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CYNTHIA A. GRANT
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Nos. 129201 & 129237 (consolidated)

In the

Supreme Court of Illinois

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

vs.

VINCENT E. MOLINA,

Defendant-Appellant,

On Appeal from the Illinois Appellate Court,
Fourth Judicial District, No. 4-22-0152.
There Heard on Appeal from the Circuit Court of the Fourteenth Judicial Circuit
Whiteside County, Illinois, No. 2020 TR 5612
The Honorable **Daniel P. Dalton**, Judge Presiding.

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

vs.

RYAN SHAVAR DON REDMOND,

Defendant-Appellee,

On Appeal from the Illinois Appellate Court,
Third Judicial District, No. 3-21-0524
There Heard on Appeal from the Circuit Court of the Fourteenth Judicial Circuit
Henry County, Illinois, No. 2020 CL 27 & 2020 TR 3348
The Honorable **Daniel P. Dalton**, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

The Government charged Mr. Molina with unlawful possession of cannabis by a passenger. Mr. Molina filed a pretrial motion to suppress evidence, and the trial court granted his motion. The Government timely appealed. The Fourth District Appellate Court reversed the trial court's holding and remanded the cause for further proceedings. It is from this holding that the instant appeal to the Illinois Supreme Court originates. No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether a police officer may search a motor vehicle based solely upon the odor of raw cannabis following the legalization of possession of cannabis.

JURISDICTIONAL STATEMENT

Mr. Molina appeals from the Fourth District's reversal of the trial court's grant of his pretrial motion to suppress evidence in *People v. Molina*, 2022 IL App (4th) 220152. Mr. Molina filed a timely petition for leave to appeal on December 28, 2022. On March 29, 2023, this Court allowed Mr. Molina's petition for leave to appeal pursuant to Illinois Supreme Court Rule 315(h).

STATUTES INVOLVED

625 ILCS 5/11-502.1(b), (c) (West 2020):

> Drivers and passengers may transport medical and recreational cannabis if it is contained in a "sealed, odor-proof, and child-resistant medical cannabis container."

625 ILCS 5/11-502.15(c) (West 2020):

> Drivers and passengers may transport medical and recreational cannabis if it is contained in a "sealed, odor-proof, child-resistant cannabis container."

410 ILCS 705/10-35(a)(2)(D) (West 2020) provides that:

> Recreational cannabis may be transported in a private vehicle if it "is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving."

410 ILCS 130/30(a)(2)(E) (West 2020) provides that:

> Medical cannabis may be transported inside a vehicle if it is "in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving."

STATEMENT OF FACTS

In December 2020, Mr. Molina was charged with unlawful possession of cannabis by a passenger in a motor vehicle (625 ILCS 5/11-502.15(c) (West 2020)) following a traffic stop by Trooper Ryan Wagand of the Illinois State Police. (C. 6-7). In April 2021, Mr. Molina filed a motion to suppress evidence, arguing that the smell of raw cannabis, without more, did not establish probable cause to search the vehicle. (C. 16-18).

In June 2021, the trial court conducted a hearing on Mr. Molina's motion to suppress. (SUP. RI. 4). Trooper Wagand testified that Mr. Molina was a passenger in a vehicle that Trooper Wagand stopped for speeding. (SUP. RI. 12). Trooper Wagand claimed that he possessed the training and experience to discern the difference between the odor of burnt cannabis and the odor of raw cannabis. (SUP. RI. 14). Trooper Wagand testified that as he approached the passenger side of the vehicle, he smelled the strong odor of raw cannabis. (SUP. RI. 17). Based solely on that smell, Trooper Wagand conducted a non-consensual, warrantless search of the vehicle. He testified that during the search, he discovered "a small cardboard box with several rolled joints" in the vehicle's center console. He also claimed to have found "a clear plastic Tupperware container in the glove box that had suspected cannabis in it." (SUP. RI. 19). Before the search, Mr. Molina told Trooper Wagand that he had a license for the medical use of cannabis. (SUP. RI. 18).

At hearing, Mr. Molina argued that recent enactments of the Cannabis Regulation and Tax Act (410 ILCS 705/10-35(a)(2)(D) (West 2020)) and the Compassionate Use of Medical Cannabis Program Act (Compassionate Use Act) (410 ILCS 130/1 *et seq.* (West 2020)) (collectively Acts) rendered the smell of raw cannabis insufficient to establish probable cause of criminal activity. (SUP. RI. 29-38, 53-61, 64-66). Specifically, Mr. Molina argued that the language of those statutes does not require storage of cannabis in

an "odor-proof" container as section 11-502.1 of the Illinois Vehicle Code requires (625 ILCS 5/11-502.1 (West 2020)). (SUP. RI. 55-58). Further, Mr. Molina argued that the Cannabis Regulation and Tax Act had fundamentally changed the law of the State of Illinois relating to cannabis, since the substance itself is no longer considered "contraband." (SUP. RI. 58-60).

In November 2021, the trial court granted Mr. Molina's motion to suppress, observing in its written order that "[t]he smell of raw cannabis can be quite strong even in small quantities," and "there are many innocent reasons someone or someone's vehicle may emit the odor of raw cannabis." (C. 47) The trial court observed:

> "[O]ne such reason is that a person working at a cannabis cultivation facility, or a dispensary could, and likely would, leave their place of employment smelling like raw cannabis. Persons with a medical cannabis card may cultivate plants and, in the process of doing so, would likely smell of raw cannabis. Persons using or handling raw cannabis in any way can smell of raw cannabis. Persons using, possessing, or otherwise around raw cannabis wholly within the bounds of the law can, and likely will, have the odor of cannabis on their clothes, hair, and even personal effects." (C. 47)

Thereafter, the Government appealed, arguing, *inter alia*, that the trial court erred by granting Mr. Molina's motion to suppress. (State's Br. 6). The Government argued that the Illinois Supreme Court's holding in *People v. Stout*, 106 Ill. 2d 77 (1985) remained good law. (State's Br. 6). In opposition, Mr. Molina argued that the "anticipated sea of change in Illinois law, foretold in *Stout*, *Hill*, and *Rowell*," had occurred. (Appellee Br. 6). Mr. Molina argued that the odor of raw cannabis alone did not provide probable cause for a warrantless search of a motor vehicle. (Appellee Br. 6). Mr. Molina further argued that the legislature did not require that cannabis be transported inside of a vehicle in an odor-proof container. (Appellee Br. 8). The defendant argued that the trial court properly relied on possible innocent explanations in its probable cause determination. (Appellee Br. 8).

On November 23, 2022, the Appellate Court, Fourth District, issued an opinion reversing the trial court and remanding the case for further proceedings. *Molina*, 2022 IL App (4th) 220152, ¶ 58. The court held that sections 11-502.1 and 502.15 of the Illinois Vehicle Code (Code) (625 ILCS 5/11-502.1 & 11-502.15 (West 2020)), which provide that passengers may transport medical and recreational cannabis if it is stored "in a sealed, odor-proof, and child-resistant" cannabis container, overrode section 10-35 of the Cannabis Regulation and Tax Act (410 ILCS 705/10-35(a)(2)(D) (West 2020)) and section 30(a)(2)(E) of the Medical Act (410 ILCS 130/30(a)(2)(E) (West 2020)). *Id*. ¶¶ 32-38.[1] The Acts provide that recreational and medical cannabis may be transported in a private vehicle if it "is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." *Id.* ¶¶ 32-33. Therefore, the Fourth District opined, a driver or passenger of a vehicle who transports cannabis in any container that is not "odor-proof" commits a Class A misdemeanor under the Code. *Id*. ¶ 38.

The Fourth District ultimately held that based on this court's holdings in *Stout*, 106 Ill. 2d 77 (1985) and *People v. Hill*, 2020 IL 124595, the smell of raw cannabis alone, absent any other corroborating factors, continues to establish probable cause for a vehicle search. *Id*. ¶¶ 40-44, 52. The Fourth District held that when Trooper Wagand detected the mere odor of raw cannabis coming from Mr. Molina's vehicle, he was entitled to conclude that there was raw cannabis inside and it was not contained within an odor-proof container. Therefore, the Fourth District held, probable cause existed to believe the Code had been or

[1]The charges arose against Mr. Molina in December 2020, thus, any subsequent amendments to the Medical Act, Cannabis Regulation and Tax Act, and the Code are inapplicable.

was being violated, and Trooper Wagand was entitled to search the vehicle. It is from this holding that the instant appeal originates.

