Nos. 129201 & 129237 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

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| THE PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellant/ Plaintiff-Appellee,<br><br>v.<br><br>RYAN SHAVAR DON REDMOND,<br><br>Defendant-Appellee, and<br><br>VINCENT E. MOLINA,<br><br>Defendant-Appellant. | ) | On Appeal from the Appellate Court of Illinois, Third Judicial District, No. 3-21-0524, and Fourth Judicial District, No. 4-22-0152<br><br>There on appeal from the Circuit Courts of Henry County, Illinois Nos. 20-CL-27, &20-TR-3348, and Whiteside County, Illinois, No. 19-CL-5612<br><br>The Honorable Daniel Dalton, Judge Presiding. |

# CONSOLIDATED BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS

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## NATURE OF THE CASE

In these consolidated cases, defendant Vincent E. Molina appeals the appellate court's judgment reversing the trial court's order granting his motion to suppress evidence. *People v. Molina*, 2022 IL App (4th) 220152. The People appeal the appellate court's judgment affirming the trial court's order granting defendant Ryan Redmond's motion to suppress evidence. *People v. Redmond*, 2022 IL App (3d) 210524. No question is raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

1. Whether — because it remains a crime to use cannabis in a vehicle or transport it in a container that is not odor-proof — the odor of cannabis detected during a traffic stop remains sufficient to establish probable cause for police to search a vehicle.

2. Whether the odor of cannabis, combined with other circumstances, sufficed to establish probable cause to search Redmond's car under the totality of the circumstances test.

3. Whether application of the exclusionary rule is inappropriate because the officers in both cases acted in good faith by relying on existing precedent to conduct a vehicle search premised on the detectable odor of cannabis.

## JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On March 29, 2023, this Court allowed leave to appeal and consolidated the cases for review.

## STATEMENT OF FACTS

### I. Defendant Ryan Redmond

In September 2020, the People charged Redmond with unlawful possession of cannabis in violation of 720 ILCS 550/4a. RC5.[1] Before trial, Redmond moved to suppress the cannabis evidence, arguing that police lacked probable cause to search his car. RC10-11.

At the ensuing suppression hearing, State Trooper Hayden Combs testified that on the evening of September 15, 2020, he was parked in his squad car on I-80 in Henry County. RR8. Combs saw a car driving three miles per hour over the speed limit with an improperly secured license plate, causing the plate to "swing down and hang at an almost vertical position." RR9. Based on these violations, Combs pulled the car over, went to the passenger side of the car, and asked the driver, Redmond, to roll down the window. RR9-10. When Redmond did so, Combs smelled the "very strong" odor of "burnt cannabis," but Redmond denied having smoked in the car.

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[1] "Redmond Br." refers to defendant Redmond's opening brief; Molina Br. refers to defendant Molina's opening brief; "RC__" and "RR__" refer to the common law record and supplemental report of proceedings in Redmond's case; and "MC__" and "MR__" refer to the common law record and supplemental report of proceedings in Molina's case.

RR10-11, 15. Combs asked Redmond for his license and registration, but Redmond did not provide either. RR15. At that point, Combs had Redmond get out of the car and walk to the front of Combs's car, where Combs searched Redmond. RR15-16. Even after Redmond stepped out of the car, Combs could still smell the odor of cannabis coming from the car. RR19.

Combs then asked Redmond several questions — including where he lived — to which Redmond did not give direct answers. RR17. Redmond said the car was a rental and that it had been rented for him by a friend. RR19. He later said that he was staying with his girlfriend in Des Moines "because of Covid-19," *id.*, and that he was traveling from Des Moines to Chicago, *id.*

Combs then searched the car. Several factors led Combs to believe that he had probable cause for the search, primarily the odor of burnt cannabis. RR13. The odor of cannabis, Combs explained, led him to suspect that Redmond had violated 625 ILCS 5/11-502.15, which prohibits individuals from using cannabis in a vehicle, or that Redmond had improperly packaged the cannabis. RR29. Ultimately, Combs found "smoked cannabis" in the car. RR31.

The circuit court granted Redmond's motion to suppress, finding that recent changes to Illinois's cannabis laws meant that the odor of cannabis, alone, no longer sufficed to establish probable cause to search a vehicle. C22-27. The circuit court further found that the additional circumstances discussed by Combs, including the fact that I-80 is a known drug corridor,

and that Redmond was evasive in answering questions, did not provide Combs probable cause to search the car under the totality of the circumstances test. C25.

The People filed a certificate of impairment and appealed, C29-30, arguing that the trial court erred in granting the motion to suppress, *Redmond*, 2022 IL App (3d) 210524, ¶ 14. The Third District affirmed the circuit court's order, holding that the changes brought about by the Cannabis Regulation and Tax Act, 410 ILCS 705/1-1 *et seq*. ("Cannabis Act"), rendered prior case law — which held that the odor of cannabis alone gave an officer probable cause to search a vehicle — inapplicable. *Id*. ¶ 18. The appellate court further held that even considering the additional factors together with the odor of cannabis did not give Combs probable cause to search the vehicle. *Id*. ¶¶ 22-25.

