No. 128957

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DANTE ANTWAN WEBB, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-21-0726. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 18-CF-305. Honorable William A. Yoder, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

MIRIAM SIERIG
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

ORAL ARGUMENT REQUESTED

E-FILED
2/7/2023 9:36 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Dante Antwan Webb was convicted of cannabis trafficking after a bench trial and was sentenced to 14 years in prison.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

When law enforcement searched Dante Webb's vehicle in 2018 based solely on an alert by a dog trained to detect cannabis, cannabis was partially legalized. Did Webb's trial attorney provide ineffective assistance of counsel when he failed to move to suppress the fruits of the search on the basis that the alert, with no additional evidence of illegal drug possession, failed to give officers probable cause?

STATUTES INVOLVED

I. Compassionate Use of Medical Cannabis Program Act[1]; 410 ILCS 130/1 *et seq*. (2018):

Because the full text of the legislation is lengthy, it is set forth in pertinent part in the appendix pursuant to Ill. S. Ct. R. 341(h)(5).

II. Possession of medical cannabis in a motor vehicle; 625 ILCS 5/11-502.1 (2018).

§ 11-502.1. Possession of medical cannabis in a motor vehicle.

(a) No driver, who is a medical cannabis cardholder, may use medical cannabis within the passenger area of any motor vehicle upon a highway in this State.
(b) No driver, who is a medical cannabis cardholder, a medical cannabis designated caregiver, medical cannabis cultivation center agent, or dispensing organization agent may possess medical cannabis within any area of any motor vehicle upon a highway in this State except in a sealed, tamper-evident medical cannabis container.
(c) No passenger, who is a medical cannabis card holder, a medical cannabis designated caregiver, or medical cannabis dispensing organization agent may possess medical cannabis within any passenger area of any motor vehicle upon a highway in this State except in a sealed, tamper-evident medical cannabis container.
(d) Any person who violates subsections (a) through (c) of this Section:
(1) commits a Class A misdemeanor;
(2) shall be subject to revocation of his or her medical cannabis card for a period of 2 years from the end of the sentence imposed;1
(4) shall be subject to revocation of his or her status as a medical cannabis caregiver, medical cannabis cultivation center agent, or medical cannabis dispensing organization agent for a period of 2 years from the end of the sentence imposed.
(...)

III. Cannabis Control Act; 720 ILCS 550 (2018).

§ 4. Possession of cannabis; violations; punishment.

It is unlawful for any person knowingly to possess cannabis. Any person who violates this section with respect to:

---

[1]In 2018, the full name of the Act was the "Compassionate Use of Medical Cannabis *Pilot* Program Act." The term "pilot" was struck from the title in a 2019 amendment. For ease of reference, Webb will refer to the Act under its current, shorter title.

(a) not more than 10 grams of any substance containing cannabis is guilty of a civil law violation punishable by a minimum fine of $100 and a maximum fine of $200. (...)

(b) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of a Class B misdemeanor;
(c) more than 30 grams but not more than 100 grams of any substance containing cannabis is guilty of a Class A misdemeanor; provided, that if any offense under this subsection (c) is a subsequent offense, the offender shall be guilty of a Class 4 felony;
(d) more than 100 grams but not more than 500 grams of any substance containing cannabis is guilty of a Class 4 felony; provided that if any offense under this subsection (d) is a subsequent offense, the offender shall be guilty of a Class 3 felony;
(e) more than 500 grams but not more than 2,000 grams of any substance containing cannabis is guilty of a Class 3 felony;
(f) more than 2,000 grams but not more than 5,000 grams of any substance containing cannabis is guilty of a Class 2 felony;
(g) more than 5,000 grams of any substance containing cannabis is guilty of a Class 1 felony.

§ 5.1. Cannabis trafficking.

§ 5.1. Cannabis Trafficking. (a) Except for purposes authorized by this Act, any person who knowingly brings or causes to be brought into this State for the purpose of manufacture or delivery or with the intent to manufacture or deliver 2,500 grams or more of cannabis in this State or any other state or country is guilty of cannabis trafficking.
(b) A person convicted of cannabis trafficking shall be sentenced to a term of imprisonment not less than twice the minimum term and fined an amount as authorized by subsection (f) or (g) of Section 5 of this Act, based upon the amount of cannabis brought or caused to be brought into this State, and not more than twice the maximum term of imprisonment and fined twice the amount as authorized by subsection (f) or (g) of Section 5 of this Act, based upon the amount of cannabis brought or caused to be brought into this State.

STATEMENT OF FACTS

Introduction

On March 26, 2018, Dante Webb was charged with possession of cannabis, possession of cannabis with intent to deliver, and with cannabis trafficking, under 720 ILCS 550/4(e), 5(f), and 5.1(a) (2018). (C. 27-29)[2] The charges stemmed from a routine traffic stop of Webb's tractor trailer during which officers from the McLean County Sheriff's office initiated a canine free-air sniff. (R. 146) When the dog which among other drugs was trained to detect cannabis alerted, police searched Webb's truck cabin and found approximately five and a half pounds of cannabis. (R. 147-48, 272) The trial court convicted Webb and sentenced him to 14 years in prison on the cannabis trafficking charge. (C. 230)

On direct appeal, Webb argued that his trial counsel was ineffective because he failed to challenge the constitutionality of the search based on the changes in cannabis legislation that had taken place by the time Webb's tractor trailer was searched and which permitted some possession, such as the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/1 *et seq*. (2018). The Appellate Court affirmed the conviction. *People v. Webb*, 2022 IL App (4th) 210726-U, ¶ 37.

Trial Court Proceedings

Motion to Suppress

Before trial, the defense filed a motion to suppress the cannabis recovered from the cabin of Webb's tractor trailer after a search by police, as well as statements that Webb made after his arrest. (C. 78-87, 128-31) The defense argued, *inter alia*,

[2]The State also charged Webb with unlawful possession of a firearm and ammunition, but dismissed these charges before trial. (C. 29-30, R. 253)

that the warrantless search of Webb's tractor trailer was unlawful based on the fact that: (1) police did not have reason to stop Webb; (2) once police did stop Webb, they improperly prolonged the stop in order to conduct a canine drug investigation; and (3) the subsequent search of the tractor cabin violated the Fourth Amendment to the United States Constitution. (C. 79-80, 128-31) Counsel's motion did not, however, argue that following the liberalization of cannabis legislation, a canine alert for cannabis did not amount to probable cause.

At the hearing on the motion, Webb testified that he was a 41-year-old disabled veteran and a truck driver. (R. 123) On March 24, 2018, he was driving his tractor truck pulling a car hauler trailer northbound on Interstate 55 when he was pulled over by law enforcement in McLean County. (R. 123) Webb testified that he did not violate any laws at the time of the stop. (R. 123) Police had neither an arrest nor a search warrant, yet he was arrested and his truck was searched. (R. 124-25) On cross-examination, Webb testified that he kept the license plates for his trailer inside his truck cabin and did not display them at the back of his trailer. (R. 129)

The trial court found that Webb's testimony established a *prima facie* case of a Fourth Amendment violation. (R. 133)

For the State, McLean County Sergeant Jonathan Albee testified. (R. 134) On March 24, 2018, he was working in vehicle code enforcement and performed drug and contraband interdiction along Interstate 55. (R. 135) Albee asserted that he became suspicious of Webb's truck because the cabin did not display any of the federally required markings.[3] (R. 136-37, 141) He also saw that the trailer

[3] *See* 49 C.F.R. § 390.21 (2018) (requiring and regulating the display of markings on commercial motor vehicles).

was only partially loaded, which he noted as unusual because trailers are expensive to operate. (R. 136-37) He pulled behind the trailer and noticed that no license plate was displayed at the rear. (R. 140) Albee pulled the truck over because Illinois mandates the display of a registration at the rear of a trailer.[4] (R. 138) The State introduced pictures of the rear of the trailer showing the empty registration bracket. (R. 140, Exhs. 1-3)

Once on the shoulder of the road, Albee exited his squad car and approached the passenger side of the truck's cabin. (R. 139) Albee identified Webb as the driver. (R. 139) Albee asked Webb for his license, registration, and insurance for both the truck and the trailer. (R. 142) Albee asserted that Webb's paperwork was "very disorganized" and that Webb handed Albee things he did not request while trying to find the insurance information on his phone. (R. 141-42) According to Albee, when he talked to Webb, Webb appeared in a "state of panic" and made "very animated" movements, repeatedly standing up and sitting back down. (R. 141) Webb told Albee that his truck had previously been stopped and checked for drugs, a statement that seemed "bizarre" to Albee. (R. 142) At some point during this interaction, Albee asked Webb whether he had a co-driver and Webb told him he did not. (R. 145) Webb partially opened the curtain behind the driver's seat and Albee could not see anyone. (R. 145) Albee noticed that the vehicle registration that Webb handed him was from Illinois, whereas the license plates that were displayed on the front of the truck were from California, which Albee opined was "not normal." (R. 143) Webb handed Albee the plates for the trailer, which were registered in Illinois. (R. 143, 161)

---

[4]625 ILCS 5/3-413(a)(2018)(requiring display of registration at front and rear of motor vehicles in Illinois).

Albee and Webb then went to Albee's squad car. (R. 144) According to Albee, at that point he believed that Webb was "involved in some type of criminal activity. I didn't know if it was a stolen vehicle or what the case may be," so he requested assistance. (R. 144) Albee and Webb were sitting in the front of Albee's car and Albee had made a request to check the license plates when another officer, Deputy Sheriff Andrew Erickson, arrived. (R. 145) Erickson took over the paperwork for Albee, checked whether there was a warrant for Webb, and waited for responses regarding the validity of Webb's driver's license. (R. 146)

As Erickson continued to process the traffic stop, Albee took a drug sniffing dog out of the back of his squad car and began performing a free-air sniff around Webb's truck, starting at the rear and working towards the front. (R. 146) The dog was certified in drug detection and had been trained on crack cocaine, methamphetamine, heroin, ecstasy, and cannabis. (R. 147-48) While Albee was out with the dog, Erickson received information that Webb's driver's license was valid and that Webb did not have outstanding warrants. (R. 155-56) Information regarding the registration remained outstanding. (R. 155) At that point, the dog alerted near the driver's side of the truck cabin. (R. 147-48)

Albee returned to the squad car, told Webb that the dog had alerted, and announced that he would perform a search of the truck. (R. 156) When Albee asked whether there was anything inside the truck that would startle him, Webb responded that another person was in the truck. (R. 148, 156) Albee and Erickson then moved Webb into Erickson's squad car, where they also placed the person who was in the truck cabin, Darrell McLain. (R. 156) Following the discovery of cannabis in the tractor cabin, the officers arrested Webb and transported him to the police station. (R. 156-57) At the station, Webb was given *Miranda* warnings and

interrogated. (R. 158) Albee and Erickson discovered 2,736 grams of cannabis inside the cabin of Webb's truck; Webb also made inculpatory statements in the squad car and during the interrogation. (R. 157-58)

Deputy Erickson testified that when he arrived at the location of the traffic stop, his task was to continue the "enforcement action," i.e., to give Webb a written warning and to run checks on Webb, the truck, and the trailer. (R. 176) According to Erickson, he was still completing this paperwork when Albee informed him that the dog had alerted. (R. 178) Erickson testified that he gave Webb *Miranda* warnings after he placed him in his squad car. (R. 184)

Neither Albee nor Erickson testified that he smelled burnt or raw cannabis at any time before or after the search of Webb's tractor trailer.

