

IN THE
COURT OF APPEALS OF INDIANA

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 RESPONSE TO PETITION FOR REHEARING

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Jackson v. State, ___ N.E.3d ___, No. 22A-CR-2524, slip op.
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State of Indiana
Response to Petition for Rehearing

On March 17, 2023, this Court issued its opinion and held that the trial court did not err when it denied Jackson's motion to suppress because Jackson consented to the search of his vehicle. *Jackson v. State*, ___ N.E.3d ___, No. 22A-CR-2524, slip op. at 2 (Ind. Ct. App. Mar. 17, 2023). On April 11, 2023, Jackson filed a petition for rehearing, arguing that he did not consent to the search of his vehicle and that the record did not support a finding that he consented (Reh'g Pet'n 3-4). In the trial court and on appeal, the State did not argue that the search was consensual.

After reviewing the video portion cited by the Court, the State does not believe that Jackson consented to the search. Jackson asked Officer Szybowski why he was detained in the police car. Szybowski explained several factors including that he smelled marijuana emanating from Jackson's car (Ex. 1 at 7:10-8:10). Jackson stated to Szybowski, "I don't have no marijuana, even when you search my vehicle you ain't gonna find no marijuana" (Ex. 1 at 8:10-8:15). The State does not believe that this statement by Jackson (or anything else said by Jackson) indicated consent for the officer to search the vehicle. Therefore, consent is not a justification for the search.

As the State argued in the trial court and to this Court, the search of Jackson's vehicle was valid because police had probable cause that contraband would be found in the car. Because the search did not violate Jackson's rights, the trial court's order denying Jackson's motion to suppress should be affirmed.

State of Indiana
Response to Petition for Rehearing

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 26, 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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