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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of October – 2024

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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People v. Ryan Redmond, 2024 IL 129201, September 19, 2024.

THE CASE: An Officer pulled a car over for a traffic violation. Upon approaching the car, the Officer smelled the strong odor of burnt cannabis. The Officer then searched the car and found a small amount of cannabis. Did the odor of burnt cannabis emanating from the suspect car alone justify a warrantless search of that car?

FACTS: An Officer saw a car with an improperly secured license plate traveling at a speed of 73 miles per hour in a 70-mile-per-hour zone on an Interstate. The Officer initiated a traffic stop of the vehicle. The Officer approached on the passenger side of the vehicle, and when the driver, Redmond, rolled down the passenger-side window, the Officer smelled burnt cannabis. The Officer then searched Redmond's car and found one gram of cannabis in the center console in a plastic bag. Redmond filed a motion to suppress the evidence—the cannabis—the police found in his car. The circuit court granted the motion to suppress, finding the Officer lacked probable cause for the warrantless search. The court first noted what was not present during the stop; namely, the Officer did not observe any signs of impairment or signs indicative of recent cannabis use. He also did not observe any paraphernalia, loose, or unpackaged cannabis, or the odor of raw cannabis coming from the vehicle. The circuit court found that "nothing" about Redmond's "living arrangement, travel plans, or travel route add[ed] to the likelihood that [he] was engaged in criminal conduct." As to the odor of burnt cannabis, the circuit court found that, because the smell of burnt cannabis could persist even if possessed and used wholly within the bounds of Illinois law, the smell of burnt cannabis standing alone could not constitute probable cause for a warrantless vehicle search.

The People filed an interlocutory appeal. The appellate court held that " 'the smell of the burnt cannabis, without any corroborating factors, is not enough to establish probable cause to search the vehicle.' " The appellate court, like the trial court, pointed out the absence of evidence supporting the search. ("Redmond did not delay pulling over or make any furtive movements, he rolled down the window when the Officer came to the passenger side of the vehicle, and the Officer did not observe any cannabis or related drug paraphernalia in the vehicle, smoke in the vehicle, or signs of impairment in Redmond."). Thereafter, the Illinois Supreme Court granted the People's petition for leave to appeal.

ARGUMENTS: The sole issue before the Supreme Court was whether the Officer had probable cause to search Redmond's vehicle after the Officer smelled the odor of burnt cannabis coming from the vehicle. The People argued in their brief that "where the officer detected the strong odor of burnt cannabis—a reasonable officer was justified in suspecting either a violation of the odor-proof transportation requirement or, perhaps more likely, the prohibition on the use of cannabis within a vehicle." Redmond responded that, after the legislature legalized the use and possession of cannabis, the odor of burnt cannabis emanating from a vehicle alone "lacks a clear and direct enough connection to illegal activity to make it 'probable' that a crime has recently been committed or is being committed."

ISSUE: Did the Circuit and Appellate Courts properly conclude that in this case the Officer did not possess sufficient probable cause to justify a warrantless search of Redmond's car?

SUB-ISSUE #1: Does the odor of burnt cannabis alone still justify a warrantless search?

CONCLUSIONS AND REASONING: First, the Supreme Court noted that after January 1, 2020, when the use and possession of cannabis was legalized in many instances, the appellate court has reached conflicting results in cases concerning the effect of legalization on probable cause for automobile searches. The Second District has held that the odor of burnt cannabis, standing alone, still justifies a warrantless search of an automobile. [See People v. Harris, 2023 IL App (2d) 210697]. The Third District has held that "the smell of the burnt cannabis, without any corroborating factors, is not enough to establish probable cause to search [a] vehicle." [See People v. Stribling, 2022 IL App (3d) 210098.]