The judge admitted State's Exhibit 4, a DVD containing a recording of the view from Albee's vehicle, which was parked behind Webb's trailer, and the State published the video. (R. 149-51) The recording contains audio of Albee's interactions with Webb. (R. 152) The judge also admitted State's Exhibit 6, a DVD containing a recording from the back of Deputy Erickson's squad car, which recorded conversations between Erickson and Webb. (R. 157)

The trial court ruled that the failure to display license plates gave Albee probable cause to stop Webb in his tractor trailer because it constituted a violation of 625 ILCS 5/3-413(a)(2018). (R. 229) Albee's request for driver's registration, proof of insurance, and determining whether Webb had outstanding warrants, were all proper actions justifying the length of the stop; officers therefore did not unduly prolong the stop. (R. 232, 235) The court determined that at the time of the dog alert, law enforcement had not yet received the information for the California registration of the truck. (R. 232-33) In addition, the information that Webb had

no outstanding warrants was received by the officers only 10 to 15 seconds before the dog alerted. (R. 237) The trial court ruled that there was probable cause to search the truck after the dog gave the positive alert. (R. 236)

The trial court suppressed one statement that Webb made after he had been placed in Deputy Erickson's car. (R. 238) In that statement, Webb responded after Albee asked him if he had any "wild guess" about what the officers had found in his tractor cabin; the trial court denied the motion to suppress in all other respects. (R. 238)

Trial

Webb elected a bench trial. (Sup2 R. 6) The State and the defense stipulated that: (1) the judge would take judicial notice of the testimony of Albee and Erickson at the suppression hearing; (2) the recording equipment used for the videos taken in the squad cars of Albee and Erickson properly functioned and both videos would be admitted at trial; (3) the substance removed from Webb's tractor cabin was securely transported from the McLean County evidence locker to the Illinois State Forensic Laboratory in Morton Grove; (4) the scientist who tested the substance was properly qualified and employed the correct procedures in the testing; and (5) testing performed on June 12, 2018, on the substance removed from Webb's tractor cabin revealed that it contained cannabis, weighing 2,736 grams. (C. 153-155; R. 251-52) The parties also stipulated to the admission of the camera recordings, to the curriculum vitae of the scientist who conducted the forensic testing, and to the report detailing the laboratory results of that testing. (C. 153-155; R. 251-52; St. Exhs. 1,2,3,4,4A,5,7A,7B)

Sergeant Albee testified at trial that he stopped Webb on March 24, 2018, for failing to display a license plate on the rear of his trailer. (R. 267) Albee explained

that he had received training to recognize indicators of possible criminal activity relating to drug interdiction. (R. 307) The judge sustained the defense objection to Albee's testimony that Webb acted more nervously than a normal person would have acted at a traffic stop. (R. 312)

In addition to detailing the stop consistent with his testimony at the hearing on the motion to suppress, Albee testified that he searched Webb's tractor cabin after his dog alerted. (R. 269) Once he had entered the cabin, Albee encountered McLain, who was placed in one of the patrol cars. (R. 270) Albee first searched the sleeper portion of the cabin. On the bunk bed he found a plastic bag containing a small container from a cannabis dispensary. (R. 271) In the same area, he found a small amount of cannabis in a cottage cheese container. (R. 271) In a closet behind the driver's seat, he also located a large, black garbage bag. Inside the bag was a second large black garbage bag and inside that were 10 vacuum-sealed bags of green plant material. Albee estimated that each bag weighed a pound and that through his training and experience he suspected that they contained cannabis. (R. 271-72; St. Exhs. 8A, 8B, 8C) Albee took the suspected cannabis in his possession, transported it to the sheriff's office, and entered it into evidence for chemical testing. (R. 274) The State offered the cannabis into evidence, and the judge admitted it. (R. 274, 286-88; St. Exh. 7) The defense made no foundational objection but noted that the admission was subject to its motion to suppress. (R. 275, 286)

The State published the videos of the stop taken from the camera of Albee's squad car and the audio from the recorder on Albee's person. (R. 281-83; Exh. 4A) The State also published the video of the back of Erickson's squad car, which recorded Erickson giving Webb *Miranda* warnings and Albee's subsequent interrogation of Webb. (R. 284, Exh. 5, 1:16:52) In this conversation, Webb told

Albee that he brought the cannabis in the truck from Texas and that it was for his personal use. (Exh. 5, 1:50:30) He said that it was his "first time doing this." (Exh. 5, 2:06:44, 2:08:25) He said he had chronic pain from an ankle injury and that he needed ankle replacement surgery. (Exh. 5, 1:50:45, 1:55:00, 2:04:17) He expressed that he was able to save a lot of money by buying the cannabis in bulk in Texas rather than at a dispensary in Illinois. (Exh. 5, 2:17:06) Webb also told Albee that he wished he had placed the cannabis into the cars he was transporting rather than keeping it in the truck cabin, because the cars had not been searched by law enforcement. (Exh. 5, 2:01:37) Webb explained that the other person in the tractor, McLain, had smoked cannabis in the tractor but did not know about the vacuum sealed cannabis. (Exh. 5, 2:10:15) Webb explained that he did not need to sell the cannabis he brought from Texas because his earnings as a truck driver were sufficient. (Exh.5, 2:12:20)

The State also published Albee and Erickson's interrogation of Webb at the sheriff's department. (R. 296-97, 307, Exh. 10) In this conversation, Webb reiterated that he had purchased the cannabis for personal use to manage his ankle pain and added that he was able to legally purchase cannabis at Illinois dispensaries using his medical veteran disability identification. (Exh. 10, 4:47:40, 4:58:10-4:59:59) Webb said he had been on the road delivering cars for 10 days in Nebraska, California, and Missouri. (Exh. 10, 04:49:27) He was stopped by law enforcement three times on his way back to Illinois in Arizona, Oklahoma, and Missouri because his license plates could not be affixed to this trailer where the bracket was broken. (Exh. 10, 04:52:00) Webb said that he purchased the cannabis in the truck from a producer in Amarillo, Texas, who usually sold cannabis to a dispensary and allowed Webb to purchase the cannabis for about $12,000.

(Exh. 10, 4:47:40, 5:00:52-5:01:10) Webb explained that he used his tax refund to buy the cannabis. (Exh. 10, 5:02:05) While "some of it was probably going to be sold," most of it was for his pain management. (Exh. 10, 5:09:45) He admitted that a gun found in the drawer of the truck belonged to him and that he kept it for protection. (Exh. 10, 5:07:25, 5:07:26:02, 5:10:35)

The State introduced a receipt from a gas purchase in Oklahoma and a warning for equipment repair issued by the State of Oklahoma on the day before Webb's arrest. (R. 292-94, Exhs. 9A, 9B) The State introduced a photograph of the Illinois license plates for the trailer, the cab card, a bill of ladings, and a traffic citation from the State of Nevada. (R. 292-94, Exhs. 9A, 9B, Sup E. 26, Exh. 9C)

The defense rested without presenting evidence. In closing, the defense argued that the State had failed to prove that Webb had the intent to deliver the cannabis because he had purchased it for himself and did not intend to sell it to other people. (R. 330-34)

The trial court found Webb guilty on all three counts. (R. 346) The trial court concluded that Webb had sole and exclusive possession of the cannabis based on Webb's admission that the drugs were his. (R. 342-45) In addition, the court also noted that Webb had admitted to bringing the cannabis in from out of state. (R. 342-45) Finally, the court found that Webb's own statements supported a finding that he had intent to deliver the cannabis. (R. 342-45)

Post-Trial Motions

Webb filed a post-trial motion, arguing *inter alia* that the trial court erred when it denied his motion to suppress. (C. 165-66, R. 372-78) The trial court denied the motion. (R. 384-388)

Sentencing

The trial court sentenced Webb to 14 years in prison. (C. 230) It denied Webb's subsequent motion to reconsider the sentence. (R. 477)

Appellate Court Proceedings

Webb appealed his conviction and sentence to the Fourth District Appellate Court. Webb argued that his trial counsel was ineffective for failing to challenge the search of his tractor cabin based on the changes in cannabis legislation in Illinois. Webb pointed to the legalization of cannabis for medical purposes under 410 ILCS 130/1 *et seq*. (eff. Jan. 1, 2014), the provision that a licensed user of medical cannabis is a "lawful user" of a "lawful product," 410 ILCS 130/7, and the provision that possession of cannabis while driving was also legalized for medical users in 2014, so long as the cannabis was contained in sealed packaging. 625 ILCS 5/11-502.1(b) (2014), as well as the decriminalization for possession of less than 10 grams of cannabis for any purpose, even non-medical purposes, and defined such possession merely as a "civil law violation." 720 ILCS 550/4(a)(2016). Likening this partial legalization to the possession of firearms, Webb argued that police could no longer simply assume that Webb was doing something unlawful when the dog alerted for cannabis. Webb also challenged his sentence as excessive.

The Fourth District Appellate Court upheld Webb's conviction and sentence. *Webb*, 2022 IL App (4th) 210726-U. The court found that a positive canine alert for contraband constitutes probable cause to search a vehicle in Illinois, even after cannabis decriminalization. *Id*. at ¶ 37, *citing People v. Campbell*, 67 Ill. 2d 308, 315-16 (1977). The Appellate Court did not address whether the legalization of cannabis for medical users had an impact on the probable cause analysis. The court further held that because the dog who alerted in this case was certified in

the detection of illegal substances, including cannabis, heroin, crack cocaine, and methamphetamine, the dog's alert gave officers probable cause to search Webb's vehicle. *Webb*, 2022 IL App (4th) 210726-U, ¶37. Accordingly, defense counsel was not ineffective for failing to make the argument in a motion to suppress, as it would have been without merit. *Id*. The Appellate Court also upheld Webb's sentence. *Id*. at ¶ 42.

This Court granted leave to appeal on November 30, 2022.

ARGUMENT

Dante Webb's trial attorney provided ineffective assistance of counsel when he failed to argue in his motion to suppress that the search of the cabin of Webb's tractor trailer was not supported by probable cause, where Webb was stopped for failure to display registration and the search of the cabin was solely supported by a canine alert.

Introduction

This Court acknowledged in 2020 that medical cannabis legislation "somewhat altered the status of cannabis as contraband." *People v. Hill*, 2020 IL 124595, ¶ 26. In fact, almost a decade ago, the Illinois legislature began transforming the status of cannabis from a drug mainly regulated by the criminal code to a substance regulated akin to alcohol. In 2014, the Illinois legislature passed the Compassionate Use of Medical Cannabis Program Act ("the Act"), which made possession of cannabis legal in Illinois for those licensed to use it for medical purposes, and specifically stated its goal to "protect (legal users) ... from arrest and prosecution, criminal and other penalties..." 410 ILCS 130/1, 130/5(g) (Findings) (eff. Jan. 1, 2014).[5] Despite this, law enforcement procedures have not changed. As exemplified by this case, in 2018 drug detection dogs remained trained on cannabis. For Dante Webb, this meant that during a traffic stop for a license plate display violation, and without more than a hunch that Webb might be "involved in some type of criminal activity," police brought out a drug sniffing dog trained on cannabis. After the dog alerted, and without ascertaining whether Webb belonged to the group

[5]The legislature has also amended the Cannabis Control Act and decriminalized possession of less than 10 grams of cannabis. 720 ILCS 550/4(a) (eff. Jan. 1, 2016). Then in 2019, the Illinois legislature passed the Cannabis Regulation and Tax Act which regulates cannabis "in a manner similar to alcohol," and legalizes the possession of up to 30 grams of cannabis for any adult 21 years or older and 410 ILCS 705/1 *et seq.*, 1-5(b) (eff. Jan. 1, 2020).

of people legally transporting cannabis in their vehicle under the Act, police took the dog alert as license to conduct a full search of Webb's tractor trailer.

Webb asks this Court to hold that the alert by the dog trained on cannabis did not give officers probable cause to search without ascertaining that Webb was not allowed to have cannabis in his vehicle. This Court should therefore also hold that its previous decision in *People v. Stout*, 106 Ill. 2d 77, 87-88 (1985) that the mere odor of cannabis emanating from a car, standing alone, creates probable cause to search is no longer good law under the Act. Webb also asks this Court to find that his attorney should have been aware of the Act which had been in effect for six years at the time of Webb's trial and was ineffective for failing to challenge the search on these grounds in a motion to suppress.

A. Applicable Law

1. Standard of Review

A defendant has the right to the effective assistance of counsel under both the United States and Illinois Constitutions. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §8; *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). Defense counsel renders ineffective assistance where his performance is unreasonable, and there is a reasonable probability that, but for counsel's deficient performance, the result of the trial would have been different. *Strickland*, 466 U.S. at 688, 694. "Where an ineffectiveness claim is based on counsel's failure to file a suppression motion, in order to establish prejudice under *Strickland*, the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 15. Where an ineffective

assistance of counsel claim was not raised in the trial court, the claim is subject to *de novo* review. *People v. Bates*, 2018 IL App (4th) 160255, ¶ 26; *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24.

2. Search and Seizure Principles

The Fourth Amendment to the United States Constitution and article I, section 6, of the Illinois Constitution protect the rights of individuals against unreasonable searches and seizures without a warrant. U.S. Const. amends. IV, XIV; Ill. Const. 1970, art. I, § 6; *Katz v. United States*, 389 U.S. 347, 351 (1967); *People v. James*, 163 Ill. 2d 302, 311 (1994). The Fourth Amendment "protects people, not places." *Katz*, 389 U.S. at 351. A search in the constitutional sense occurs "when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (*citing Katz*, 389 U.S. at 361 (Harlan, J., concurring)).

