No. 18-1486

In the

Supreme Court of the United States

ZACHARIAH J. MARSHALL,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

Emergency Application for a Stay of Jury Trial Scheduled for July 29, 2019 in the Porter Superior Court 4 Until Ruling on Pending Petition for Writ of Ceriorari

---

Application Directed to the Honorable Brett M. Kavanaugh, Associate Justice of the United States and Circuit Justice for the Seventh Circuit

---

Michael A. Campbell
Counsel of Record
Campbell Law, P.C.
3235 45th St., Suite 107
Highland, IN 46322
mac@attorney-campbell.com

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Constitutional Provisions

Procedural Rules

In the

Supreme Court of the United States

ZACHARIAH J. MARSHALL,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

Emergency Application for a Stay of Jury Trial Scheduled for July 29, 2019 in the Porter Superior Court 4 Until Ruling on Pending Petition for Writ of Ceriorari

To the Honorable Brett M. Kavanaugh, Associate Justice of the United States and Circuit Justice for the Seventh Circuit:

In accordance with this Court's Rule 23, and as authorized by 28 U.S.C. 2101(f), Applicant Zachariah J. Marshall ("Marshall") respectfully requests that the Court issue an Order directing the Porter Superior Court 4 to stay the jury trial set by said court on July 29, 2019 in *State of Indiana v. Zachariah J. Marshall*, Cause No. 64D04-1611-CM-010105, pending a ruling on Marshall's previously filed Petition for Writ of Certiorari and this Court's disposition of that Petition.

A copy of the Opinion of the Supreme Court of Indiana issued on February 27, 2019 and which forms the basis for Marshall's Petition for Writ of Certiorari is attached to this Application as Exhibit A. A copy of the Porter Superior Court 4's June 5, 2019 Order which denied Marshall's Motion to Stay Proceedings and which further set the matter for jury trial on July 29, 2019 is attached to this Application as Exhibit B. Lastly, a copy of the Porter Superior Court 4's June 27, 2019 Order which denied Marshall's Motion to Certify Order Setting Jury Trial for Interlocutory

Appeal is attached hereto as Exhibit C. The reason this has been filed as an emergency application is because the case is presently set for jury trial on July 29, 2019 and Marshall has just finished exhausting all of his appellate remedies concerning the granting of a stay in the state of Indiana.

NATURE OF THE CASE AND BACKGROUND

Marshall's Petition for Writ of Certiorari presents the Court with a unique set of facts that has challenged the Indiana judiciary's understanding of what the bare minimum facts are that a law enforcement officer needs to know to substantiate a traffic stop for speeding under the Fourth Amendment's reasonable suspicion standard. The Opinion by the Supreme Court of Indiana runs afoul of how federal and other state courts have applied the reasonable suspicion standard when the basis for the traffic stop is alleged speeding. Because the application of the reasonable suspicion standard by the Supreme Court of Indiana is not in harmony with how it has been applied by federal and other state courts, the issue presented in Marshall's Petition for Writ of Certiorari is one of national concern. If allowed to stand, the Supreme Court of Indiana's Opinion will serve as an anchor to be used by other federal and state courts to further erode the requirement of reasonable suspicion under the Fourth Amendment. With the foregoing in mind, the relevant background of Marshall's case will be discussed.

On October 29, 2016, Marshall was pulled over by Reserve Officer Sean Dolan for allegedly speeding and was subsequently charged with Operating a Vehicle while Intoxicated (Endangering a Person), Operating a Motor Vehicle with an Alcohol Concentration Equivalent to at least .08 but less than .15; and Operating a Vehicle while Intoxicated; all Misdemeanor offenses. The only reason for the traffic stop was Marshall's alleged speeding.

On August 8, 2017, Marshall filed his Renewed Motion to Suppress Evidence Obtained from Unlawful Traffic Stop and Request for Hearing on the basis that the traffic stop violated his

rights under the Fourth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment to the United States Constitution as well as Article 1, Section 11 of the Indiana Constitution.

On August 17, 2017 a hearing was held on Marshall's Renewed Motion to Suppress Evidence Obtained from Unlawful Traffic Stop. During the suppression hearing Reserve Officer Dolan acknowledged that in his prior deposition testimony he stated he did not know the speed limit on the road where Marshall was allegedly speeding and had guessed that it may have been 40 mph. Reserve Officer Dolan further testified at the suppression hearing that the applicable speed limit was 50 mph and he knew this because he revisited the roadway at some point between his deposition and the suppression hearing.

Reserve Officer Dolan stated he used his police radar to determine the speed of Marshall's vehicle, but also that he never made any documentation of the purported speed and that he does not know the actual speed at which Marshall's vehicle was traveling. All Reserve Officer Dolan could state about the speed of Marshall's vehicle was that it was greater than the posted speed limit.

Importantly, at no point in time did Reserve Officer Dolan ever provide testimony as to the approximate speed of Marshall's vehicle, he did not pace the vehicle, and he could not provide any description as to the movement of Marshall's vehicle to support his contention that Marshall was speeding. At the suppression hearing the following question was asked of Reserve Officer Dolan: "So, again, all we [have] to go on is essentially your word and no objective proof; its simply your word that [Marshall] was going over the posted speed limit" to which he responded "Correct."

August 18, 2017 the trial court issued an Order Denying Motion to Suppress. In doing so, the trial court wrestled with the issue of whether "quantification, or some exact speed is required,

along with knowledge of the speed limit at the scene, for there to be reasonable suspicion that a traffic infraction was being committed, as a necessary requirement for stopping [Marshall], consistent with Fourth Amendment jurisprudence." Ultimately the trial court held that Reserve Officer Dolan's belief that Marshall was traveling too fast was sufficient to support the traffic stop.

On September 5, 2017, Marshall filed his Motion to Certify Order Denying Motion to Suppress for Interlocutory Appeal and said Motion was granted by the trial court on September 6, 2017. On October 2, 2017, Marshall filed his Motion to Accept Jurisdiction over Interlocutory Appeal with the Court of Appeals of Indiana which was granted on November 16, 2017.

On June 20, 2018, the Court of Appeals of Indiana issued a published Opinion which reversed the trial court's order. In doing so, the Appellate Court noted that this was an issue of first impression in the State of Indiana and held that "because Reserve Officer Dolan could not testify regarding the speed of Marshall's vehicle in more specific terms, we hold he did not have specific articulable facts to support his initiation of a traffic stop, and therefore the traffic stop violated Marshall's Fourth Amendment rights." *Marshall v. State*, 105 N.E.3d 218, 222 (Ind. Ct. App. 2018)

On July 20, 2018, the State of Indiana filed its Petition to Transfer this case to the Supreme Court of Indiana and said Petition was granted on September 20, 2018. On February 27, 2019 the Supreme Court of Indiana issued an Opinion affirming the trial court's order.

