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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of January – 2025

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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People v. Vincent Molina, 2024 IL 129237, December 5, 2024.

THE CASE: An Officer searched a suspect car based upon the odor of raw cannabis. Was the search legal?

FACTS: Molina was the front-seat passenger in a vehicle he stopped for speeding. The arresting Officer approached the suspect car on the passenger side, and the passenger-side window was lowered. Having had training and experience in the discernment of the difference between the odor of burnt and raw cannabis, the Officer detected a strong odor of fresh cannabis coming from the suspect car. Based on this detection of the odor of fresh cannabis, the Officer decided to search the vehicle. He found several rolled joints in a small cardboard box in the center console. He also found suspected cannabis in a clear plastic container with an attached and sealed lid in the glove box.

THE CIRCUIT COURT: Based upon this evidence, Molina was charged with a cannabis violation. Prior to his trial, Molina moved to suppress the evidence discovered during the Officer's search of the suspect car. The circuit court granted the motion to suppress and held that the odor of raw cannabis, without more, was insufficient as a matter of law to establish probable cause to search a vehicle. [The court noted that a contrary holding would place Illinois citizens over the age of 21 in the untenable position of exercising their rights under the Cannabis Regulation and Tax Act (Regulation Act) (410 ILCS 705/1-1 et seq., while simultaneously forfeiting their constitutional right to be free from unreasonable searches.] The People filed an interlocutory appeal.

THE APPELLATE COURT: The appellate court reversed, holding that “the smell of raw cannabis, without any corroborating factors, is sufficient to establish probable cause to search a person's vehicle.” The court recognized the “recent changes in the law legalizing possession of small amounts of cannabis” but also noted that there remain “(1) illegal ways to transport it, (2) illegal places to consume it, and (3) illegal amounts of it to possess.” Based on the current regulatory state of cannabis, the court was unpersuaded that the “legal landscape” had changed in such a way as to render the Illinois Supreme court's opinions [People v. Stout, 106 Ill. 2d 77, (1985), and People v. Hill, 2020 IL 124595, no longer controlling. The court concluded that “an officer who smells cannabis in a vehicle he has just stopped is almost certain to discover a violation of the Vehicle Code because the law clearly states that when cannabis is transported in a private vehicle, the cannabis must be stored in a sealed, odor-proof container—in other words, the cannabis should be undetectable by smell by a police officer.” (citing 625 ILCS 5/11-502.15(c)).

The Illinois Supreme Court allowed Molina's petition for leave to appeal.

ISSUE: The sole issue before the Supreme Court is whether the Officer had probable cause to search the vehicle Molina was a passenger in after he smelled the odor of raw cannabis coming from the vehicle. [The Court noted that if the answer was yes, the search was valid, and the motion to suppress should have been denied. If, however, the answer was no, the search violated Molina's constitutional rights, and the motion to suppress was correctly granted.]

THE LAW: “[S]earches conducted outside the judicial process, without prior approval by a judge or a magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions. One well-established exception is for searches of automobiles. The automobile exception is justified because of an automobile's “transient nature,” which “often renders it impracticable to secure a warrant before the automobile escapes the jurisdiction in which the warrant must be sought.” “Under the automobile exception, law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize.” Probable cause exists where the evidence known to the officer raises a “fair probability that contraband or evidence of a crime will be found in a particular place.” “[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” “Whether the necessary probability exists is governed by commonsense considerations that are factual and practical, rather than by technical rules.” “[P]robable cause does not require an officer to rule out any innocent explanations for suspicious facts.” “Instead, it 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 a search of the automobile will uncover contraband or evidence of criminal activity. “A court must examine the events leading up to the search or seizure, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable law enforcement officer, amount to probable cause.”

SUB-ISSUE #1: [The Supreme Court first noted that there are two statutory provisions that deal with the possession of cannabis within a motor vehicle. [1. 410 ILCS 705/10-35(a)(2)(D) (requiring cannabis possessed in a vehicle to be in a “reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving”); and 2. 625 ILCS 5/11-502.15(b), (c) (requiring cannabis possessed in a motor vehicle to be in a “sealed, odor-proof, child-resistant cannabis container”)]. The Court was asked to determine if both provisions were valid at the time of the stop in this case or, if only one provision was valid, which one?

ARGUMENT: Molina contended (1) that the two provisions cannot be harmonized, (2) that the Regulation Act is both more specific and more recently enacted, and (3) that the odor-proof container requirement is, therefore, invalid.

EDITOR’S NOTE: *If Molina is correct and the “odor-proof container” provision was invalid, then the Appellate Court’s decision, which was based upon a violation of the “odor-proof container” provision must be rejected. Therefore, Molina’s motion to suppress should have been granted.*

FINDINGS: The Supreme agreed with the appellate court's holding that the “legislature did not intend to modify, repeal, or supersede the requirement of sections 11-502.1 and 11-502.15 of the Vehicle Code that cannabis be stored in an odor-proof container during transport in a vehicle when it mandated in the Cannabis Regulation and Tax Act and Medical Act that cannabis be ‘reasonably secured’ during such transport.”

SUB-ISSUE #2: Did the arresting Officer have probable cause to search the suspect car based upon the odor of raw cannabis?

FINDINGS: The Supreme Court concluded that the arresting Officer, an officer trained to distinguish between burnt and raw cannabis, smelled the odor of raw cannabis coming from the vehicle, and the officer's training and experience would create at least a reasonable belief or fair probability that raw cannabis was in the vehicle stored in a container that was not odor-proof. Therefore, the Officer had probable cause to conduct a warrantless search of the suspect vehicle.