**II. Defendant Vincent Molina**

In December 2020, the People charged Molina with unlawful possession of cannabis by a passenger in a motor vehicle in violation of 625 ILCS 5/11-502.15(c), which prohibits the possession of cannabis by a passenger unless the cannabis is "in a secured, sealed or resealable, odor-proof, child-resistant cannabis container that is inaccessible." In April 2021, Molina filed a motion to suppress cannabis evidence recovered in a search of the car. C17-19.

At the ensuing suppression hearing, State Trooper Ryan Wagand testified that Molina was a passenger in a car that Wagand had pulled over for speeding. MR12-14. When Wagand approached the passenger side of the car, Wagand detected a "strong" odor of raw cannabis, MR17, and Molina told Wagand that he had a license for the medical use of cannabis, MR18. Based solely on the odor of the cannabis, Wagand searched the vehicle. *Id.* During the search, Wagand found in the center console a small cardboard box containing several rolled joints; from the glove box, Wagand recovered a plastic container containing what Wagand suspected was cannabis. MR17-18.

The circuit court granted Molina's motion to suppress, holding that the odor of raw cannabis alone was no longer sufficient to establish probable cause to search. C45-49. The People filed a certificate of impairment and appealed, C58-67, arguing that the circuit court erred in granting the motion to suppress, *Molina*, 2022 IL App (4th) 220152, ¶ 10.

On appeal, the Fourth District held that the odor of raw cannabis alone can provide probable cause to search a vehicle, *id.* ¶ 52, and reversed the circuit court's order. The appellate court acknowledged recent changes brought about by the Cannabis Act and Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/*1 et seq.* ("Compassionate Use Act"), but held that those Acts allow the possession and transportation of cannabis only under specific circumstances, and only in compliance with the Vehicle

Code. *Id.* ¶¶ 30-35. Specifically, the appellate court noted, the Vehicle Code allows the transportation of cannabis — medical or not — "in a secured, sealed or resealable, odor-proof, and child-resistant medical cannabis container that is inaccessible." 625 ILCS 5/11-502.1(b) & (c); 625 ILCS 5/11-502.15(b) & (c). Accordingly, when an officer smells cannabis, that officer is "almost certain to discover a violation of the Vehicle Code," and therefore he has probable cause to search the vehicle. *Molina*, 2022 IL App (4th) 220152, ¶ 44.

## STANDARD OF REVIEW

This Court employs a "two-part standard of review" to determine whether a trial court erred in granting a motion to suppress. *People v. Hill*, 2020 IL 124595, ¶ 14 (citing *Ornelas v. United States*, 517 U.S. 690 (1996)). This Court affords great deference to the trial court's factual determinations and will reverse them only if they are against the manifest weight of the evidence; the Court reviews de novo the ultimate legal conclusion of whether the evidence should be suppressed. *Id.* ¶ 14.

## ARGUMENT

The trial courts erred when they granted defendants' motions to suppress because the odor of cannabis, by itself, continues to provide probable cause for law enforcement to search a vehicle**.** Despite the changes brought about by Illinois's recent cannabis legislation, the use and possession of cannabis remains illegal in some circumstances. Indeed, cannabis must be

possessed within the confines of the Cannabis Act, the Compassionate Use Act, and the Vehicle Code. As the Fourth District correctly pointed out, there remain "(1) illegal ways to transport it, (2) illegal places to consume it, and (3) illegal amounts of it to possess." *Molina*, 2022 IL App (4th) 220152, ¶ 43. Thus, although the legal landscape has changed since *People v. Stout*, 106 Ill. 2d 77 (1985), in which this Court held that the smell of cannabis, alone, provided police with probable cause to search a vehicle, *Stout* remains good law.

Moreover, even if the odor of cannabis alone no longer provides probable cause to search, the circuit court erred in granting Redmond's motion to suppress because the odor of cannabis remains a relevant factor in the totality-of-the-circumstances test and, in Redmond's case, the totality of the circumstances provided Combs with probable cause to search the car.

Finally, even if this Court were to find that neither search was supported by probable cause, it should apply the good-faith exception to the exclusionary rule and allow the People to use the evidence obtained during the search of defendants' vehicles.

## I. The Odor of Cannabis Emanating from a Vehicle Provides Probable Cause to Search the Vehicle because Illinois Law Prohibits the Use of Cannabis in a Vehicle and Requires that it be Transported only in Odor-Proof Containers.

