MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark D. Altenhof
Elkhart, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tyler Banks
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Darius J. Henderson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

March 16, 2022

Court of Appeals Case No. 21A-CR-1816

Appeal from the Elkhart Superior Court

The Honorable Kristine Osterday, Judge

Trial Court Cause No. 20D01-1912-F4-86

Robb, Judge.

Case Summary and Issues

[1] Darius Henderson was a passenger in a vehicle that was stopped for a traffic violation. Officer Jesse Morganthaler instructed Henderson to exit the vehicle and upon smelling burnt marijuana on Henderson's person, conducted a warrantless search and discovered Henderson in possession of a firearm. The State charged Henderson with unlawful possession of a firearm by a serious violent felon, a Level 4 felony, and Henderson moved to suppress the evidence from the search. The trial court denied his motion. In this interlocutory appeal, Henderson raises multiple issues, which we restate as: (1) whether the officer's actions violated Henderson's Fourth Amendment rights; and (2) whether the officer's actions violated Henderson's rights under Article 1, section 11 of the Indiana Constitution. Concluding both Henderson's Fourth Amendment and Article 1, section 11 rights were violated, we reverse the trial court's order and remand for further proceedings.

Facts and Procedural History

[2] On December 16, 2019, Quanece Spears was pulled over by Officer Morganthaler of the Elkhart Police Department for driving without her headlights illuminated during nighttime hours. Henderson was a passenger in the front seat of the vehicle. Officer Morganthaler approached the vehicle, discussed with Spears the reason she was pulled over, and then asked Henderson if he had any identification. Henderson responded that he did not, and although Henderson provided his full name when asked, Exhibits, Volume

4 at 3, Exhibit 3 (Audio Disc 1 at 01:11), Officer Morganthaler only heard him say "Darius[,]" Transcript of Evidence, Volume 2 at 10. Henderson questioned why the officer was asking for his name which "raised [Officer Morganthaler's] suspicion a little bit." *Id.*

[3] Officer Morganthaler returned to his vehicle and checked Spears' registration and driving status, both of which were valid. Officer Morganthaler then ran the name "Darius" through the department's Record Management System ("RMS") and located a person named Darius Garret who had a "red alert" next to his name indicating he may have a local warrant for his arrest. *Id.* at 14. Officer Morganthaler testified that compared to the photo of Garret in the RMS, Henderson had "facial hair, similar facial features, . . . the age appeared to be very similar [and] the height and weight, as well[.]" *Id.*

[4] Although Officer Morganthaler had no reason to believe that Henderson was armed and dangerous, he requested that an additional police unit respond to the traffic stop. *See id.* at 42. Once an additional unit arrived, Officer Morganthaler returned to Spears' vehicle and instructed Henderson to exit the vehicle. Henderson complied with Officer Morganthaler's instructions and did not resist; however, he was immediately placed in handcuffs upon exiting the vehicle. As Henderson exited the vehicle, Officer Morganthaler detected the odor of burnt marijuana coming from Henderson's person. Officer Morganthaler then asked Henderson if there was anything on his person, including weapons, that he should know about. Henderson stated there was nothing on his person and subsequently refused Officer Morganthaler's request

to conduct a pat down. Officer Morganthaler conducted a pat down search anyway and located a firearm in Henderson's left jacket pocket.

[5] On December 19, 2019, the State charged Henderson with unlawful possession of a firearm by a serious violent felon, a Level 4 felony. Henderson filed a motion to suppress "all evidence seized in connection with this case." Appellant's Appendix, Volume 2 at 129. Henderson claimed that Officer Morganthaler's actions violated the Fourth Amendment and Article 1, section 11 of the Indiana Constitution. *See id.* at 131. Following a hearing on the motion to suppress, the trial court issued an order denying Henderson's motion. However, the trial court noted in its order that Henderson and Garret "do not share similar facial features and should not have been mistaken for each other." Appealed Order at 5.

[6] Subsequently, Henderson filed a motion to certify the trial court's order for interlocutory appeal. The request was granted by the trial court and this court accepted jurisdiction. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[7] We entrust the admission of evidence to the trial court's sound discretion. *Robinson v. State,* 5 N.E.3d 362, 365 (Ind. 2014). We review a trial court's denial of a defendant's motion to suppress deferentially, construing conflicting evidence in the light most favorable to the ruling, but we also consider any

substantial and uncontested evidence favorable to the defendant. *Id.* We defer to the trial court's findings of fact unless they are clearly erroneous, and we will not reweigh the evidence. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008). When the trial court's denial of a defendant's motion to suppress concerns the constitutionality of a search or seizure, however, it presents a question of law, and we address that question de novo. *Id.*

II. Fourth Amendment

[8] Henderson argues that Officer Morgenthaler's actions violated his rights under the Fourth Amendment. The Fourth Amendment provides protection against unreasonable searches and seizures by generally prohibiting such acts without a warrant supported by probable cause. U.S. Const. amend. IV; *Clark v. State,* 994 N.E.2d 252, 260 (Ind. 2013). However, in *Maryland v. Wilson*, the Supreme Court of the United States determined that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop[,]" finding that during a valid traffic stop "the passengers are already stopped by virtue of the stop of the vehicle" and the "additional intrusion on the passenger is minimal." 519 U.S. 408, 414-15 (1997).

