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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of July – 2024 - ALTERNATIVE

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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United States v. Prentiss Jackson, Nos. 23-1708 & 23-1721, --- F.4th ---, 2024 WL 2825539, June 4, 2024.

THE CASE: An Officer witnessed Jackson driving a car at night with unlit head and taillights. After pulling Jackson's car over, the Officer detected the odor of unburnt cannabis coming from Jackson's car. The Officer ordered Jackson to exit his car so that it could be searched. Jackson ran. While running, Jackson tripped and fell. A firearm dropped from Jackson's waistband. Was the discovery of the firearm legal?

FACTS: Shortly after midnight on the morning in question, Prentiss Jackson drove a vehicle with unlit head and taillights. As a result, an Officer conducted a traffic stop. The officer asked for Jackson's driver's license and registration. Jackson did not have his license but produced another form of identification. The officer smelled the odor of unburnt cannabis emanating from the car. He knew the odor came from inside the car, as he had not smelled it before he approached the vehicle. During their conversation about the license and registration, the officer told Jackson he smelled "a little bit of weed" and asked if Jackson and the passenger had been smoking. Jackson said he had, but that was earlier in the day, and he had not smoked inside the car. Through the officer's training, he knew the most common signs of impairment for driving under the influence were the odor of cannabis or alcohol and speech issues. He was also taught to look for traffic violations. Concerned that Jackson might be driving under the influence because of the head and taillight violation, the odor of cannabis, and Jackson's admission that he had smoked earlier, the officer asked Jackson whether he was "safe to drive home." Jackson said he was. His speech was not slurred during the interaction, and his responses were appropriate.

After questioning Jackson about the cannabis smell, the officer asked Jackson to wait for a moment so he could write a warning, to turn the car off, and to hand over the keys. Jackson complied. The officer then said he was going to search Jackson and the car. He asked if there were "guns, knives, drugs, [or] bombs" in the car and told Jackson he could "cut breaks and warnings" if Jackson and the passenger were "honest with [him] up front." Jackson told him none of those items were in the car. The officer then asked Jackson to get out and walk to the back of the car, cautioning Jackson not to reach for his waistband. Before Jackson exited the car, the passenger asked why the officer planned to search the car. The officer told her he could smell cannabis and explained the potential violation of Illinois law. He was ready to write up a warning for the cannabis violation, the officer told them, but he also said he was prepared to make an arrest if Jackson and the passenger were uncooperative and refused to get out of the car and permit a "probable cause" search.

In response to this line of conversation, Jackson acknowledged he had some "weed" and handed the officer a tied-off plastic baggie that appeared to contain about two grams of unburnt cannabis. The officer explained "having weed like th[at] was illegal inside the confines of a vehicle" under Illinois law. The officer again asked Jackson to step out of the car. Jackson complied and walked calmly to the back of the car. The officer intended to pat Jackson down and conduct a field sobriety test. Jackson placed his hands on the trunk. The officer turned to put his flashlight in its holster, and Jackson ran. A few seconds into his flight, Jackson tripped, and a gun fell from his waistband. The officer caught up with Jackson, restrained him so Jackson could not reach the firearm, and arrested him.

Jackson moved to suppress evidence of the gun, arguing it was the product of an unlawful seizure and search. The district court held a suppression hearing during which the officer testified as the only witness, and the government presented his bodycam video. The facts and testimony at the hearing tracked the video evidence. The district court denied Jackson's motion. After the court's decision, Jackson entered a conditional guilty plea, reserving his right to appeal the district court's denial of his motion to suppress. This appeal followed.

ISSUE: Did the District Court properly deny Jackson's motion to suppress?

THE LAW: "Warrantless searches are per se unreasonable under the Fourth Amendment, subject to only certain exceptions." The automobile exception to the warrant requirement allows authorities to search a car without a warrant if they have probable cause. "Probable cause to search a vehicle exists when, based on the totality of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'"

ARGUMENT #1: Jackson contended that evidence of the firearm should have been suppressed because the officer did not have probable cause to search him or the car. He argued that the officer relied only on the smell of unburnt cannabis, which he contended did not provide probable cause to search a vehicle under Illinois law.

CONCLUSIONS AND REASONING: The Court of Appeals concluded that Jackson was incorrect in arguing that the only evidence in support of probable cause when the officer announced an intent to search and ordered him out of the vehicle was the odor of unburnt cannabis. The totality of the circumstances, the Court reasoned, provided probable cause to search Jackson and the vehicle. Considering the circumstances of the traffic stop, the Court noted that the officer pulled Jackson over because he had been driving in the dark with unlit head and taillights, a state law violation. After pulling over the car, the officer asked for Jackson’s license and registration. But Jackson did not have his license, another state law violation. The Court declared that at any point after this lawful stop, the officer could have ordered Jackson out of the vehicle, even if the officer “ha[d] no reason to suspect foul play.” But the officer did suspect further issues—he smelled the odor of unburnt cannabis coming from the car. Although possession of cannabis in certain amounts is legal in Illinois, the smell of unburnt cannabis coming from the car signaled that Jackson had cannabis in the car in an improper container, another violation of Illinois’s law. Further, the Court noted that the circumstances also could suggest that Jackson was driving while impaired. When questioned about the smell, Jackson admitted to smoking cannabis earlier. And although Jackson responded to questions and did not seem impaired to the officer, that officer knew that failure to follow the simplest of traffic laws—like turning on your lights just after midnight—could indicate driving under the influence. Thus, the Court held that a search of Jackson and the car was warranted as possibly providing further evidence of criminal conduct.

ARGUMENT #2. Jackson argued that the officer's credibility should be questioned because he failed to conduct field sobriety tests or note any suspicion of impairment in his police report.