The core holding of *People v. Stout*, 106 Ill. 2d 77 (1985) — that the odor of cannabis, alone, provided police with probable cause to search a vehicle — remains good law. The Fourth Amendment to the United States

Constitution and Article I, Section 6 of the Illinois Constitution of 1970 guarantee Illinois citizens the right to be free from unreasonable searches. *See Katz v. United States*, 389 U.S. 347, 359 (1967); *People v. Gaytan*, 2015 IL 116223, ¶ 20. In general, the Fourth Amendment requires that officers obtain a warrant, supported by probable cause, before they may search persons or property. *See People v. James,* 163 Ill. 2d 302, 311 (1994) (citing *Katz,* 389 U.S. at 356-57). However, an exception is recognized "for searches of automobiles, because their transient nature often renders it impracticable to secure a warrant before the automobile escapes the jurisdiction in which the warrant must be sought," and "an immediate intrusion of a vehicle is necessary if police officers are to secure the evidence of a crime or contraband." *Hill*, 2020 IL 124595, ¶¶ 20-21 (citations omitted). Accordingly, a warrantless search of a vehicle is constitutionally permissible if there is probable cause to believe that the vehicle contains contraband or evidence of criminal activity that the officers are entitled to seize. *See James*, 163 Ill. 2d at 311 (1994) (citing *Carroll v. United States*, 267 U.S. 132, 149 (1925)).

Probable cause exists when "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." *Hill*, 2020 IL 124595, ¶ 23 (citing *People v. Smith*, 95 Ill. 2d 412, 419 (1983)). Probable cause "is not a high bar," *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018), and "'does not demand any showing that

such a belief be correct or more likely true than false,'" *Hill*, 2020 IL 124595, ¶ 24 (quoting *Texas v. Brown,* 460 U.S. 730, 742 (1983)). And because "[p]robable cause deals with probabilities, not certainties," it "does not require an officer to rule out innocent explanations for suspicious facts," but instead only requires "that the facts available to the officer — including the plausibility of an innocent explanation — would warrant a reasonable man to believe" that a search would uncover contraband or evidence of a crime. *Id.* (citations and quotations omitted). Indeed, the United States Supreme Court has noted that "innocent behavior frequently will provide the basis for a showing of probable cause" and that "[i]n making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of non-criminal acts." *Illinois v. Gates*, 462 U.S. 213, 243, n.13 (1983).

### A. It is illegal to use cannabis in a vehicle or to transport it in a container that is not odor-proof.

Despite the changes to Illinois statutes regulating cannabis use and possession, it remains the case that although some cannabis use and possession is non-criminal, the odor of cannabis emanating from a vehicle would lead a reasonable officer to believe that a search would uncover evidence of a violation of the law. When *Stout* was decided, use or possession of cannabis was not permitted under any circumstances. That changed in 2013 when the General Assembly passed the Compassionate Use Act, legalizing "the possession of cannabis for people to whom the State had

granted a license to use cannabis for medical purposes." *People v. Rowell*, 2021 IL App (4th) 180819, ¶ 25. But medical users had to possess and use cannabis in accordance with the Act. *Hill*, 2020 IL 124595, ¶ 34. For example, while in a car, licensees had to keep cannabis in "'a reasonably secured, sealed, tamper-evident container and reasonably inaccessible while the vehicle is moving.'" 410 ILCS 130/30(a)(2)(E)) (West 2014). The Compassionate Use Act further required licensees to possess cannabis in accordance with 625 ILCS 5/11-502.1 of the Vehicle Code (a section that the Compassionate Use Act added to the Vehicle Code). *Hill*, 2020 IL 124595, ¶ 34 (Compassionate Use "Act does not allow any person to violate" 625 ILCS 5/11-502.1"); *see also* Ill. Legis. Serv. P.A. 98-122 (H.B. 1). When it was enacted in 2013, section 5/11-502.1 of the Vehicle Code similarly required that licensees keep cannabis "in a sealed, tamper-evident medical cannabis container," and prohibited the use of cannabis in a vehicle. Ill. Legis. Serv. P.A. 98-122 (H.B. 1).

Then, in 2019, the General Assembly passed the Cannabis Act, which legalized the use and possession of cannabis for non-medical licensees. *See* 410 ILCS 705/1-1 *et seq*. As with the Compassionate Use Act, the Cannabis Act required individuals to use and possess cannabis in accordance with Illinois law. Under the Cannabis Act, for example, one may possess only a limited amount of cannabis product, 410 ILCS 705/10-10(a)-(b), and individuals under 21 may not possess any amount of cannabis, 410 ILCS

705/10-15. In addition, no one is allowed to use cannabis "in any motor vehicle," "public place," or in the proximity of anyone under 21. 410 ILCS 705/10-35(a)(3)(D), (F), (G). Further, like the Compassionate Use Act, the Cannabis Act required that individuals transport cannabis in a "reasonably secured, sealed container" that is "reasonably inaccessible while the vehicle is moving." 410 ILCS 705/10-35(a)(2)(D).