In doing so, the Supreme Court of Indiana held that the traffic stop initiated by Reserve Officer Dolan passed muster under both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. With respect to the Fourth Amendment, the Supreme Court of Indiana found that there were sufficient articulable facts to give Reserve Officer Dolan reasonable suspicion that Marshall was speeding. Notably, the Supreme Court of Indiana

failed to conduct an analysis under the landmark case for visual speed estimates, *U.S. v. Sowards*, 690 F.3d 583 (4th Cir. 2012), or address the factually indistinguishable case of *State v. Petzoldt*, 803 N.W.2d 128 (Iowa Ct. App. 2011) which was relied heavily upon by the Court of Appeals of Indiana in its Opinion and which was one of the cases extensively analyzed and relied upon by *Sowards*.

On May 23, 2019, Marshall filed his Petition for Writ of Certiorari which is currently pending before this Court. In the interim, the Judge of the Porter Superior Court 4 set Marshall's case for hearing. On May 30, 2019 Marshall filed a Motion to Stay Proceedings with the Porter Superior Court 4 and said Motion was denied on June 5, 2019. Furthermore, the matter was set by the trial court for jury trial on July 29, 2019. In an effort to exhaust his state law remedies, on June 26, 2019 Marshall filed his Motion to Certify Order Setting Jury Trial for Interlocutory Appeal and said Motion was denied by the Judge of the Porter Superior Court 4 on June 27, 2019. This Application for Stay follows Marshall having exhausted his remedies for a stay in the State of Indiana.[1]

REASONS TO GRANT THE APPLICATION

The Court's criteria for staying a lower court judgment pending the filing and disposition of a petition for writ of certiorari are well established. To obtain a stay, Applicant "must demonstrate (1) 'a reasonable probability' that this Court will grant certiorari, (2) 'a fair prospect'

[1] Pursuant to Ind. R. App. P. 14, an order denying a parties' request to stay proceedings is an interlocutory order. An appeal from an interlocutory order denying a motion to stay is a discretionary interlocutory appeal and such an appeal can only be taken "if the trial court certifies its order and the Court of Appeals accepts jurisdiction over the appeal." See Ind. R. App. P. 14(B). Because the Porter Superior Court 4 (trial court) denied Marshall's Motion to Certify Order Setting Jury Trial for Interlocutory Appeal, Marshall has fully exhausted his appellate remedies within the State of Indiana with respect to obtaining a stay of the upcoming jury trial.

that the Court will then reverse the decision below, and (3) 'a likelihood that irreparable harm [will] result from the denial of a stay.'" *Maryland v. King*, 567 U.S. 1301 (2012) (Chief Justice Roberts, in chambers) (quoting *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)). These standards are readily satisfied in this case, and the balance of equities also tips in Marshall's favor.

A. There is a Reasonable Probability that this Court will Grant Certiorari

If stayed pending this Court's review, this case presents an opportunity to address the erosion of the Fourth Amendment's reasonable suspicion standard as well as to provide critical guidance regarding how the reasonable suspicion standard is to be applied to situations where an officer cannot testify factually about a vehicle's actual or approximate speed in correlation to the applicable speed limit. It is reasonably probable that this Court will grant certiorari for two reasons: (1) the Court regularly grants certiorari to interpret and clarify the limits of the Fourth Amendment and (2) Applicant's petition would allow the Court to correct an opinion by the Supreme Court of Indiana which conflicts with federal and state applications of the reasonable suspicion standard to traffic stops that were initiated by law enforcement for alleged speeding.

Although addressed more fully in his Petition for Writ of Certiorari, to justify a traffic stop under the Fourth Amendment, an officer is required to have "reasonable suspicion," that is, a particularized and objective basis for suspecting that the particular person stopped has broken the law. *Heien v. North Carolina*, 574 U.S. 54 (2014). When a traffic stop is based on alleged speeding and there is no objectively verifiable evidence of an actual vehicle speed, as in Marshall's case, the stop is properly categorized as being based on a visual speed estimate and the relevant Fourth Amendment analysis is governed by *Sowards*; a landmark case decided by the Fourth Circuit Court of Appeals. *U.S. v. Sowards*, 690 F.3d 583 (4th Cir. 2012).

The Supreme Court of Indiana's failure to apply *Sowards* and its progeny when analyzing whether Reserve Officer Dolan had reasonable suspicion to stop Marshall's vehicle for alleged speeding was in derogation to well-established precedent. Moreover, by not applying the analytical framework outlined in *Sowards*, the Supreme Court of Indiana created a new precedential standard that has the practical effect of reducing reasonable suspicion to a meaningless standard. Stated somewhat differently, under the precedent created by the Supreme Court of Indiana, a law enforcement officers can lawfully pull motorists over and detain them as long as the officer insists that the motorist was speeding, even though the officer is unable to provide so much as an estimate as to the vehicle's speed. Because this new precedential standard created by the Indiana Supreme Court represents a complete departure from *Sowards* and a significant erosion of the reasonable suspicion standard, there is a reasonable probability that this Court will grant Marshall's pending Petition for Writ of Certiorari.

B. There is a Fair Prospect That This Court Will Reverse the Decision Below

The Supreme Court of Indiana erred when it affirmed the trial court's ruling on Marshall's Renewed Motion to Suppress Evidence Obtained from Unlawful Traffic Stop, and there is a "fair prospect" that those errors would cause this Court to reverse the ruling by the Supreme Court of Indiana. *King*, 567 U.S. at 1301. This is because the Supreme Court of Indiana failed to apply the legal framework announced in *Sowards* and, had it done so, there would not have been reasonable suspicion for the traffic stop. Additionally, even if *Sowards* does not apply, there still would not have been reasonable suspicion for the traffic stop.