The Supreme Court that declared that it would now resolve the conflict between the districts and consider whether the legalization of cannabis affects the legality of warrantless searches based on the odor of burnt cannabis. According to the Supreme Court, Illinois cannabis law has evolved over the years and now the use and possession of cannabis has not only been decriminalized in numerous situations, but it has been legalized in numerous situations. See 410 ILCS 705/10-5(a)(1), 10-10(a). There are now a myriad of situations where cannabis can be used and possessed (id.), and the smell resulting from that legal use and possession is not indicative of the commission of a criminal offense. Therefore, given the fact that under Illinois law the use and possession of cannabis is legal in some situations and illegal in others, the odor of burnt cannabis in

a motor vehicle, standing alone, is not a sufficiently inculpatory fact that reliably points to who used the cannabis, when the cannabis was used, or where the cannabis was used.

Therefore, based on our precedent and the state of cannabis laws at the time of the search in this case, the Supreme Court held that the odor of burnt cannabis is a fact that should be considered when determining whether police have probable cause to search a vehicle, but the odor of burnt cannabis, standing alone without other inculpatory facts, does not provide probable cause to search a vehicle. In light of this holding, the prior holding of the Court, that an officer's detection of the odor of burnt cannabis emanating from a vehicle, standing alone, establishes probable cause to conduct a warrantless search of the vehicle—was no longer valid for searches that occurred on or after January 1, 2020.

SUB-ISSUE #1: If the odor of burnt cannabis alone no longer justifies a warrantless search, were other facts gathered by the Officer sufficient to justify a warrantless search of the suspect car?

CONCLUSIONS AND REASONING: The People argued that in this case, the Officer gathered sufficient evidence prior to his search of the suspect car to justify that search.

In response to this argument, the Supreme Court noted that the People argued that Redmond was likely violating the Vehicle Code by using cannabis in a motor vehicle. [625 ILCS 5/11-502.15]. ("No driver may use cannabis within the passenger area of any motor vehicle upon a highway in this State.") [Id. § 502.15(a).] Second, Redmond may have violated the Vehicle Code by possessing cannabis in a motor vehicle in violation of the Vehicle Code. [See id. § 11-502.15(b)] ("No driver may possess cannabis within any area of any motor vehicle upon a highway in this State except in a sealed, odor-proof, child-resistant cannabis container."). The Supreme Court declared that it was notable that these Vehicle Code provisions do not prohibit the possession or use of cannabis within a motor vehicle. [See id. § 502.15] The gravamen of the offenses is that the conduct occurs "upon a highway in this State." Thus, the Court concluded, it would not have been a violation of the Vehicle Code for Redmond to have used cannabis in a motor vehicle before he left Des Moines or in any location within Illinois not considered a "highway."

Finally, the State points to the Regulation Act's (1) prohibition against the use of cannabis in a motor vehicle and (2) prohibition against the possession of cannabis in a motor vehicle "unless the cannabis is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." [410 ILCS 705/10-35(a)(2)(D); id. § 10-35(a)(3)(D).] Notably, the Court concluded that these are not offenses themselves. Instead, the Cannabis Control Act establishes the penalty structure for the possession of cannabis. [See 720 ILCS 550/4(a)-(g)]. Section 10-5 of the Regulation Act then generally grants immunity from prosecution for the use and possession of cannabis. Section 10-35 then describes conduct for which section 10-5 does not apply. In other words, if the People can establish that an individual is engaged in conduct described in section 10-35 (i.e., the individual used cannabis in the vehicle or possessed cannabis in an unauthorized container), the individual's possession of cannabis is not immune from the Control Act's general prohibition against the possession of cannabis.

