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## ***LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH***

**By Don Hays**

Month of November – 2024 - ALTERNATIVE

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# LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

## Month of November - 2024 - ALTERNATIVE

### People v. Cornelius Eubanks, 2024 IL App (1st) 221229, September 30, 2024

**THE CASE:** Two Officers noticed an illegally park car. They approached the car and smelled burnt cannabis. A search of the car revealed a firearm. Was the warrantless search of the car legal?

**FACTS:** Two Officers noticed a vehicle illegally parked in a bus lane. After the officers turned on their emergency lights and stopped their police cruiser near the vehicle, two other Officers arrived to provide backup. Eubanks, who was seated in the driver's seat of the vehicle, rolled down his window and spoke with the officers. When Eubanks rolled down his window, an Officer noticed the odor of burnt cannabis. When the Officer requested defendant's driver's license, he was unable to provide one. The Officer then instructed Eubanks to step out of the vehicle. He complied and was directed to the back of the vehicle, where he was "temporarily detained." As Eubanks was being moved to the rear of the vehicle, a second Officer began to perform a search of the passenger compartment of the vehicle. The first Officer did not observe Eubanks have bloodshot eyes, nor did he see any smoke coming out of the car, nor did he ask Eubanks when he had last smoked cannabis, nor whether he smoked it at all. The second Officer stated that he searched the immediate area around the driver's seat. During his search, the Officer removed a dashboard panel to the left of the steering wheel, behind which he found a handgun in a concealed compartment. At some point during the search, Eubanks informed the first Officer, who was detaining him at the back of the car with a third Officer, that there was "some weed" in the vehicle. [While the People asserted that this statement was made prior to the search, the body worn camera footage contained in the record showed that Eubanks was standing behind the trunk of his car, speaking to the second Officer when he made the statement. He was not handcuffed at the time, though Eubanks asserted that he was.] No contraband, other than the firearm, was recovered during the search.

Eubanks was taken into custody and ultimately charged with unlawful use or possession of a weapon by a felon (UUWF). 720 ILCS 5/24-1.1(a). At trial, the parties stipulated that Eubanks had a qualifying previous felony conviction. Prior to his bench trial, Eubanks filed a "Motion to Suppress Evidence Illegally Seized." In that motion, Eubanks argued that the firearm should be suppressed because the search of his vehicle was without his consent, conducted without a warrant, and conducted without probable cause or appropriate exigent circumstances. Eubanks also argued that the search was neither incident to, nor contemporaneous with, his arrest. The circuit court found that the search was in compliance with the fourth amendment (U.S. Const., amend. IV) after stating that an officer has the right, after smelling burnt cannabis, to search in areas in which they have previously, in their experience, recovered narcotics. The circuit court found defendant guilty and sentenced him to 26 months' imprisonment with the Illinois Department of Corrections. This timely appeal followed.

**ARGUMENTS:** On appeal, among other things, Eubanks argued that the vehicle search conducted by the second Officer was not justified by probable cause or as a search incident to arrest. Specifically, Eubanks argued that the trial court erred in denying his motion to suppress because the officers lacked a valid basis to search his vehicle. The People countered that the officers possessed probable cause to search the vehicle because they detected the smell of burnt cannabis. Alternatively, the People argued that, even if the officers did not have probable cause to search the vehicle, the search was permissible under the exception for a search incident to arrest.

**ISSUE:** Did the circuit court err in denying Eubanks' motion to suppress?

**SUB-ISSUE #1: Probable Cause based upon the odor of Cannabis.** The People argued that the odor of burnt cannabis alone provided them with probable cause to search the inside of the suspect vehicle.

**THE LAW:** The fourth amendment to the United States Constitution enshrined the right of individuals to "be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The fourteenth amendment subsequently extended the fourth amendment to the states. U.S. Const., amend. XIV. Warrantless searches are per se unreasonable with limited exceptions, including the automobile exception, which allows for warrantless searches of vehicles where such vehicle could be moved quickly out of the jurisdiction in which a warrant might be sought.. While the automobile exception prevents a search from being per se unreasonable, officers must still have probable cause to conduct the search. "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 deals with probabilities, not certainties." Accordingly, an officer need not "rule out any innocent explanations for suspicious facts."

Until very recently, the question of whether the smell of burnt cannabis, alone, was sufficient to establish probable cause to search a vehicle was the subject of a split in appellate jurisprudence and a question not yet addressed in the First Appellate District. However, the Illinois Supreme Court recently and clearly decided the matter in People v. Redmond, 2024 IL 129201. The Supreme Court stated: “The laws on cannabis have changed in such a drastic way as to render the smell of burnt cannabis, standing alone, insufficient to provide probable cause for a police officer to search a vehicle without a warrant.”

**CONCLUSION:** Based upon Redmond, the Appellate Court concluded that the mere odor of burnt cannabis alone was now insufficient to provide probable cause which would justify a search of a vehicle based upon the vehicle exception to the warrant requirement. Specifically, the Court held that if the People wanted to use the “automobile” exception to the warrant requirement, they would need to produce other evidence, in addition to the odor of burnt cannabis, to justify their warrantless search. In this case, the court noted that the officers on the scene observed no signs of cannabis consumption before beginning the search other than the odor of burnt cannabis. There was no smoke, no cannabis or paraphernalia observed, and Eubanks was not observed to have bloodshot eyes or any other indicia of intoxication. Eubanks was not nervous or evasive. He did not make any furtive motions before or after officers approached his vehicle that might suggest an attempt to hide contraband. Eubanks was parked when the officers observed him and approached, so it cannot be said there was anything suspicious about his driving or how long it took him to stop.