ARGUMENT

I. THE TRIAL COURT CORRECTLY RULED THAT THE ODOR OF RAW CANNABIS, ABSENT OTHER CORROBORATING FACTORS, DOES NOT ESTABLISH PROBABLE CAUSE FOR A POLICE OFFICER TO SEARCH A MOTOR VEHICLE.

STANDARD OF REVIEW

When examining a trial court's order suppressing evidence, reviewing courts employ a two-part standard of review, whereby the trial court's factual findings are reviewed under the manifest-weight-of-the-evidence standard, and the trial court's ultimate legal ruling is reviewed *de novo*. *People v. Aljohani*, 2022 IL 127037, ¶ 28.

ANALYSIS

The Compassionate Use Act (410 ILCS 130 *et seq*.) and the Cannabis Regulation and Tax Act (410 ILCS 705 *et seq*.) have legalized the possession of cannabis in the State of Illinois. The odor of fresh, raw cannabis emitting from a motor vehicle no longer provides a law enforcement officer with probable cause to believe that the vehicle contains evidence of a crime.

The United States Constitution and the Illinois Constitution protect individuals from unreasonable searches and seizures by the Government. U.S. Const. Amend. IV; Ill. Const. Art. I, § 6. Generally, the warrantless search of a motor vehicle is considered unreasonable. *People v. Jones*, 215 Ill. 2d 261, 269 (2005). However, the automobile exception allows law enforcement to conduct a warrantless search of a lawfully stopped

vehicle when probable cause exists to believe that the vehicle contains contraband or evidence of criminal activity. *People v. Burns*, 2020 IL App (3d) 170103, ¶ 33.

Probable cause is said to exist "where the facts and circumstances known to the officer would warrant a reasonable person to believe there is a reasonable probability that the automobile contains contraband or evidence of criminal activity." *People v. Stribling*, 2022 IL App (3d) 210098, citing *Hill*, 2020 IL 124595, ¶ 23. These facts and circumstances must be examined through the viewpoint of an objectively reasonable officer, who may rely on his or her training and experience. *Hill*, *Id*.

It is well established that "[p]robable cause deals with probabilities, not certainties." *Id*. ¶ 24. "An officer need not rule out innocent explanations for facts he or she deems suspicious." *People v. Redmond*, 2022 IL App (3d) 210524, ¶ 17. However, a finding of probable cause requires "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 stolen property or useful as evidence of a crime.' " *Hill*, 2020 IL 124595, ¶ 24; quoting *Texas v. Brown*, 460 U.S. 730, 742, 103 S. Ct. 1535 (1983); see *People v. Zuniga*, 372 P. 3d 1052, ¶ 23 ("[W]hile a possible innocent explanation may impact the weight given to a particular fact in a probable cause determination, it does not wholly eliminate the fact's worth and require it to be disregarded."); see *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018) (the relevant inquiry is the degree of suspicion attached to particular types of noncriminal acts). Because the possession of certain quantities of cannabis has been decriminalized, the smell

of cannabis is rendered not more than a factor in a determination of probable cause. See *Hill*, 2020 IL 124595, ¶ 18.[2]

A. The Changing Landscape of Cannabis Regulation in Illinois

In 1985, when all cannabis possession was illegal, this Court held in *Stout* that the odor of burnt cannabis without other corroborating evidence was sufficient to establish probable cause to search a vehicle. *Stout*, 106 Ill. 2d at 87. Thereafter, the Illinois legislature passed the Compassionate Use Act. Though the use or possession of cannabis was once strictly illegal in Illinois, the Compassionate Use Act allowed marijuana cardholders to possess and use marijuana legally, without imposition of criminal or civil penalties, subject to certain restrictions. 410 ILCS 130/7 (West 2019).

Following the passage of the Compassionate Use Act, but before the passage of the Cannabis Regulation and Tax Act, the Illinois Supreme Court revisited the issue of whether the odor of raw cannabis was sufficient to establish probable cause to search a vehicle. See *Hill*, 2020 IL 124595. In *Hill*, the arresting officer searched the motor vehicle not only based upon the odor of raw cannabis, but also because the driver took longer than needed to pull his car over and the officer observed a "bud" of cannabis in the back seat of the defendant's car. *Id*. ¶ 16. The *Hill* court instructed that because more than the odor of raw cannabis was considered in the officer's probable cause determination, the *Stout* holding was inapplicable. See *Id*. ¶¶ 16-18. This Court ruled that "we need not address the validity of *Stout* after the enactment of the Compassionate Use of Medical Cannabis Pilot Program Act." *Id*. ¶ 18.

[2]The footnote affixed to paragraph 18 of the *Hill* case aids in clarifying this court's decision.

The *Hill* court presciently commented on the important difference between "decriminalization" of cannabis, as then existed, and the "legalization" of cannabis, as now exists. *Id*. ¶ 29. Specifically, the *Hill* court, stated:

> "([D]ecriminalization is not synonymous with legalization. [Citation.] Because cannabis remains unlawful to possess, any amount of marijuana is considered contraband."). To hold otherwise leads to the absurd conclusion that persons could have a legitimate privacy interest in an item that remains illegal to possess." *Id*; quoting *Commonwealth v. Cruz*, 459 Mass. 459, 473 (2011).

In this, the Illinois Supreme Court expressly foreshadowed that a different conclusion would be reached if cannabis possession became legalized.

After *Hill* was decided, the Fourth District Appellate Court in *Rowell* held that *Stout* remained binding precedent, stating, in relevant part:

> "The *Hill* decision demonstrates that the holding in *Stout*—namely, that the scent of cannabis alone provides probable cause for a search—was in force in 2017 at the time of the search in this case ***. Defendant's contention appears to be based upon changes in Illinois law since 2017 regarding cannabis. However, our assessment of counsel's performance must be based upon the facts and law known to counsel at the time defendant claims counsel should have filed that motion ***. Even if *Hill* could be interpreted differently (which it clearly cannot), counsel could not be ineffective for his alleged failure to act based upon a development of the law that had not yet occurred. *** Although the area of cannabis law is rapidly changing, the law as it stood in February 2017 unequivocally stated that the smell of cannabis emanating from a vehicle was sufficient justification for the police to search it. ***" *Rowell*, 2021 IL App (4th) 180819, ¶¶ 28-29, 31.

After *Rowell* was decided, the State of Illinois legalized the possession of limited amounts of cannabis for recreational use through the Cannabis Regulation and Tax Act. (Pub. Act 101-27 (eff. June 25, 2019) (adding 410 ILCS 705/1-1 *et seq*.)). With the legalization of cannabis use and possession, cannabis has shed its contraband status. Illinois law must adapt to this change by barring warrantless searches of vehicles based solely on the odor of a legal substance.

The Cannabis Regulation and Tax Act has significantly broadened the scope of legal cannabis use and possession in Illinois. The Act permits almost all individuals aged 21 years and over to possess, consume, use, purchase, obtain, transport, or, in some cases, to cultivate cannabis, for personal use. 410 ILCS 705/10-5 (West 2019). These individuals may possess up to 30 grams of cannabis flower, 500 milligrams of THC in a cannabis infused product, and 5 grams of cannabis concentrate. 410 ILCS 705/10-10 (West 2019). Additionally, pursuant to this Act, "[a]n Illinois resident 21 years of age or older who is a registered qualifying patient under the Compassionate Use Act may cultivate cannabis plants, with a limit of 5 plants that are more than 5 inches tall, per household without a cultivation center or craft grower license." 410 ILCS 705/10- 5(b)(1) (West 2019). Under the Act, a person is permitted to possess cannabis in a private vehicle as long as the cannabis is contained within in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving. 410 ILCS 705/10-35(a)(2)(D) (West 2020).

During the pendency of this case in the Fourth District Appellate Court, the Third District Appellate Court issued decisions in *Stribling*, 2022 IL App (3d) 210098 and *Redmond*, 2022 IL App (3d) 210524.[3] These cases represent the first post-legalization cases in Illinois to analyze probable cause for a vehicle search based on the odor of burnt cannabis.