With respect to the analysis under *Sowards*, the Fourth Circuit Court of Appeals stated "the Fourth Amendment does not allow, and the case law does not support, blanket approval for the proposition that an officer's visual speed estimate, in and of itself, will always suffice as a

basis for [reasonable suspicion] to initiate a traffic stop." 690 F.3d at 591. The question remains one of reasonableness and there must be sufficient indicia of reliability for a court to credit as reasonable an officer's visual speed estimate. *Id.*

From this the *Sowards* court reasoned that "where an officer estimates that a vehicle is traveling in significant excess of the legal speed limit, the speed differential – i.e., the percentage difference between the estimated speed and the legal speed limit – may itself provide sufficient 'indicia of reliability' to support an officer's probable cause determination." *Id.* (See, e.g. *United States v. Banks*, No. 2:08–cr–19–FtM–29SPC, 2008 WL 4194847, at *1, *4 (M.D.Fla. Sep. 11, 2008) (finding probable cause where officer observed vehicle "traveling at a high rate of speed," estimated to be 50–60 mph in a 30–mph zone, making it "extremely obvious to [the officer] that the vehicle was speeding"); *State v. Butts*, 46 Kan.App.2d 1074, 269 P.3d 862, 873 (2012) (finding reasonable suspicion where officer "estimated vehicle speed [was 45 mph in a 30–mph zone, which was] significantly higher than the posted speed limit and, as a result, a difference that would be discernable to an observant and trained law enforcement officer"); *People v. Olsen*, 22 N.Y.2d 230, 292 N.Y.S.2d 420, 239 N.E.2d 354, 355 (1968) (holding officer's visual speed estimate of vehicle traveling 50–55 mph in a 30–mph zone sufficient to support speeding conviction)).

Conversely, when "an officer estimates that a vehicle is traveling in only slight excess of the legal speed limit, and particularly where the alleged speed violation is at a speed differential difficult for the naked eye to discern, an officer's visual speed estimate requires additional indicia of reliability to support [reasonable suspicion]." *Id.*, at 592 (See *U.S. v. Moore*, No. 10 Cr. 971 (RJH), 2011 U.S. Dist. LEXIS 145729, *22 (S.D.N.Y. Dec. 19, 2011) (finding that stop was unsupported by probable cause and explaining that, absent an officer's estimate that a

vehicle is traveling "significantly in excess" of the legal speed limit, "courts will credit an officer's testimony regarding firsthand observation of a speeding vehicle if additional, specific details of his or her account confirm that the officer's observation and belief were reasonable"); *cf. City of Kansas City v. Oxley*, 579 S.W.2d 113, 116 (Mo. 1979) (holding that officer's uncorroborated opinion evidence of defendant's 45 mph speed in a 35 mph zone was insufficient evidence to allow trier of fact to find that defendant was speeding); *Olson*, 239 N.E.2d at 335 ("[A]bsent mechanical corroboration, [testimony] that a vehicle was proceeding 35 or 40 mph in [a 30 mph] zone might for obvious reason be insufficient [to sustain a conviction for speeding], since it must be assumed that only a mechanical device could detect such a slight variance with [sufficient] accuracy."); *State v. Kimes*, 234 S.W.3d 584, 589 (Mo. Ct. App. 2007) ("[W]here an officer's estimation of speed is 60 mph, a fact-finder cannot conclude with any degree of certainty that a defendant was exceeding a 55 mph speed limit because the accuracy of human estimation of speed cannot easily, readily, and accurately discriminate between such small variations in speed.); *People's Drug Stores, Inc. v. Windham*, 12 A.2d 532, 537 (Md. 1940) ("[A]n estimate is necessarily approximate and not exact for without mechanical aides it is manifestly impossible for anyone . . . to estimate precisely the speed of a moving object, and that fact is assumed by everyone possessing ordinary common sense.").

The *Sowards* court went on to explain that "[t]he reasonableness of an officer's estimate that a vehicle is traveling in slight excess of the legal speed limit may be supported by radar, pacing methods, or other indicia of reliability that establish, in the totality of the circumstances, the reasonableness of the officer's visual speed estimate. *Id.*; (*See e.g.*, *U.S. v. Gomez Valdez*, No. 4:10CR3100, 2011 U.S. Dist. LEXIS 118328, 2011 WL 5037190, at *4 (D. Neb. Sept. 12, 2011) (finding probable cause where an officer's visual estimate was verified by radar

confirming that defendant was traveling 70 mph in a 65 mph zone (emphasis added)); *U.S. v. Nunez*, No. 1:10-CR-127, 2011 U.S. Dist. LEXIS 61726, 2011 WL 2357832, at *1 (D. Utah June 9, 2011) (finding reasonable suspicion where officer's visual estimate was supported by pacing, which confirmed that defendant was traveling 85 mph in a 75 mph (emphasis added)); *U.S. v. Colden*, No. 11-M-989-SKG, 2011 U.S. Dist. LEXIS 122048, 2011 WL 5093777, at *1, *2 (D. Md. Oct. 21, 2011) (holding that officer's "visual estimation of defendant's speed, in combination with the officer's observations that his car shook [when defendant's car passed] and that defendant tapped his breaks, amounts to a reasonable articulable suspicion that defendant was speeding"); *U.S. v. Fuentes*, No. 09 Cr. 860, 2010 U.S. Dist. LEXIS 16489, 2010 WL 707424, at *3 (S.D. Tex. Feb. 23, 2010) (finding reasonable suspicion where an officer's visual speed was supported by additional observations – i.e. vehicle's relative speed and roaring engine – and such observations were corroborated by patrol car's video camera); *U.S. v. Riley*, No. 07 Cr. 226, 2007 U.S. Dist. LEXIS 80281, 2007 WL 3204063, at *4 (D. Neb. Oct. 30, 2007) (finding reasonable suspicion where officer's visual speed estimate was supported by separate radio dispatch indicating defendant's vehicle was being driven recklessly).

"In the absence of sufficient indicia of reliability, an officer's visual approximation that a vehicle is traveling in excess of the legal speed limit is a guess that is merely conclusory and which lacks the necessary factual foundation to provide an officer with reasonably trustworthy information to initiate a traffic stop." *Id.* Ultimately, the court in *Sowards* held that the officer's traffic stop for speeding was unconstitutional for the following reasons: the officer's credibility was suspect; his visual speed estimate was a guess that was merely conclusory without any appropriate factual foundation; and that it lacked the necessary indicia of reliability to be an objectively reasonable basis to initiate the traffic stop. *Id.*, at 594.

As articulated above, the *Sowards* court went into great detail articulating the appropriate test to use to analyze Marshall's Fourth Amendment claim, yet the Supreme Court of Indiana incorrectly refused to apply *Sowards* on two grounds: the *Sowards* court evaluated the traffic stop for probable cause as opposed to reasonable suspicion and Reserve Officer Dolan's claim that he used a radar, without any verification, removes this case from being considered a visual speed estimate to which *Sowards* applies.