SUB-ISSUE #3: [In the case of *People v. Redmond*, 2024 IL 129201, the Supreme Court concluded that the odor of burnt cannabis alone does not alone provide probable cause to conduct a warrantless search. In this case, the Court concluded that the smell of raw cannabis alone does justify a warrantless search]. How does the Supreme Court explain these two cases?

FINDINGS: In *Redmond*, the Supreme Court concluded that the odor of burnt cannabis from a vehicle was insufficient to indicate that illegal cannabis was inside the vehicle. In this case, concerning the odor of raw cannabis, however, the Court concluded that the odor of raw cannabis coming from a vehicle strongly indicates the current presence of cannabis. And when the odor of raw cannabis comes from a vehicle driven on an Illinois highway, it is almost certain that the cannabis is being possessed in violation of the Vehicle Code's odor-proof container requirement. In fact, the Court declared that it was unclear what other inference an officer could draw upon the detection of the odor of raw cannabis other than that the odor is coming from cannabis currently possessed in the vehicle. In short, while cannabis is legal to possess generally, it is illegal to possess in a vehicle on an Illinois highway unless in an odor-proof container. The odor of raw cannabis strongly suggests that the cannabis is not being possessed within the parameters of Illinois law. And, unlike the odor of burnt cannabis, the odor of raw cannabis coming from a vehicle reliably points to when, where, and how the cannabis is illegally possessed—namely, currently, in the vehicle, and not in an odor-proof container.

CONCLUSION: The Supreme Court held that the odor of raw cannabis coming from a vehicle being operated on an Illinois highway, alone, is sufficient to provide police officers, who are trained and experienced in distinguishing between burnt and raw cannabis, with probable cause to perform a warrantless search of a vehicle. In other words, an officer trained and experienced in distinguishing between burnt and raw cannabis who smells the odor of raw cannabis in a vehicle stopped on the highway would logically suspect that there is cannabis in the vehicle that is not properly contained as required by the Vehicle Code. Therefore, the Supreme Court concluded that the circuit court erred when it granted the motion suppressing the raw cannabis confiscated from Molina. Accordingly, it affirmed the appellate court's decision reversing the trial court's order suppressing the evidence seized in the warrantless search of Molina's car.

NOTE: **Three Justices concurred in this Opinion. However, two Justices dissented. The Dissenting Justices argued: “It makes no sense to treat raw cannabis as more probative when the odor of burnt cannabis may suggest recent use, whereas the odor of raw cannabis does not suggest consumption. If the crime suggested by the odor of burnt cannabis is not sufficient for probable cause, then certainly the crime suggested by the odor of raw cannabis cannot be either.”**

QUIZ QUESTIONS FOR THE MONTH OF JANUARY – 2025

People v. Vincent Molina, 2024 IL 129237, December 5, 2024.

1. The warrantless search of motor vehicles may be legal if the searching officers have reasonable suspicion to believe that the vehicle contains contraband.
 - a. True.
 - b. False.

2. Can a passenger in a vehicle legally possess cannabis in Illinois if that cannabis is not sealed in an “odor-proof container”?
 - a. Yes.
 - b. No.

3. Did this Court hold that the Illinois Vehicle Code provision requiring that cannabis be transported in vehicles in “odor proof container” was invalid.
 - a. Yes.
 - b. No.

4. In this case, the Illinois Supreme Court held that the odor of raw (fresh) cannabis was alone sufficient to provide probable cause to arrest and search. However, the Court had previously held that the odor of burnt cannabis coming from a suspect vehicle will not alone provide probable cause to justify a warrantless search of that suspect vehicle.
 - a. True.
 - b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF JANUARY – 2025

People v. Vincent Molina, 2024 IL 129237, December 5, 2024.

1. The warrantless search of motor vehicles may be legal if the searching officers have reasonable suspicion to believe that the vehicle contains contraband.

b. False. Officers must have probable cause (not merely reasonable suspicion) to believe that the vehicle contains contraband.

2. Can a passenger in a vehicle legally possess cannabis in Illinois if that cannabis is not sealed in an “odor-proof container”?

a. Yes. Section 11-502.15 of the Illinois Vehicle Code provides: “No passenger may possess cannabis within any passenger area of any motor vehicle *upon a highway in this State* except in a secured, sealed or resealable, odor-proof, child-resistant cannabis container that is inaccessible.” Therefore, it would seem that if the vehicle is not upon “a highway in this State,” it is not illegal for a passenger in a Vehicle to possess cannabis outside of an “odor-proof container.”

3. Did this Court hold that the Illinois Vehicle Code provision requiring that cannabis be transported in vehicles in “odor proof container” was invalid.

b. No. This Court upheld the validity of the Vehicle Code provision requiring that cannabis be transported in “odor-proof” containers.

4. In this case, the Illinois Supreme Court held that the odor of raw (fresh) cannabis was alone sufficient to provide probable cause to arrest and search. However, the Court had previously held that the odor of burnt cannabis coming from a suspect vehicle will not alone provide probable cause to justify a warrantless search of that suspect vehicle.

a. True. In the case of People v. Redmond, 2024 IL 129201, the Supreme Court concluded that the odor of burnt cannabis alone does not alone provide probable cause to conduct a warrantless search. Whereas, in this case, the Court held that the odor of fresh (raw) cannabis was alone sufficient to provide probable cause to arrest and search.