In *Stribling*, the parties stipulated that when the officer approached the defendant's vehicle, he could detect a strong odor of burnt cannabis emanating from inside the vehicle. *Stribling*, 2022 IL App (3d) 210098, ¶ 4. The defendant told the officer that someone had smoked inside the vehicle "a long time ago." *Id*. Based on these observations and the

[3]The *Redmond* case has since been consolidated with the instant case for purposes of appeal before the Illinois Supreme Court.

defendant's statements, the officer searched the vehicle. *Id*. On appeal, the *Stribling* court examined whether the enactment of the Cannabis Regulation and Tax Act had changed the probable cause determination for cannabis set forth in *Stout*. *Id*. ¶ 24. After recounting the changing landscape of cannabis regulation in Illinois, the *Stribling* court answered this inquiry affirmatively, instructing that:

> "The smell of burnt cannabis, alone, coupled with the defendant's statement that someone (he did not state that it was himself) had smoked in the vehicle "a long time ago," was not enough for "a reasonable officer [to] conclude—considering all of the surrounding circumstances, including the plausibility of the [innocent] explanation itself—that there was a 'substantial chance of criminal activity.' " [Citation.] It was legal for the defendant to possess some cannabis. It was also legal for the defendant to have smoked cannabis and then drive, so long as the concentration in his blood or urine did not pass the threshold amount. The evidence presented does not show that the officer had any concerns with the defendant's blood concentration or any impaired driving. We note that the stipulation does not state which traffic violation the defendant committed. A traffic violation, in and of itself, is not necessarily indicative of impairment. [Citation.] ("merely driving at excessive speeds or the mere fact of involvement in an accident are not necessarily indicative of impairment"). There was no reason for the officer to think that the defendant was currently smoking cannabis in the car—there was no indication that there was smoke in the car, nor did the officer see any marijuana or drug paraphernalia, nor did the defendant's demeanor show that he was hiding anything. Moreover, the smell of burnt cannabis may have lingered in the defendant's car or on his clothing. Simply put, there was no evidence that would lead a reasonable officer to conclude that there was a substantial chance of criminal activity afoot." *Id*. ¶ 28.

The *Stribling* court ultimately concluded that *Stout*, which held that the odor of burnt cannabis alone was sufficient to establish probable cause to search a vehicle, no longer applied to post-legalization fact patterns. *Id*. ¶ 29.

Similarly, in *Redmond*, an officer approached the passenger side of the vehicle and smelled a strong odor of burnt cannabis emanating from the vehicle. *Redmond*, 2022 IL App (3d) 210524, ¶ 4. The defendant denied smoking cannabis in the vehicle and was unable to provide his license or registration. *Id*. ¶¶ 4-5. The officer led the defendant to the front of his squad car, conducted a pat-down search, told him he was not free to leave, and began posing queries about the defendant's trip. *Id*. ¶ 6. The officer, believing he had

probable cause to search the vehicle based solely on the smell of burnt cannabis, searched the vehicle and recovered a plastic bag containing approximately 1 gram of cannabis in the center console. *Id*. ¶¶ 8-9. On appeal, the Government argued that the odor of burnt cannabis remained sufficient to support a probable cause finding, to which the Third District Appellate Court responded:

> "This contention ignores the impact of subsequent changes in the underlying law. The legislature can change the law as it sees fit, subject to constitutional requirements. [Citation.] Legislative action can moderate, or even totally negate, the impact, the applicability, and the pertinence of prevailing case law. There have been such changes in the law regarding cannabis possession and use in Illinois. Cases such as [*People v. Stout*, 106 Ill. 2d 77, 87, (1985)] (holding that the odor of burnt cannabis without other corroborating evidence was sufficient to establish probable cause to search a vehicle), interpreted the law when all cannabis possession was illegal. With the changes brought about by the Cannabis Regulation and Tax Act [Citation.], those cases are no longer applicable." *Id*. ¶ 18; See *Stribling*, 2022 IL App (3d) 210098, ¶ 29.

In support of its decision, the *Redmond* court cited *Hill*, wherein this court instructed that after the change in the law regarding the legalization of medical cannabis, the odor of raw cannabis could still contribute to any probable cause determination. *Redmond*, 2022 IL App (3d) 210524, ¶ 19. In other words, a finding of probable cause based solely on the odor of raw cannabis would be improper if that observation was unsupported by other corroborating factors.

B. *Stribling* and *Redmond* Do Not Stand Alone

The recent cascade of cannabis decriminalization and legalization has spurred the judiciary in other jurisdictions to amend their probable cause analyses as well. See Michael Podgurski, Cannabis, Cars, and Probable Cause, Illinois Bar Journal, February 2023 Vol. 111 No. 2, at 35. For instance, in *United States v. Maffei*, 417 F. Supp. 3d 1212, 1218 (N.D. Cal. 2019) the defendant was arrested after an officer conducted a warrantless search of her vehicle based on his detection of a strong odor of fresh cannabis emanating from the open

car window. The United States District Court for the Northern District of California held that following the legalization of cannabis in the State of California, the officer's detection of the odor of raw cannabis was insufficient, standing alone, to establish probable cause to search a motor vehicle. *Id*. at 1228. The *Maffei* court instructed that "[c]ontext matters" and observed that the officer did not see any cannabis in the vehicle or in the occupants' possession, no field sobriety tests were performed, no smell of cannabis emanated from the trunk, a car carrier, or other known trafficking storage locations, neither occupant attempted to flee from traffic stop, the driver told the officer that he had a cannabis card, and it was a routine traffic stop for a broken tail light and failing to yield to pedestrians. *Id*. at 1226-27.

In *Commonwealth v. Cruz*, after Massachusetts decriminalized possession of cannabis in amounts below one gram, officers seized "crack" cocaine from the defendant. *Cruz*, 459 Mass. 459, 460 (Mass. 2011). The Defendant was a passenger in an automobile that was searched after an officer detected the odor of burnt cannabis emanating from the vehicle and issued an order for the defendant to exit it. *Id.* The Massachusetts Supreme Judicial Court held that after decriminalization of cannabis, the odor of burnt cannabis alone no longer constituted probable cause to conduct a warrantless search of an automobile. *Id*. at 476-77. The *Cruz* Court observed that the degree of intrusiveness permitted must be in proportion to the degree of suspicion that prompted the intrusion. *Id.* at 477. The *Cruz* court noted that the intent of the "ballot initiative" passed in Massachusetts was, in part, "to free up the police for more serious criminal pursuits than the civil infraction of low-quantity marijuana possession." *Id;* See *also Commonwealth v. Overmyer*, 469 Mass. 16, 21-23 (2014) (holding that characterizations of odors as "strong" or "weak" are inherently subjective, and whether the smell is of burnt or unburnt cannabis, the court was

not confident that "a human nose can discern reliably the presence of a criminal amount of marijuana, as distinct from an amount subject only to a civil fine.").

In *State v. Clinton-Aimable*, 232 A.3d 1092, 1095-96, 1101 (Vt. 2020), following the decriminalization of cannabis, whereby the possession of less than one ounce of cannabis resulted in a civil, rather than a criminal penalty, the defendant's vehicle was seized, and a warrant was obtained due to the odor of cannabis. The Supreme Court of Vermont held that the odor of cannabis, along with the defendant's willing surrender of the cannabis, did not provide sufficient probable cause to seize and subsequently obtain a warrant to search the defendant's vehicle. *Id*. at 1098-99. The court instructed that though the odor of cannabis can provide a reasonable basis to believe that cannabis is present, the odor itself "will not always be enough to establish probable cause of criminal activity and is just one factor to be considered." *Id*. at 1101.

In *Commonwealth v. Barr*, 266 A.3d 25, 43 (Pa. 2021), following the legalization of medical cannabis, the Supreme Court of Pennsylvania opined that:

> "[O]ne's liberty may not be abridged on the sole basis that a law enforcement officer detected the smell of marijuana, because, to do so, would eliminate individualized suspicion required for probable cause and would misapply the totality-of-the-circumstances test."

The Illinois legislature has also recognized the antiquated nature of probable cause analyses similar to that of *Stout*. On March 30, 2023, the Illinois Senate passed proposed amendments to sections 11-502.1 and 11-502.15 of the Code. 103rd Ill. Gen. Assem., Senate Bill 125, 2023. *Inter alia*, the proposed amendments provide that the odor of burnt or raw cannabis in a motor vehicle by itself shall not constitute probable cause for the search of the motor vehicle, vehicle operator, or passengers in the vehicle. The proposed

amendments are currently pending before the Illinois House of Representatives. The Illinois Legislature is not unique in proposing such amendments.

For instance, New York Penal Law provides that no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on evidence of the odor of cannabis or burnt cannabis. N.Y. Penal Law § 222.05(3)(a), (b). Similarly, the Code of Virginia provides that:

> "No law-enforcement officer *** may lawfully stop, search, or seize any person, place, or thing and no search warrant may be issued solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding." Va. Code Ann. § 4.1-1302(A).

Clearly, neither *Stribling*, *Redmond*, nor the Illinois legislature are anomalous in recognizing the need to amend the probable cause analyses employed by law enforcement officers and courts following the legalization of cannabis. However, not all Illinois courts are on the same page.