As articulated more fully in his Petition for Writ of Certiorari, the Supreme Court of Indiana's contention that *Sowards* only applies to an evaluation of probable cause for a traffic stop was error. Since *Sowards*, federal and state courts have acknowledged that reasonable suspicion, as opposed to probable cause, is the proper legal standard to utilize when analyzing the constitutionality of a warrantless traffic stop for speeding and, after having made such an acknowledgment, apply *Sowards* to the reasonable suspicion analysis.

Equally important is the claimed use of a radar necessarily implies that the officer can testify as to the radar speed. A beeping sound by a radar only informs its user that a vehicle is approaching, it does not reveal an actual speed. When using a radar, it is the officer's responsibility to observe the radar, identify an actual vehicle speed from the radar, and then correlate that speed to the officer's knowledge of the applicable speed limit. The case law cited above is consistent on this point. As such, when an officer is unable to testify factually about an actual radar speed when a radar is claimed to have been used, there is no longer any presumptive validity as to vehicle speed that the use of a radar would ordinarily carry to support reasonable suspicion. In the absence of any such presumptive validity, the stop is properly analyzed as a visual speed estimate under *Sowards*.

Although the Supreme Court of Indiana erred by not applying *Sowards* to the facts of this case, had it done so the court would have been forced to conclude that Reserve Officer Dolan lacked reasonable suspicion to stop Marshall's vehicle. This is so because Reserve Officer Dolan could not even provide enough information to engage in the appropriate analysis under *Sowards*.

As *Sowards* and applicable case law make clear, the requisite Fourth Amendment analysis requires, at a minimum, an officer's knowledge of the actual speed limit at the time of the traffic stop and at least an estimation of the vehicle's speed. This is the minimum essential information needed to engage in the appropriate Fourth Amendment analysis to resolve this case and is information that Reserve Officer Dolan did not possess.

Reserve Officer Dolan could not provide so much as an estimate as to Marshall's vehicle speed or any context as to how he determined that Marshall was speeding. This is a critical piece of information and all that Reserve Officer Dolan was able to admit was that he did not recall how fast Marshall's vehicle was traveling; he just makes the conclusory statement that he was going over the speed limit.

Consequently, it is impossible to determine, based on Reserve Officer Dolan's own testimony, whether Marshall's vehicle was traveling in significant excess of the posted speed limit or in slight excess. This missing piece of critical information, by itself, does not allow any court to engage in the appropriate Fourth Amendment analysis and necessarily means that the traffic stop was unlawful.

Even if the analytical framework in *Sowards* were to be disregarded, the Supreme Court of Indiana still erred in how it applied the reasonable suspicion standard to Marshall's case. It is undisputed that "reasonable suspicion is a less demanding standard than probable cause," requiring a showing "considerably less than preponderance of the evidence," but there must be "at least a minimal level of objective justification for making the stop." *Illinois v.*

Wardlow, 528 U.S. 119, 123 (2000) (emphasis added). A hunch will not suffice. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Rather, an "officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the investigative stop. *Id.* at 21. The officer may then "briefly stop the suspicious person and make 'reasonable inquiries' aimed at confirming or dispelling his suspicions." *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1973).

The Court must evaluate the "totality of the circumstances" to determine whether the investigators had a "particularized and objective basis" for suspecting legal wrongdoing. *United States v. Arvizu*, 534 U.S. 266, 273 (2002); see also *United States v. Williams*, 619 F.3d 1269, 1271 (11th Cir. 2010). Stated somewhat differently, reasonable suspicion "takes into account 'the totality of the circumstances – the whole picture.'" *Navarette v. California*, 572 U.S. 393, 397 (2014). Reasonable suspicion ". . . depends on a commonsense approach based on "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* at 402 (internal quotations omitted).

Even if the Court were to assume that Reserve Officer Dolan actually knew the applicable speed limit at the time he observed Marshall's vehicle,[2] knowing the speed limit is immaterial if the Officer can't even provide so much as an estimate as to the vehicle's speed or the manner in which it was operated so as to substantiate an allegation of speeding.

---

[2] Marshall has and continues to contend that it was an abuse of discretion for the trial court to find that Reserve Officer Dolan knew the applicable speed limit at the time of the traffic stop. Reserve Officer Dolan testified that he patrols the area often, is very familiar with the roadway, he patrolled the roadway after he stopped Marshall, and that the applicable speed limit never changed. That being said, he did not know the speed limit at the time of his deposition and incorrectly guessed that it may have been 40 mph. He subsequently testified at the suppression hearing that he confirmed the speed limit was 50 mph after he revisited the scene in preparation for the suppression hearing. He was unable to explain his loss of knowledge as to the speed limit but asked to be taken at his word that he knew it at the time he stopped Marshall.

If a reasonable and prudent person without any legal training were to apply a practical, common-sense evaluation to the facts of this case, that person would conclude that Reserve Officer Dolan did not have a particularized and objective basis for stopping Marshall. It's common-sense that for an officer to legitimize pulling someone over for speeding said officer would need to know the applicable speed limit and, at the very least, be able to provide either a speed estimate or articulate his or her observations as to how the vehicle was operated which led the officer to conclude that the motorist was speeding. Reserve Officer Dolan couldn't testify concerning the latter and it is highly doubtful he knew the former at the time of the stop.

Moreover, the Supreme Court of Indiana also failed to acknowledge and follow the factually indistinguishable case of *State v. Petzoldt* which was relied heavily upon by the Court of Appeals of Indiana in its Opinion which reversed the trial court's ruling in this case. 803 N.W.2d 128 (Iowa Ct. App. 2011). Consequently, there is now a state court split on the unique issues and facts presented by this case.

Based on all of the foregoing, it is Marshall's contention that there is more than a fair prospect that this Court will reverse the decision of the Supreme Court of Indiana.

C. Denial of the Stay Inevitably Will Result in Irreparable Harm to Marshall

Unless the order by the Porter Superior Court 4 setting Marshall's case for jury trial is stayed, Marshall will suffer immediate, severe, and irreparable harm; namely one or more violations of his constitutional rights.