Stopping a vehicle based on a suspected traffic violation constitutes a seizure. *People v. Jones*, 215 Ill. 2d 261, 270 (2005) (citing *Whren v. United States*, 517 U.S. 806, 809-10 (1996)). "Warrantless searches are presumptively unreasonable," and therefore unconstitutional, unless an exception to the warrant requirement exists. *United States v. Karo*, 468 U.S. 705, 717 (1984). The "automobile exception" is a recognized exception to the warrant requirement. Under that exception, if an officer has lawfully stopped a vehicle, and has probable cause to believe the vehicle contains evidence of a crime, then the officer may conduct a search of the car without first obtaining a warrant. *Collins v. Virginia*, __ U.S. __, 138 S. Ct. 1663, 1670 (2018); *United States v. Ross*, 456 U.S. 798, 806 (1982); *People v. DeLuna*, 334 Ill. App. 3d 1, 17 (2002) (only if an officer is in possession of facts sufficient to support probable cause to believe that a vehicle contains contraband, the vehicle

may be searched without a warrant). A minor traffic violation does not justify a search of a vehicle, unless an officer reasonably believes he is confronting a situation more serious than a routine traffic violation. *Jones*, 215 Ill. 2d at 271. "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." *Hill*, 2020 IL 124595, ¶ 23. Probable cause "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 certain items may be contraband or useful as evidence of a crime.'" *Id.* ¶ 24 (*quoting Texas v. Brown*, 460 U.S. 730, 742 (1983)). This Court held in *Stout* that the odor of cannabis emanating from a car, by itself, gives the officer probable cause to search the vehicle. 106 Ill. 2d at 87-88. The validity of *Stout* after the passage of the Compassionate Use of Medical Cannabis Program Act 2014. 410 ILCS 130/1 *et seq.* (eff. 2014), *see discussion infra*, is squarely at issue in this case

The use of dogs to detect the presence of narcotics has been an acceptable method to establish probable cause. *People v. Campbell*, 67 Ill. 2d 308, 315-16 (1977). In *United States v. Place*, 462 U.S. 696 (1983), the United States Supreme Court classified a dog sniff as a law enforcement technique "*sui generis,*" a way to detect narcotics that is "minimally intrusive" and detects nothing other than contraband. *Place*, 462 U.S. at 707. In other words, a dog sniff that detects banned substances does not "violate(...) a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001); *Campbell*, 67 Ill. 2d at 315-16. As applied to a dog sniff that occurs during a lawful traffic

stop, the United States Supreme Court concluded in *Illinois v. Caballes* that "the use of a well-trained narcotics-detection dog one that 'does not expose noncontraband items that otherwise would remain hidden from public view' during a lawful traffic stop, generally does not implicate legitimate privacy interests." 543 U.S. 405, 409 (2005) (internal citation omitted) (*quoting Place*, 462 U.S. at 707). Where there is no reasonable expectation of privacy, officers do not even require reasonable suspicion to conduct a dog sniff because it could only detect contraband, and "any interest in possessing contraband cannot be deemed 'legitimate,' ... thus, governmental conduct that only reveals the possession of contraband 'compromises no legitimate privacy interest.' " *Caballes* 543 U.S. at 408 (*quoting United States v. Jacobsen*, 466 U.S. 109, 123 (1984)).

3. Illinois Cannabis Legislation in 2018

In 2018, when Webb's truck was searched, cannabis possession with a notable exception was an offense under the Cannabis Control Act. 720 ILCS 550 (2018) (creating misdemeanors and felonies offense related to cannabis possession and delivery). The exception was the Compassionate Use of Medical Cannabis Program Act ("the Act"), which the legislature enacted in 2014. 410 ILCS 130/1 *et seq*. (2018). The Act recognizes the medicinal benefits of cannabis, and legalizes its use and possession for medical users, their caretakers, and those involved in the manufacture and delivery of medical cannabis. 410 ILCS 130/5, 15, 20. The Act creates a class of lawful users and lawful products, and establishes an identification card system for qualifying participants. 410 ILCS 130/7(a), 10(d), 15(b). It includes a web-based "verification system" available to law enforcement personnel "on a 24-hour basis for the verification of registry identification card (...)." 410 ILCS 130/10(x), 15(c), 150. The Act specifically exempts qualified,

registered participants from "arrest, prosecution, or denial of any right or privilege" if they possesses an amount of cannabis that does not exceed the amount allotted to them under the Act. 410 ILCS 130/25(a-c).

Furthermore, both the Act and the Illinois Vehicle Code regulate the transportation of medical cannabis. 625 ILCS 5/11-502.1 (2018). The Act requires medical cannabis to be stored in a "reasonably secured container" while being transported in a vehicle. 410 ILCS 130/30(a)(2)(E). In 2018, the Vehicle Code prohibited medical cannabis use while driving and mandated that it be transported in a "sealed, tamper-evident medical cannabis container." 625 ILCS 5/11-502.1 (a)-(c).[6]

B. Law enforcement lacked probable cause to search Webb's tractor trailer.

The events preceding the search of Webb's tractor cabin, including the dog alert, did not give law enforcement probable cause to believe that criminal contraband was in Webb's vehicle, and therefore did not justify the search. At the time officers conducted the search, it was lawful for a number of people to possess and transport cannabis, as long as it was properly packaged. 410 ILCS 130/25 (2018). Without ascertaining whether Webb belonged to the group of people legally authorized to transport cannabis in the vehicle, law enforcement could not simply assume that Webb belonged to the group of people *not* permitted to do so. Here, officers could have easily asked Webb for a cannabis identification card or accessed the 24-hour verification system established under the Act. 410

[6]With the further legalization of cannabis, the Vehicle Code has since been amended. It now requires that adult cannabis be stored in a "sealed or resealable, *odor-proof*, and child-resistant medical cannabis container that is inaccessible." 625 ILCS 5/11-502.15(c) (eff. Jun. 25, 2019) (emphasis added). The odor-proof requirement did not exist at the time of Webb's arrest.

ILCS 130/10(x), 15(c), 150. This Court should hold that where officers failed to do so, they did not have probable cause to believe that the cannabis detected by the dog in the tractor cabin was contraband and they therefore lacked probable cause to search Webb's vehicle.

1. When cannabis is partially legalized, a mere dog alert for cannabis does not establish probable cause.

Law enforcement stopped Webb's tractor trailer for a license plate violation. (R. 138-40) The stop was justified and the officers properly checked Webb's paperwork. (R. 138-42) *Rodriguez v. United States*, 575 U.S. 348, 355 (2015), *citing Delaware v. Prouse*, 440 U.S. 648, 658 660 (1979), and 4 W. LaFave, Search and Seizure § 9.3(c), pp. 507-517 (5th ed. 2012) (at lawful traffic stop, officers may determine whether there are outstanding warrants against the driver, and inspect the automobile's registration and proof of insurance). Yet, it is well-settled that a stop for a traffic violation does not give officers probable cause to search a vehicle. *See, e.g., Jones*, 215 Ill. 2d at 271 ("Stopping an automobile for a minor traffic violation does not, by itself, justify a search of the ... vehicle.")

Law enforcement did not gain probable cause to search Webb's vehicle from the subsequent alert by a dog trained on cannabis, which was the *only* evidence of drugs in the vehicle neither officer testified to smelling cannabis or seeing evidence of drug use. This Court did not squarely address the issue presented here whether the mere odor of cannabis *without more* establishes probable cause after the partial legalization of cannabis in *People v. Hill*, 2020 IL 124595. Yet, the reasoning in *Hill* suggests that it does not.

In *Hill*, police in 2017, after the enactment of the Compassionate Use of Medical Cannabis Program Act, made a lawful stop of the defendant's car. 2020

IL 124595, ¶ 5. The car took a while to come to a stop, and the officer knew that this could mean people were trying to destroy or conceal contraband. *Id*. When an officer approached the car window, he smelled raw cannabis. *Id*. at ¶¶5, 10. He also saw a cannabis bud in the back seat. *Id*. at ¶ 16. Based on this evidence, officers searched the car and found crack cocaine. *Id*. at ¶ 1.

In reviewing whether the cannabis in the vehicle gave officers probable cause to search it, this Court acknowledged that in 2017 "cannabis (was) no longer contraband in every circumstance." *Id*. at ¶ 32. Yet, it found the search justified because the facts demonstrated an *illegal* use of cannabis. Crucially, in *Hill* the officer had not just smelled cannabis but seen a bud of cannabis on the back seat of the car. *Id*. at ¶ 16 ("[T]he officer here relied on *more than* the odor of raw cannabis."(emphasis added)). This Court emphasized that even someone who legally possesses cannabis under the Act may not do so in a car unless it is "in a sealed, tamper-evident medical cannabis container." *Id*. at ¶ 36, citing 625 ILCS 5/11-502.1(b), (c) (2016), and 410 ILCS 130/30(a)(5)(2016). The cannabis bud in the back seat indicated that "cannabis was in the car and, likely, not properly contained." *Id*. at ¶ 35. Because open cannabis in a car violated 625 ILCS 5/11-502.1.(b), the facts "established probable cause that evidence of a crime was in the vehicle." *Id*.

Evidence of unlawfully contained cannabis is the crucial difference between *Hill* and the instant case. In *Hill*, the cannabis bud was key to the finding of probable cause because it violated the prohibition of open cannabis in the car; here, no evidence pointed to improperly contained cannabis in Webb's truck cabin in violation of 625 ILCS 5/11-502.1(b)(c). The dog alert on which the officers relied to support the search of Webb's vehicle came from a canine certified in the detection of narcotics,

and trained on several substances, including cannabis. (R. 147-48) With no improperly contained cannabis visible, and without the newer requirement that cannabis be in an odor-proof container, whether the dog alerted to *illegal* cannabis depended on at least two things: (1) whether Webb was a registered user/delivery person of cannabis under the Compassionate Use of Medical Cannabis Program Act; and (2) the weight of the cannabis. The officers who conducted the traffic stop did nothing to ascertain whether Webb had a license to possess and/or transport cannabis in his tractor trailer under 410 ILCS 130/25 (2018). And there is no evidence that the dog alert gave information regarding the weight of the cannabis; it solely alerted for its presence. (R. 147-48) Consequently, before the officers began the search of Webb's tractor cabin, they simply did not know whether the dog alerted to illegal cannabis.

The onus on the officers to ascertain that they were not searching the vehicle of a legal cannabis user, is made clear by the example of firearms. Like cannabis, firearms occupy a hybrid space, where possession is legal under some circumstances, namely as long as the person carries the proper licensing. 430 ILCS 65/2(a)(1), (2) (2023) (requiring firearm owner registration cards for firearms and ammunition). Given that firearms may legally be carried by those with a proper license, law enforcement cannot presume that a person with a firearm is *not* licensed to carry it. Rather, before taking action against the person based on the firearm, police must first ascertain whether the person has the proper license rather than engage in an "arrest first, determine licensure later" practice. *People v. Thomas*, 2019 IL App (1st) 170474, ¶ 40 ("under the current legal landscape, police cannot simply assume a person who possesses a firearm outside the home is involved in criminal activity," such that the mere sight of a gun alone is not "probable cause…without

first identifying whether the individual has the necessary licenses"). The same reasoning applies to cannabis, such as in Webb's case. In 2018, when Webb was stopped and the dog alerted to cannabis, law enforcement could not "simply assume" that the cannabis was illegal without "first identifying whether the individual [*i.e.* Webb] ha[d] the necessary license." *Id.*

In *Hill*, this Court recognized the partial legalization of cannabis and likened it to alcohol.[7] It noted that while possession of alcohol is legal for adults 21 and over, the Vehicle Code makes transporting alcohol in open containers an offense. *Hill*, 2020 IL 124595, ¶36 (citing 625 ILCS 5/11-502 (open containers not allowed in cars), 235 ILCS 5/6-16 (illegal for people under 21 to possess alcohol)). Where alcohol is detected in an unsealed container in a vehicle, officers have probable cause to search it. *Hill*, 2020 IL 124595, ¶36. This Court used the example of an open container of alcohol as an equivalent to visible cannabis in a car: both are plain examples of Vehicle Code violations and thereby "evidence of a crime ... in the vehicle." *Id.* at ¶ 35. The analogy to alcohol holds in this case: in the same way that an alert to a car's trunk by a dog trained in the detection of alcohol would not clearly be "evidence of a crime," an alert by a dog for cannabis in 2018 was *only* evidence of a crime if the person who controlled the vehicle was not licensed to possess and/or transport the cannabis.

The Fourth District Appellate Court recently found that differences remain between legalized cannabis and alcohol, and used that determination to validate a search of a car based on an officer's detection of cannabis odor. *People v. Hall*,

---

[7]The Cannabis Regulation and Tax Act, passed in 2019, in fact now expressly regulates cannabis "in a manner similar to alcohol." 410 ILCS 705/ 1-5(b) (eff. Jan. 1, 2020).

2023 IL App (4th) 220209, ¶ 26 (noting that contrary to cannabis, "alcohol's legality is not conditioned on its amount, and Illinois law does not require alcohol to be transported in an odor-proof container"). *Hall*, however, almost directly conflicts with the reasoning in *Hill,* where this Court recognized the analogy between the prohibition of open-container alcohol and partially legalized cannabis: in each instance there must be evidence of actual wrongdoing, i.e. evidence that alcohol or cannabis is wrongly contained, before law enforcement can begin a search. *Hill*, 2020 IL 124595, ¶36. Contrary to the court's suggestion in *Hall*, the important point is not that differences remain between the regulations of the two substances. Rather, the issue involves how the new regulatory scheme influences the probable cause analysis and because the regulatory schemes for alcohol and cannabis are similar, the analysis is similar.

Hall also did not address how the restrictions on a possession of certain amounts of cannabis changes the probable cause analysis. And neither in *Hall* nor in the case at hand was there an indication without a search of how much cannabis was in the vehicle. Moreover, *Hall* failed to address entirely the analogy to firearms and the question whether the onus is on law enforcement to take the simple step to ascertain before searching whether the detected cannabis is lawfully or unlawfully in a person's possession. This Court should decline to follow *Hall*'s reasoning. And, as argued *infra*, *Hall* is also distinct because it involved human detection of the smell of cannabis, rather than the dog alert here.

Other jurisdictions where cannabis has been partially legalized have already held that after such changes in the law, police must do more than rely on a positive dog alert or the officer's detection of the odor of cannabis to ascertain whether the cannabis detected in a vehicle gives rise to probable cause. *See, e.g., Pacheco*

v. State, 465 Md. 311, 333 (2019) (holding that the smell of cannabis obviously does not provide probable cause to search in a jurisdiction where it has been decriminalized); *Com. v. Cruz*, 459 Mass. 459, 469-72 (2011) (same); *Com. v. Overmyer*, 469 Mass. 16, 18-23 (2014) (the mere odor of burnt cannabis no longer gives police officers probable cause to believe that a vehicle contains criminal contraband or evidence of a crime); *Com. v. Barr*, 266 A.3d 25, 35-41 (Pa. 2021) (given legalization of medical cannabis, smell of cannabis alone cannot create probable cause to search).