C. Conflict Between the Third and Fourth Districts

In this matter, the Fourth District expressly disagreed with the Third District's "holding and reasoning" in *Stribling*. *Molina*, 2022 IL App (4th) 220152, ¶ 55. The Fourth District flatly concluded that because the Supreme Court in *Hill* declined to address the current validity of *Stout*, the *Hill* court implicitly upheld the validity of *Stout*. See *Id*. The Fourth District further criticized the *Stribling* court's decision to omit any discussion of *Rowell* in its holding. *Id*. ¶ 56. With this, a clear divide in Illinois' appellate precedent now exists.

D. The Infirmities of the Fourth District's Decision

1. *Stout* is no Longer Good Law/Misinterpretation of *Hill*

The Fourth District's holding in this case was erroneous. Its criticism of the Third District's opinion in *Stribling* was misplaced. Though the Third District's *Redmond* decision was issued before the Fourth District's opinion here, *Redmond* was curiously omitted from the Fourth District's discussion. Moreover, the *Stribling* court's decision to omit a discussion of *Rowell* makes good sense. First, *Rowell* was wrongly decided based on this court's analysis in *Hill.* Second, *Rowell* analyzed criminal charges that arose in 2017, long before the legalization of cannabis in December 2019. The *Stribling* court correctly declined to rely on *Rowell*—a case that is now clearly inapplicable to post-legalization fact patterns.

The gravamen of the Fourth District's holding in this case stems from its belief that *Stout* remains good law. The Fourth District's conclusion is not based on any reasoned analysis of *Stout's* viability following the legalization of medical and recreational cannabis. Rather, it is based on the *Hill* court's remarks that it need not reach the issue of *Stout's* obsolescence. The Fourth District is operating under the mistaken impression that only a newly minted Supreme Court opinion may invalidate another, prior, Supreme Court opinion. Not so. Legislative action, in and of itself, "can moderate, or even totally negate, the impact, the applicability, and the pertinence of prevailing case law." *Redmond*, 2022 IL App (3d) 210524, ¶ 18; See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 260 (2010) (Instructing that "[b]ecause the formulation and implementation of public policy are principally legislative functions, the courts afford substantial deference to legislative enactments" and that "[w]e cannot nullify a legislative enactment merely

because we consider it unwise or believe it offends the public welfare.") (Karmeier, J. concurring in part and dissenting in part).

Furthermore, the Fourth District misread *Hill*. *Hill*, 2020 IL 124595. On appeal before the Fourth District in this matter, the Government argued that under *Hill*, law enforcement officers and trial courts should refrain from considering innocent explanations for the conduct of their citizens. (State's Br. 10). In so arguing, the Government advocated trespass upon a fundamental constitutional right by erring against, not in favor of, liberty. Under the Government's rationale, a diner in lawful possession of a steak knife may nonetheless be seized because the knife could have been used to stab someone. A hunter in lawful possession of a firearm may be searched because, after all, the gun could have been used in a homicide. The camper who smells like smoke from a campfire may be stopped and searched because he could very well be an arsonist. The bartender who smells of alcohol on her way home from work, without anything more, is subject to a search of her vehicle. Law enforcement officers and courts, as the argument goes, must not conjure innocent explanations for possibly guilty conduct. They should presume the probability of guilt, and then conduct their resulting searches. Our State and Federal Constitutions protect against the constitutional intrusions of a Government so cynical about the innocent conduct of its citizens.

Yet, despite these protections, the Fourth District held that considering "possible innocent explanations for the odor of raw cannabis was clearly prohibited by the Supreme Court's decision in *Hill." Molina*, 2022 IL App (4th) 220152, ¶ 48.

The *Hill* court never instructed that trial courts and/or officers should refrain from considering innocent explanations for a citizen's conduct when evaluating the reasonableness of an officer's determination of probable cause. *See People v. Newton*,

2018 IL 122958, ¶ 20 (A trial judge may make reasonable inferences that flow from the facts presented and apply his or her common knowledge.). The *Hill* court instructed that a finding of 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 stolen property or useful as evidence of a crime.'" *Hill*, 2020 IL 124595, ¶ 24; quoting *Brown*, 460 U.S. at 742.

The Fourth District also misconstrued Mr. Molina's position on appeal regarding the viability of *Hill*. In its decision, the court stated:

> "[W]e are not persuaded that the legal landscape has changed in such a way as to render the supreme court's decisions in *Stout* and *Hill* inapplicable." *Molina*, 2022 IL App (4th) 220152, ¶ 43.

Despite that there can be no greater change in the criminal "legal landscape" than the legalization of that which was previously illegal, Mr. Molina never advocated for *Hill's* complete obsolescence. In fact, the *Hill* decision, which was announced at a time when cannabis was still considered contraband, set the very groundwork for *Stribling*, *Redmond*, and Illinois' jurisprudence going forward. Despite legalization, the odor of cannabis, burnt or raw, will remain a corroborating factor that may contribute to an officer's probable cause determination. However, the odor of cannabis, burnt or raw, is not by itself sufficient to establish probable cause to search a person's vehicle.

Certainly, Illinois law imposes limitations upon the quantity and/or weight of cannabis that might lawfully be possessed. Nevertheless, the human nose is incapable of determining the weight of the substance it smells. See *e.g., Overmyer*, 469 Mass. 16, 17, 11 N.E.3d 1054 (2014) (holding that the human nose cannot determine the difference between the presence of a criminal amount of cannabis versus an amount subject only to a

civil fine). For this reason, the weight to be given to the odor of cannabis should depend on "the nature and strength of the odor and other factors accompanying the odor" and "how those factors relate to the offense being investigated." *Zullo v. State*, 209 Vt. 298, 205 A.3d 466 (2019); See *Barr*, 266 A.3d at 44 ("the odor of marijuana alone does not amount to probable cause to conduct a warrantless search of a vehicle but, rather, may be considered as a factor in examining the totality of the circumstances.").

Ultimately, the Fourth District erroneously interpreted *Stout* and *Hill* as if they are identical holdings based on identical facts. *Stout* held that the odor of burnt cannabis alone establishes probable cause to search a vehicle. *Stout*, 106 Ill. 2d at 87. *Hill* held that following the decriminalization of small amounts of contraband, the smell of raw cannabis is only a factor in the determination of probable cause for a search. See *Id*. ¶ 18. *Stout* and *Hill* are not the same. *Stout* has clearly been rendered bad law, and the odor of cannabis alone no longer constitutes sufficient probable cause to conduct a warrantless search of an automobile.

Trooper Wagand was not empowered to conduct a warrantless search of Mr. Molina's vehicle based solely on the odor of raw cannabis. Trooper Wagand was not empowered to conclude that the odor of raw cannabis stemmed from a violation of the Vehicle Code, which prohibits the transportation of cannabis in a non-odor-proof container. Moreover, a question remains as to whether Illinois law requires that cannabis be transported in an odor-proof container.

2. Statutory Interpretation

The Fourth District erred in its analysis concerning a purported conflict in statutes. The Vehicle Code provides that passengers may transport medical and recreational cannabis if it is stored "in a sealed, odor-proof, and child-resistant" cannabis container.

(625 ILCS 5/11-502.1, 11-502.15 (West 2020)). The Acts provide that recreational and medical cannabis may be transported in a private vehicle if it "is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." (410 ILCS 705/10-35(a)(2)(D) (West 2020)); (410 ILCS 30(a)(2)(E) (West 2020)).

In this case, the Fourth District instructs that "when statutes appear to conflict, they must be construed in harmony if reasonably possible," and "[w]hen statutes covering the same subject conflict, more recently enacted statutes control over earlier ones, and more specific statutes control over general statutes." *Molina*, 2022 IL App (4th) 220152, ¶ 31.

Though the language of these sections regarding the lawful transportation of cannabis is clearly conflicting, the court, without analyzing whether it was "reasonably possible," stated that it "must" interpret the sections in harmony. *Id*. ¶ 36. The court then held that because the term "odor-proof" was more specific than the term "reasonably secured," this necessarily "demonstrated that the legislature did not intend to end the requirement that cannabis be stored in an odor-proof container while being transported in a vehicle." *Id*. ¶ 35. Plainly, there is no way of interpreting the relevant language of the Code and the Acts harmoniously, and there is certainly no way to ascribe the legislature's intent to the bases relied upon by the Fourth District.