Additionally, the Court noted that although Eubanks told the second Curtis that there was “weed” in the vehicle, that statement was made after the search was already underway and therefore could not have been part of the probable cause analysis conducted by the officers prior to beginning the search. Given the facts before it, the Court concluded that it saw no justification for the officers’ warrantless search aside from the odor of burnt cannabis and, in the wake of Redmond, that alone was insufficient to establish probable cause which was needed to justify the use of the “automobile” exception to the warrant requirement.

**SUB-ISSUE #2: Search Incident to an Arrest.** The People argued that if probable cause did not support the Officer’s search, then the search was valid based upon the search incident to an arrest exception. Eubanks argued that the search conducted by the officers was not valid under the search incident to arrest exception because (1) there was no reasonable basis to suspect that evidence of the crime for which he was stopped or for which he was arrested could be found in the vehicle and (2) he was handcuffed at the back of the vehicle at the time of the search, so there was no officer safety concern that warranted a vehicle search.

**THE LAW:** The United States Supreme Court, in Arizona v. Gant, 556 U.S. 332, unified the two rationales under which a search incident to arrest are permissible. One rationale allows for a search incident to arrest in the interest of officer safety “only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” The other Gant rationale allows for a search incident to arrest “when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”

**CONCLUSION:** Concerning the first Gant rationale, (i.e., Officer Safety), the Court noted that Eubanks, who was standing at the rear of his vehicle with numerous Officers between him and the inside of his car clearly did not constitute the type of threat needed to justify a warrantless search for “officer safety.” Further, nothing about Eubanks’ conduct indicated that he was sufficiently dangerous to invoke the Officer Safety rationale of Gant. Concerning the second Gant rationale, (i.e., Presence of evidence concerning the purpose of arrest), the Court noted that the Officers detained Eubanks due to his illegal parking and then, because he could not produce a driver’s license. The Court concluded that it could envision no circumstances where the Officers could be reasonably expected to discover evidence relevant to the purposes for which Eubanks was arrested (illegal parking and no driver’s license) when searching the passenger compartment of the suspect vehicle. Therefore, since the Officers could not reasonably have believed that relevant evidence concerning those two violations could possibly be found inside the passenger compartment of Eubanks’ car, the Officers could not rely on the second Gant rationale to support their warrant search of the suspect car.

**RESULT:** The Court concluded that because the search of Eubanks’ vehicle was neither justifiable by probable cause nor as a search incident to arrest, it must conclude that the circuit court erred in denying Eubanks’ motion to suppress. Further, the Court noted that where the underlying charge cannot be proven without the evidence that should have been suppressed, a reviewing court may outright reverse the defendant’s conviction on that charge. The appellate court choose to do so in this case. Consequently, the appellate court vacated the defendant’s UUIF conviction without remanding the case back to the circuit court for further proceedings.

**QUIZ QUESTIONS FOR THE MONTH OF NOVEMBER – 2024 - ALTERNATIVE**

**People v. Cornelius Eubanks, 2024 IL App (1st) 221229, September 30, 2024**

1. Warrantless searches are generally considered to be unreasonable in Illinois.
  - a. True.
  - b. False.
  
2. In order to invoke the automobile exception to the warrant requirement, Officers must have probable cause to believe that the suspect automobile contains contraband.
  - a. True.
  - b. False.
  
3. The People argued that if probable cause did not justify a warrantless search of the suspect vehicle, the search in this case was justified by the “search incident to an arrest” exception to the warrant requirement. The District Court agreed with this argument?
  - a. Yes.
  - b. No.
  
4. In this case, Eubanks was charged with UUWF after a firearm was discovered inside his vehicle. If this incident had occurred after January 1, 2025, would Eubanks have been charged with UUWF?
  - a. Yes.
  - b. No.

**QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF NOVEMBER – 2024 - ALTERNATIVE****People v. Cornelius Eubanks, 2024 IL App (1st) 221229, September 30, 2024**

1. Warrantless searches are generally considered to be unreasonable in Illinois.
  - a. True.** Warrantless searches are *per se* unreasonable with limited exceptions, including the automobile exception, which allows for warrantless searches of vehicles where such vehicle could be moved quickly out of the jurisdiction in which a warrant might be sought. See *Katz v. United States*, 389 U.S. 347, (1967).
2. In order to invoke the automobile exception to the warrant requirement, Officers must have probable cause to believe that the suspect automobile contains contraband.
  - a. True.** While the automobile exception prevents a search from being *per se* unreasonable, officers must still have probable cause to conduct the search. *People v. Hill*, 2020 IL 124595
3. The People argued that if probable cause did not justify a warrantless search of the suspect vehicle, the search in this case was justified by the “search incident to an arrest” exception to the warrant requirement. The District Court agreed with this argument?
  - b. No.** The appellate court found that the search incident to an arrest exception to the warrant requirements did not justify the police search of the suspect in this case.
4. In this case, Eubanks was charged with UUWF after a firearm was discovered inside his vehicle. If this incident had occurred after January 1, 2025, would Eubanks have been charged with UUWF?
  - b. No.** On January 1, 2025, Public Act 103-0822 will go into effect. On that date, UUWF (Unlawful Use of a Weapon by a Felon) will be changed to UPWF (Unlawful Possession of a Weapon by a Felon). The word “Use” will no longer be used in describing numerous weapons offenses.