The Cannabis Act also amended the Vehicle Code provision (625 ILCS 5/11-502.1) added by the Compassionate Use Act in 2013 to require that medical users transport cannabis in a "sealed, *odor-proof*, and child resistant" container. 2019 Ill. Legis. Serv. P.A. 101-27 (H.B. 1438) (emphasis added). The Cannabis Act further added to the Vehicle Code a new provision (625 ILCS 11-502.15), which similarly required that non-medical users transport cannabis only "in a sealed, *odor-proof*, child-resistant cannabis container," and prohibited the use of cannabis in a vehicle. *Id.* (emphasis added). Violation of the odor-proof container requirement in section 11-502.1 or section 502.15, or those sections' prohibition of the use of cannabis in a vehicle, is punishable as a Class A misdemeanor. 625 ILCS 5/11-502.1(d); 625 ILCS 5/11-502.15(d).

Since 2019, the Cannabis Act, Compassionate Use Act, and Vehicle Code have been amended in minor but important ways. For instance, in August 2019, shortly after the Cannabis Act's passage, the General Assembly harmonized the transportation requirements of the Cannabis and

Compassionate Use Acts by removing the "tamper-evident" requirement in the original Compassionate Use Act. *See* 2019 Ill. Legis. Serv. P.A. 101-363 (S.B. 2023); *see also Molina*, 2022 IL App (4th) 220152, ¶ 20. In 2021, the General Assembly amended the Cannabis Act and, in the same legislation, added to the Vehicle Code. Specifically, regarding the Cannabis Act, the General Assembly altered the transportation requirements to prohibit cannabis transportation in a vehicle unless in "a reasonably secured, sealed *or resealable* container," adding the term "resealable." 2021 Ill. Legis. Serv. P.A. 102-98 (H.B. 1443) (emphasis added). As for the Vehicle Code, the General Assembly amended sections 11-502.1 and 502.15 to prohibit cannabis transportation unless it is contained "in a *secured*, sealed or *resealable*, odor-proof, child-resistant cannabis container *that is inaccessible*." 2021 Ill. Legis. Serv. P.A. 102-98 (H.B. 1443) (emphasis added). Notably, the General Assembly did not alter the Vehicle Code's requirement that the cannabis be secured in an odor-proof container.

In summary, the Cannabis Act prohibits the transportation of cannabis except in a "reasonably secured, sealed or resealable container," 410 ILCS 705/10-35(a)(2)(D), and the Compassionate Use Act similarly requires that medical cannabis be transported in "in a reasonably secured, sealed container," 410 ILCS 130/30(a)(2)(E). The Vehicle Code, in turn, prohibits the transportation of any cannabis except in "a secured, sealed or resealable, odor-proof, and child-resistant" container. *See* 625 ILCS 5/11-502.1(b) & (c);

625 ILCS 5/11-502.15(b) & (c). And all three statutes prohibit the use of cannabis in a motor vehicle. 410 ILCS 705/10-35(a)(3)(D); 410 ILCS 130/30(a)(2)(D); 625 ILCS 5/11-502.1(a); 625 ILCS 5/11-502.15(a). Any violation of the Vehicle Code's provisions remains punishable as a Class A misdemeanor. 625 ILCS 5/11-502.1(d); 625 ILCS 5/11-502.15(d).

### B. The odor of cannabis provides probable cause to search a vehicle.

Accordingly, although the passage of the Compassionate Use and Cannabis Acts had the effect of largely legalizing cannabis in Illinois, the General Assembly imposed specific restrictions on the use and possession of cannabis and made it a criminal violation to use cannabis in a car under any circumstances or to transport cannabis in a car unless it is in an odor-proof container. And, because it is a criminal violation to transport cannabis other than in an odor-proof container, the Fourth District correctly concluded that probable cause exists to search a vehicle when an officer smells the odor of raw cannabis. *Molina*, 2022 IL App (4th) 220152, ¶ 44. Further, because it is a criminal violation to transport cannabis other than in an odor-proof container *and* to use cannabis in a vehicle under any circumstances, the Third District incorrectly concluded that police lacked probable cause to search Redmond's vehicle when police smelled burnt cannabis. *Redmond*, 2022 IL App (3d) 210524, ¶ 26.

Put differently, if an officer smells cannabis coming from a car, he has probable cause to believe a crime is being committed, either because the

cannabis is being used in the car or because it is not being transported in an odor-proof container. As noted, "[p]robable cause deals with probabilities, not certainties," and "does not require an officer to rule out innocent explanations for suspicious facts," but instead only requires "that the facts available to the officer — including the plausibility of an innocent explanation — would warrant a reasonable man to believe" that a search would uncover contraband or evidence of a crime. *Hill*, 2020 IL 124595, ¶ 24 (citations and quotations omitted). For this reason, it does not matter that the possession and use of cannabis is now *sometimes* legal in Illinois; so long as an officer has reason to believe that one of the laws governing the use and possession of legal cannabis is being violated, probable cause exists.