Assuming the term "odor-proof" container set forth in the Code is more specific than the term "reasonably secured" set forth in the Acts, it must also follow that the phrase "reasonably inaccessible while the vehicle is moving" contained in the Acts is more specific than that of the Code, which contains no such language. Moreover, insofar as specificity is concerned, the Acts are specifically cannabis-related; the Code is not. Based on the language at issue, there is no way of surmising that the relevant Code

sections are more specific than the relevant sections of the Act. Rather, the Act is more specific as it pertains to the lawful transportation of cannabis.

Further, "[w]hen statutes covering the same subject are in conflict, the more recently enacted statutes control over earlier ones ***." *In re Craig H.*, 2022 IL 126256, ¶ 26. Regarding the recency of the legislative enactments at issue, the Fourth District provided the following relevant legislative history:

> "In June 2019, the State of Illinois legalized the possession of small amounts of cannabis for recreational use through the Cannabis Regulation and Tax Act (Pub. Act 101-27 (eff. June 25, 2019) (adding 410 ILCS 705/1-1 *et seq.*)), allowing, among other things, recreational cannabis to be transported in a private vehicle if it "is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving" (410 ILCS 705/10-35(a)(2)(D) (West 2020)). At the same time, the legislature amended section 11-502.1 and added section 11-502.15 of the Vehicle Code to allow drivers and passengers to transport medical and recreational cannabis if it is placed "in a sealed, *odor-proof, and child-resistant*" cannabis container. (Emphasis added.) 625 ILCS 5/11-502.1 (West 2020) (amended by Pub. Act 101-27, § 900-38 (eff. June 25, 2019)); *id.* § 11-502.15 (added by Pub. Act. 101-27, § 900-38 (eff. June 25, 2019)).
>
> In August 2019, the legislature amended section 30(a)(2)(E) of the Medical Act to mirror the language of section 10-35(a)(2)(D) of the Cannabis Regulation and Tax Act, requiring medical cannabis to be stored "in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." 410 ILCS 130/30(a)(2)(E) (West 2020) (amended by Pub. Act 101-363, § 55 (eff. Aug. 9, 2019) (removing "tamper-evident")); *See* 410 ILCS 705/10-35(a)(2)(D) (West 2020)." *Id*. ¶¶ 19-20

Presumably, this timeline was compiled by the Fourth District to demonstrate that the relevant sections of the Code were more recently enacted than those of the Acts and were thus controlling. Yet, the language contained within the Compassionate Use Act, providing that medical cannabis be stored "in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving," appears to be the most recently enacted in August 2019, prior to the traffic stop in December 2020. As such, the language contained within the Compassionate Use Act controls.

If the Fourth District was correct and the legislature indeed intended that cannabis be transported in an "odor-proof," rather than in a "reasonably secured" container, the legislature would certainly have taken note of the Fourth District's opinion and acted to amend the Acts through the addition of "odor-proof" language. Yet, the opposite occurred. Just two months following the release of the Fourth District's opinion, the Senate proposed to remove the "odor-proof" language from sections 11-502.1 and 11-502.15 of the Code.[4] 103rd Ill. Gen. Assem., Senate Bill 125, 2023. As previously discussed, on May 30, 2023, the Illinois Senate passed proposed amendments to sections 11-502.1 and 11-502.15 of the Code. *Id*.

It is true that "courts must proceed cautiously when examining future legislative enactments for evidence of past legislative intent." *O'Casek v. Children's Home and Aid Society of Illinois*, 229 Ill. 2d 421, 442 (2008). Yet, the Illinois legislature's recent push to rid the Code of "odor-proof" language, just two months after the Fourth District issued its opinion in the instant case, is so precisely tailored to rectifying the untenable conflict between the Acts and the Code that the intent inferred therefrom cannot be ignored.

In summary, it is not reasonably possible to interpret these sections of the Code and the Acts in harmony. The language of the Code is not more specific than that of the Acts. The sections of the Code were not more recently enacted than those of the Acts. The legislature did not intend the provisions of the Code to override those of the Acts. Therefore, the Fourth District's conclusions regarding the purported necessity of an "odor-proof" container are incorrect.

[4]The Fourth District's opinion was filed on November 23, 2022. The proposed amendments to sections 11-502.1 and 11-502.15 of the Code were first filed in the Senate on January 24, 2023.

CONCLUSION

For these reasons, the Fourth District's decision should be reversed, and the trial court's order granting Vincent E. Molina's motion to suppress should be affirmed.

VINCENT E. MOLINA, Appellant.

/s/ James W. Mertes

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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 appended to the brief under Rule 342(a) is 23 pages.

/s/ James W. Mertes
James W. Mertes
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Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

James W. Mertes, Attorney for Defendant/Appellant, states that he has electronically filed the Appellant's Brief with the Illinois Supreme Court with the Clerk of the Court on July 3, 2023. Upon acceptance of the filing from this Court, persons named below with identified email addresses will be served using the court's electronic filing system. 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.

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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.

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APPENDIX

APPENDIX

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IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

People of the State of Illinois,
Plaintiff,

v.

Vincent E. Molina,
Defendant,

20TR5612ST

ORDER

On December 3, 2020, Trooper Wagand of the Illinois State police executed a traffic stop on a gray Chevrolet Impala for exceeding the posted speed limit. The vehicle in question was driven by Kayla Cervantes, and the defendant, Vincent Molina, was a passenger. After the vehicle pulled over and stopped as required, Troope Wagand approached the vehicle from the passenger side and informed the driver of the reason for the stop. He requested and received identification of both Ms. Cervantes and Mr. Molina. During this interaction, Trooper Wagand detected the odor of raw cannabis. Trooper Wagand testified that he has training and experience in not only identifying the smell of cannabis, but also differentiating between the smell of burnt or raw cannabis. Trooper Wagand had both parties exit the vehicle and performed a search of the vehicle believing he had probable cause based on the smell of raw cannabis. It should be noted that Trooper Wagand did not indicate any other reason for his suspicions or his search other than the smell of raw cannabis. The court would also note that Mr. Molina did provide a medical use license to Trooper Wagand prior to the search of the vehicle.

The issue in the instant case is whether the smell of raw cannabis alone provides probable cause to execute a warrantless search of a motor vehicle.

In *People v. Hill*, the most recent Illinois Supreme Court case addressing this issue, the Court held that smell of raw cannabis provided probable cause to search a vehicle. *People v. Hill*, 2020 IL 124595 (2020). At the outset of *People v. Hill*, the Court found it unnecessary to address the narrow legal question of whether the smell of cannabis alone provided probable cause to search the defendant's vehicle (as held by *People v. Stout*, 106 Ill. 2d 77 (1985)) because in *Hill* there were other factors that, in conjunction with the smell of raw cannabis, gave rise to probable cause to search the vehicle. *People v. Hill*, 2020 IL 124595 (2020). The Court in *Hill* upheld the search because, at the time, cannabis was not legal for recreational use, it had only been "decriminalized." Put another way, it was still contraband. *Id.* Based on the fact that cannabis was still contraband, as well as the totality of the circumstances, the Court held there was probable cause to search the vehicle.

In *People v. Stout*, the Court held that the smell of burnt cannabis alone provides probable cause to search a vehicle. *People v. Stout*, 106 Ill. 2d 77 (1985). At the time *Stout* was decided, possession of cannabis in any amount was illegal in Illinois. This is no longer the case. The possession and use of cannabis were legalized in Illinois in 2020 under The Cannabis Regulation and Tax Act.

Although not the only argument provided by the defense, the defense argues that 625 ILCS 5/11-502.15 and its requirement that cannabis be transported in an odor-proof container has been superseded by the more recent statutes 410 ILCS 130 (West 2019) and 410 ILCS 705 (West 2019) citing *Barragan vs. Casco Design Corporation*, 216 Ill. 2d 435, 451 (2005). 410 ILCS 130 (West 2019) and 410 ILCS 705 (West 2019) do not require the use of odor-proof containers and are more recently enacted. The State argues that 625 ILCS 5/11-502.15 is not superseded because it is more particular and specifically addresses passenger vehicles upon a highway, as opposed to 410 ILCS

130 (West 2019) and 410 ILCS 705 (West 2019) which addresses the transport of cannabis in all vehicles and is more general in nature. *Hernon v. E.W. Corrigan Const. Co.*, 149 Ill. 2d 190 (1992). Further, the State argues that the requirements of 625 ILCS 5/11/-502.15, in particular, the odor-proof container requirement, means that if an officer smells raw cannabis coming from a vehicle, this odor provides probable cause to believe that the cannabis is being illegally transported and the officer may conduct a warrantless search of the vehicle in question. The defense argues the requirements of 625 ILC 5/11-502.15 (if not superseded) alone are insufficient to establish probable cause to believe criminal activity is afoot or that the vehicle otherwise contains contraband because there are many innocent reasons a person or a person's vehicle smell of raw cannabis.

