

IN THE
INDIANA SUPREME COURT

No. 22A-CR-2524

BRIONE JACKSON,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the Hamilton Superior
Court,

No. 29D03-2203-F4-1271,

The Honorable William J. Hughes,
Judge.

BRIEF IN OPPOSITION TO TRANSFER

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INTRODUCTION

This Court should deny Jackson’s petition to transfer because his case does not present a novel legal question for this Court to answer. Instead, it offers an untenable solution to a hypothetical problem that does not exist in his case. This Court should deny transfer.

BACKGROUND AND PRIOR TREATMENT OF ISSUE

At approximately 2:40 a.m. on March 1, 2022, Officer Thomas Szybowski was patrolling the parking lot of the Extended State of America Hotel in Carmel (Tr. Vol. II 9-10). Szybowski had a “significant history” of investigating drug-related criminal activity in that parking lot (Tr. Vol. II 9-10). As he drove, he saw Brione Jackson sitting in the driver’s seat of a silver Lexus (Tr. Vol. II 10-13). Szybowski observed that Jackson “looked like a deer in headlights” and knew from his experience at the hotel that it was “uncommon for people to be out and about in that parking lot unless they are up to criminal activity” at 2:40 a.m. (Tr. Vol. II 10). Szybowski circled the parking lot, and when he returned to the Lexus, Jackson was still seated inside (Tr. Vol. II 10-13). Szybowski decided to approach Jackson (Tr. Vol. II 11-12).

When Szybowski reached Jackson’s door, Jackson opened it, and Szybowski “was immediately met with the odor of marijuana emanating from the interior of that vehicle” (Tr. Vol. II 12). Szybowski knew from his training and experience that the odor was burnt marijuana (Tr. Vol. II 6-8, 30). He also observed several loose pills in the driver’s door armrest (Ex. 1 at 5:50, 6:45-7:15, 9:45-10:15). Szybowski

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told Jackson, “I smell weed” (Ex. 1 at 1:00-1:20). Jackson replied, “Ain’t no smell of weed in here” (Ex. 1 at 1:20-1:30). Jackson later said that there was marijuana in his vehicle “probably like a week ago” (Ex. 1 at 3:20-3:50).

Szybowski then detained Jackson in a police vehicle while police searched Jackson’s vehicle for contraband (Tr. Vol. II 13-14). Szybowski seized the loose pills he had observed and searched the remainder of the passenger compartment (Ex. 1 at 9:35-15:05). After completing the search of the passenger compartment, he then walked toward the trunk (Ex. 1 at 15:05-17:00, 17:40-17:45). When Szybowski walked toward the trunk, “[Jackson was banging on the window [and] was real nervous” (Ex. 1 at 15:05-17:00, 17:40-17:45). Szybowski found a handgun in the trunk, learned that Jackson was a serious violent felon, and arrested Jackson (Tr. Vol. II 14-15).

The State charged Jackson, and he filed a pretrial motion to suppress (App. Vol. II 32, 36-38). After a hearing, the trial court issued a written order finding that there was probable cause to search Jackson’s entire vehicle for contraband and denied his motion (Tr. Vol. II 36-39; App. Vol. II 39-46). Jackson filed a motion to correct error that was also denied (App. Vol. II 39-46). He filed a motion for an interlocutory appeal that was granted (Docket).

On appeal, Jackson argued that there was not probable cause to search his trunk (Appellant’s Br. 6). The State argued that probable cause existed to search Jackson’s entire vehicle (Appellee’s Br. 8-9). The Court of Appeals issued an opinion on March 17, 2023, but did not reach the issue of probable cause because it held

that Jackson granted consent to search his vehicle. *Jackson v. State*, No. 22A-CR-2524, slip op. at 4-5 (Ind. Ct. App. Mar. 17, 2023).

Jackson filed a petition for rehearing that was denied (Docket). He then filed a petition to transfer that this Court granted on August 24, 2023 (Docket). *See Jackson v. State*, No. 23S-CR-233 (Ind. Aug. 24, 2023). This Court vacated the Court of Appeals opinion and remanded the case to the Court of Appeals to consider the merits of Jackson's constitutional challenge to the denial of his motion to suppress. *Id.* The Court of Appeals then issued an opinion affirming the trial court's denial of Jackson's motion to suppress. *Jackson v. State (Jackson II)*, No. 22A-CR-2524, slip op. at 6-13 (Ind. Ct. App. Oct. 4, 2023).

ARGUMENT

Transfer is not required because Jackson's narrowly proposed legal question does not reflect all the facts of his case.