[9] The Supreme Court has also held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures" and that "[a] seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of

issuing a ticket for the violation." *Rodriguez v. United States*, 575 U.S. 348, 350 (2015) (quoting *Illinois v. Caballes*, 543 U.S.405, 407 (2005)). In so holding, the Supreme Court stated that "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—*or reasonably should have been*—completed." *Id.* at 354 (emphasis added).

[10] Here, Officer Morganthaler's RMS search of a common first name unnecessarily extended the traffic stop. Officer Morganthaler pulled Spears over for failing to have her headlights on after the sun had set. Officer Morganthaler testified that after speaking to both Spears and Henderson he returned to his vehicle and confirmed Spears' driver's registration and driving status prior to searching "Darius" in the RMS. Officer Morganthaler then waited for an additional police unit to arrive before returning to Spears' vehicle. The Fourth Amendment tolerates "certain unrelated investigations" that do not lengthen the roadside detention such as "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 575 U.S. at 354-55. But we conclude this does not include such blanket searches of first names in the RMS. Because Officer Morganthaler's name search impermissibly extended the traffic stop, his subsequent direction to Henderson to exit the vehicle constituted an unreasonable seizure under the Fourth Amendment.

[11] The State argues that we have previously stated that the holding in *Wilson* permitting officers to instruct a passenger to exit a vehicle is a per se rule. *See* Brief of Appellee at 10 (citing *Tawdul v. State*, 720 N.E.2d 1211, 1214 (Ind. Ct.

App. 1999), *trans. denied*). However, in interpreting the Supreme Court's decision in *Wilson*, we stated that the Court's "analysis seems to contemplate an order to exit along with some indication that the officer's safety may be compromised." *Walls v. State*, 714 N.E.2d 1266, 1267 (Ind. Ct. App. 1999), *trans. denied*. Officer Morganthaler testified that when he asked Henderson his name, he had no reason to believe that Henderson had done anything wrong, further stating:

> Q. [I]n fact you would have released [Henderson] or let it go if he hadn't give[n] you any name at all?
>
> A. Correct.[1]

Tr., Vol. 2 at 36.

[12] It was not until after Officer Morganthaler decided to search "Darius" in the RMS that he returned to the vehicle and asked Henderson to exit for "officer safety" reasons. *Id*. at 17. Officer safety is a great concern. *See Wilson*, 519 U.S. at 412 (describing officer safety as a "legitimate and weighty" interest) (citation omitted); *see also Mitchell v. State*, 745 N.E.2d 775, 780 (Ind. 2001) (stating "concern for officer safety may justify the additional intrusion of ordering a driver and passengers out of the car"). However, any indication to Officer

[1] Henderson was not required to identify himself when Officer Morganthaler requested his name. *See Starr v. State*, 928 N.E.2d 876, 880 (Ind. Ct. App. 2010) (holding that a passenger did not fall within the purview of the Refusal to Identify Self statute when there is no showing that they were stopped "as a consequence of any conduct on [their] part"), *trans. denied*.

Morganthaler that his safety was compromised was created by searching a common first name in RMS, which unsurprisingly produced a suspect with a potential warrant.[2] Therefore, we believe Officer Morganthaler's actions fall outside of *Wilson*.

[13] We conclude that Officer Morganthaler asking Henderson to exit the vehicle based solely on a retrieving a "red alert" when searching Henderson's first name in RMS violated Henderson's Fourth Amendment right against unreasonable searches and seizures.

III. Article 1, Section 11

[14] Henderson also argues that Officer Morganthaler's actions violated his rights under Article 1, section 11 of the Indiana Constitution. Henderson contends that the entirety of the search violated his rights under Article 1, section 11; however, we limit our discussion to Officer Morganthaler searching "Darius" in the RMS and having Henderson exit the vehicle.[3]

---

[2] The trial court also noted its concern with Officer Morganthaler's actions, stating:

> The officer's decision to search police records for a warrant based on the very limited information that he had is troubling. It is no surprise that the officer found an African-American man named "Darius" who had a valid arrest warrant, but the two men are clearly not the same person.

Appealed Order at 5.

[3] Because we conclude that Henderson's rights under Article 1, section 11 of the Indiana Constitution were violated when he was forced to exit the vehicle based on an RMS search of a common first name, we need not address the subsequent pat-down. We note that Officer Morganthaler testified that he did not smell marijuana until Henderson exited the vehicle. *See* Tr., Vol. 2 at 20. Further, Henderson does not challenge the validity of the initial traffic stop.