This Court's decision in *Hill* is illustrative. There, the defendant argued that after the Compassionate Use Act's passage, "because cannabis may legally be owned in some circumstances," police could not search a vehicle without first suspecting that "cannabis was illegally owned or connected to another criminal activity." 2020 IL 124595, ¶ 33. This Court disagreed and explained that although "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 Act." *Id.* ¶ 34. The Vehicle Code (at that time) required the transportation of cannabis in "a sealed, tamper-evident medical cannabis container." *Id.* Accordingly, where police had probable cause to believe that

cannabis was not being transported in such a manner, they had probable cause to believe "that evidence of a crime was in the vehicle." *Id.* ¶ 35.

The same reasoning applies here. Although the General Assembly further legalized the possession of cannabis in the Cannabis Act, it did not legalize the use and possession of cannabis without restriction. To the contrary, the General Assembly simultaneously amended the Vehicle Code to require that legal possessors transport cannabis only in "odor-proof" containers. 625 ILCS 5/11-502.1(b) & (c); 625 ILCS 5/11-502.15(b) & (c). And it remains illegal to use cannabis in a vehicle. *Id.* As in *Hill*, the fact that cannabis possession *can* be legal in Illinois does not relieve individuals from complying with other aspects of the cannabis laws, and where an officer has probable cause to suspect a violation of the law, the officer has probable cause to search a vehicle.

Here, in each case, the odor of cannabis was sufficient, on its own, to provide an officer with probable cause to suspect that the defendant was committing a criminal violation. In Molina's case — where the officer smelled raw cannabis — the Fourth District correctly noted that the officer was "almost certain to discover a violation" of at least the odor-proof container requirement, *Molina*, 2022 IL App (4th) 220152, ¶ 44, providing the officer with probable cause to search the vehicle. Likewise, in Redmond's case — 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. In sum, although the regulation of cannabis has changed dramatically since *Stout*, "the legal landscape has [not] changed in such a way as to render . . . *Stout* and *Hill* inapplicable." *Molina*, 2022 IL App (4th) 220152, ¶ 43. Instead, because the odor of cannabis coming from a vehicle alone remains indicative of a criminal violation, the odor alone continues to provide probable cause to search the vehicle.

Redmond's and Molina's arguments that the Cannabis Act rendered *Stout* and *Hill* inapplicable, *see* Redmond Br. 12; Molina Br. 20-23, fail to acknowledge that although cannabis is no longer contraband in *every* circumstance, one still must use and possess it in compliance with the Vehicle Code. And defendants' arguments ignore this Court's decision in *Hill*, which explained that "even if the officer presumed defendant was in legal possession of cannabis pursuant to the Act," probable cause nevertheless exists if the officer suspects a violation of the Vehicle Code. 2020 IL 124595, ¶ 35.

Similarly, defendants' reliance on the Third District's decision in *People v. Stribling*, 2022 IL App (3d) 210098 — which held that the odor of cannabis no longer sufficed to establish probable cause — is misplaced. The *Stribling* court, although purportedly "recounting the changing landscape of cannabis regulation in Illinois," Molina Br. 15, completely overlooked a significant part of that landscape: that sections 11-502.1(a) and 11-502.15(a)

of the Vehicle Code require the transportation of cannabis in odor-proof containers. As a result, *Stribling*'s probable cause analysis was flawed and contravened *Hill's* statement that legal possessors must still comply with other applicable laws, including the Vehicle Code. The Third District's decision in *Redmond*, 2022 IL App (3d) 210524 — which Molina cites as further support that *Stout* should be overruled, Molina Br. 15-16 — is similarly flawed. Like *Stribling*, *Redmond* overlooked the odor-free container requirements of the Vehicle Code and therefore failed to consider all statutes regulating cannabis in Illinois.

Conversely, the Fourth District in *Molina* and, recently, the Second District in *People v. Harris*, 2023 IL App (2d) 210697,[2] accurately recounted the requirements of the Vehicle Code and correctly concluded that the odor of cannabis provides probable cause to search a vehicle. *Harris*, 2023 IL App (2d) 210697, ¶¶ 31-32; *Molina*, 2022 IL App (4th) 220152, ¶¶ 29-44. As the Second District explained, because the Vehicle Code requires that cannabis be transported in an odor-proof container, "a law enforcement officer who detects" the odor of cannabis "has probable cause to believe that cannabis is being transported, possessed, or used in a manner contrary to law." *Harris*, 2023 IL App (2d) 210697, ¶ 32.

[2] The Second District filed its decision in *Harris* on September 28, 2023, and *Harris* therefore is not cited in either defendant's opening brief, which were filed in this Court July 2023.