Marshall believes in the issues presented in his Petition for Writ of Certiorari, they are issues of public concern, and they are issues that the Indiana judiciary have gone back and forth on. By requiring Marshall to stand trial while his Petition for Writ of Certiorari is still pending, the trial court is forcing him to gamble with his pre-conviction appellate rights which he has

chosen to exercise. This is so because if he is found not guilty at trial, it will render his appellate issues moot. Moreover, it will solidify the precedential opinion issued by the Supreme Court of Indiana which is in derogation of Fourth Amendment precedent.

The alternative is that Marshall is forced to stand trial while his Petition for Writ of Certiorari is still pending and, after said trial, be found guilty. As indicated more fully in his Petition for Writ of Certiorari and herein, there is a more than fair probability that this Court will ultimately conclude that the traffic stop violated Marshall's Fourth Amendment rights.

It is important to emphasize that the issue in this case stems from an interlocutory appeal which is distinctly different from a situation where a defendant is appealing post-conviction. Marshall is still cloaked with a constitutional presumption of innocence and to have him tried and convicted while he is still exercising his pre-conviction appellate rights, just to be exonerated after the fact, would be tantamount to the legal system working in reverse. Such a process would be a violation of Marshall's right to due process of law pursuant to the Fourteenth Amendment to the United States Constitution.

Allowing this case to proceed to jury trial is to condone setting the course for a violation of Marshall's constitutional rights. Once a constitutional rights violation occurs, it cannot be undone. The prudent course of action so as to avoid any potential for a constitutional rights violation is to stay all proceedings in this case until after this Court has ruled on Marshall's pending Petition for Writ of Certiorari.

D. The Balance of Equities Favors a Stay

Finally, equity favors a stay of the trial court's order setting Marshall's case for jury trial. The State of Indiana has no more interest in seeing this case proceed to trial then it does any other case it is tasked with prosecuting. Should this case proceed to trial, Marshall will suffer one

or more violations of his constitutional rights as articulated more fully in the preceding section. These are concrete harms that will occur regardless of whether he would ultimately be found guilty or not guilty by a jury. The fact that Marshall will face a deprivation of his constitutional rights is enough, by itself, to grant a stay.

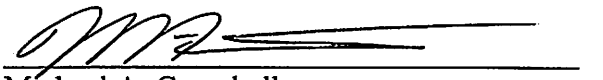
Also important is the public's interest in the outcome of this litigation. How this case is decided will affect the substantive Fourth Amendment rights of every motorist traveling throughout the United States. The issue presented in this case was one of first impression in the State of Indiana and it is one of national concern. This is especially true considering the Supreme Court of Indiana's opinion is an outlier in Fourth Amendment jurisprudence which can be relied upon by other state and federal courts to erode the reasonable suspicion standard. As indicated above, allowing this case to proceed to trial could render Marshall's pending Petition for Writ of Certiorari moot in what may otherwise become a landmark case in Fourth Amendment jurisprudence. Such a result would be both a disservice and injustice to not only Marshall, but to the American public.

CONCLUSION

For the foregoing reasons, the Court should issue an order directing the Porter Superior Court 4 to stay the jury trial set for July 29, 2019 in *State of Indiana v. Zachariah J. Marshall*, Cause No. 64D04-1611-CM-010105, pending a ruling on Marshall's previously filed Petition for Writ of Certiorari and this Court's disposition of said Petition.

Dated: July 2, 2019

Respectfully submitted,



Michael A. Campbell
Counsel of Record / Counsel for Petitioner
Campbell Law, P.C.
3235 45th St., Suite 107
Highland, IN 46322
(219) 234-2370
(219) 234-2369 (fax)
mac@attorney-campbell.com

STATE OF INDIANA
IN THE SUPREME COURT

ZACHARIAH J MARSHALL, Appellant(s), v. STATE OF INDIANA Appellee(s).	Cause No. 18S-CR-00464

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 12th day of April, 2019.

Gregory R. Pachmayr,
Clerk of the Supreme Court

Ex. A

IN THE

Indiana Supreme Court

Supreme Court Case No. 18S-CR-00464

Zachariah J. Marshall,
Appellant (Defendant below),

–v–

State of Indiana,
Appellee (Plaintiff below).

Argued: October 15, 2018 | Decided: February 27, 2019

Appeal from the Porter Superior Court 4,
No. 64D04-1611-CM-010105
The Honorable David L. Chidester, Judge

On Petition to Transfer from the Indiana Court of Appeals,
No. 64A05-1710-CR-02368

Opinion by Justice Goff

Chief Justice Rush and Justices David, Massa, and Slaughter concur.

Goff, Justice.

Zachariah Marshall challenges the propriety of his traffic stop for speeding under both the United States and Indiana Constitutions. He presents us with an interesting question: When a police officer's calibrated radar indicates an oncoming vehicle is speeding, the officer then verifies the radar speed exceeds the posted speed limit, but he ultimately fails to document the excessive speed, is there reasonable suspicion for a traffic stop? We answer yes and affirm the trial court.

Factual and Procedural History

During the early morning hours of October 29, 2016, as Reserve Officer Sean Dolan patrolled near State Road 8 and 500 West in Hebron, Indiana, in Porter County, he observed a vehicle approaching him through the darkness. That night Officer Dolan drove a marked police car equipped with a radar unit that was mounted on the dashboard, turned on, and properly calibrated. As the vehicle approached him, Officer Dolan heard the radar giving off a high-pitch tone. He later explained that the higher the tone's pitch, the faster the speed. Upon hearing the high pitch, Officer Dolan looked at the radar's target speed, compared it to the 50-miles-per-hour speed limit sign posted just north of him, and saw the oncoming vehicle was traveling faster than the posted speed limit. It was a clear, dry night and Officer Dolan had no trouble seeing his radar unit, the posted speed limit, or the approaching car.

One-hundred-percent sure the oncoming vehicle was speeding, Officer Dolan initiated a traffic stop, intending to cite the driver for speeding only. With the car stopped, Officer Dolan approached and found Zachariah Marshall was the driver. Explaining that he stopped Marshall for speeding, Dolan asked him for his driver's license and vehicle registration. While Officer Dolan ran a warrant and BMV check, his back-up officer (Corporal O'Dea) arrived at the scene and talked with Marshall. Corporal O'Dea smelled alcohol on Marshall and noticed his slowed and slurred speech. With the routine speeding traffic stop now turned into an OWI investigation, Officer Dolan exercised his discretion and decided not

to cite Marshall for speeding, later explaining: "I knew he was going to have plenty of money problems and legal problems ahead of him that were going to be costly and I decided to cut him a break on the citation for speeding." Tr. p. 15. Since Officer Dolan did not issue Marshall a speeding ticket or a written warning, he did not document the speed he clocked Marshall driving.