[15] Although its text mirrors the Fourth Amendment, we interpret Article 1, section 11 of our Indiana Constitution separately and independently. *State v. Washington,* 898 N.E.2d 1200, 1205-06 (Ind. 2008). The purpose of this section is to protect those areas of life that Hoosiers consider private from unreasonable police activity. *State v. Quirk,* 842 N.E.2d 334, 339-40 (Ind. 2006). When a defendant raises a section 11 claim, the State must show the police conduct "was reasonable under the totality of the circumstances." *Washington*, 898 N.E.2d at 1206. We consider three factors when evaluating reasonableness of a search: "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of 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).

[16] Officer Morganthaler testified that when he first approached the vehicle, he asked Henderson if he had any identification. After Henderson responded that he did not, Officer Morganthaler asked him to provide his name. Henderson did, but also questioned why Officer Morganthaler was asking for his name which "raised [Officer Morganthaler's] suspicion a little bit." Tr., Vol. 2 at 10. However, Officer Morganthaler also testified that when he asked Henderson his name, he had no reason to believe that Henderson had done anything wrong and that if Henderson had refused to respond at all, he would have just let the vehicle go. *See* Tr., Vol. 2 at 36. It was only after running the name "Darius" in the RMS and receiving a "red alert" that Officer Morganthaler ordered Henderson to exit the vehicle. Therefore, because Officer Morganthaler had no

reason to believe that Henderson had committed a crime prior to searching the RMS for "Darius," the degree of concern that a violation had occurred is low.

[17] As for degree of intrusion, we cannot say that a passenger being required to exit a vehicle is a high degree of intrusion. In *Wilson*, the Supreme Court addressed this situation and stated that because passengers are already stopped by virtue of the stop of the vehicle, "the additional intrusion of the passenger is minimal."[4] 519 U.S. at 415.

[18] Finally, when determining the extent of law enforcement needs, we consider the nature and immediacy of the governmental concern. *Masterson v. State*, 843 N.E.2d 1001, 1007 (Ind. Ct. App. 2006), *trans. denied.* A police officer's ability to search for outstanding warrants is important for officers to ensure the safety of the public. *Dowdy v. State*, 83 N.E.3d 755, 765 (Ind. Ct. App. 2017). However, Officer Morganthaler's RMS search of "Darius" falls outside of this purview. As the trial court noted, it is unsurprising that searching a common first name returned a match to an outstanding warrant. Further, Officer Morganthaler's "need" to instruct Henderson to exit the vehicle is based solely on this overbroad search, which as the trial court noted returned a picture of a

[4] Although this was determined in the context of a Fourth Amendment analysis, we see no reason why it would not be applicable when analyzing the intrusion under Article 1, section 11 of the Indiana Constitution. Indiana courts have not addressed the issue of requiring a *passenger* to exit a vehicle under Article 1, section 11. However, in *Ammons v. State*, we determined that requiring the driver of a vehicle to exit their vehicle was "minimal intrusion[.]" 770 N.E.2d 927, 932 (Ind. Ct. App. 2002), *trans. denied*. Further, we have held that requiring a passenger that had exited a stopped vehicle to return and get back in the vehicle was a minimal intrusion because they "had already been stopped to effectuate the traffic stop[.]" *Eaton v. State*, 111 N.E.3d 1039, 1045 (Ind. Ct. App. 2018).

man named "Darius" that did not resemble Henderson. Therefore, we conclude the extent of law enforcement's needs was low.

[19] Under the totality of the circumstances, we conclude that Officer Morganthaler requiring Henderson to exit the vehicle based on an RMS search of "Darius" was unreasonable and violated Henderson's rights under Article 1, section 11 of the Indiana Constitution.[5]

Conclusion

[20] We conclude that Officer Morganthaler's actions violated Henderson's Fourth Amendment and Article 1, section 11 rights against unreasonable search and seizure. Therefore, the trial court abused its discretion by denying Henderson's motion to suppress. Accordingly, we reverse the trial court's order and remand for further proceedings consistent with this opinion.

[21] Reversed and remanded.

Riley, J., concurs.

Molter, J., concurs in result without opinion.

---

[5] Henderson also argues that Officer Morganthaler "was not trained to know the difference between the odor of illegal marijuana and legalized hemp[.]" Brief of Appellant at 22. However, because we have concluded that Henderson's Fourth Amendment and Article 1, section 11 rights were violated prior to Officer Morganthaler detecting the odor of burnt marijuana, we need not address this argument. We do note that Henderson's reliance on *Alexander-Woods v. State* seems misplaced as that case does not address the merits of an argument that an officer was not trained to distinguish between marijuana and hemp. 163 N.E.3d 902, 906 (Ind. Ct. App. 2021) (describing the argument as "novel" but waiving the issue because the defendant failed to challenge the officer's qualifications at trial), *trans. denied.*