Defendants' reliance on foreign cases, Molina Br. 16-19; Redmond Br. 15, is similarly misplaced, for none of those cases considered whether probable cause would be met by the odor of cannabis had those States had similar odor-proof requirements. *See generally United States v. Maffei*, 417 F. Supp. 3d 1212 (N.D. Cal. 2019) (no requirement in California that cannabis be transported in odor-proof container); *Com. v. Cruz*, 459 Mass. 459, 473 (2011) (considering only whether the odor of cannabis supported probable cause for violation of Massachusetts' weight restrictions); *People v. McKnight*, 446 P.3d 397, ¶ 43 (Colo. 2019) (same); *State v. Clinton-Aimable*, 2020 VT 30, ¶ 33 (2020) (same); *Commonwealth v. Barr*, 266 A.3d 25, 41 (Pa. 2021) (holding that the smell of cannabis alone did not suffice to establish that a person was possessing cannabis without a medical license). Instead, the courts in each of these out-of-state cases analyzed only whether the odor of cannabis was sufficient to support an officer's belief that the defendant had violated any laws and regulations of those respective States. Here, the General Assembly made the decision to require that cannabis be transported in an odor-proof container and, as a result, a reasonable officer in Illinois is justified in believing that, upon smelling the odor of cannabis coming from a vehicle, he or she will find a violation of that requirement.

### C. The Vehicle Code does not conflict with the Compassionate Use and Cannabis Acts, and even if it did, the Vehicle Code applies here.

Molina is incorrect that the odor-proof container requirements of the Vehicle Code are unenforceable due to an alleged conflict with the Compassionate Use and Cannabis Acts. *See* Molina Br. 23-26. To be sure, the Vehicle Code requires cannabis be transported in an "odor-proof" container, 625 ILCS 5/11-502.1(b) & (c); 625 ILCS 5/11-502.15(b) & (c), whereas the Compassionate Use and Cannabis Acts require only that it be transported in a "reasonably secured, sealed container." 410 ILCS 705/10-35(a)(2)(D); 410 ILCS 130/30(a)(2)(E); *see also* Molina Br. 23-24. But these provisions do not conflict. Instead, the Vehicle Code simply provides the additional requirement that the container be odor-proof.

This Court must presume that legislative enactments do not conflict, *Moore v. Green*, 219 Ill. 2d 470, 479 (2006) ("We presume the legislature would not enact a law that completely contradicts an existing law"), and that the General Assembly intended that statutes touching on the same subject "be consistent and harmonious," *Uldrych v. VHS of Illinois, Inc.*, 239 Ill. 2d 532, 540 (2011). Thus, this Court considers statutes to be in conflict only when there is "such a manifest and total repugnance that the two cannot stand together." *Jahn v. Troy Fire Prot. Dist.*, 163 Ill. 2d 275, 280 (1994); *see also Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 441-42 (2005) ("Where two statutes are allegedly in conflict, a court has a duty to interpret the

statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible."). For example, this Court found that two statutes, one of which "immunize[d] willful and wanton misconduct," and the other of which did not, were in conflict because "under [one statute], count I cannot stand," but "under [the other statute], count I stands." *Henrich v. Libertyville High Sch.*, 186 Ill. 2d 381, 390 (1998); *accord People v. Freeman*, 404 Ill. App. 3d 978, 987-88 (1st Dist. 2010) (finding irreconcilable conflict where two statutes make "the same piece of evidence simultaneously admissible and inadmissible"). But there is no similar conflict here because the Vehicle Code merely contains an additional requirement not found in the Compassionate Use and Cannabis Acts, and the three statutes can easily be read together as requiring that cannabis be transported in a container that is both odor-proof and reasonably secured and sealed.

Indeed, in 2019, the General Assembly amended the Vehicle Code to require that users transport cannabis in an odor-proof container at the same time that it enacted the Cannabis Act with its "reasonably secured" and "sealable" container requirements and amended the Compassionate Use Act to include the same language as the Cannabis Act. Plainly, the General Assembly intended those two requirements to operate together. Then, in 2021, the General Assembly amended both the Cannabis Act and the Vehicle Code's transportation requirements, and the legislature did not remove the

odor-proof container requirement from the Vehicle Code. This Court must presume that the General Assembly "intended the several statutes to be consistent and harmonious," *Uldrych*, 239 Ill. 2d at 540, and give effect to each because they are not so "total[ly] repugnan[t]" that they "cannot stand together," *Jahn*, 163 Ill. 2d at 280.