The State of Indiana eventually charged Marshall with three counts: (1) A-Misdemeanor Operating a Vehicle While Intoxicated, Endangering a Person; (2) C-Misdemeanor Operating a Vehicle with an Alcohol Concentration Equivalent to at least 0.08 but less than 0.15; and (3) C-Misdemeanor Operating a Vehicle While Intoxicated.

Marshall's counsel deposed Officer Dolan on June 15, 2017, nearly eight months after the traffic stop. During that deposition, Officer Dolan could recall neither the posted speed limit near the intersection of Route 8 and 500 West where he pulled over Marshall nor could he remember the radar reading of how fast Marshall was driving that night. Officer Dolan, however, stated that at the time of the traffic stop, he could see the speed limit sign posted on 500 West.

On August 4, 2017, Marshall moved to suppress all evidence from the traffic stop, alleging he'd been illegally seized under both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Regarding the Fourth Amendment, Marshall alleged Officer Dolan lacked reasonable suspicion to stop him for speeding that night. And concerning the Indiana Constitution, he alleged the traffic stop proved unreasonable considering the totality of the circumstances. Both arguments hinged upon the point that in his deposition testimony Officer Dolan could not recall how fast Marshall was driving before the traffic stop and could not remember the posted speed limit.

Officer Dolan testified at the suppression hearing, recounting the details surrounding the traffic stop and repeatedly acknowledging that he could not remember the posted speed or the radar speed during his deposition two months earlier. He testified he did not document Marshall's speed that night. He explained he returned to the scene of the

traffic stop between his deposition and the suppression hearing and he could now definitely say the speed limit there is 50 miles per hour. Ultimately, Officer Dolan testified that he knew the posted speed limit the night of the stop and he was one-hundred-percent certain that Marshall was speeding before he stopped him.

The trial court eventually denied Marshall's suppression motion. The court's factual findings included that Officer Dolan "observed Defendant's car speeding and . . . [he] was using a radar." The trial court then concluded:

> Officer Dolan was **sure**, based on his experience and observations at the scene, on a clear night, that defendant approached the road in [question] traveling in excess of the posted speed limit. He was **adamant** that the defendant was traveling too fast. The Court **thus finds** that his stop of the defendant was based upon his observation that a traffic infraction was being committed. **On that basis**, the Court denies the Motion to Suppress.

Appellant's App. Vol. II, pp. 11–12 (emphases added). The trial court certified the order for interlocutory appeal and Marshall appealed.

The Court of Appeals accepted jurisdiction, and then reversed, holding: "Because Reserve Officer Dolan could not testify regarding the speed of Marshall's vehicle in more specific terms . . . he did not have specific articulable facts to support his initiation of a traffic stop, and therefore the traffic stop violated Marshall's Fourth Amendment rights." *Marshall v. State*, 105 N.E.3d 218, 222 (Ind. Ct. App. 2018). The Court of Appeals did not address Marshall's argument for suppression under Article 1, Section 11, explaining that "[a]s the Indiana Constitution provides broader protection than the Federal Constitution . . . and we have concluded the traffic stop did not meet the lower protection provided by the Federal Constitution, we need not address any argument regarding the Indiana Constitution." *Id.* at 222 n.6.

The State petitioned for transfer, which we granted, thereby vacating the Court of Appeals opinion. Ind. Appellate Rule 58(A).

Standard of Review

Trial courts enjoy broad discretion in decisions to admit or exclude evidence. *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014). When a trial court denies a motion to suppress evidence, we necessarily review that decision "deferentially, construing conflicting evidence in the light most favorable to the ruling." *Id.* However, we "consider any substantial and uncontested evidence favorable to the defendant." *Id.* We review the trial court's factual findings for clear error, declining invitations to reweigh evidence or judge witness credibility. *Id. See also State v. Keck*, 4 N.E.3d 1180, 1185 (Ind. 2014) (explaining that "when it comes to suppression issues, appellate courts are not in the business of reweighing evidence" because "our trial judges are able to see and hear the witnesses and other evidence first-hand"). If the trial court's decision denying "a defendant's motion to suppress concerns the constitutionality of a search or seizure," then it presents a legal question that we review de novo. *Robinson*, 5 N.E.3d at 365.

Discussion and Decision

Traffic stops, for even minor violations, fall within the protections of the federal and state constitutions. When a law enforcement officer stops a vehicle for a suspected traffic infraction like speeding, that officer seizes the vehicle's occupants under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution; and that traffic stop must pass constitutional muster. *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014) (citing *Brendlin v. California*, 551 U.S. 249, 255–59 (2007)); *Meredith v. State*, 906 N.E.2d 867, 869 (Ind. 2009) (Fourth Amendment); *State v. Quirk*, 842 N.E.2d 334, 339–40 (Ind. 2006) (Article 1, Section 11). Marshall here argues that his traffic stop offended both the state and federal constitutions. Even though the Fourth Amendment and Article 1, Section 11 share parallel language, they part ways in application and

scope. The Indiana Constitution sometimes affords broader protections than its federal counterpart and requires a separate, independent analysis from this Court. *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018). We, therefore, take Marshall's constitutional arguments in turn, analyzing his claim first under the Fourth Amendment, and then under Article 1, Section 11.

I. The Fourth Amendment

A. The reasonable-suspicion standard applies to traffic violations generally.

The Fourth Amendment safeguards our persons, our property, and our peace by requiring that law enforcement first have a warrant supported by probable cause before executing searches or seizures. *Robinson*, 5 N.E.3d at 367. This mandate notwithstanding, one exception to the warrant and probable-cause requirements allows police to seize a person without a warrant and on a level of suspicion less than probable cause—that is, the reasonable-suspicion standard for brief investigatory stops. We often call these encounters *Terry* Stops, where an officer may "stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" *Id.* (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). Traffic stops typically fall into this *Terry* Stop category, and, therefore, must be based upon reasonable suspicion. *Meredith*, 906 N.E.2d at 869 (citing *Whren v. United States*, 517 U.S. 806, 809–10 (1996)).