The People contended that the totality of the circumstances, including the Officer's detection of the strong odor of burnt cannabis, made it reasonable to suspect that Redmond had smoked cannabis in the car on his way from Des Moines to Chicago. The People relied on the following facts in addition to the strong smell of burnt cannabis coming from the vehicle: (1) the stop occurred on Interstate 80, halfway between Des Moines and Chicago, (2) the Officer continued to smell the odor of burnt cannabis in the vehicle after he removed Redmond, (3) Redmond did not produce his license and registration, and (4) Redmond did not provide direct answers to the Officer's questions about where he lived or why he was traveling from Des Moines to Chicago. The People concluded that these facts established probable cause to believe that Redmond violated the Vehicle Code and Regulation Act. The Supreme Court disagreed with this argument. In rejecting this argument, the Supreme Court noted that the Officer, aside from the smell, observed no signs of impairment and no drug paraphernalia or evidence of cannabis use in the car. The Officer also did not smell the odor of burnt cannabis on Redmond, which undercut the reasonable belief that Redmond had recently smoked cannabis inside the vehicle while on an Illinois highway.

RESULT: In short, the Court determined that the Officer's detection of the strong odor of burnt cannabis coming from the vehicle certainly established reasonable suspicion to investigate further. The Officer reasonably investigated whether Redmond had violated the Vehicle Code and whether Redmond was driving impaired. When his further investigation did not yield any inculpatory facts, the quantity of evidence never advanced on the continuum from reasonable suspicion to probable cause to search. Therefore, the search was unreasonable and unlawful, and the circuit court properly granted Redmond's motion to suppress the evidence in this case.

NOTE: This case did not deal with the odor of unsmoked cannabis. Therefore, the Court did not rule on that issue.

QUIZ QUESTIONS FOR THE MONTH OF OCTOBER – 2024

People v. Ryan Redmond, 2024 IL 129201, September 19, 2024.

1. As a general rule, warrantless searches are considered to be reasonable under the Fourth Amendment.

   a. True.

   b. False.

2. There are certain exceptions to the warrant requirement of the Fourth Amendment. In this case, an automobile was searched by the Officers. Under certain circumstances, can warrantless searches of automobiles be reasonable under the Fourth Amendment?

   a. Yes.

   b. No.

3. In this case, the Officers detected the odor of burnt cannabis coming from the suspect car. Did the Supreme Court conclude that the Officer's identification of the odor of burnt cannabis alone would justify a warrantless search of the suspect car?

   a. Yes.

   b. No.

4. In making its ruling in this case, the Illinois Supreme Court specifically declared that the odor of unsmoked cannabis, along with the odor of burnt cannabis, alone did not justify a warrantless search of a vehicle.

   a. True.

   b. False.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF OCTOBER – 2024

People v. Ryan Redmond, 2024 IL 129201, September 19, 2024.

1. As a general rule, warrantless searches are considered to be reasonable under the Fourth Amendment.

   b. False. "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

2. There are certain exceptions to the warrant requirement of the Fourth Amendment. In this case, an automobile was searched by the Officers. Under certain circumstances, can warrantless searches of automobiles be reasonable under the Fourth Amendment?

   a. Yes. One well-established exception is for searches of automobiles. See Carroll v. United States, 267 U.S. 132, 156, 45 S. Ct. 280, 69 L. Ed. 543 (1925); People v. Webb, 2023 IL 128957, ¶ 24, 473 Ill. Dec. 476, 234 N.E.3d 87 ("There are recognized exceptions to the general rule, however, including an exception for searches of vehicles.").

3. In this case, the Officers detected the odor of burnt cannabis coming from the suspect car. Did the Supreme Court conclude that the Officer's identification of the odor of burnt cannabis alone would justify a warrantless search of the suspect car?

   b. No. The Court declared that the odor of burnt cannabis, by itself, was insufficient to justify a search of the suspect car.

4. In making its ruling in this case, the Illinois Supreme Court specifically declared that the odor of unsmoked cannabis, along with the odor of burnt cannabis, alone did not justify a warrantless search of a vehicle.

   b. False. This case did not deal with the odor of unburnt (or raw) cannabis. Therefore, this Court did not decide whether or not the odor of raw cannabis alone could constitute probable cause to search.