Although it is true, as Molina notes, that the Illinois Senate passed an amendment to the Vehicle Code in May 2023 that would remove the odor-proof container requirements, Molina Br. 26, that amendment has not become law and, in any event, Molina concedes that any post-December 2020 amendments "are inapplicable" to him, *id*. at 9 n.2. Molina's argument that this proposed amendment demonstrates that the General Assembly views the statutes as conflicting, *see id*., is both speculative and ignores that "the legislative intent that controls the construction of a public act is the intent of the legislature which passed the subject act, and not the intent of the legislature which amends the act." *O'Casek v. Children's Home & Aid Soc. of Illinois*, 229 Ill. 2d 421, 441 (2008) (citing *People v. Boreman*, 401 Ill. 566, 572 (1948)); *accord Boreman*, 401 Ill. at 572 ("Statutes are to be construed as they were intended to be construed when they were passed."). Thus, that the current Senate has passed an amendment that would remove the odor-proof requirements does not provide any evidence of the General Assembly's intent when it passed the requirements in 2019 and declined to remove them in the 2021 amendments.

Moreover, even if the Vehicle Code did conflict with the Compassionate Use and Cannabis Acts, the odor-proof container requirements in the Vehicle Code would control because they are the more specific provisions. *See Green*, 219 Ill. 2d at 480 ("Where a general statutory provision and a more specific statutory provision relate to the same subject, we will presume that the legislature intended the more specific provision to govern."). First, the Vehicle Code's enactments are more specific to this context, as they deal exclusively with the possession of cannabis in vehicles, whereas the Cannabis and Compassionate Use Acts regulate cannabis more broadly. *Hernon v. E.W. Corrigan Const. Co.*, 149 Ill. 2d 190, 195 (1992) (where one statute "is general and designed to apply to cases generally, and the other is particular and relates to only one subject," the more particular applies.). In fact, the Compassionate Use Act explicitly acknowledges that the Vehicle Code contains specific storage requirements for cannabis in vehicles and incorporates those requirements into the Compassionate Use Act itself. *See* 410 ILCS 130/30(a)(2)(D) (requiring compliance with 625 ILCS 5/11-502.1). And the requirement that cannabis be stored in an "odor-proof" container is a more specific prohibition than the general requirement that cannabis be contained in a "reasonably secured, sealed container." Indeed, an odor-proof container is necessarily a "reasonably secured, sealed container," but a reasonably secured container is not necessarily odor-proof, and where "a general permission or prohibition is contradicted by a specific prohibition or

permission . . . the specific provision" applies. *Kloeppel v. Champaign Cnty. Bd.*, 2022 IL 127997, ¶ 22. Finally, the Vehicle Code provides that a violation of the odor-proof container requirement is a Class A misdemeanor, whereas the Compassionate Use and Cannabis Acts provide no enforcement mechanism and instead state generally that they "do[ ] not prevent the imposition of any civil, criminal, or other penalties for" possessing unsecured cannabis. 410 ILCS 705/10-35(a); 410 ILCS 130/30(a).

Molina's suggestion that the Compassionate Use Act controls in the event of a conflict because it was "more recently enacted," Molina Br. 25, is both misleading and irrelevant. True, the Compassionate Use Act was more recently *amended*, as it was amended in August 2019, whereas the Vehicle Code was amended to include the odor-proof requirements in June 2019. But the August 2019 amendment to the Compassionate Use Act merely removed the words "tamper-evident" from the Act's requirement that cannabis be stored in "'a reasonably secured, sealed, tamper-evident container," to harmonize it with the Cannabis Act, which was passed in June 2019. *See supra* p. 12. It did not create the storage requirement itself, such that the August 2019 amendment should be interpreted to suggest that the Compassionate Use Act's language controls over the Vehicle Code's. Instead, the fact that the odor-proof requirement was added to the Vehicle Code in June 2019 in the same legislation as the Cannabis Act means that neither the "reasonably secured" nor the "odor-proof" provisions are more recently

enacted; instead, they were enacted at the same time. In any event, "the canon that the specific governs the general holds true regardless of the priority of enactment." *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 32; *see also Kloeppel*, 2022 IL 127997, ¶ 22 (more specific statute prevails even if the more general one "is the more recently enacted statute"). Thus, should this Court find a conflict between the statutes, this Court should apply the Vehicle Code because it is the more specific provision.

In sum, because it remains illegal to use cannabis in a vehicle and to transport cannabis in a vehicle in a container that is not odor-proof, and because the odor of cannabis coming from a car is evidence of a violation of these prohibitions, the odor of cannabis —whether in raw or burnt form — continues to provide police with probable cause to search the vehicle.

## II. Probable Cause Existed to Search Redmond's Car Based on the Totality of the Circumstances.

Even if this Court concludes that the odor of cannabis alone no longer suffices to establish probable cause to search a vehicle, Trooper Combs's belief that Redmond had violated cannabis regulations was reasonable under the totality-of-the-circumstances test and the search of Redmond's car was therefore justified.[3]

As noted, "[p]robable cause deals with probabilities, not certainties," and "does not require an officer to rule out innocent explanations for

[3] Should this Court hold that the odor of cannabis no longer suffices to establish probable cause, the People concede that the odor of raw cannabis

suspicious facts," but instead requires only "that the facts available to the officer — including the plausibility of an innocent explanation — would warrant a reasonable man to believe" that a search would uncover contraband or evidence of a crime. *Hill*, 2020 IL 124595, ¶ 24 (citations and quotations omitted). Here, Combs testified that he pulled over Redmond's rental car on I-80 and that when Redmond rolled down his window, Combs smelled a "strong" odor of burnt cannabis, RR9-11, 15; Combs continued to smell the odor of burnt cannabis emitting from the vehicle after he removed Redmond, RR16; Redmond failed to provide his license and registration, RR15; and Redmond did not provide direct answers to Combs's questions about where Redmond lived and why he was traveling from Des Moines to Chicago, RR17.