In a 2019 decision, following Colorado's partial legalization of cannabis, the Colorado Supreme Court found that the changes in the law had fundamentally transformed the search and seizure analysis, because it changed the privacy interest of the person carrying the cannabis. *People v. McKnight*, 2019 CO 36, ¶ 58 446 P. 3d 397, 408 (Co. 2019). The court reasoned that one of the bedrocks of search and seizure jurisprudence is the axiom that no one has a privacy interest in contraband. *See Caballes*, 543 U.S. at 409 (use of a narcotics-detection dog that does not expose noncontraband during a lawful traffic stop, generally does not implicate legitimate privacy interests). The court in *McKnight* found that once cannabis had been legalized, a dog sniff by a dog trained on cannabis could now detect non-contraband, *i.e.* legal cannabis. Legal cannabis in contrast to illegal cannabis is something for which an individual *does* have a "subjective expectation of privacy that society recognizes as reasonable." *Kyllo*, 533 U.S. at 33 . Based on the Colorado constitution, the court therefore held that the dog sniff by a dog trained on cannabis *itself* constituted a search for which officers must have suspicion. While *McKnight* relies on the Colorado constitution, its reasoning nonetheless remains persuasive. And the protections that the Compassionate Use of Medical

Cannabis Program Act affords those who are licensed under the Act protections "from arrest and prosecution, criminal and other penalties," 410 ILCS 130/5(g) signal that similar to Colorado, society in Illinois recognizes a reasonable privacy interest in the possession of medical cannabis.

Contrary to these decisions from other jurisdictions, several Illinois courts have held that new cannabis legislation has not changed the probable cause analysis. In particular, these courts have held that this Court's prior opinions, particularly *Campbell*, 67 Ill. 2d at315-16 (detection of narcotics by dogs is a permissible method of establishing probable cause), and *Stout*, 106 Ill. 2d at 87 (mere odor of cannabis from a vehicle gives officer probable cause to search a vehicle), remain good law. In Webb's case, the Fourth District Appellate Court found that, when officers searched Webb's vehicle, cabin cannabis possession remained an offense pursuant to the Cannabis Control Act. *Webb*, 2022 IL App (4th) 210726-U, ¶ 37 (citing 720 ILCS 570/402 (2016)). The dog alert was therefore sufficient evidence to give officers probable cause to search. *Webb*, 2022 IL App (4th) 210726-U, ¶ 37 (citing *Campbell*). The Fourth District reached the same conclusion in *People v. Molina*, 2022 IL App (4th) 220152, ¶ 52 (citing *Stout*, 106 Ill. 2d at 87), and *Hall*, 2023 IL App (4th) 220209,¶ 27 (same), though all these cases involve the detection of cannabis by a trained officer rather than a dog. Other appellate districts have come to similar conclusions, citing this Court's pre-legalization decisions. *See, e.g., People v. Sims*, 2022 IL App (2d) 200391, ¶¶ 92-94 (because cannabis possession remained illegal in 2018, the odor of raw cannabis detected by an officer gave probable cause to search, citing *Stout*); *People v. Lymon*, 2021 IL App (1st) 173182-U, ¶ 64 (finding that *Stout* remained good law in 2016). None of those cases addressed whether a dog alert alone constituted probable cause after the legalization of medical

cannabis. *But see People v. Stribling,* 2022 IL App (3d) 210098, ¶ 28 (mere odor of cannabis and admission that someone had smoked cannabis in the car at some point no longer gave officers reason to believe that criminal activity was afoot).[8]

In reviewing the lower courts' determinations, this Court should acknowledge the difference between when an officer detects the odor of cannabis and when a dog does. Courts have repeatedly recognized that dogs far surpass humans in their ability to pick up cannabis scent. *See, e.g. Place*, 462 U.S. at707(describing the ability of dogs to sniff out cannabis in luggage that would have required officers to rummage through a suitcase); *McKnight*, 2019 CO 36, ¶ 42, 446 P.3d 397, 409 (comparing dog sniffs to thermal imaging technology). This difference is significant because of the storage requirements for cannabis. 625 ILCS 5/11-502.1 (requiring container); 410 ILCS 130/30(a)(2)(E)(same). In the same way dogs can pick up the scent of cannabis in luggage, they can (as demonstrated in this case) detect it when in a sealed container. Thus, when a dog detects cannabis, it does *not* indicate that cannabis is improperly stored in the car, as the detection of odor by an officer might. Within the parameters of this Court's decision in *Hill* where *mispackaging* of cannabis was crucial for the probable cause determination had an officer smelled cannabis in Webb's tractor cabin, it may have indicated that cannabis was not properly contained. *Cf. Hill*, 2020 IL 124595, ¶36. Yet, that was not the case here.

---

[8]Several of these decisions address the probable cause analysis after passage of the Cannabis Regulation and Tax Act which legalizes the possession of up to 30 grams of cannabis for any adult 21 years or older and 410 ILCS 705/1 *et seq.*, 1-5(b) (eff. Jan. 1, 2020). The issue of the impact of the new legislation is not directly before this Court. However, the analysis is similar to this case. In fact, after further legalization there is an even greater duty on law enforcement before conducting a search, namely to ascertain that cannabis officers may encounter on a person or in a vehicle is probably illegal whether because the person is under age or possesses more than the permissible quantity.

Furthermore, this Court should hold that after the passage of the Compassionate Use of Medical Cannabis Program Act neither *Campbell* nor *Stout* were good law at the time of the search of Webb's vehicle. The appellate courts that have concluded that *Stout* and *Campbell* remain good law have cited this Court's decision in *Hill* in support. *Webb*, 2022 IL App (4th) 210726-U, ¶ 35; *Lymon*, 2021 IL App (1st) 173182-U, ¶¶ 63-64; *Molina*, 2022 IL App (4th) 220152, ¶ 52. These courts misinterpret this Court's discussion of *Stout* in *Hill*, and critically, they disregard that legislative action takes precedence over common law decisions. *See, e.g., People v. Redmond*, 2022 IL App (3d) 210524, ¶ 12 ("legislative action can moderate, or even totally negate, the impact, the applicability, and the pertinence of prevailing case law").

Specifically, in *Hill*, the defendant asked this Court to overrule *Stout*. *Hill*. 2020 IL 124595, ¶¶ 15. This Court concluded that it did not need to address *Stout* because, in addition to the odor of cannabis (all that was the issue in *Stout*), the officer in *Hill* had evidence of a criminal violation via the discovery of the improperly packaged cannabis bud. *Id*. at ¶¶ 15-16. This Court therefore explicitly *declined* to "address the validity of *Stout*." *Id*. at ¶ 18. Yet, this Court's refusal to address *Stout* is not an endorsement of it, nor does it mean that *Stout* trumps the provisions of the Compassionate Use of Medical Cannabis Program Act. *Stout* was issued in 1985. The Act was passed in 2004. The legislature can change the law of the land "as it sees fit," within the constitutional limitations. *See, e.g., Fure v. Sherman Hosp.*, 64 Ill. App. 3d 259, 267 (2d Dist. 1978). And it is fundamental that legislative action takes precedence over judge-made law. Here, by legalizing medical cannabis, the legislature effectively abrogated *Stout*; after all, it provides that a valid user *cannot* be arrested. 410 ILCS 130/5(g). And, as noted previously, this legalization

also reflects society's changing view of reasonable privacy rights.

The provisions of the Compassionate Use of Medical Cannabis Program Act "protect (legal users) ... from arrest and prosecution, criminal and other penalties...". 410 ILCS 130/5(g). That goal can only be accomplished if law enforcement changes its practices. Webb does not contend that *Hill* overruled *Stout*. Rather, *Stout* was decided before the passage of the Act. Because the Act changes the probable cause calculations for officers, *Stout* is no longer good law. In 2018, when Webb was stopped for a traffic violation and a dog alerted to cannabis in his vehicle, without ascertaining that Webb was not authorized to transport cannabis in his tractor trailer, law enforcement did not have probable cause to search.

2. The totality of the circumstances also did not give rise to probable cause

The State argued in the appellate court that in Webb's case the detection of cannabis by the dog was coupled with other incriminating behavior, which under a totality of circumstances, gave rise to probable cause to search Webb's tractor cabin. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 232 (1983) (probable cause standard deals with probabilities and depends on the totality of the circumstances). This argument fails because the facts known to officers, including the dog alert for cannabis, amounted to nothing more than a hunch by law enforcement that there was "some type of criminal activity." (R. 144) This hunch was insufficient to justify the search because it was insufficient "to give a reasonable man cause to believe that the vehicle contained contraband or evidence of criminal activity." *Hill*, 2020 IL 124595, ¶ 23.

Sergeant Albee listed the combination of circumstances and Webb's behaviors

that made him believe that Webb was "involved in some type of criminal activity." (R. 144) Webb's truck missed federally required markings and was only partially loaded; Webb's paperwork was "very disorganized," and to Albee, he appeared as if in a "state of panic" because he made "very animated" movements. (R. 141-42) Additionally, Albee believed that Webb's statement that his truck been searched for drugs previously was "bizarre." (R. 142)

Albee's representations did not amount to more than an unspecified feeling that something was amiss. Albee testified that he had been trained in drug interdictions, but did nothing to explain why missing markings and a partially loaded truck made him believe that something more sinister was afoot indeed, the best he could say was that he thought Webb might be "involved in some type of criminal activity. I didn't know if it was a stolen vehicle or what the case may be." (R. 135, 144) On this unspecified feeling, he brought out the dog. In his report, Albee noted that he decided to investigate further because "he assumed that the truck could not be making much money at this point in its trip." (C. 83) Yet, he never claimed that his training allowed him to connect an observation of potentially wasteful business practices to drug trafficking. Moreover, Albee's descriptions of Webb's behavior as "panicked" or "bizarre" are contradicted by the State's own evidence, namely the recordings of Webb's interactions. The recordings captured a majority of the interactions, and on them Webb's voice is steady and he answers questions without hesitation or apparent anxiety in his voice; he calmly explains where he has traveled, where his loaded cars originated, and his problems with accessing his insurance information on his phone. (Exh. 4A, 00:43:00-00:45:00) Once Deputy Erickson takes over the paperwork and Albee goes out with the drug sniffing dog, Webb's voice does not change when he recalls a prior search he

underwent earlier that morning. (Exh. 4A, 00:45:00-00:48:30) Albee's descriptions of Webb's behavior were repudiated by the actual evidence. They therefore merit no deference. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006) (court reviewing motion to suppress litigated in the trial court is "free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions").

Furthermore, Albee found it "bizarre" that Webb told him his truck had previously been searched for drugs. Yet, the State's own evidence tended to show that Webb was only telling Albee the truth: he had been stopped by law enforcement in both Nevada and Oklahoma. (Exhs. 9A, 9C) And to the extent that Albee may have sensed anxiety which is not captured by the tape, the circumstances of the stop bear noting. Albee, who is White, stopped Webb, who is Black, around midnight; it was snowing, and Webb was only about 100 miles away from his home after a cross-country trip. (C. 78, Exh. 4A (showing snow and darkness)) It is undisputed that Webb was searching for paperwork that Albee had requested, and the average person would be alarmed by his or her own inability to find it. In other words, if Webb appeared nervous, in that situation, it was normal to be at least uneasy. *See, e.g., United States v. Beck*, 140 F.3d 1129, 1139 (8th Cir. 1998) ("It certainly cannot be deemed unusual for a motorist to exhibit signs of nervousness when confronted by a law enforcement officer."); *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997) (same)*; see also People v. Thomas*, 2018 IL App (4th) 170440, ¶ 78 ("Although nervousness can contribute to reasonable suspicion, nervousness is not enough to arouse reasonable suspicion.") (citing *People v. Moore*, 341 Ill. App. 3d 804, 811 (2003), and *People v. Sinegal*, 409 Ill. App. 3d 1130, 1135-36 (2011)). Ultimately, by Albee's own admission, before he conducted the dog sniff he had nothing other than the proverbial hunch that Webb was "involved in some

type of criminal activity. [...] I didn't know if it was a stolen vehicle or what the case may be." (R. 144) A hunch cannot support a search. *See, e.g., Hill*, 2020 IL 124595, ¶ 23 (search of vehicle at traffic stop requires probable cause).