CONCLUSIONS AND REASONING: The Court responded Jackson's speculation did not overcome the officer's credible testimony that he intended to perform such a test. Jackson fled prior to any such test, thus depriving the Officer of opportunity of conducting such tests. In any event, the Court noted that the officer's subjective intent did not control the analysis.

ARGUMENT #3. Jackson further argued it was impossible for the officer to smell two grams of unburnt cannabis.

CONCLUSIONS AND REASONING: In response, the Court noted that Jackson provided no evidence that the officer lied about smelling the cannabis. According to the Court, to rebut the officer's testimony and the district court's credibility finding, Jackson had to show that the district court clearly erred in determining that the officer smelled unburnt cannabis and was able to differentiate that odor from burnt cannabis. And he must explain why the district court's implicit determination that the officer's testimony was credible should be reversed. The Court found that Jackson did neither. Finally, the Court noted that the officer's testimony was supported by Jackson turning over a baggie of unburnt cannabis during the traffic stop. Consequently, the Court declared that under the totality of these circumstances, the officer had probable cause to search Jackson and the car.

ARGUMENT #4. Jackson argued that because Illinois has legalized cannabis for adult recreational use, the smell of cannabis alone could not alone provide probable cause for a search or seizure.

CONCLUSIONS AND REASONING: The Court of Appeals declared that under Federal law cannabis was still illegal and, thus, the smell of cannabis alone justified a Fourth Amendment seizure and search. The Court further held that even if this were not the case, the Court held that the officer still had probable cause to search Jackson and the car. The Court reasoned that while Illinois has legalized cannabis for recreational use in some circumstances, as the officer said to Jackson and the passenger during the traffic stop, Illinois retains laws restricting the packaging of and use of cannabis. Jackson did not comply with that requirement, so the smell of unburnt cannabis provided probable cause for a violation of that Illinois law. Specifically, the Court concluded that the smell of unburnt cannabis outside a sealed container independently supplied probable cause and thus supported the direction for Jackson to step out of the car for the search.

CONCLUSION: The Court of Appeals concluded that the central issue in this case was the legality of the officer ordering Jackson out of the car for a search. Federal caselaw indicated that after a lawful stop, an officer can order occupants out of a car, and the totality of circumstances in this case supported probable cause for a search based upon a Cannabis Transportation Violation. Therefore, the smell of unburnt cannabis provided probable cause. After exiting the vehicle, Jackson chose to run, where a firearm fell from his pants. Consequently, the Court of Appeals concluded that the district court correctly denied Jackson’s motion to suppress.

QUIZ QUESTIONS FOR THE MONTH OF JULY – 2024 - ALTERNATIVE

United States v. Prentiss Jackson, Nos. 23-1708 & 23-1721, --- F.4th ---, 2024 WL 2825539, June 4, 2024.

1. The automobile exception to the warrant requirement allows Officers to conduct warrantless searches of automobiles if the Officers have probable cause to believe that the automobile contains evidence of illegal activity.
 - a. True.
 - b. False.

2. Probable cause exists when Officers have a fair probability to believe that contraband or evidence of a crime might be present in the suspect car.
 - a. True.
 - b. False.

3. In this case, Jackson argued that the Officer used the odor of cannabis alone to justify probable cause to search Jackson and his car. Did the Court of Appeals agree with this argument?
 - a. Yes.
 - b. No.

4. Jackson argued that the odor of cannabis alone could not justify a search of Jackson and his car. Did the Court of Appeals agree with this argument?
 - a. Yes.
 - b. No.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF JULY – 2024 - ALTERNATIVE

United States v. Prentiss Jackson, Nos. 23-1708 & 23-1721, --- F.4th ---, 2024 WL 2825539, June 4, 2024.

1. The automobile exception to the warrant requirement allows Officers to conduct warrantless searches of automobiles if the Officers have probable cause to believe that automobile contains evidence of illegal activity.
 - a. True. “The automobile exception, which allows authorities to search a car without a warrant if they have probable cause. See *Collins v. Virginia*, 584 U.S. 586, 592, 138 S. Ct. 1663, 201 L. Ed.2d 9 (2018); *United States v. Ross*, 456 U.S. 798, 807–09, 102 S. Ct. 2157, 72 L.Ed.2d 572 (1982); *Carroll v. United States*, 267 U.S. 132, 149, 153–56, 45 S. Ct. 280, 69 L. Ed. 543 (1925); *United States v. Ostrum*, 99 F.4th 999, 1005–06 (7th Cir. 2024).
2. Probable cause exists when Officers have a fair probability to believe that contraband or evidence of a crime might be present in the suspect car.
 - a. True. “Probable cause to search a vehicle exists when, based on the totality of the circumstances, ‘there is a fair probability that contraband or evidence of a crime will be found in a particular place.’ ” *United States v. Sands*, 815 F.3d 1057, 1063 (7th Cir. 2015) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983)); see *Kizart*, 967 F.3d at 695.
3. In this case, Jackson argued that the Officer used the odor of cannabis alone to justify probable cause to search Jackson and his car. Did the Court of Appeals agree with this argument?
 - b. No. The Court declared that the odor of cannabis was not the only basis for the Officer’s action. It noted that the Officer had probable cause to believe that Jackson was illegally transporting the cannabis and, perhaps, Jackson was driving under the influence of cannabis.
4. Jackson argued that the odor of cannabis alone could not justify a search of Jackson and his car. Did the Court of Appeals agree with this argument?
 - b. No. The Court declared that both Federal and Illinois law has declared the odor of unburnt cannabis alone is sufficient to provide probable cause to arrest suspects and conduct searches.