Combs's belief that Redmond had violated the Vehicle Code's prohibition against using cannabis in a vehicle was reasonable. That Combs smelled a strong odor of burnt cannabis, as opposed to the odor of raw cannabis or a faint smell of burnt cannabis, RR15, suggests that the cannabis was smoked relatively recently. And Combs still smelled the odor of burnt cannabis coming from the car even after he removed Redmond from the car, RR16, which suggests that the cannabis was smoked in the car, not that the odor was simply lingering on Redmond, as he suggests, Redmond Br. 14.

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coming from Molina's car did not provide probable cause to search the vehicle.

Further, Redmond informed Combs that he was traveling from Des Moines to Chicago; Henry County (where Redmond was pulled over) is halfway between the two cities, which suggests that Redmond had been in the vehicle for hours, and it was therefore reasonable to suspect — given the strong odor of burnt cannabis — that Redmond smoked cannabis in the car and not before he left Des Moines. In sum, under the totality of the circumstances, Combs reasonably believed that the cannabis he smelled had been smoked recently and that it had been smoked in the vehicle. Because using cannabis in a vehicle violates the Vehicle Code and the Compassionate Use and Cannabis Acts, Combs had probable cause to suspect that Redmond had committed a crime.

## III. Even if Probable Cause Did Not Exist, the Good-Faith Exception to the Exclusionary Rule Applies, and the Evidence Should Not Be Suppressed.

Even if this Court were to overrule *Stout* and hold that the odor of cannabis no longer suffices to establish probable cause to search a vehicle, it should apply the good-faith exception to the exclusionary rule and decline to exclude the evidence obtained during the search of defendants' vehicles.

A defendant does not have a "a personal constitutional right" to the exclusion of evidence. *People v. Manzo*, 2018 IL 122761, ¶ 62. Instead, the exclusionary rule is a judicially created tool fashioned as a deterrent to future violations of the Fourth Amendment. *See People v. LeFlore*, 2015 IL 116799, ¶ 17 (citing *Arizona v. Evans*, 514 U.S. 1, 10 (1995)). But, because "the bottom-line effect of exclusion, in many cases, 'is to suppress the truth and

set the criminal loose in the community without punishment,'" *Manzo*, 2018 IL 122761, ¶ 62 (quoting *Davis v. United States*, 564 U.S. 229, 231 (2011)), exclusion is reserved for "situations in which the deterrent purpose is 'thought most efficaciously served,'" *id*. (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)).

For these reasons, evidence obtained in violation of the Fourth Amendment will not be excluded where an officer acted with an objective good-faith belief that his conduct was lawful. *LeFlore*, 2015 IL 116799, ¶ 24; *see also* 725 ILCS. 5/114-12(b)(1) ("The court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer who acted in good faith."). To determine whether the good-faith exception applies, this Court asks "whether a reasonably well trained officer would have known that the search was illegal in light of all of the circumstances." *LeFlore*, 2015 IL 116799, ¶ 25. And "'[a]n officer who conducts a search in reasonable reliance on binding appellate precedent does no more than ac[t] as a reasonable officer would and should under the circumstances.'" *Id*. ¶ 27 (quoting *Davis*, 564 U.S. at 241).

Here, at the time defendants' vehicles were searched, *Stout's* holding that the odor of cannabis coming from a vehicle provided probable cause to search the vehicle was good law. Indeed, the searches in these cases occurred in September and December 2020, shortly after this Court decided *Hill*,

which declined to overrule *Stout*. 2020 IL 124595, ¶ 18. Under these circumstances, it was objectively reasonable for the officers to continue to rely on *Stout* and the decades of precedent applying it. Thus, enforcing the exclusionary rule here would not serve the purpose of the rule, and the evidence obtained during the searches of defendants' vehicles should not be suppressed. *See LeFlore*, 2015 IL 116799, ¶ 27.

## CONCLUSION

This Court should affirm the Fourth District's judgment in *People v. Molina,* 2022 IL App (4th) 220152, and reverse the Third District's judgment in *People v. Redmond*, 2022 IL App (3d) 210524.

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## RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 28 pages.

s/Mitchell J. Ness
Mitchell J. Ness

## PROOF OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 14, 2023, the **Consolidated Brief of People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

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