

**IN THE
INDIANA COURT OF APPEALS**

CAUSE NO. 22A-CR-02524

BRIONE JACKSON)	Appeal from the
)	Hamilton County Superior Court 3
Appellant,)	
)	
v.)	Cause No. 29D03-2203-F4-001271
)	
)	
STATE OF INDIANA,)	The Honorable William J. Hughes, Judge
)	
Appellee)	

REPLY BRIEF OF THE APPELLANT

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Argument

In its brief, the State mischaracterizes the evidence and omits significant portions of the bodycam video in order to support its argument that the search of Brione’s trunk was supported by probable cause.

First, the State uses the fact that it was 2:40 a.m. when Officer Szybowksi stopped Brione and that Brione allegedly looked like a “deer in headlights”. Appellee Brief, p. 10. Even assuming *arguendo* that Brione did look like a “deer in the headlights,” nervousness is of limited significance when determining reasonable suspicion. *See Finger v. State*, 799 N.E.2d 528, 534 (Ind. 2003); *see also Pinner v. State*, 74 N.E.3d 226 (Ind. 2017). Next, the State argues that the officer saw loose pills in the driver’s door armrest. Appellee Br. at 10. However, the State omits the fact that Brione told Officer Szybowski that the loose pills were Tylenol. Ex. 1 at 5:51. The State also argues that Brione gave inconsistent answers when the officer asked him about the smell of marijuana in the car. Appellee Br. at 11. However, the State, again, mischaracterizes the evidence. Beginning at 3:28 of Exhibit 1, the following exchange was had:

Officer Szybowski: Is there any marijuana in the car?

Brione Jackson: No.

Officer Szybowski: When’s the last time there was?

Brione Jackson: Ain’t nothing in here.

Officer Szybowski: No, I understand that, I’m just asking when the last time there was because it lingers in the car, that’s all.

Brione Jackson: Probably like a week ago.

Ex. 1 at 3:28-3:50. Brione’s answers to the questions about the presence of marijuana were not inconsistent, but entirely supported by the facts. That the officer

Reply Brief of the Appellant – Brione Jackson

acknowledged the smell of marijuana “lingers” in the car further diminishes any probable cause argued by the State. So while, “it is not uncommon for officers to find marijuana residue or the ends of marijuana cigarettes after detecting the odor of burnt marijuana,” and “the odor of burnt marijuana is indicative that marijuana may yet be present in a car,” the fact is that, in this case, after searching the entire passenger compartment of the car, no marijuana, marijuana residue or the ends of marijuana cigarettes were located. *See Edmond v. State*, 951 N.E.2d 585, 588 n.3 (Ind. Ct. App. 2011). There was simply no probable cause to search the trunk.

Finally the State argues that Brione was “banging on the window; was real nervous” when Officer Szybowski moved to the trunk to search it and that the officer’s “observations ... and Jackson’s suspicious answers and actions” provided probable cause to search the entire car. Appellee Br. at 11. However, Officer Szybowski did not observe Brione “banging on the window” or being “real nervous”. This information was not depicted in the bodycam video and only came from the other officer who was on scene; who did not testify during the suppression hearing. Ex. 1 at 17:40-17:45.

Based on the bodycam video, it was not the lingering smell of burnt marijuana that prompted the officer to search Brione’s car, but undoubtedly Brione’s criminal history. It was not until after Officer Szybowski learned of Brione’s criminal history that he detained Brione and proceeded to search the car. “Just so you know, he’s got like a murder prior and multiple gun priors,” Officer Szybowski told his supervisor, who was then on scene. Ex. 1 at 6:44-6:48. Based on the totality of the circumstances, the lingering odor of burnt marijuana from a week prior was not sufficient to establish probable cause to search the trunk.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true copy of the foregoing has been delivered through E-service using the Indiana E-filing System to Theodore Rokita, Attorney General of Indiana this 28th day of February 2023.

Respectfully submitted,



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