At the outset, the court finds the determination as to whether 625 ILCS 5/11-502/15 has been superseded is unnecessary for the reasons delineated below.

The smell of raw cannabis can be quite strong even in small quantities. This odor can, and often does, permeate items it is near or has come in contact with and remain for an appreciable amount of time. Given this, the court recognizes that there are many innocent reasons someone or someone's vehicle may emit the odor of raw cannabis. As noted by the defense, one such reason is that a person working at a cannabis cultivation facility or a dispensary could, and likely would, leave their place of employment smelling of raw cannabis. Persons with medical cannabis card may cultivate plants and, in the process of doing so, would likely smell of raw cannabis. Persons using or handling raw cannabis in *any way* can smell of raw cannabis.

Persons using, possessing, or otherwise around raw cannabis wholly within the bounds of the law can, and likely will, have the odor of cannabis on their clothes, hair, and even personal effects.

The issue in the instant case is whether the odor of raw cannabis alone provides probable cause to conduct a warrantless search of a vehicle. In this context, probable cause exists where the facts known to the arresting officer at the time of arrest are sufficient to lead a reasonable person to believe the defendant is engaged in criminal activity or that the vehicle contains contraband. *People v. Burns*, 156 N.E.3d 68, 78, 441 Ill. Dec. 68, 78 (2020). The passage of The Cannabis Regulation and Tax Act legalized the possession and use of cannabis in the State of Illinois beginning in 2020. This, in combination with above noted reasons a person acting wholly within bounds of Illinois may smell of raw cannabis, gives rise to a myriad of wholly innocent reasons as to why the vehicle in question may have smelled of raw cannabis. Trooper Wagand testified that he conducted the search of the vehicle in the instant case because he smelled raw cannabis and that because of this he had reason to believe the driver or passenger might be transporting cannabis in violation of 625 ILCS 5/11-502.15. Trooper Wagand did not offer any other reasons as to why he believed the defendant, or the driver of the vehicle, was engaged in criminal activity or that the vehicle contained contraband. In other words, the facts, or fact, rather, known to Trooper Wagand is that he smelled the odor of raw of cannabis coming from the vehicle in which the defendant was a passenger.

As noted above, the courts finds there are a number of wholly innocent reasons a person or the vehicle in which they are in may smell of raw cannabis. Given this fact, the court finds that the odor of raw cannabis alone is insufficient to establish probable cause whether 625 ILCS 5/11-502.15 is applicable or not. Accordingly, the court finds the facts known to Trooper Wagand are insufficient to establish probable cause to conduct a warrantless search of the vehicle; to hold otherwise would place not only the defendant, but also any person in Illinois aged 21 or above, in a position wherein they could exercise their rights under The Cannabis Regulation and Tax Act

only to forfeit their rights under the Fourth Amendment of the United States Constitution and/or Article 1, Section 6, of the Illinois Constitution, even though they have acted wholly within the bounds of the law. The court declines to impose this untenable situation upon the defendant or any similarly situated person. Accordingly, the motion to suppress is allowed.

12/19/21
Date

Associate Judge of the 14th Judicial Circuit

COPY

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellant,	)	
vs	)	No. 20 TR 5612ST
VINCENT E. MOLINA, Defendant-Appellee,	)	

NOTICE OF APPEAL

An appeal is taken from the judgment order described below:

1. Court to which appeal is taken Illinois Appellate Court, Fourth District

2. Name of appellant and address to which notices shall be sent:

Name: Terry A. Costello, Whiteside County State's Attorney
Address: 200 East Knox Street
Morrison IL 61270
Email: tcostello@whiteside.org

3. Name and address of appellant's attorney of appeal:

Name: David J. Robinson
Chief Deputy Director
State's Attorney's Appellate Prosecutor – 4th Dist.
Address: 725 South Second Street
Springfield, Illinois 62704
Email: drobinson@ilsaap.org

4. Date of Judgment or Order: November 19, 2021

5. Denial of People's Motion to Reconsider and Request for Clarification: February 2, 2022

6. Nature of Order appealed from: Suppression of evidence discovered during a warrantless search of a motor vehicle. The warrantless search of the motor vehicle was conducted based on the odor of raw cannabis emitting from the vehicle.

Terry A. Costello
State's Attorney, Whiteside County
200 East Knox Street
Morrison IL 61270

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

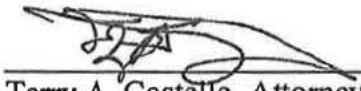
PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellant,	)	
vs	)	No. 20 TR 5612ST
VINCENT E. MOLINA, Defendant-Appellee,	)	

NOTICE OF FILING

To: James Mertes; Mertes and Mertes, 4015 E. Lincolnway, Sterling IL 61081

PLEASE TAKE NOTICE that the People of the State of Illinois, Plaintiff, in the above titled cause, by Terry A. Costello, State's Attorney of Whiteside County, Illinois, have filed a Notice of Appeal.

Dated: February 23, 2022



Terry A. Costello, Attorney for Plaintiff-Appellant

TERRY A. COSTELLO
State's Attorney of Whiteside County, Illinois
200 East Knox Street
Morrison IL 61270
815-772-5194

PROOF OF SERVICE

Terry A. Costello, State's Attorney, on oath, deposes and says that he served the above notice with a copy of the Notice of Appeal to the persons to whom it is directed above by placing the same in the U.S. mail at Morrison, Illinois, with postage fully prepaid, on the 23rd day of February, 2022

Terry A. Costello

Subscribed and sworn to before me this 23rd day of February, 2022 by Terry A. Costello.

Notary Public

OFFICIAL SEAL
JOANNE M EADS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/06/24

FILED
November 23, 2022
Carla Bender
4th District Appellate
Court, IL

2022 IL App (4th) 220152
NO. 4-22-0152

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. VINCENT E. MOLINA, Defendant-Appellee.	)	Appeal from the Circuit Court of Whiteside County No. 20TR5612 Honorable Daniel Dalton, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
Justices Zenoff and Doherty concurred in the judgment and opinion.

OPINION

¶ 1 In December 2020, the State charged defendant, Vincent E. Molina, with unlawful possession of cannabis by a passenger in a motor vehicle (625 ILCS 5/11-502.15(c) (West 2020)). In April 2021, defendant filed a motion to suppress evidence, which the trial court granted following a hearing.

¶ 2 The State appeals, arguing that the trial court erred by granting defendant's motion to suppress because (1) the primary holding in *People v. Stout*, 106 Ill. 2d 77, 477 N.E.2d 498 (1985), that the odor of cannabis alone establishes probable cause to search a vehicle, is still good law, (2) the trial court improperly based its decision on the plausibility of innocent explanations for why a car could smell of raw cannabis, and (3) the court improperly considered evidence outside the record and its own personal knowledge. Because we agree with the State's arguments, we reverse and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 In December 2020, defendant was charged with unlawful possession of cannabis by a passenger in a motor vehicle (625 ILCS 5/11-502.15(c) (West 2020)) following a traffic stop by Trooper Ryan Wegand of the Illinois State Police. In April 2021, defendant filed a motion to suppress evidence, arguing that the smell of raw cannabis without more did not constitute probable cause to search the vehicle

¶ 5 In June 2021, the trial court conducted a hearing on defendant's motion to suppress. Wegand testified that defendant was a passenger in a vehicle that Wegand stopped for speeding. Wegand stated that he had the training and experience to discern the difference between the odor of burnt cannabis and the odor of raw cannabis. When Wegand approached the passenger side of the vehicle, he testified that he smelled the strong odor of raw cannabis. Based solely on that smell, Wegand conducted a search of the vehicle, finding (1) in the center console "a small cardboard box with several rolled joints" inside and (2) "a clear plastic Tupperware container in the glove box that had suspected cannabis in it." Prior to the search, defendant told Wegand that he had a license for the medical use of cannabis.

