

ILLINOIS PROSECUTOR SERVICES, LLC

PO Box 722, Carlinville, IL 62626
Phone: (217) 854-8041 Fax: (217) 854-5343
Website: www.ipsllonline.com
E-mail: don@ipsllonline.com



LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of January – 2023

Copyright © 2023 Illinois Prosecutor Services, LLC. All Rights Reserved.

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of January - 2023

People v. Vincent E. Molina, 2022 IL App (4th) 220152, November 23, 2022

CASE: After noticing the odor of raw cannabis during a traffic stop, an Officer search the suspect car. Did the odor of raw cannabis alone justify a search of the car?

FACTS: Molina was a passenger in a vehicle that was stopped for speeding. The Officer that stopped the car stated that he had the training and experience to discern the difference between the odor of burnt cannabis and the odor of raw cannabis. When the Officer approached the passenger side of the vehicle, he smelled the strong odor of raw cannabis. Based solely on that smell, the Officer conducted a search of the vehicle, finding (1) in the center console “a small cardboard box with several rolled joints” inside and (2) “a clear plastic Tupperware container in the glove box that had suspected cannabis in it.” Prior to the search, Molina told the Officer that he had a license for the medical use of cannabis. Molina was charged with the unlawful possession of cannabis by a passenger in a motor vehicle (625 ILCS 5/11-502.15(c) He then filed a motion to suppress evidence.

The trial court granted Molina’s motion to suppress, stating in its written order that “[t]he smell of raw cannabis can be quite strong even in small quantities,” and “there are many innocent reasons someone or someone's vehicle may emit the odor of raw cannabis.” The court explained its reasoning, writing the following: “[O]ne such reason is that a person working at a cannabis cultivation facility, or a dispensary could, and likely would, leave their [sic] place of employment smelling like raw cannabis. Persons with medical cannabis card may cultivate plants and, in the process of doing so, would likely smell of raw cannabis. Persons using or handling raw cannabis in any way can smell of raw cannabis.” The People appealed.

ARGUMENT: The People argued on appeal that the trial court erred by granting defendant's motion to suppress because (1) the primary holding in People v. Stout, 106 Ill. 2d 77, (1985), that the odor of cannabis alone establishes probable cause to search a vehicle, is still good law, (2) the trial court improperly based its decision on the plausibility of innocent explanations for why a car could smell of raw cannabis, and (3) the court improperly considered evidence outside the record and its own personal knowledge.

THE LAW: All persons enjoy the right to be free from unreasonable searches and seizures. A police officer may conduct a warrantless search of a stopped vehicle if the officer has probable cause to believe that the vehicle contains contraband. “To establish probable cause, it must be shown that the totality of the facts and circumstances known to the officer at the time of the search would justify a reasonable person in believing that the automobile contains contraband or evidence of criminal activity.” Probable cause “requires only that the facts available to the officer—including the plausibility of an innocent explanation—would warrant a reasonable man to believe there is a reasonable probability ‘that certain items may be contraband *** or useful as evidence of a crime.’ ”

“In 2014, [(through the Medical Act)] the State of Illinois legalized the possession of cannabis for people to whom the State had granted a license to use cannabis for medical purposes. 410 ILCS 130/1 et seq. In 2016, the State of Illinois passed a law stating that a licensed user of medical cannabis ‘shall not be considered an unlawful user’ and that medical cannabis ‘purchased by a qualifying patient at a licensed dispensing organization shall be lawful products.’ 410 ILCS 130/7 Also in 2016, the State of Illinois decriminalized the possession of less than 10 grams of cannabis and defined possession of less than 10 grams as a ‘civil law violation.’ 720 ILCS 550/4(a).” In June 2019, the State of Illinois legalized the possession of small amounts of cannabis for recreational use through the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 et seq.), allowing, among other things, recreational cannabis to be transported in a private vehicle if it “is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving” (410 ILCS 705/10-35(a)(2)(D)). At the same time, the legislature amended section 11-502.1 and added section 11-502.15 of the Vehicle Code to allow drivers and passengers to transport medical and recreational cannabis if it is placed “in a sealed, odor-proof, and child-resistant” cannabis container. 625 ILCS 5/11-502.1 In August 2019, the legislature amended section 30(a)(2)(E) of the Medical Act to mirror the language of section 10-35(a)(2)(D) of the Cannabis Regulation and Tax Act, requiring medical cannabis to be stored “in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving.” 410 ILCS 130/30(a)(2)(E).

ISSUE #1: Odor of Raw Cannabis: Did the odor of raw cannabis alone provide probable cause to search the suspect car? Molina argued that even if the law requires cannabis to be transported in an odor-proof container, the officer needed

more facts than the smell of cannabis alone to suggest some criminal activity had occurred. He claimed the legislature's legalization scheme allows “almost all individuals aged 21 years and over to possess, consume, use, purchase, obtain, transport, or (in some cases) cultivate cannabis, for personal use.” The appellate court disagreed with this argument.

FINDINGS: The Court held that just because a defendant can legally possess some amounts of cannabis under specified conditions did not mean that all forms of possession are presumed to be legal. Regarding this point, the supreme court in People v. Hill, 2020 IL 124595, wrote the following: “While the mere presence of cannabis for medical users may no longer be immediately attributable to criminal activity or possession of contraband, such users must possess and use cannabis in accordance with the [Medical] Act. Notably, section 11-502.1 of the Illinois Vehicle Code prohibits any driver or passenger, who is a medical cannabis cardholder, from possessing cannabis within an area of the motor vehicle ‘except in a sealed, tamper-evident medical cannabis container.’ 625 ILCS 5/11-502.1(b), (c). Moreover, the Court noted that Section 10-10(a) of the Cannabis Regulation and Tax Act limits the amount of cannabis an Illinois resident can legally possess to (1) 30 grams of cannabis flower, (2) 500 milligrams of THC contained in a cannabis-infused product, or (3) 5 grams of cannabis concentrate. 410 ILCS 705/10-10(a). That is to say, possession of cannabis exceeding those amounts remains a crime.