Though admittedly "a 'somewhat abstract' concept," reasonable suspicion is not an illusory standard. *State v. Renzulli*, 958 N.E.2d 1143, 1146 (Ind. 2011) (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)). The reasonable-suspicion standard guards Fourth Amendment rights alongside the warrant and probable cause requirements. Law enforcement "may not initiate a stop for any conceivable reason[;]" they must have at least reasonable suspicion lawbreaking occurred. *Meredith*, 906 N.E.2d at 869 (citing *Whren*, 517 U.S. at 809–10; *Delaware v. Prouse*, 440 U.S. 648, 653

(1979); *Finger v. State*, 799 N.E.2d 528, 532 (Ind. 2003)). Nor can police rely on a "mere 'hunch'" simply suggesting a person committed a crime before making a *Terry* Stop, like a traffic stop. *Prado Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). To be sure, "[s]uch a stop 'must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.'" *Robinson*, 5 N.E.3d at 367 (quoting *Armfield v. State*, 918 N.E.2d 316, 319 (Ind. 2009)). Reasonable suspicion requires more than an officer's own subjective belief a person might be violating the law. *See Terry*, 392 U.S. at 21–22. In other words, the stopping officer must be able to articulate some facts that provide a particularized and objective basis for believing a traffic violation occurred. *See Keck*, 4 N.E.3d at 1184. That is reasonable suspicion—the constitutional floor—for a traffic stop.

Marshall argues that Reserve Officer Dolan lacked reasonable suspicion for a traffic stop since he did not document the radar speed, could not recall the posted speed limit in his deposition, and could not articulate Marshall's precise speed at the deposition or the suppression hearing. We disagree because the reasonable-suspicion standard does not become more exacting for speeding violations.

B. The reasonable-suspicion standard does not change for speeding traffic stops specifically.

Applying the reasonable-suspicion standard to traffic stops, we've previously said that, generally, "[a]n officer's decision to stop a vehicle is valid so long as his on-the-spot evaluation reasonably suggests that lawbreaking occurred." *Meredith*, 906 N.E.2d at 870. While we abide by our prior statement, this case presents a variation on that jurisprudential theme by addressing what details must survive that on-the-spot evaluation for the traffic stop to hold up under the Fourth Amendment's weight. Marshall presents a more specific question: when an officer stops a driver for speeding, does the reasonable-suspicion standard demand that the officer document the driver's speed?

Marshall argues the answer to this question is yes, largely relying upon *United States v. Sowards*, 690 F.3d 583 (4th Cir. 2012). In that case, the police

officer stopped the defendant based upon only his visual observation that the defendant was driving 75 miles per hour in a 70-miles-per-hour zone. *Id.* at 585. Even though the officer had radar equipment, he did not use it to verify the speed. *Id.* Likewise, the officer did not use pacing to gauge the defendant's speed. *Id.* That officer later testified there was no technique to visually assess whether a car was speeding, and he exclusively relied on his experience patrolling speeders. *Id.* at 585–86.

The Fourth Circuit held the officer's visual estimation of the defendant's speed alone did not provide sufficient suspicion for the traffic stop because it provided no factual foundation for speeding. *Id.* at 594. That court opined that when, based on a visual assessment only, an officer stops a driver for speeding in slight excess of the speed limit, "then additional indicia of reliability are necessary to support the reasonableness of the officer's visual estimate." *Id.* at 591. The court explained that "[s]uch additional indicia of reliability need not require great exactions of time and mathematical skill that an officer may not have, but they do require some factual circumstance that supports a reasonable belief that a traffic violation has occurred." *Id.* at 593.

Marshall likens his case to *Sowards* and pushes for a similar result. He believes that had Officer Dolan documented his speed or even remembered how fast he was driving before the stop, then there would be some indicia of reliability here to make the traffic stop reasonable. But we see *Sowards* differently and notice two distinguishing points that limit its applicability here. First and foremost, the *Sowards* court evaluated that traffic stop for probable cause, not reasonable suspicion. *Id.* at 594. As we've said before, probable cause is a more demanding standard compared to reasonable suspicion. *See Renzulli*, 958 N.E.2d at 1146. Second, *Sowards* involved a speeding determination based solely on the officer's visual observation. Radar was not used, unlike here. Even if we did apply *Sowards* to these facts, Officer Dolan's radar indication would constitute sufficient indicia of reliability to support his determination that Marshall was speeding. *See Sowards*, 690 F.3d at 593 (suggesting that radar or pacing would provide sufficient indicia of reliability for a speeding assessment).

Sowards aside, Marshall, nevertheless, insists Officer Dolan lacked reasonable suspicion to stop Marshall for speeding because Dolan could not articulate, or even estimate, how fast Marshall was driving that night. Marshall demands a number from Officer Dolan, reasoning that we cannot do a Fourth Amendment reasonable-suspicion analysis without one. In support of that argument, Marshall invites us to establish a bright-line rule requiring that officers document a driver's exact speed in some way—by remembering it, documenting it in a citation, a written warning, or a probable-cause affidavit, or by recording the radar speed via a dashboard camera. We disagree initially with Marshall's premise that the Fourth Amendment's reasonable-suspicion requirement needs a number for a speeding violation to pass constitutional muster. And we then reject Marshall's invitation to establish such a black-and-white rule.

First, we disagree with Marshall's premise that the Fourth Amendment requires that an officer provide a number for how fast a defendant was driving. The reasonable-suspicion standard does not demand such measures. Like probable cause, reasonable suspicion is not readily quantifiable and cannot be "reduced to a neat set of legal rules." *Sokolow*, 490 U.S. at 7 (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). Rather, the reasonable-suspicion "standard takes into account 'the totality of the circumstances—the whole picture.'" *Prado Navarette*, 572 U.S. at 397 (citation omitted). Reasonable suspicion does not require that an officer know a crime occurred beyond a reasonable doubt or even by a preponderance of the evidence. *See id.* And so, in order to execute a constitutional traffic stop, "officers need only 'reasonable suspicion'—that is, 'a particularized and objective basis for suspecting'" the driver violated the law. *Heien*, 135 S. Ct. at 536.

Second, we reject Marshall's request for a bright-line rule for similar reasons and because we think such a rule unnecessary. As we just said, reasonable suspicion must be evaluated based on the totality of the circumstances of each particular case. And this individualized test does not lend itself to bright-line, widespread rules. What amounts to reasonable suspicion in one case may not be enough in a different case. What's more, reasonable suspicion is not an exacting standard, and it has not and cannot be reduced to a generic checklist. For speeding violations

in particular, it makes sense that either pacing or radar would naturally provide articulable, particularized objective facts to rouse reasonable suspicion. But this case does not require us to speak in such definitive terms.

