

NOS. 129201, 129237 Cons.

IN THE SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, |) | ON APPEAL FROM THE APPELLATE COURT |
| PLAINTIFF - APPELLEE, |) | OF ILLINOIS, THIRD JUDICIAL DISTRICT, |
| |) | #03-21-0523 |
| v |) | |
| |) | THERE HEARD ON APPEAL FROM THE |
| |) | CIRCUIT COURT OF HENRY COUNTY, |
| RYAN DON SHAVOR REDMOND, |) | ILLINOIS |
| DEFENDANT-APPELLANT. |) | #20 CL 27 / 20 TR 3348 |
| |) | |
| |) | THE HON. JUDGE DANIEL P. DALTON |
| |) | JUDGE PRESIDING |

REPLY BRIEF AND ARGUMENT OF DEFENDANT - APPELLANT
RYAN DON SHAVOR REDMOND

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ORAL ARGUMENT REQUESTED

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ARGUMENT

SINCE THE LEGALIZATION OF THE RECREATIONAL OR MEDICAL USE OF CANNABIS, THE PLAIN SMELL OF BURNT CANNABIS ALONE CAN NEVER GIVE RISE TO PROBABLE CAUSE TO SEARCH A MOTOR VEHICLE

While Defendant-Appellee Redmond supports the arguments of Defendant-Appellant Molina, he recognizes that their positions are different. Redmond, therefore, will simply adopt the arguments set forth by Molina as they pertain to the legality of a vehicle search based upon the purported plain smell of raw cannabis, and limit his discussion to the issues arising out of Trooper Combs belief that he had probable cause to search in this case.

Overall, however, the main position asserted by Redmond is that the recent changes in the law dismantle the “plain smell of cannabis...standing alone... as probable cause” rationale of *Stout*. As the State points out in its own brief, the use of cannabis is legal in some circumstances, not in others. Since the plain smell of burnt cannabis raises only one inescapable inference...that someone in the vehicle, present or not at the time of the traffic stop, had at sometime in the recent past smoked cannabis...it gives rise to nothing more than the possibility, not probability, that illegal activity is afoot.

That does not mean that the officer cannot take the plain smell of cannabis into account at all in determining whether he has probable cause to believe the motor vehicle will yield evidence of illegal activity. As pointed out in the trial court’s opinion, more is needed, and that “more” cannot be speculation or, worse, limit the Fourth Amendment rights of cannabis smokers who are not otherwise engaged in illegal activity, such as operating a motor vehicle while impaired or smoking cannabis while a motor vehicle is in operation.

Because, for all the reasons previously asserted, the “plain smell of cannabis standing alone” argument lacks merit, the State continues to push the argument, rejected by both the trial court in its

role as finder of fact and the Appellate Court under the standard of review for factual conclusions of the trial court, that the facts in this case established probable cause to search.

The State argues that Trooper Combs could take into account the fact that Interstate 80 is a known drug trafficking route for illegal substances moving from West to East. The trial court correctly rejected that contention because this particular journey started in Des Moines, Iowa. It is not against the manifest weight of the evidence, to the extent there was any evidence at all other than Trooper Combs' subjective and unfounded belief that Des Moines is a usual source of illegal drug activity. Had the issue been whether Des Moines is an active center for liability insurance, the political center of the State of Iowa or the home of AdventureLand, this would be a different issue.

Equally unimpressive was Trooper Combs' fashioning of suspicion out of what were some very simple statements by Redmond about where he lived, where the woman he was staying with lived during the COVID era, and why they were traveling from Des Moines to Chicago. As the trial court found, none of those statements should have raised any suspicions of illegal activity.

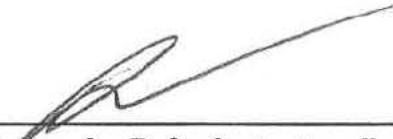
The real answer to these extraneous facts lies in Trooper Combs' own testimony. The main reason he believed he had probable cause was because he detected the plain odor of burnt cannabis. It was not wrong for Trooper Combs to believe that at the time, despite the change in the law.

It would be unfair to characterize Trooper Combs' other supposed bases for probable cause as untruthful, but it is equally clear that they were correctly rejected by the trial court as a legitimate basis for suspecting that illegal activity was afoot.

CONCLUSION

For these reasons, Defendant-Appellee Ryan Shaver Don Redmond, respectfully requests that this Court affirm the Judgment of the Circuit Court of Henry County, as affirmed by the Third District Appellate Court, and for remand to the Circuit Court.

Date: 11/21/23




Attorney for Defendant - Appellant

CERTIFICATE OF COMPLIANCE

I, Bruce L. Carmen , 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(a), is 8 pages.

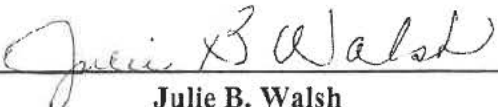
DATE: November 21, 2023



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