Even giving credence to Albee's claim that he had a feeling that Webb was "involved in some type of criminal activity," (R. 144), the addition of a dog alert for cannabis to these facts cannot add up to probable cause. If this were so, law enforcement could use drug sniffing dogs trained on cannabis as a pretext to search in cases where officers have only a hunch of criminal activity. In 2018, almost 40,000 Illinois citizens had been issued licenses under the Compassionate Use of Medical Cannabis Program Act. *See* Illinois Department of Health, Annual Progress Report, Compassionate Use of Medical Cannabis Program Act, July 1, 2017 to June 30, 2018, p. 4 (39,808 licenses issued by 2018), *available at* https://dph.illinois.gov/topics-services/prevention-wellness/medical-cannabis/annual-report.html.[9] For this population, an officer's hunch in addition to an alert for a substance that the *person is legally permitted to have*, would be sufficient grounds for a search. In this regard, it is worth reiterating that the mere request for the cannabis license or a check in the database can solve this situation and give the officer clarity whether cannabis odor indicates an offense or not. 410 ILCS 130/10(x), 150. Without such a check, the Fourth Amendment does not permit a search. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 22 (1968) ("Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused

[9]This Court may take judicial notice of information on government websites. *See, e.g., Leach v. Dept. of Employment Security*, 2020 IL App (1st) 190299 (information on public websites is sufficiently reliable to allow courts to take judicial notice).

to sanction."), citing *Beck v. Ohio*, 379 U.S. 89 (1964); *Rios v. United States*, 364 U.S. 253 (1960); *Henry v. United States*, 361 U.S. 98 (1959).

C. Trial counsel was ineffective for failing to move to suppress the fruits of the illegal search based on the argument that the dog alert did not give officers probable cause

The standard for resolving ineffective assistance of counsel claims was set forth in *Strickland*, 466 U.S. 668-94. *See also* U.S. Const., amends. VI, XIV; Ill. Const., art. I, § 8. Under *Strickland*, a criminal defendant is entitled to a new trial when: (1) counsel's performance fell below an objective standard of reasonableness; and (2) the deficient performance prejudiced the defendant, creating a "reasonable probability" that the result would have been different. *Strickland*, 466 U.S. at 688-94. Competent representation requires the use of established law. *See, e.g. People v. Fillyaw*, 409 Ill. App. 3d 302, 315 (2d Dist. 2011) ("The constitutional guarantee of effective assistance of counsel requires a criminal defense attorney to use the applicable rules of evidence"); *People v. Moore*, 279 Ill. App. 3d 152, 158-59 (5th Dist. 1996); *see also People v. Utley*, 2019 IL App (1st) 152112, ¶ 58 (counsel ineffective for failing to pursue a meritorious motion to suppress). As previously explained, in the context of a claim that counsel was ineffective for failing to file a suppression motion, in order to establish prejudice under *Strickland*, the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed. *Henderson*, 2013 IL 114040, ¶ 15.

In this case, defense counsel's failure to base his motion to suppress on the lack of probable cause to search Webb's tractor cabin constitutes ineffective assistance of counsel. *People v. Young*, 347 Ill. App. 3d 909, 928 (1st Dist. 2004).

Had defense counsel here litigated the motion to suppress based on the arguments made *supra*, the motion would have been meritorious, leading to suppression of the recovered cannabis. The State's case against Webb would have been fundamentally different i.e. without evidence of the cannabis, the State could not have proceeded. There is therefore a reasonable probability that, without cannabis, the trial outcome would have been different. *See People v. Miller*, 2013 IL App (1st) 110879, ¶ 72 ("To be reasonably effective, criminal defense attorneys must raise constitutional violations when constitutional rights have been violated and move to suppress damning evidence produced in violation of constitutional guarantees.").

An attorney's trial strategy must be *sound* and *reasonable* to defeat a claim of ineffective assistance. *See People v. King,* 316 Ill. App. 3d 901, 915-16 (1st Dist. 2000) ("[T]he mere characterization of counsel's decision not to call an available alibi witness as 'trial strategy' does not preclude inquiry as to the reasonableness of counsel's strategy."). Here, counsel's decision was neither. When defense counsel litigated his motion to suppress in October 2020 (based on different grounds), the Compassionate Use of Medical Cannabis Program Act had been enacted since 2014, almost six years prior. What is more, this Court had *already* decided *Hill* in March of that year. *Hill,* 2020 IL 124595 (decided Mar. 19, 2020). Counsel therefore could have and should have used this Court's express acknowledgment that the legalization of medical cannabis had altered the status of cannabis as contraband. *Hill*, 2020 IL 124595, ¶ 26. Instead, counsel did not raise any argument at all about whether, given the partial legalization of cannabis, the dog alert by a dog trained on cannabis gave the officers probable cause to search the truck cabin. *See, e.g., Hinton v. Alabama*, 571 U.S. 263, 274 (2014) (*per curiam*) (an

attorney's ignorance on a point of law that is fundamental to his case combined with his failure to do basic research on that point is a quintessential example of unreasonable performance).

Counsel in this case sought suppression of the cannabis on other arguments. (C. 78-87) Yet, counsel was required to use a course of action that actually could bring relief for his client. *Miller*, 2013 IL App (1st) 110879, ¶ 84 (" Even if defense counsel vigorously tests the State's evidence at trial, prejudice can be found where a motion to suppress would have been defense counsel's strongest, and most likely wisest, course of action.") (internal quotation omitted). And as demonstrated *supra*, the search *based on the dog's drug alert* was unconstitutional.

Had counsel filed the motion, the trial court was bound by the Compassionate Use of Medical Cannabis Program Act and would have had to find that the search of Webb's tractor trailer was unlawful. Had the trial court then granted the motion to suppress, it would have had to suppress evidence of the cannabis found in the vehicle. Webb was charged with violations under the Cannabis Control Act, which required, *inter alia*, that the State prove that Webb knowingly possessed and/orbrought into Illinois "2,500 grams or more of cannabis." 720 ILCS 550/4(f), 5.1(a). Without evidence of the cannabis found pursuant to the unlawful search, there would have been insufficient evidence to prosecute Webb. Webb was therefore prejudiced by his counsel's failure to base his motion on this argument.

D. Conclusion

The only pertinent evidence law enforcement cited to justify the search of Webb's tractor trailer was a dog's alert an alert that indicated no more than a range of drugs, including the possible presence of cannabis. After the partial legalization of cannabis under the Compassionate Use of Medical Cannabis Program

Act, such a dog alert for cannabis, coupled with Albee's mere hunch that Webb was involved in "some type of criminal activity," was not enough in 2018 to provide probable cause to justify a search of Webb's cabin. Webb's trial attorney should have filed a meritorious motion to suppress the cannabis based on the lack of probable cause. Such a motion would have been granted, the physical evidence introduced by the State as well as Webb's statements would have been suppressed and, as a result, the State would have been unable to sustain its burden of proof at trial. This Court should hold that counsel was ineffective and reverse Webb's convictions. Moreover, because the State cannot prevail on retrial without the evidence that should have been suppressed, this Court should reverse Webb's convictions outright without remanding for a new trial. *People v. Williams*, 2020 IL App (1st) 172992, ¶ 12; *People v. Litwin*, 2015 IL App (3d) 140429, ¶ 46; *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 36.

CONCLUSION

For the foregoing reasons, Dante Antwan Webb, Defendant-Appellant, respectfully requests that this Court reverse his conviction.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

MIRIAM SIERIG
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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 or words contained in 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, is 38 pages or words.

/s/Miriam Sierig
MIRIAM SIERIG
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Dante Antwan Webb No. 128957

INDEX TO THE RECORD

Common Law Record ("C") **Page**

Sealed Common Law Record ("CS") **Page**

Report of Proceedings ("R")

			Direct	Cross	Redir.	Recr.
December 3, 2020						
Bench Trial						
State Witnesses	Sergeant Jonathan Albee	265				

IN THE CIRCUIT COURT OF McLEAN COUNTY, IL
ELEVENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS)
)
vs.)
)
Dante Webb)
Defendant)

Date of Sentence 9/08/2021

Case Number 2018-CF-305

Date of Birth 03/31/1979
(Defendant)

FILED
DEC 09 2021
McLEAN COUNTY
CIRCUIT CLERK

Amended **JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS**

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
1	Cannabis Trafficking	3/24/18	720 ILCS 550/5.1(a)	1	14 Yrs. 0 Mos.	1 Yrs.

To run (concurrent with) (consecutively to) count(s)_____ and served at (50%), 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3

_____ _____ _____ _____ _____ Yrs. _____ Mos. _____ Yrs.
To run (concurrent with) (consecutively to) count(s)_____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3

_____ _____ _____ _____ _____ Yrs. _____ Mos. _____ Yrs.
To run (concurrent with) (consecutively to) count(s)_____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3

This Court finds that the defendant is:

_____ Convicted of a Class _____ offense but sentenced as a **Class X** offender pursuant to 730 ILCS 5/5-4.5-95(b).

X The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 197 days as of the date of this order) from (specify dates) 6/21/18 – 7/21/18, 3/24/18 – 9/5/18, and 4/18/21 – 9/7/21. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.
X The defendant remained in continuous custody from the date of this order.
___ The defendant did not remain in continuous custody from the date of this order (less _____ days from a release date of _____ to a surrender date of _____).

_____ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in **great bodily harm** to the victim. [730 ILCS 5/3-6-3(a)(2)(iii)]

_____ The Court further finds that the defendant meets the eligibility requirements for possible placement in the **Impact Incarceration Program.** [730 ILCS 5/5-4-1(a)]

_____ The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. [730 ILCS 5/5-4-1(a)]

_____ The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ____ Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible for sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4). THEREFORE IT IS ORDERED that the defendant shall be awarded additional sentence credit as follows: total number of days in identified program(s)_____ x .50 = _____ days, if not previously awarded.

_____ The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

_____ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of _____ County.

_____ IT IS FURTHER ORDERED that _____

The Clerk of the Court shall deliver a certified copy of this order to the sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is (X effective immediately) (_____ stayed until _____).

DATE: 12/09/2021 ENTER: _____

William Yoder
(PLEASE PRINT JUDGE'S NAME HERE)

White original – Court Green – Defendant Canary – IDOC Pink – State's Attorney Goldenrod – Defendant's Attorney
Approved by Conference of Chief Judges 6/20/14 (rev. 10/23/2015)

C 230

E-FILED
Transaction ID: 4-21-0726
File Date: 12/28/2021 9:06 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 4-21-0726

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DANTE ANTWAN WEBB, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois No. 18-CF-305 Honorable William A. Yoder, Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Mr. Dante Antwan Webb
Appellant's Address:	Taylorville Correctional Center 1144 Illinois Route 29 Taylorville, IL 62568
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303 Springfield, IL 62704
Offense of which convicted:	Cannabis Trafficking
Date of Judgment or Order:	December 9, 2021
Sentence:	14 years in prison
Nature of Order Appealed:	Conviction, Sentence and Denial of Motion to Reconsider

/s/ Catherine K. Hart
CATHERINE K. HART
ARDC No. 6230973
Deputy Defender

Compassionate Use of Medical Cannabis Pilot Program Act; 410 ILCS 130/1 *et seq*. (2018).

§ 5. Findings.

(a) The recorded use of cannabis as a medicine goes back nearly 5,000 years. Modern medical research has confirmed the beneficial uses of cannabis in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions, including cancer, multiple sclerosis, and HIV/AIDS, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

(b) Studies published since the 1999 Institute of Medicine report continue to show the therapeutic value of cannabis in treating a wide array of debilitating medical conditions. These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS, and other illnesses that often fail to respond to conventional treatments and relief of nausea, vomiting, and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens.

(c) Cannabis has many currently accepted medical uses in the United States, having been recommended by thousands of licensed physicians to at least 600,000 patients in states with medical cannabis laws. The medical utility of cannabis is recognized by a wide range of medical and public health organizations, including the American Academy of HIV Medicine, the American College of Physicians, the American Nurses Association, the American Public Health Association, the Leukemia & Lymphoma Society, and many others
.
(d) Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 cannabis arrests in the U.S. are made under state law, rather than under federal law. Consequently, changing State law will have the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use cannabis.
…
(d-10) According to the State of Illinois Opioid Action Plan released in September 2017, "The opioid epidemic is the most significant public health and public safety crisis facing Illinois". According to the Action Plan, "Fueled by the growing opioid epidemic, drug overdoses have now become the leading cause of death nationwide for people under the age of 50. In Illinois, opioid overdoses have killed nearly 11,000 people since 2008. Just last year, nearly 1,900 people died of overdoses-almost twice the number of fatal car accidents. Beyond these deaths are thousands of emergency department visits, hospital stays, as well as the pain suffered by individuals, families, and communities".
According to the Action Plan, "At the current rate, the opioid epidemic will claim the lives of more than 2,700 Illinoisans in 2020".
Further, the Action Plan states, "Physical tolerance to opioids can begin to develop as early as two to three days following the continuous use of opioids, which is a large factor that contributes to their addictive potential".
The 2017 State of Illinois Opioid Action Plan also states, "The increase in OUD [opioid use disorder] and opioid overdose deaths is largely due to the dramatic

rise in the rate and amount of opioids prescribed for pain over the past decades". Further, according to the Action Plan, "In the absence of alternative treatments, reducing the supply of prescription opioids too abruptly may drive more people to switch to using illicit drugs (including heroin), thus increasing the risk of overdose".

(e) Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and Washington, D.C. have removed state-level criminal penalties from the medical use and cultivation of cannabis. Illinois joins in this effort for the health and welfare of its citizens.

(f) States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this Act does not put the State of Illinois in violation of federal law.

(g) State law should make a distinction between the medical and non-medical uses of cannabis. Hence, the purpose of this Act is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if the patients engage in the medical use of cannabis.

§ 7. Lawful user and lawful products.

