warrantless search of a car for a kidnapped child may be reasonable, the same warrantless search may be unreasonable if it is merely "to salvage a few bottles of bourbon and catch a bootlegger"). The officer here was investigating only marijuana possession, which, without enhancing circumstances, is "one of the more minor offenses in the Indiana criminal code." *Nance*, 216 N.E.3d at 484 (citing Ind. Code § 35-48-4-11(a)). And the smell of burnt marijuana, which "might linger in a vehicle for a period of time," doesn't "necessarily indicate illegal activity by a current occupant." *Edmond v. State*, 951 N.E.2d 585, 591 (Ind. Ct. App. 2011). The officer here recognized as much, confirming he had no way of assessing how recently any marijuana might have been in the car. And this lingering odor is likely to become more prevalent in cars passing through Indiana, as each of our surrounding states has now legalized marijuana to some extent.

Moreover, once the officer found no marijuana or other contraband in the passenger compartment, his decision to immediately search Jackson's trunk served no compelling law-enforcement need. There was no evidence that searching the trunk would help protect the community from drugs or that Jackson presented any threat. He fully cooperated with law

enforcement from the moment the officer approached his car, and he was calm throughout the encounter. Additionally, because Jackson was handcuffed in the back seat of a squad car, he could not drive away with any evidence while the officer sought a warrant to search the trunk. *Cf. Myers v. State*, 839 N.E.2d 1146, 1154 (Ind. 2005) (recognizing law enforcement's need to search a vehicle that "could be driven away by the defendant who was present at the time and not under arrest"). In fact, after searching the trunk, the officer applied for, obtained, and executed a search warrant on site to collect DNA from inside Jackson's cheek. These circumstances belie any pressing need to search Jackson's trunk for marijuana without first seeking a warrant.

All in all, because each factor supports finding the officer's conduct unreasonable based on the totality of the circumstances, the warrantless search of Jackson's trunk violated his rights under Article 1, Section 11. By denying transfer, the Court leaves standing a Court of Appeals decision that both misstates the record and decides important issues of first impression that we should decide. But what perhaps troubles me most is that the Court not only fails to protect Brione Jackson's constitutional rights but also waters down Hoosiers' protections against overly intrusive police searches. *Cf. Brinegar*, 338 U.S. at 182 (Jackson, J., dissenting) ("[W]e must remember that the authority which we concede to conduct searches and seizures without warrant may be exercised by the most unfit and ruthless officers as well as by the fit and responsible, and resorted to in case of petty misdemeanors as well as in the case of the gravest felonies."). When confronted with a record, such as the one before us, that shows unreasonable conduct by a police officer based on the totality of the circumstances, we must illuminate and enforce Section 11's protections to ensure their continued vitality for all Hoosiers. Because today's decision does the exact opposite, I dissent.

Molter, J., joins.