¶ 6 Defendant argued that recent enactments of the Cannabis Regulation and Tax Act (410 ILCS 705/10-35(a)(2)(D) (West 2020)) and the Compassionate Use of Medical Cannabis Program Act (Medical Act) (410 ILCS 130/1 *et seq.* (West 2020)) rendered the smell of raw cannabis on its own insufficient to constitute probable cause. Specifically, defendant argued that the language of those statutes does not require storage of cannabis to be in an "odor-proof" container as section 11-502.1 of the Illinois Vehicle Code requires (625 ILCS 5/11-502.1 (West 2020)). Further, defendant argued that the Cannabis Regulation and Tax Act had "fundamentally changed the state of Illinois relating to cannabis[;] *** the substance itself is no longer

'contraband.' "

¶ 7 In November 2021, the trial court granted defendant's motion to suppress, stating in its written order that "[t]he smell of raw cannabis can be quite strong even in small quantities," and "there are many innocent reasons someone or someone's vehicle may emit the odor of raw cannabis." The court explained its reasoning, writing the following:

> "[O]ne such reason is that a person working at a cannabis cultivation facility, or a dispensary could, and likely would, leave their [*sic*] place of employment smelling like raw cannabis. Persons with medical cannabis card may cultivate plants and, in the process of doing so, would likely smell of raw cannabis. Persons using or handling raw cannabis in *any way* can smell of raw cannabis.
>
> Persons using, possessing, or otherwise around raw cannabis wholly within the bounds of the law can, and likely will, have the odor of cannabis on their clothes, hair, and even personal effects." (Emphasis in original.)

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 The State appeals, arguing that the trial court erred by granting defendant's motion to suppress because (1) the primary holding in *Stout*, 106 Ill. 2d 77, that the odor of cannabis alone establishes probable cause to search a vehicle, is still good law, (2) the trial court improperly based its decision on the plausibility of innocent explanations for why a car could smell of raw cannabis, and (3) the court improperly considered evidence outside the record and its own personal knowledge. Because we agree with the State's arguments, we reverse and remand for further proceedings.

¶ 11 A. The Applicable Law and the Standard of Review

¶ 12 1. *The Standard of Review*

¶ 13 Appellate courts employ a two-part standard of review when reviewing a trial court's order suppressing evidence: (1) the trial court's factual findings are reviewed under a manifest-weight-of-the-evidence standard and (2) the trial court's ultimate legal ruling is reviewed *de novo*. *People v. Aljohani*, 2022 IL 127037, ¶ 28.

¶ 14 2. *Search and Seizure*

¶ 15 All persons enjoy the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. A police officer may conduct a warrantless search of a stopped vehicle if the officer has probable cause to believe that the vehicle contains contraband. *United States v. Ross*, 456 U.S. 798, 799 (1982). "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." *People v. Hill*, 2020 IL 124595, ¶ 23, 162 N.E.3d 260. 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) (plurality opinion)).

¶ 16 3. *The Law Pertaining to Cannabis in Illinois*

¶ 17 In *People v. Rowell*, 2021 IL App (4th) 180819, ¶ 25, 182 N.E.3d 806, this court provided a brief history of cannabis law in Illinois, writing the following:

> "In 2014, [(through the Medical Act)] the State of Illinois legalized the possession of cannabis for people to whom the State had granted a license to use cannabis for medical purposes. See 410 ILCS 130/1 *et seq.* (West 2014). In 2016,

> the State of Illinois 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 State of Illinois decriminalized the possession of less than 10 grams of cannabis and defined possession of less than 10 grams as a 'civil law violation.' 720 ILCS 550/4(a) (West 2016)."

¶ 18 Expanding on that history, and relevant to this case, section 30 of the Medical Act in 2014 allowed for the possession of medical cannabis in a private vehicle if "the medical cannabis is in a reasonably secured, sealed, tamper-evident container and reasonably inaccessible while the vehicle is moving." 410 ILCS 130/30(a)(2)(E) (West 2014). Likewise, section 11-502.1 of the Illinois Vehicle Code provided that passengers could transport medical cannabis if it was stored "in a sealed, tamper-evident medical cannabis container." 625 ILCS 5/11-502.1(c) (West 2014).

¶ 19 In June 2019, the State of Illinois legalized the possession of small amounts of cannabis for recreational use through the Cannabis Regulation and Tax Act (Pub. Act 101-27 (eff. June 25, 2019) (adding 410 ILCS 705/1-1 *et seq.*)), allowing, among other things, recreational cannabis to be transported in a private vehicle if it "is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving" (410 ILCS 705/10-35(a)(2)(D) (West 2020)). At the same time, the legislature amended section 11-502.1 and added section 11-502.15 of the Vehicle Code to allow drivers and passengers to transport medical and recreational cannabis if it is placed "in a sealed, *odor-proof, and child-resistant*" cannabis container. (Emphasis added.) 625 ILCS 5/11-502.1 (West 2020) (amended by Pub. Act 101-27, § 900-38 (eff. June 25, 2019)); *id.* § 11-502.15 (added by Pub. Act. 101-27, § 900-38 (eff. June 25, 2019)).

¶ 20 In August 2019, the legislature amended section 30(a)(2)(E) of the Medical Act to

mirror the language of section 10-35(a)(2)(D) of the Cannabis Regulation and Tax Act, requiring medical cannabis to be stored "in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving." 410 ILCS 130/30(a)(2)(E) (West 2020) (amended by Pub. Act 101-363, § 55 (eff. Aug. 9, 2019) (removing "tamper-evident")); see 410 ILCS 705/10-35(a)(2)(D) (West 2020).

¶ 21 We note that there have been subsequent amendments to the Medical Act, Cannabis Regulation and Tax Act, and Vehicle Code. However, we discuss only the versions of those statutes that were in effect in 2020 at the time of the traffic stop in this case.

¶ 22 In 2020, the Illinois Supreme Court in *Hill*, 2020 IL 124595, ¶ 15, acknowledged that it had the opportunity to overrule its precedent set in *Stout*, 106 Ill. 2d at 87, that the smell of cannabis alone can establish probable cause sufficient to justify the search of a vehicle. The supreme court declined to do so, explaining as follows:

> "[D]efendant further requests this court to overrule [*Stout*, 106 Ill. 2d at 87], which held the odor of burnt cannabis without other corroborating evidence provides an officer probable cause to search a vehicle. Based on the record, however, we find it unnecessary to address this narrow legal issue." *Hill*, 2020 IL 124595, ¶ 15.

Accordingly, in *Rowell*, 2021 IL App (4th) 180819, ¶ 26, this court concluded that *Stout* remained binding precedent. In so holding, this court explained as follows:

> "In this case, we must follow the lead of the Illinois Supreme Court. It is important to recognize that the Illinois Supreme Court earlier this very year declined in *Hill* to overrule *Stout*. [Citation.] The *Hill* decision demonstrates that the holding in *Stout*—namely, that the scent of cannabis alone provides probable cause for a search—was in force in 2017 at the time of the search in this case." *Id.*

¶ 28.

¶ 23 B. The Odor of Cannabis Justified the Search of Defendant's Vehicle

¶ 24 In this case, defendant argues—as did the defendant in *Rowell*—that changes in the law regarding the regulation of cannabis have rendered *Stout* inapplicable to post-legalization of cannabis factual scenarios. Specifically, defendant contends that because (1) *Stout* and *Rowell* were decided based on the law in place before the possession of recreational cannabis was legalized and (2) the traffic stop in this case occurred after legalization of the possession of small amounts of cannabis, *Stout* and *Rowell* have no application. Defendant asserts that the 2019 enactments so changed the legal landscape that the mere smell of cannabis no longer provides probable cause to suspect the presence of contraband. Defendant also contends that recent changes in the Cannabis Regulation and Tax Act and the Medical Act impliedly repealed the Vehicle Code's requirement that cannabis be stored in an odor-proof container because amendments to those acts were the more recent legislative action.

¶ 25 We disagree.

¶ 26 1. *Statutory Amendment by Implication Is Not Favored*

¶ 27 Defendant's argument that provisions of the Vehicle Code were impliedly repealed by recent revisions to the Cannabis Regulation and Tax Act and the Medical Act has no basis whatsoever in Illinois law. In *People v. Ullrich*, 135 Ill. 2d 477, 483, 553 N.E.2d 356, 359 (1990), the Supreme Court of Illinois wrote the following:

> "Amendment by implication is not favored; a statute will not be held to have implicitly amended an earlier statute unless the terms of the later act are so inconsistent with those of the prior act that they cannot stand together. [Citation.] If the two enactments are capable of being construed so that both may stand, the

court should so construe them."

See also *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 441-42, 837 N.E.2d 16, 21 (2005) (in which the court wrote that when "two statutes are allegedly in conflict, a court has a duty to interpret the statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible").

¶ 28 The supreme court's decision in *Ullrich* dealt with the *amendment* of a statute by implication and concluded it was not favored; the implied *repeal* of a statute—which is the argument defendant raises in this case—is even more strongly disfavored. As the Second District Appellate Court wrote in *People v. McGuire*, 2015 IL App (2d) 131266, ¶ 15, 53 N.E.3d 77,

> "[t]his court presumes that the legislature would not enact a law that completely contradicts an existing law without expressly repealing the existing law. [Citation.] For a later enactment to operate as a repeal by implication of an existing statute, there must be such a manifest and total repugnance that the two cannot stand together." (Internal quotation marks omitted.)