For the purposes of this Act and to clarify the legislative findings on the lawful use of cannabis:

(1) A cardholder under this Act shall not be considered an unlawful user or addicted to narcotics solely as a result of his or her qualifying patient or designated caregiver status.

(2) All medical cannabis products purchased by a qualifying patient at a licensed dispensing organization shall be lawful products and a distinction shall be made between medical and non-medical uses of cannabis as a result of the qualifying patient's cardholder status, provisional registration for qualifying patient cardholder status, or participation in the Opioid Alternative Pilot Program under the authorized use granted under State law.

§ 10. Definitions.

The following terms, as used in this Act, shall have the meanings set forth in this Section:

...

(d) "Cardholder" means a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card by the Department of Public Health.

...

(l-10) "Illinois Cannabis Tracking System" means a web-based system established and maintained by the Department of Public Health that is available to the Department of Agriculture, the Department of Financial and Professional Regulation, the Illinois State Police, and registered medical cannabis dispensing

organizations on a 24-hour basis to upload written certifications for Opioid Alternative Pilot Program participants, to verify Opioid Alternative Pilot Program participants, to verify Opioid Alternative Pilot Program participants' available cannabis allotment and assigned dispensary, and the tracking of the date of sale, amount, and price of medical cannabis purchased by an Opioid Alternative Pilot Program participant.

...

(n) "Medical cannabis container" means a sealed, traceable, food compliant, tamper resistant, tamper evident container, or package used for the purpose of containment of medical cannabis from a cultivation center to a dispensing organization.

(r-5) "Opioid" means a narcotic drug or substance that is a Schedule II controlled substance under paragraph (1), (2), (3), or (5) of subsection (b) or under subsection (c) of Section 206 of the Illinois Controlled Substances Act.

(r-10) "Opioid Alternative Pilot Program participant" means an individual who has received a valid written certification to participate in the Opioid Alternative Pilot Program for a medical condition for which an opioid has been or could be prescribed by a certifying health care professional based on generally accepted standards of care.

...

(s-5) "Provisional registration" means a document issued by the Department of Public Health to a qualifying patient who has submitted: (1) an online application and paid a fee to participate in Compassionate Use of Medical Cannabis Program pending approval or denial of the patient's application; or (2) a completed application for terminal illness.

(x) "Verification system" means a Web-based system established and maintained by the Department of Public Health that is available to the Department of Agriculture, the Department of Financial and Professional Regulation, law enforcement personnel, and registered medical cannabis dispensing organization agents on a 24-hour basis for the verification of registry identification cards, the tracking of delivery of medical cannabis to medical cannabis dispensing organizations, and the tracking of the date of sale, amount, and price of medical cannabis purchased by a registered qualifying patient.

(y) "Written certification" means a document dated and signed by a certifying health care professional, stating (1) that the qualifying patient has a debilitating medical condition and specifying the debilitating medical condition the qualifying patient has; and (2) that (A) the certifying health care professional is treating or managing treatment of the patient's debilitating medical condition; or (B) an Opioid Alternative Pilot Program participant has a medical condition for which opioids have been or could be prescribed. A written certification shall be made only in the course of a bona fide health care professional-patient relationship, after the certifying health care professional has completed an assessment of either a qualifying patient's medical history or Opioid Alternative Pilot Program participant, reviewed relevant records related to the patient's debilitating condition, and conducted a physical examination.

§ 15. Authority.

(a) It is the duty of the Department of Public Health to enforce the following provisions of this Act unless otherwise provided for by this Act:

(1) establish and maintain a confidential registry of qualifying patients authorized to engage in the medical use of cannabis and their caregivers;
...
(c) It is the duty of the Department of Financial and Professional Regulation to enforce the provisions of this Act relating to the registration and oversight of dispensing organizations unless otherwise provided for in this Act.
(d) The Department of Public Health, the Department of Agriculture, or the Department of Financial and Professional Regulation shall enter into intergovernmental agreements, as necessary, to carry out the provisions of this Act including, but not limited to, the provisions relating to the registration and oversight of cultivation centers, dispensing organizations, and qualifying patients and caregivers.
(e) The Department of Public Health, Department of Agriculture, or the Department of Financial and Professional Regulation may suspend, revoke, or impose other penalties upon a registration for violations of this Act and any rules adopted in accordance thereto. The suspension or revocation of, or imposition of any other penalty upon, a registration is a final Agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Circuit Court.
(...)

§ 25. Immunities and presumptions related to the medical use of cannabis.

(a) A registered qualifying patient is not subject to arrest, prosecution, or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by an occupational or professional licensing board, for the medical use of cannabis in accordance with this Act, if the registered qualifying patient possesses an amount of cannabis that does not exceed an adequate supply as defined in subsection (a) of Section 10 of this Act of usable cannabis and, where the registered qualifying patient is a licensed professional, the use of cannabis does not impair that licensed professional when he or she is engaged in the practice of the profession for which he or she is licensed.

(b) A registered designated caregiver is not subject to arrest, prosecution, or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by an occupational or professional licensing board, for acting in accordance with this Act to assist a registered qualifying patient to whom he or she is connected through the Department's registration process with the medical use of cannabis if the designated caregiver possesses an amount of cannabis that does not exceed an adequate supply as defined in subsection (a) of Section 10 of this Act of usable cannabis. A school nurse or school administrator is not subject to arrest, prosecution, or denial of any right or privilege, including, but not limited to, a civil penalty, for acting in accordance with Section 22-33 of the School Code1 relating to administering or assisting a student in self-administering a medical cannabis infused product. The total amount possessed between the qualifying patient and caregiver shall not exceed the patient's adequate supply as defined in subsection (a) of Section 10 of this Act.

(c) A registered qualifying patient or registered designated caregiver is not subject to arrest, prosecution, or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by an occupational or professional licensing board for possession of cannabis that is incidental to medical use, but is not usable

cannabis as defined in this Act.

(d)(1) There is a rebuttable presumption that a registered qualifying patient is engaged in, or a designated caregiver is assisting with, the medical use of cannabis in accordance with this Act if the qualifying patient or designated caregiver:
(A) is in possession of a valid registry identification card; and
(B) is in possession of an amount of cannabis that does not exceed the amount allowed under subsection (a) of Section 10.
(2) The presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition in compliance with this Act.
...
(l) Mere possession of, or application for, a registry identification card or registration certificate does not constitute probable cause or reasonable suspicion, nor shall it be used as the sole basis to support the search of the person, property, or home of the person possessing or applying for the registry identification card. The possession of, or application for, a registry identification card does not preclude the existence of probable cause if probable cause exists on other grounds.
(...)

§ 30. Limitations and penalties.

(a) This Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:
...
(5) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while using or under the influence of cannabis in violation of Sections 11-501 and 11-502.1 of the Illinois Vehicle Code;
(6) Using or possessing cannabis if that person does not have a debilitating medical condition and is not a registered qualifying patient or caregiver;
(7) Allowing any person who is not allowed to use cannabis under this Act to use cannabis that a cardholder is allowed to possess under this Act;

(10) The use of medical cannabis by a person who has a school bus permit or a Commercial Driver's License.
(b) Nothing in this Act shall be construed to prevent the arrest or prosecution of a registered qualifying patient for reckless driving or driving under the influence of cannabis where probable cause exists.
(c) Notwithstanding any other criminal penalties related to the unlawful possession of cannabis, knowingly making a misrepresentation to a law enforcement official of any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution is a petty offense punishable by a fine of up to $1,000, which shall be in addition to any other penalties that may apply for making a false statement or for the use of cannabis other than use undertaken under this Act.
(d) Notwithstanding any other criminal penalties related to the unlawful possession of cannabis, any person who makes a misrepresentation of a medical condition to a certifying health care professional or fraudulently provides material misinformation to a certifying health care professional in order to obtain a written certification is guilty of a petty offense punishable by a fine of up to $1,000.

(e) Any cardholder or registered caregiver who sells cannabis shall have his or her registry identification card revoked and is subject to other penalties for the unauthorized sale of cannabis.
(f) Any registered qualifying patient who commits a violation of Section 11-502.1 of the Illinois Vehicle Code or refuses a properly requested test related to operating a motor vehicle while under the influence of cannabis shall have his or her registry identification card revoked.
(...)

§ 70. Registry identification cards.

(a) A registered qualifying patient or designated caregiver must keep their registry identification card in his or her possession at all times when engaging in the medical use of cannabis.
(b) Registry identification cards shall contain the following:
(1) the name of the cardholder;
(2) a designation of whether the cardholder is a designated caregiver or qualifying patient;
(3) the date of issuance and expiration date of the registry identification card;
(4) a random alphanumeric identification number that is unique to the cardholder;
(5) if the cardholder is a designated caregiver, the random alphanumeric identification number of the registered qualifying patient the designated caregiver is receiving the registry identification card to assist; and
(6) a photograph of the cardholder, if required by Department of Public Health rules.
(c) To maintain a valid registration identification card, a registered qualifying patient and caregiver must annually resubmit, at least 45 days prior to the expiration date stated on the registry identification card, a completed renewal application, renewal fee, and accompanying documentation as described in Department of Public Health rules. The Department of Public Health shall send a notification to a registered qualifying patient or registered designated caregiver 90 days prior to the expiration of the registered qualifying patient's or registered designated caregiver's identification card. If the Department of Public Health fails to grant or deny a renewal application received in accordance with this Section, then the renewal is deemed granted and the registered qualifying patient or registered designated caregiver may continue to use the expired identification card until the Department of Public Health denies the renewal or issues a new identification card.
(d) Except as otherwise provided in this Section, the expiration date is 3 years after the date of issuance.
(e) The Department of Public Health may electronically store in the card any or all of the information listed in subsection (b), along with the address and date of birth of the cardholder and the qualifying patient's designated dispensary organization, to allow it to be read by law enforcement agents.
(...)

§ 120. Dispensing organization agent identification card.

(a) The Department of Financial and Professional Regulation shall:
(1) verify the information contained in an application or renewal for a dispensing organization agent identification card submitted under this Act, and approve or

deny an application or renewal, within 30 days of receiving a completed application or renewal application and all supporting documentation required by rule;
(2) issue a dispensing organization agent identification card to a qualifying agent within 15 business days of approving the application or renewal;
(3) enter the registry identification number of the dispensing organization where the agent works; and
(4) allow for an electronic application process, and provide a confirmation by electronic or other methods that an application has been submitted.
(b) A dispensing agent must keep his or her identification card visible at all times when on the property of a dispensing organization.
(c) The dispensing organization agent identification cards shall contain the following:
(1) the name of the cardholder;
(2) the date of issuance and expiration date of the dispensing organization agent identification cards;
(3) a random 10 digit alphanumeric identification number containing at least 4 numbers and at least 4 letters; that is unique to the holder; and
(4) a photograph of the cardholder.
(d) The dispensing organization agent identification cards shall be immediately returned to the dispensing organization upon termination of employment.
(e) Any card lost by a dispensing organization agent shall be reported to the Illinois State Police and the Department of Financial and Professional Regulation immediately upon discovery of the loss.
(f) An applicant shall be denied a dispensing organization agent identification card if he or she has been convicted of an excluded offense.
(...)

§ 150. Registry identification and registration certificate verification.

(a) The Department of Public Health shall maintain a confidential list of the persons to whom the Department of Public Health has issued registry identification cards and their addresses, phone numbers, and registry identification numbers. This confidential list may not be combined or linked in any manner with any other list or database except as provided in this Section.
(b) Within 180 days of the effective date of this Act, the Department of Public Health, Department of Financial and Professional Regulation, and Department of Agriculture shall together establish a computerized database or verification system. The database or verification system must allow law enforcement personnel and medical cannabis dispensary organization agents to determine whether or not the identification number corresponds with a current, valid registry identification card. The system shall only disclose whether the identification card is valid, whether the cardholder is a registered qualifying patient or a registered designated caregiver, the registry identification number of the registered medical cannabis dispensing organization designated to serve the registered qualifying patient who holds the card, and the registry identification number of the patient who is assisted by a registered designated caregiver who holds the card. The Department of Public Health, the Department of Agriculture, the Illinois State Police, and the Department of Financial and Professional Regulation shall not share or disclose any existing or non-existing Illinois or national criminal history record information. Notwithstanding any other requirements established by this subsection, the Department of Public Health shall issue registry cards to qualifying patients, the Department of Financial and Professional Regulation may issue registration

to medical cannabis dispensing organizations for the period during which the database is being established, and the Department of Agriculture may issue registration to medical cannabis cultivation organizations for the period during which the database is being established.

(c) For the purposes of this Section, "any existing or non-existing Illinois or national criminal history record information" means any Illinois or national criminal history record information, including but not limited to the lack of or non-existence of these records.

(...)

2022 IL App (4th) 210726-U

NO. 4-21-0726

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 20, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
DANTE ANTWAN WEBB,	)	No. 18CF305
Defendant-Appellant.	)	
	)	Honorable
	)	William A. Yoder,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 ***Held***: The appellate court held that defendant failed to establish that his counsel provided ineffective assistance for failing to argue that a positive canine alert for drugs in defendant's vehicle could not constitute probable cause for a search, because such an argument would have been meritless. The appellate court further found that the trial court did not impose an excessive sentence for defendant's conviction of cannabis trafficking.