C. Reserve Officer Dolan had reasonable suspicion that Marshall was speeding.

Looking at the totality of these facts—the whole picture—Officer Dolan had reasonable suspicion to stop Marshall for speeding that night, meaning Dolan possessed and provided sufficient articulable facts or particularized, objective facts that Marshall was speeding. He testified at the deposition and the suppression hearing that he was using radar that night. He also testified the radar was mounted in front of him, turned on, and properly calibrated that night. Officer Dolan testified the radar's high-pitch tone first alerted him that Marshall's oncoming vehicle was speeding. He explained he looked down at the radar and compared the radar speed to the posted 50-miles-per-hour speed limit and concluded Marshall was speeding. Officer Dolan testified he was one-hundred-percent sure that Marshall was speeding when he stopped him. All told, Officer Dolan articulated enough facts that gave him a particularized and objective basis for believing Marshall was speeding when he initiated the traffic stop.[1] We, therefore, hold that the traffic stop did not amount to an unconstitutional seizure under the Fourth Amendment.

II. Article 1, Section 11

The Indiana Constitution's Article 1, Section 11 also protects Hoosiers' persons, property, and peace from unreasonable State intrusion. *Quirk*, 842 N.E.2d at 339–40. To maintain its vigor in guarding citizens from

[1] We pause a moment to address Marshall's suggestion that Officer Dolan was not a credible witness. But we can only respond by noting that credibility determinations fall outside our purview in these cases. The trial court's order shows that it found Dolan credible, and we will not disturb that determination. *See supra* p. 4.

unreasonable searches and seizures, we give Article 1, Section 11 "a liberal construction" when applying it. *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006). Indeed, it is well settled that investigative stops, like traffic stops, receive protections under Article 1, Section 11. *Renzulli*, 958 N.E.2d at 1146. Although "[p]olice officers may stop a vehicle when they observe minor traffic violations[,]" they must do so under Article 1, Section 11's strictures. *Quirk*, 842 N.E.2d at 340 (citation omitted).

When a defendant challenges the propriety of an investigative stop under the Indiana Constitution, the burden falls to the State to "show the police conduct 'was reasonable under the totality of the circumstances.'" *Robinson*, 5 N.E.3d at 368 (quoting *State v. Washington*, 898 N.E.2d 1200, 1205–06 (Ind. 2008)). We decide whether a stop proved reasonable given the totality of the circumstances by applying our three-part *Litchfield* test, whereby we evaluate: "1) the degree 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." *Id.* (quoting *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005)). Considering these three factors, we conclude Marshall's traffic stop was reasonable.

First, based on the radar unit's indications, Reserve Officer Dolan had a high degree of knowledge that Marshall was speeding. Officer Dolan testified his radar's high-pitched tone alerted him that Marshall was speeding and even explained that a higher pitch indicated a faster speed. Officer Dolan then compared the radar speed to the reflective 50-miles-per-hour speed limit sign posted before him. We find that Officer Dolan acted with a great degree of suspicion and then knowledge that Marshall was driving too fast when he stopped him for speeding.

Second, we find that this initial seizure—a traffic stop for speeding—amounted to a small intrusion on Marshall's ordinary activities. Officer Dolan stopped Marshall at approximately 2:40 a.m. on a road with little-to-no traffic. Upon making the stop, Dolan explained why he stopped Marshall and asked him for his license and registration in order to run a warrant and BMV check—all routine procedures. The stop escalated into

an OWI investigation only when Corporal O'Dea spoke with Marshall and noticed his slowed, slurred speech and smelled alcohol.

Third, we acknowledge that law enforcement has at least a legitimate, if not a compelling, need to enforce traffic-safety laws, including speeding limits. So long as governments set speed limits for public safety, those limits will need to be enforced.

Balancing these three factors, we hold Marshall's traffic stop for speeding did not violate Article 1, Section 11 of the Indiana Constitution. Officer Dolan possessed sufficient knowledge that Marshal was speeding, the initial stop was not intrusive, and law enforcement needs to be able to patrol speeding.

Conclusion

We hold this traffic stop passes muster under both the United States and Indiana Constitutions. As it relates to the Fourth Amendment, we find there were sufficient articulable facts to give Reserve Officer Dolan reasonable suspicion that Marshall was speeding. And for Article 1, Section 11, we find the traffic stop was reasonable in view of the totality of the circumstances. We, therefore, affirm the trial court's decision denying Marshall's motion to suppress evidence.

Rush, C.J., and David, Massa, and Slaughter, JJ., concur.

ATTORNEY FOR APPELLANT
Michael A. Campbell
Schwerd, Fryman & Torrenga, LLP
Valparaiso, Indiana

ATTORNEYS FOR APPELLEE
Curtis T. Hill, Jr.
Attorney General

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

STATE OF INDIANA	)	IN THE PORTER SUPERIOR COURT
	) SS:	DIVISION 4
COUNTY OF PORTER	)	VALPARAISO, INDIANA

STATE OF INDIANA	)	
	)	
VS.	)	64D04-1611-CM-10105
Zachariah Marshall	)	
Defendant	)	

ORDER SETTING JURY TRIAL

The Court, having reviewed the briefs of the parties, now denies Motion for Stay and reaffirms 7/29/19 jury trial.

Dated: June 5, 2019

Judge

✓ ✓

CC: Atty Campbell / DPA Peterson

FAXED Atty. Campbell

FILED IN OPEN COURT
JUN 05 2019
COUNTY DIVISION
PORTER SUPERIOR COURT

RECEIVED
JUN 06 2019
CLERK
PORTER CIRCUIT/SUPERIOR COURT

Ex. B

STATE OF INDIANA	)	IN THE PORTER SUPERIOR COURT 4
	) SS:	
COUNTY OF PORTER	)	SITTING AT VALPARAISO, INDIANA
STATE OF INDIANA, Plaintiff,	)	
v.	)	Cause No.: 64D04-1611-CM- 010105
ZACHARIAH J. MARSHALL, Defendant.	)	

ORDER

The Court, having carefully considered Defendant's Motion to Certify Order Setting Jury Trial for Interlocutory Appeal, and being duly advised, now GRANTS that motion. The Court's order of June 5, 2019 Setting Jury Trial and which therein denied Defendant's Motion to Stay Proceedings is hereby certified for Interlocutory Appeal under Ind. App. R. 14(B).

SO ORDERED this _____ day of _____, 2019.

_____
JUDGE, PORTER SUPERIOR COURT 4

DENIED
June 27, 2019
DC

Distribution:

Michael A. Campbell
State of Indiana

Ex. C