Therefore, the Court held that it not persuaded that the legal landscape has changed in such a way as to render the supreme court's opinions in Stout and Hill inapplicable. The Court declared that regardless of recent changes in the law legalizing possession of small amounts of cannabis, there are still, among other things, (1) illegal ways to transport it, (2) illegal places to consume it, and (3) illegal amounts of it to possess. Further, the Court noted that the supreme court in Stout did not limit its holding in any way that would suggest the smell of cannabis constituted probable cause only because cannabis was generally illegal. Instead, the court stated simply, “[A]dditional corroboration is not required where a trained and experienced police officer detects the odor of cannabis emanating from a defendant's vehicle.”

ISSUE #2: Should cannabis Be Treated Like Alcohol Under Illinois Law: Molina also argued that cannabis should be treated like alcohol, pointing out that the smell of alcohol alone has never been held to provide probable cause for a vehicle search. According to the Court, the implication of this argument was that because cannabis—an intoxicating drug—has been legalized and regulated, Illinois case law for another intoxicating drug—specifically, alcohol—should control over established precedent. The Court rejected this argument.

FINDINGS: The Court noted that alcohol is regulated differently than cannabis—for instance, it is not illegal to possess more than 30 grams of alcohol. Similarly, there are no statutes like sections 11-502.1 and 11-502.15 of the Vehicle Code requiring alcohol to be transported in an odor-proof container. While the Court acknowledged that cannabis was in a different position in society than it was even four years ago, the Court held that that position was not so different that it needed to reevaluate the law of probable cause, particularly in light of the supreme court's recent decision in Hill not to overrule Stout. Accordingly, the Court concluded that (1) Stout remains good law and (2) the smell of raw cannabis, without any corroborating factors, was sufficient to establish probable cause to search a person's vehicle.

ISSUE #3: People v. Stribling and People v. Redmond: The Court in this case acknowledged that the Third Appellate District recently (in the Case of People v. Stribling) considered a case very similar factually to this one and held that “the smell of the burnt cannabis, without any corroborating factors, is not enough to establish probable cause to search the vehicle.” This Court rejected the Stribling Court findings.

[It should further be noted that on March 31, 2022, the Second District Appellate Court in the case of **People v. Sims, 2022 IL App (2d) 200391**, declared the following: “The odor of raw cannabis emanating from the defendant's vehicle when the officer first approached the defendant's vehicle during a traffic stop gave rise to probable cause to search the vehicle. U.S. Const. Amend. 4.”

[When a circuit court is “faced with conflicting decisions from the various appellate districts” and “the absence of controlling authority from its home district,” it is “free to choose between the decisions of the other appellate districts.” State Farm Fire & Casualty Co. v. Yapejian, 152 Ill.2d 533, (1992). However, because of our system of precedent, the circuit court may not disregard binding authority from its home district.”]. People v. Morgan, 307 Ill.App.3d 707, (4th Dist., 1999)

CONCLUSION: The Court concluded that the detection of the odor of raw cannabis gave the Officers sufficient probable cause to justify a search of Molina's car. Therefore, the trial court erred in granting Molina's motion to suppress.

QUIZ QUESTIONS FOR THE MONTH OF JANUARY – 2023

People v. Vincent E. Molina, 2022 IL App (4th) 220152, November 23, 2022

1. A police officer may conduct a warrantless search of a stopped vehicle if the officer has probable cause to believe that the vehicle contains contraband.
 - a. True.
 - b. False.

2. Does Illinois now allow the legal possession of small amounts of cannabis?
 - a. Yes.
 - b. No.

3. The People argued that the Officers in this case developed probable cause to justify a search of Molina's car based upon their detection of the smell of raw cannabis coming from that car. Did the appellate court agree with this argument?
 - a. Yes.
 - b. No.

4. All Illinois Appellate Courts now allow warrantless searches of vehicles based upon the odor of cannabis (either raw or burnt) coming from that car.
 - a. True.
 - b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF JANUARY – – 2023

People v. Vincent E. Molina, 2022 IL App (4th) 220152, November 23, 2022

1. A police officer may conduct a warrantless search of a stopped vehicle if the officer has probable cause to believe that the vehicle contains contraband.
 - a. **True.** This the declaration of the Court in this case.
2. Does Illinois now allow the legal possession of small amounts of cannabis?
 - a. **Yes.** As the Court held: “In June 2019, the State of Illinois legalized the possession of small amounts of cannabis for recreational use through the Cannabis Regulation and Tax Act (Pub. Act 101-27 (eff. June 25, 2019) (adding 410 ILCS 705/1-1 et seq.)), allowing, among other things, recreational cannabis to be transported in a private vehicle if it “is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving” (410 ILCS 705/10-35(a)(2)(D).
3. The People argued that the Officers in this case developed probable cause to justify a search of Molina’s car based upon their detection of the smell of raw cannabis coming from that car. Did the appellate court agree with this argument?
 - a. **Yes.** This Court declared that the smell of raw cannabis coming from a car was alone sufficient to justify a search of that car.
4. All Illinois Appellate Courts now allow warrantless searches of vehicles based upon the odor of cannabis (either raw or burnt) coming from that car.
 - b. **False.** The Third District Court (in People v. Stribling and People v. Redmond) have ruled that the smell of burnt cannabis alone does not justify a warrant search of a vehicle.