¶ 2 Following a bench trial, defendant, Dante Webb, was found guilty of cannabis trafficking (720 ILCS 550/5.1(a) (West 2018)), possession of cannabis with intent to deliver (720 ILCS 550/5(f) (West 2018)), and possession of cannabis (720 ILCS 550/4(f) (West 2018)). The court found that possession of cannabis with intent to deliver and possession of cannabis merged into cannabis trafficking and sentenced defendant to 14 years' imprisonment in the Department of Corrections. Defendant appeals, arguing that (1) his trial counsel was ineffective in failing to

argue in defendant's motion to suppress that the police did not have probable cause to search his vehicle and (2) the trial court imposed an excessive sentence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We include only those facts necessary to our disposition of the issues raised by defendant. In March 2018, defendant was charged with cannabis trafficking (720 ILCS 550/5.1(a) (West 2018)) (count I), unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(f) (West 2018)) (count II), unlawful possession of cannabis (720 ILCS 550/4(f) (West 2018)) (count III), unlawful possession of a firearm (430 ILCS 65/2(a)(1) (West 2018)) (count IV), and unlawful possession of firearm ammunition (430 ILCS 65/2(a)(2) (West 2018)) (count V). The charges arose out of events occurring on March 24, 2018, in which the police, during a traffic stop, searched the cab of defendant's tractor trailer and located cannabis and a firearm. Ultimately, the State proceeded only on counts I, II, and III.

¶ 5 Prior to trial, defendant's counsel filed a motion to suppress all evidence obtained in the search of defendant's vehicle and all statements defendant made to the police. The motion alleged, in part, that the police (1) did not have reasonable suspicion to stop his vehicle, (2) improperly prolonged the stop to conduct a canine sniff investigation, and (3) obtained evidence from defendant's vehicle in violation of the fourth amendment. The motion did not allege that a positive canine sniff alert could not constitute probable cause for a search.

¶ 6 A hearing on the motion to suppress was held in October 2020. Defendant testified that he was a truck driver. On March 24, 2018, he was driving a tractor trailer northbound on Interstate 55 in McLean County while pulling a car hauler. Defendant testified that, although he was not violating any laws, he was pulled over by law enforcement. He explained that the police searched his vehicle and arrested him without either a search warrant or

an arrest warrant. Defendant testified that the police seized several items, including two Illinois license plates. On cross-examination, defendant admitted that, at the time of the stop, neither plate was affixed to his vehicle or the trailer he was pulling.

¶ 7 Sergeant Jonathan Albee of the McLean County Sheriff's Office testified for the State. Albee testified that in March 2018, he was a deputy and canine handler assigned to the patrol division. He explained that on March 24, 2018, he was on patrol sitting stationary near mile marker 174 on Interstate 55 when a commercial motor vehicle drove by. The vehicle was a white truck tractor pulling a partially loaded car hauler trailer. Albee testified that the vehicle drew his attention because it had no driver's side markings indicating the company name or a Department of Transportation number, which Albee explained were "required by federal motor carrier regulations." Additionally, Albee thought it was "odd" that the trailer was only partially loaded with cars since he knew that tractor trailers "are expensive to operate." Albee testified that he began to follow the vehicle and noticed that there was no registration displayed anywhere on the trailer. As a result, Albee activated his emergency lights and stopped the vehicle. Albee approached the vehicle on the passenger side and stepped up into the truck to speak with the driver, whom he identified as defendant.

¶ 8 According to Albee, defendant "appeared to be in a state of panic." Albee testified that defendant's movements "were very animated" and that he would stand up and sit back down. Albee testified that, while truck drivers usually have a binder containing a "cab card," vehicle insurance information, and other documents, defendant was very disorganized and provided him with information that he did not request, such as bills for tire repairs. Albee also testified that defendant volunteered that he "had been stopped several times along this trip" and that "the vehicles had been checked for drugs." Albee testified that he thought this was "a bizarre

statement." He explained that defendant handed him an Illinois-apportioned "cab card" which did not match the California license plate displayed on the front of the vehicle. Albee testified that this was "not normal." Defendant also handed Albee a license plate for the trailer, which was registered in Illinois. Albee asked defendant to accompany him to his patrol car. According to Albee, at that time, he believed defendant was involved "in some type of criminal activity" and requested another unit for assistance.

¶ 9 Albee testified that he and defendant sat in the front of his patrol car while he began writing a warning and checking the license plates. Albee explained that Deputy Andrew Erickson arrived as he did so. Erickson "took over my enforcement action" by continuing with the written warning, running defendant's information through several databases, and checking defendant's driver's license. Albee testified that, meanwhile, he performed a free air sniff with his canine partner around defendant's truck. Albee noted that his canine was certified in the detection of narcotics "through the Illinois law enforcement training standards boards *** [and] through the National Police Canine Association in both narcotics and patrol." Albee testified that his canine was trained to detect odors of crack cocaine, methamphetamine, heroin, ecstasy, and marijuana. Albee explained that the canine gave a positive drug alert near the front driver's side of the vehicle. Albee informed defendant that he was going to search the vehicle and asked if there was anything inside that would "startle him." Albee testified that defendant told him that he "had a buddy in there with him." After placing defendant in the back of Erickson's squad car, Albee retrieved the other individual in the truck, Darrell McLain, and placed him in Erickson's squad car with defendant. Albee testified that he then searched defendant's truck and located a gun and cannabis in the sleeper portion of the cab. Thereafter, Albee placed defendant under

arrest and transported him to the McLean County Sheriff's Office, where he was given his ***Miranda*** warnings (see ***Miranda v. Arizona***, 384 U.S. 436 (1966)), and interviewed.

¶ 10 Erickson, a patrol deputy with the McLean County Sheriff's Office, testified that he was called to help Albee with a traffic stop on Interstate 55. Erickson testified that when he arrived at the scene, he took over the enforcement action, which included continuing with the written warning and running checks on defendant, the vehicle, and the trailer. While Erickson did so, Albee conducted a canine sniff around defendant's vehicle. Erickson testified that he learned that there was a positive alert for drugs at the vehicle while he was still completing the enforcement action. Erickson explained that, thereafter, defendant and McLain were placed in the back of his squad car, where he gave them both their ***Miranda*** warnings.

¶ 11 The trial court suppressed one statement defendant made before he was given his ***Miranda*** warnings but otherwise denied defendant's motion to suppress. In denying the remainder of the motion, the trial court found, ***inter alia***, that Albee had probable cause to stop defendant's vehicle because there was no rear registration plate affixed to the trailer defendant was hauling. See 625 ILCS 5/3-413(a) (West 2018) (stating registration plate issued for a trailer must be attached to the rear thereof). The court also found that the positive canine alert gave the officers probable cause to search defendant's vehicle.

¶ 12 The matter proceeded to a bench trial, and the trial court took judicial notice of Albee's and Erickson's suppression hearing testimony. Thereafter, the State called Albee.

¶ 13 Albee's trial testimony was substantially similar to his suppression hearing testimony. He noted that he stopped defendant's vehicle on March 24, 2018, because there was no registration displayed on the trailer. He explained that, eventually, Erickson arrived to provide assistance. While Erickson took over the traffic stop, Albee performed a free air sniff with his

canine partner, which resulted in a positive alert for drugs at defendant's vehicle. Albee noted that he asked defendant if there was anything in the vehicle that would "startle" him, and defendant informed him that McLain was riding with him. Albee testified that, after securing McLain, he searched defendant's tractor-trailer. He explained that on the bunk in the sleeper portion, he found a plastic bag containing a small container from a marijuana dispensary and a cottage cheese container with a small amount of marijuana in it. Albee testified that, in a closet, he found ten vacuum-sealed bags containing green plant material, which he suspected was cannabis. Albee testified that he took possession of the material and transported it to the sheriff's office for chemical testing. The parties stipulated that the material was 2736 grams of cannabis.

¶ 14 The trial court admitted State's Exhibit 10, a video of defendant's interrogation by Albee and Erickson at the sheriff's department. During the interrogation, defendant told the officers that he was a disabled veteran and used marijuana for pain relief following an ankle injury. He also told the officers that he purchased the cannabis obtained from his vehicle from a producer in Texas who usually sold cannabis to a dispensary. Defendant stated that most of the cannabis was "just for me," but "some of it was probably going to get sold."

¶ 15 Defendant presented no evidence, and following closing arguments, the trial court found defendant guilty of all three counts. The court ultimately determined that counts II and III merged into count I.

¶ 16 The trial court held a sentencing hearing in September 2021. The parties stipulated that the estimated street value of the cannabis was $40,000. The State presented evidence in aggravation that on August 22, 2019, while defendant was on his way to appear in court in the instant case, officers stopped him on Interstate 55 and located 7.8 grams of cocaine and a scale in his car.

¶ 17 The presentence investigation report (PSI) showed that defendant's criminal record included, ***inter alia***, 2005 convictions in Indiana of two counts of robbery and two counts of criminal confinement, resulting in a six-year prison sentence. The PSI further disclosed that while defendant had been on bond in the instant case, he had (1) been charged in Livingston County with several offenses stemming from the August 22, 2019, traffic stop, (2) received a traffic violation in Indiana, (3) been charged with retail theft in Lake County, and (4) been charged with theft of services in Wisconsin. The PSI noted that defendant earned an honorable discharge after serving in the United States Army and worked as a truck driver since approximately 2011. The PSI further indicated that defendant was in a relationship with his girlfriend, with whom he had a daughter, and provided financial support to them.

¶ 18 The State argued that defendant should receive a 15-year sentence, noting that although defendant did not sell any of the cannabis, he nevertheless stood to profit given the nature of the offense of trafficking. The State also emphasized that defendant's prior criminal history was aggravating and noted that defendant had "picked up several new cases" while he was out on bond. The State asserted that a 15-year sentence was necessary to deter others and so as not to deprecate the seriousness of the offense.

¶ 19 Defendant's counsel responded that defendant should be sentenced to the minimum sentence of eight years. Counsel argued that the court should not consider the pending charges in Livingston County, because punishment based on those acts in the instant case risked a double enhancement if he was later sentenced for those offenses in the Livingston County case. While counsel acknowledged defendant's prior six-year prison sentence in Indiana, he argued that going "from six years to 15 years later, a 15-year sentence *** is too much of an increase" and noted that defendant was a veteran. Defendant, in allocation, emphasized that he had held a

commercial driver's license (CDL) since he was 21 years old. He explained that he owned a trucking company, worked diligently as a truck driver, and would "continue to be an outstanding member of society." Defendant noted that he was a family man who went to church and paid for his daughter to go to a private school. He further stated that he was a disabled veteran, only had about five pounds of cannabis, and obtained the cannabis only for personal use to alleviate pain.

¶ 20 The trial court stated that it had considered the PSI, exhibits, arguments, defendant's statement in allocution, and all statutory factors in aggravation and mitigation. The court noted that it would not consider the pending Livingston County charges due to the potential sentencing issue raised by defendant's counsel. The court considered defendant's prior felony convictions and noted that the remainder of defendant's record was "relatively minor." Further, the court noted that defendant "has provided for his family and doesn't seem to have a[n] extensive substance abuse history." However, the court explained that a community-based sentence would not be an "appropriate sentence in this case," as it "would deprecate the seriousness of the defendant's conduct and be inconsistent with the ends of justice." The court stated that "a sentence to the Illinois Department of Corrections is necessary for the protection of the public" and sentenced defendant to 14 years' imprisonment.

¶ 21 The court denied defendant's subsequent motion to reconsider the sentence. This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 A. Ineffective Assistance of Counsel

¶ 24 Defendant argues that his trial counsel was ineffective for failing to argue in the motion to suppress that the police did not have probable cause to search his vehicle. Specifically, defendant contends that the positive canine alert for drugs, without more, could not have

constituted probable cause for the search of his vehicle, because the legislature decriminalized the possession of less than 10 grams of cannabis in 2016 (720 ILCS 550/4(a) (West 2016)). The State responds that such an argument would have been meritless because the positive alert justified the search.

¶ 25 To establish ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that such deficient performance so prejudiced the defendant as to deny him or her a fair trial. ***Strickland v. Washington***, 466 U.S. 668, 687-88 (1984). A defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. ***Strickland***, 466 U.S. at 687-88, 694. To prove prejudice when claiming that counsel was ineffective for failing to move to suppress evidence, a defendant must establish that the unargued suppression motion was meritorious and that there is a reasonable probability that the verdict would have been different without the excludable evidence. ***People v. Eubanks***, 2021 IL 126271, ¶ 30.

¶ 26 All individuals enjoy the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Generally, a search is ***per se*** unreasonable if it is conducted without a warrant supported by probable cause and approved by a judge or magistrate. ***People v. Hill***, 2020 IL 124595, ¶ 20. An exception to this general rule is recognized for searches of automobiles, given the impracticability of securing a warrant before an automobile escapes the jurisdiction in which the warrant must be sought. ***Hill***, 2020 IL 124595, ¶ 21. However, even under the automobile exception, officers must still have probable cause to search a vehicle. ***Hill***, 2020 IL 124595, ¶ 22.