This Court should deny transfer of this discretionary interlocutory appeal because Jackson proposes a hypothetical question that this Court is not required to answer to resolve his case. Jackson asks this Court to answer the question of whether "the smell of burnt marijuana alone in the passenger compartment of a vehicle create[s] probable cause to search the trunk" (Pet. to Transfer 3, 6). But the police had more information to establish probable cause than the smell of burnt marijuana *alone* in the passenger compartment of Jackson's vehicle. It is true that the officer smelled burnt marijuana emanating from Jackson's vehicle. But that was not all: the hotel parking lot Jackson was parked in had a significant history of drug-related criminal activity; it was 2:40 a.m., which was an unusual time to be

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lingering in the parking lot; Jackson “looked like a deer in headlights” when the officer first drove past; Jackson told police “ain’t no smell of weed in here”; Jackson then said he had marijuana in the car about one week prior; there were unidentified loose pills in plain view in the driver’s door; Jackson was calm while police searched the passenger compartment of his vehicle; Jackson became very nervous and started banging on the window of a police vehicle when an officer walked toward Jackson’s trunk (Tr. Vol. II 6-15; Ex. 1).

The *totality* of these circumstances—which reviewing courts must consider—established a fair probability that Jackson’s vehicle contained contraband. “Probable cause exists ‘when the totality of the circumstances establishes ‘a fair probability’ ... of criminal activity, contraband, or evidence of a crime.’” *Combs v. State*, 168 N.E.3d 985, 993 (Ind. 2021). Police may conduct a “warrantless search of an automobile where the searching officers have probable cause to believe the automobile contains the fruits or instrumentalities of a crime.” *Moody v. State*, 448 N.E.2d 660, 663 (Ind. 1983); *see Carroll v. United States*, 267 U.S. 132, 153-56 (1925). “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” *United States v. Ross*, 456 U.S. 798, 825 (1982); *see also Krise v. State*, 746 N.E.2d 957, 964 (Ind. 2001) (observing that probable cause to search a vehicle authorizes a search of “every part of the vehicle” and closed containers found therein). And “[t]he scope of a warrantless search of an automobile ... is not defined by the nature of the container in which the contraband is secreted. Rather, it is

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defined by the object of the search and the places in which there is probable cause to believe that it may be found.” *Id.* at 824. The scope of this search includes closed containers found inside the automobile. *California v. Acevedo*, 500 U.S. 565, 580-81 (1991); *Ross*, 456 U.S. at 824. “The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which entry is sought.” *Wyoming v. Houghton*, 526 U.S. 295, 302 (1999) (citations omitted). And “[w]hen there is probable cause to search for contraband in a car, it is reasonable for police officers ... to examine packages and containers without a showing of individualized probable cause for each one.” *Id.*

The odor of marijuana was just one factor of many that gave the police probable cause to believe that there was contraband inside Jackson’s vehicle, anywhere it would fit. *See Bunnell v. State*, 172 N.E.3d 1231, 1236-37 (Ind. 2021) (collecting cases where odor of marijuana supplied probable cause to search a vehicle). Those factors included the area of the hotel parking lot, time of day, Jackson’s conflicting answers to ordinary questions, and his drastic changes in demeanor, all of which was viewed by trained and experienced law enforcement officers. The totality of the circumstances was sufficient to establish probable cause to search Jackson’s entire vehicle for contraband.

This Court should also reject Jackson’s invitation to answer his hypothetical question because he asks this Court to interpret the automobile exception to the warrant requirement in a manner contrary to the United States Supreme Court and

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this Court. *See Ross*, 456 U.S. at 825; *State v. Hobbs*, 933 N.E.2d 1281, 1287 (Ind. 2010) (“the same considerations underlying the federal automobile exception support permitting the officers to secure the evidence without delay”). Jackson’s argument that extra probable cause is required to search his trunk is based on an opinion that has not aged well outside the Tenth Circuit. *Compare United States v. Nielson*, 9 F.3d 1487 (10th Cir. 1993), with *United States v. Kiszart*, 967 F.3d 693, 698-99 (7th Cir. 2020) (collecting cases that disagree with *Nielson*). And the Court of Appeals’ opinion aptly points to *Wilson v. State* to identify the logical problems with adopting Jackson’s view of probable cause. *See Jackson II*, slip op. at 7-9 (citing *Wilson v. State*, 921 A.2d 881, 892-93 (Md. Ct. Spec. App. 2007), *cert. denied*). It is certainly reasonable to believe that the odor of burnt marijuana in a vehicle indicates current unsmoked marijuana or paraphernalia elsewhere in the vehicle, including inside the trunk and containers. *See id.* To hold otherwise would indeed render the trunk of a vehicle a “safe harbor for the transportation of drugs for both users and traffickers who use drugs.” *Wilson*, 921 A.2d at 893; *see also United States v. Turner*, 119 F.3d 18, 20-21 (D.C. Cir. 1997) (collecting cases rejecting a personal use exception for the odor of marijuana in vehicles and upholding searches for additional contraband that included trunks).

There is no reason for this Court to answer Jackson’s hypothetical question to adopt a viewpoint that enjoys little support. The officers had probable cause to search his entire vehicle based on the totality of the circumstances, and this Court should deny transfer.

CONCLUSION

This Court should deny transfer.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I verify that this Brief in Opposition to Transfer contains no more than 4,200 words.

/s/ Robert M. Yoke
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CERTIFICATE OF SERVICE

I certify that on December 8, 2023, the foregoing document was electronically filed and served on the appellant at the address below using the Indiana E-filing System (“IEFS”).

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