¶ 27 Probable cause is established 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. Probable cause deals with probabilities as opposed to certainties and is a flexible, commonsense standard that does not require a showing that a particular belief is correct or more likely true than false. ***Hill***, 2020 IL 124595, ¶ 24. Accordingly, to establish probable cause, an officer need not rule out any innocent explanations for suspicious facts. ***Hill***, 2020 IL 124595, ¶ 24. Rather, the facts available to the officer, including the plausibility of an innocent explanation, need only warrant a reasonable person to believe that there is a reasonable probability that certain items might be contraband or useful as evidence of a crime. ***Hill***, 2020 IL 124595, ¶ 24.

¶ 28 Defendant argues that the positive canine alert could not constitute probable cause for the search of his vehicle, because Illinois decriminalized possession of cannabis under 10 grams in 2016. See 720 ILCS 550/4(a) (West 2016). Seizing on ***Hill***'s statement that such decriminalization "somewhat altered the status of cannabis as contraband" (***Hill***, 2020 IL 124595, ¶ 26), defendant contends that "all adult Illinoisans" were "allowed to possess" less than 10 grams of cannabis. He argues, therefore, that because the alert indicated only that his vehicle might have contained a substance that he was allowed to possess, the alert alone "was simply not enough in 2018 to provide probable cause to justify a search."

¶ 29 In 2014, the legislature legalized the possession of cannabis for individuals who had been granted a license to use it for medical purposes. See 410 ILCS 130/1 ***et seq***. (West 2014). Thereafter, in 2016, the legislature passed a law stating that a licensed user of medical cannabis "shall not be considered an unlawful user" and that medical cannabis "purchased by a qualifying patient at a licensed dispensing organization shall be lawful products." 410 ILCS

130/7 (West 2016). Also in 2016, the legislature decriminalized the possession of no more than 10 grams of cannabis and categorized such possession as a civil law violation punishable by only a fine. See 720 ILCS 550/4(a) (West 2016).

¶ 30 In ***Hill***, 2020 IL 124595, the Illinois Supreme Court considered whether the search of a defendant's vehicle was justified in light of the foregoing amendments. In ***Hill***, the defendant filed a motion to suppress evidence of cocaine obtained pursuant to a search of his vehicle. ***Hill***, 2020 IL 124595, ¶ 4. At the hearing on the motion to suppress, evidence was presented that, after the arresting officer activated his emergency lights to stop the defendant's vehicle, the defendant continued driving for several blocks, which, based on the officer's experience, typically meant the occupants were concealing contraband. ***Hill***, 2020 IL 124595, ¶ 5. Once the vehicle stopped, the officer approached it, smelled cannabis, and observed a bud of cannabis on the back seat. ***Hill***, 2020 IL 124595, ¶¶ 5, 7, 9, 10. The officer then searched the vehicle and found cannabis and a rock of crack cocaine. ***Hill***, 2020 IL 124595, ¶ 7. Although the trial court granted the motion to suppress, this court reversed. ***Hill***, 2020 IL 124595, ¶¶ 11, 12.

¶ 31 The defendant appealed to the supreme court, arguing that because the possession of small amounts of cannabis was decriminalized, such possession was no longer criminal activity and cannabis was no longer contraband. ***Hill***, 2020 IL 124595, ¶ 25. The defendant asserted that, without more facts to establish that he illegally possessed a criminal amount of cannabis or that a crime was committed, the officer lacked probable cause for the search. ***Hill***, 2020 IL 124595, ¶ 25.

¶ 32 In addressing the defendant's argument, the court first distinguished ***People v. Stout***, 106 Ill. 2d 77 (1985), which held that the odor of burnt cannabis alone provides probable cause to search a vehicle, because the officer in ***Hill*** relied on more than the mere odor of

cannabis to justify the search. ***Hill***, 2020 IL 124595, ¶¶ 15-16. Specifically, the officer also relied on (1) his experience that when a vehicle delays pulling over, its occupants are often hiding contraband and (2) his observing a bud of cannabis on the back seat. ***Hill***, 2020 IL 124595, ¶¶ 16-17.

¶ 33 Thereafter, the court held that the officer had probable cause for the search of the defendant's vehicle. ***Hill***, 2020 IL 124595, ¶ 26. The court rejected the defendant's decriminalization argument as "fatally flawed." ***Hill***, 2020 IL 124595, ¶ 31. The court explained that the automobile exception to the warrant requirement equates "contraband" with illegality as opposed to unlawful acts subject to criminal penalties. ***Hill***, 2020 IL 124595, ¶ 28. As such, whether an item is contraband is determined by whether the legislature prohibits possession of the item, not whether a defendant would be subject to criminal penalties for having it. ***Hill***, 2020 IL 124595, ¶ 29. The court explained that, therefore, "[w]hile the decriminalization of cannabis diminished the penalty for possession of no more than 10 grams of cannabis to a civil law violation punishable by a fine, possession of cannabis remained illegal," and the decriminalization "did not alter the status of cannabis as contraband." ***Hill***, 2020 IL 124595, ¶ 31.

¶ 34 The court, however, acknowledged that the Compassionate Use of Medical Cannabis Pilot Program Act (Act) (410 ILCS 130/1 ***et seq***. (West 2016)) "somewhat altered the status of cannabis as contraband" in that "possession of cannabis is not contraband for medical users." ***Hill***, 2020 IL 124595, ¶¶ 26, 32. Even so, the court explained that, while the mere presence of cannabis for medical users may not necessarily amount to criminal activity or possession of contraband, such users must still possess and use cannabis in accordance with the Act, which includes possessing cannabis in a motor vehicle only when it is in a " 'sealed,

tamper-evident medical cannabis container.' " ***Hill***, 2020 IL 124595, ¶ 34 (quoting 625 ILCS 5/11-502.1(b), (c) (West 2016)). The court concluded that, even if the officer presumed that the defendant could legally possess the cannabis, there was probable cause that cannabis in the vehicle was not properly contained, in violation of the Act, given evidence that the officer believed the defendant may have been concealing contraband before the stop, smelled cannabis near the vehicle, and saw a loose bud of cannabis in the back seat. ***Hill***, 2020 IL 124595, ¶ 35.

¶ 35 Contrary to defendant's argument, "all adult Illinoisans" were not "allowed to possess" less than 10 grams of cannabis after the legislature decriminalized such possession. "Decriminalization" is not synonymous with "legalization." ***In re O.S.***, 2018 IL App (1st) 171765, ¶ 29. Thus, as the supreme court clarified in ***Hill***, even after the legislature decriminalized the possession of small amounts of cannabis, the substance continued to be contraband, and its possession remained illegal. ***Hill***, 2020 IL 124595, ¶ 31.

¶ 36 Defendant nevertheless argues that probable cause was lacking in this case. He contends that ***Hill*** is distinguishable, as are ***People v. Rowell***, 2021 IL App (4th) 180819, ¶ 31, and ***People v. Sims***, 2022 IL App (2d) 200391, ¶ 93, which both held that, despite the decriminalization of the possession of small amounts of cannabis, probable cause to search the defendants' vehicles existed where the officers smelled cannabis emanating from them. Defendant contends that here, unlike ***Hill***, ***Rowell***, and ***Sims***, there was no evidence that Albee or Erickson smelled cannabis and nothing else "pointed to illegal drug possession." This argument is unavailing because even without evidence that Albee or Erickson smelled cannabis, there was evidence pointing to illegal drug possession.

¶ 37 Defendant disregards that a positive canine alert for contraband constitutes probable cause to search a vehicle. See ***People v. Campbell***, 67 Ill. 2d 308, 315-16 (1977) ("It is

clear that the detection of narcotics by police smelling the odor is a permissible method of establishing probable cause [citations], and we see no significant difference in the use of dogs under identical circumstances."); ***People v. Thomas***, 2018 IL App (4th) 170440, ¶ 74 ("If a dog smells drugs in a vehicle, the police have probable cause to search the vehicle."). At the hearing on the motion to suppress, Albee testified that his canine partner was certified in the detection of narcotics and, in addition to marijuana, was trained to detect crack cocaine, methamphetamine, heroin, and ecstasy. Like cannabis, it is illegal to possess any of those substances. 720 ILCS 570/402(a)(2) (West 2016) (cocaine); 720 ILCS 646/60(a) (West 2016) (methamphetamine); 720 ILCS 570/402(a)(1) (West 2016) (heroin); 720 ILCS 570/402(a)(7.5) (West 2016) (ecstasy). Because Albee's canine alerted to the presence of at least one of the foregoing illegal substances, probable cause existed for the search of defendant's vehicle. Thus, we conclude that, had counsel argued in the motion to suppress that the canine alert did not constitute probable cause, that argument would have been meritless. Defendant, therefore, cannot show that he was prejudiced by counsel's failure to raise that argument. Accordingly, we hold that defendant's claim of ineffective assistance of counsel fails.

¶ 38 B. Excessive Sentence

¶ 39 Next, defendant argues that the trial court abused its discretion in sentencing him to 14 years' imprisonment. He contends that he should have received the minimum sentence of eight years because the amount of cannabis he was transporting was "barely more than the minimum" to constitute cannabis trafficking. He further argues that the trial court's sentence failed to reflect his "high potential for rehabilitation."

¶ 40 When the trial court's sentencing decision is within the statutory range for the offense, it will not be disturbed absent an abuse of discretion. ***People v. Aquisto***, 2022 IL App

(4th) 200081, ¶ 111. A sentence constitutes an abuse of discretion where it is greatly at variance with the spirit and purpose of the law or where it is manifestly disproportionate to the nature of the offense. ***Aquisto***, 2022 IL App (4th) 200081, ¶ 111. In determining what sentence to impose, the trial court may consider (1) the defendant's history, character and rehabilitative potential, (2) the seriousness of the offense, (3) the need to protect society, and (4) the need for punishment and deterrence. ***People v. Klein***, 2022 IL App (4th) 200599, ¶ 34. The seriousness of the offense is the most important sentencing factor, and the trial court need not give greater weight to rehabilitation or mitigating factors than to the severity of the offense. ***Aquisto***, 2022 IL App (4th) 200081, ¶ 112. We may not substitute our judgment for that of the trial court merely because we might have weighed a factor differently. ***Klein***, 2022 IL App (4th) 200599, ¶ 37. We presume that a sentence imposed within the statutory range is proper. ***Klein***, 2022 IL App (4th) 200599, ¶ 37.

¶ 41 Defendant was convicted of cannabis trafficking involving more than 2000 grams but not more than 5000 grams, which carries a prison term of between 8 and 30 years. 720 ILCS 550/5.1(b), 5(f) (West 2018); 730 ILCS 5/5-4.5-30(a) (West 2018). The trial court sentenced defendant to 14 years of imprisonment. This sentence was within the statutory limits for the offense.

¶ 42 Defendant's argument that the trial court should have sentenced him to the minimum sentence eight years because the offense was not serious and because he is likely to be rehabilitated is unavailing. The court considered these factors at sentencing. Defendant's counsel argued that defendant was a veteran and that eight years was an appropriate sentence. Defendant stated to the court that he held a CDL since he was 21 years old, owned a trucking company, and worked diligently as a truck driver. He further stated that he was a family man

who went to church, paid for his daughter to go to a private school, and obtained the cannabis which he claimed amounted to only about five pounds only for personal use to alleviate pain. The trial court explained that it considered the PSI, the parties' arguments, defendant's statement in allocution, and all statutory factors. Although the trial court acknowledged that defendant "does provide for his family" and that much of defendant's criminal record was "relatively minor," the court noted that defendant's record included prior convictions of robbery and criminal confinement, resulting in a six-year prison sentence. Thereafter, the trial court explained that imposition of a 14-year sentence was appropriate given the "seriousness of the defendant's conduct" and was "necessary for the protection of the public." Defendant, in effect, argues that the trial court should have weighed the mitigating factors presented to the trial court differently. However, the trial court did consider them and gave more weight to the seriousness of the offense and the need to protect the public. This was proper. We see no abuse of discretion in the trial court's assessment of the proper sentence to impose. Accordingly, we will not disturb the trial court's imposition of a 14-year sentence.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm defendant's conviction and sentence for cannabis trafficking.

¶ 45 Affirmed.

E-FILED
Transaction ID: 4-21-0726
File Date: 12/28/2021 9:06 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 4-21-0726

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DANTE ANTWAN WEBB, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois No. 18-CF-305 Honorable William A. Yoder, Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Mr. Dante Antwan Webb
Appellant's Address:	Taylorville Correctional Center 1144 Illinois Route 29 Taylorville, IL 62568
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303 Springfield, IL 62704
Offense of which convicted:	Cannabis Trafficking
Date of Judgment or Order:	December 9, 2021
Sentence:	14 years in prison
Nature of Order Appealed:	Conviction, Sentence and Denial of Motion to Reconsider

/s/ Catherine K. Hart
CATHERINE K. HART
ARDC No. 6230973
Deputy Defender

No. 128957

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DANTE ANTWAN WEBB, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-21-0726. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 18-CF-305. Honorable William A. Yoder, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Kwame Raoul, Attorney General, Attorney General's Office, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Don Knapp, McLean County State's Attorney, 104 W. Front St., Room 605, Bloomington, IL 61701-2400, stateattny@mcleancountyil.gov;

Mr. Dante Antwan Webb, Register No. Y47977, Taylorville Correctional Center, 1144 Illinois Route 29, Taylorville, IL 62568

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 7, 2023, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Rebecca S. Kolar
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us