¶ 29 2. *The Law Continues To Require Cannabis To Be Transported in an Odor-Proof Container*

¶ 30 Defendant asserts that the legislature intended for the "odor-proof" container requirement of the Vehicle Code to be superseded by the Medical Act and Cannabis Regulation and Tax Act, which do not require cannabis storage in a vehicle to be in an odor-proof container. We disagree.

¶ 31 The primary goal of statutory interpretation is to give effect to the intent of legislature. *People v. Hunter*, 2013 IL 114100, ¶ 13, 986 N.E.2d 1185. The most reliable indicator of legislative intent "is the language of the statute, given its plain and ordinary meaning. *** Each

word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Id.* We presume that statutes relating to the same subject are "intended to be consistent and harmonious." *In re Craig H.*, 2022 IL 126256, ¶ 26. Accordingly, "even when statutes appear to conflict, they must be construed in harmony if reasonably possible." *Id.* "When statutes covering the same subject conflict, more recently enacted statutes control over earlier ones, and more specific statutes control over general statutes." *Id.*

¶ 32 In August 2018, the Medical Act required medical cannabis to be stored in a "reasonably secured, sealed, tamper-evident container" while being transported in a vehicle. 410 ILCS 130/30(a)(2)(E) (West 2018). In August 2019, after the Cannabis Regulation and Tax Act was passed, that provision of the Medical Act was amended to require cannabis storage during vehicle transport to be in a "reasonably secured, sealed container." 410 ILCS 130/30(a)(2)(E) (West 2020) (amended by Pub. Act 101-363, § 55 (eff. Aug. 9, 2019)).

¶ 33 In June 2019, the Cannabis Regulation and Tax Act was enacted, requiring that adult use cannabis be stored in a "reasonably secured, sealed container" while being transported in a vehicle. 410 ILCS 705/10-35(a)(2)(D) (West 2020). In December 2019, the legislature amended that section but did not alter the language of that requirement. *Id.* (amended by Pub. Act 101-593, § 25 (eff. Dec. 4, 2019)).

¶ 34 In June 2014, the Vehicle Code was amended to include requirements for the storage of medical cannabis in a vehicle, mandating that the cannabis to be stored in a "sealed, tamper-evident medical cannabis container." 625 ILCS 5/11-502.1(b), (c) (West 2014) (added by Pub. Act 98-122, § 935 (eff. Jan. 1, 2014)). In June 2019, the legislature amended that section to require the cannabis to be stored in a "sealed, odor-proof, and child-resistant medical cannabis container." 625 ILCS 5/11-502.1(b), (c) (West 2020) (amended by Pub. Act 101-27, § 900-38 (eff.

June 25, 2019)). In that same act, the legislature also added the requirement that adult use cannabis be stored in a "sealed, odor-proof, child-resistant cannabis container" while being transported in a vehicle. *Id.* § 11-502.15(c) (added by Pub. Act 101-27, § 900-38 (eff. June 25, 2019)).

¶ 35 Given the legislative history of these statutes, a plain, harmonious reading of section 30 of the Medical Act (410 ILCS 130/30(a)(2)(E) (West 2020)), section 10-35 of the Cannabis Regulation and Tax Act (410 ILCS 705/10-35(a)(2)(D) (West 2020)), and sections 11-502.1 and 11-502.15 of the Vehicle Code (625 ILCS 5/11-502.1, 11-502.15 (West 2020)) demonstrates that the legislature did not intend to end the requirement that cannabis be stored in an odor-proof container while being transported in a vehicle. To the contrary, the legislature chose to (1) keep the "odor-proof" container requirement in the Vehicle Code and (2) utilize the more general phrase "reasonably secured" in the Medical Act and Cannabis Regulation and Tax Act.

¶ 36 Because (1) we must interpret related statutes in harmony and (2) the more specific statute controls the general, the "reasonably secured" requirement certainly includes "odor-proof" containers but may also include other methods of storage. Further informing this opinion, although unique to the language of the Medical Act, is section 30(a)(2)(D), which explicitly states, "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: *** [p]ossessing cannabis: *** in a vehicle under Section 11-502.1 of the Illinois Vehicle Code[.]" 410 ILCS 130/30(a)(2)(D) (West 2018). We note that this language remained unchanged, despite the passing of the Cannabis Regulation and Tax Act in 2019 and subsequent amendments to the Medical Act. See 410 ILCS 130/30(a)(2)(D) (West 2020).

¶ 37 Further, we are certain that the legislature did not intend to implicitly repeal the Vehicle Code's "odor-proof" requirement because in 2019 the legislature added section 11-502.15

to the Vehicle Code in the same Public Act through which the Cannabis Regulation and Tax Act was enacted. See Pub. Act 101-27, §§ 10-35, 900-38 (eff. June 25, 2019) (adding 410 ILCS 705/10-35 and 625 ILCS 5/11-502.15). Importantly, section 11-502.15 of the Vehicle Code requires that cannabis be stored in a vehicle only in an "odor-proof" container (625 ILCS 5/11-502.15 (West 2020)), and section 10-35 of the Cannabis Regulation and Tax Act requires that cannabis be in a "reasonably secured, sealed container" (410 ILCS 705/10-35(a)(2)(D) (West 2020)). See *Larsen v. Provena Hospitals*, 2015 IL App (4th) 140255, ¶ 49, 27 N.E.3d 1033 (stating that when the legislature acts to pass a statute, it is presumed to act with full knowledge of all existing and prior statutory and case law). Accordingly, if the legislature intended to amend the Vehicle Code to exclude the requirement that cannabis storage be odor-proof during vehicle transport, it could have—and would have—done so. The August 2019 amendment to the Medical Act merely updated its language to mirror that of the Cannabis Regulation and Tax Act (Pub. Act 101-363, § 55 (eff. Aug. 9, 2019)). We deem it significant that the legislature at that time did not amend the Vehicle Code.

¶ 38 We conclude that the legislature did not intend to modify, repeal, or supersede the requirement of sections 11-502.1 and 11-502.15 of the Vehicle Code that cannabis be stored in an odor-proof container during transport in a vehicle when it mandated in the Cannabis Regulation and Tax Act and Medical Act that cannabis be "reasonably secured" during such transport. Accordingly, a driver or passenger of a vehicle who transports cannabis in any container other than one that is odor-proof violates the Vehicle Code and commits a Class A misdemeanor. 625 ILCS 5/11-502.1, 11-502.15 (West 2020).

¶ 39 3. *The Smell of Raw Cannabis Alone Provides Probable Cause for a Vehicle Search*

¶ 40 Defendant asserts that even if the law requires cannabis to be transported in an

odor-proof container, the officer needed more facts than the smell of cannabis alone to suggest some criminal activity had occurred. Defendant claims the legislature's legalization scheme allows "almost all individuals aged 21 years and over to possess, consume, use, purchase, obtain, transport, or (in some cases) cultivate cannabis, for personal use." We disagree.

¶ 41 Just because defendant can legally possess some amounts of cannabis under specified conditions does not mean that all forms of possession are presumed to be legal. Regarding this point, the supreme court in *Hill* wrote the following:

> "While the mere presence of cannabis for medical users may no longer be immediately attributable to criminal activity or possession of contraband, such users must possess and use cannabis in accordance with the [Medical] Act. Notably, section 11-502.1 of the Illinois Vehicle Code prohibits any driver or passenger, who is a medical cannabis cardholder, from possessing cannabis within an area of the motor vehicle 'except in a sealed, tamper-evident medical cannabis container.' 625 ILCS 5/11-502.1(b), (c) (West 2016); see 410 ILCS 130/30(a)(5) (West 2016) (the [Medical] Act does not allow any person to violate section 11-502.1 of the Illinois Vehicle Code). Violation of this provision constitutes a Class A misdemeanor. 625 ILCS [5/]11-502.1(d)(1) (West 2016)." *Hill*, 2020 IL 124595, ¶ 34.

¶ 42 Moreover, section 10-10(a) of the Cannabis Regulation and Tax Act limits the amount of cannabis an Illinois resident can legally possess to (1) 30 grams of cannabis flower, (2) 500 milligrams of THC contained in a cannabis-infused product, or (3) 5 grams of cannabis concentrate. 410 ILCS 705/10-10(a) (West 2020). That is to say, possession of cannabis exceeding those amounts remains a crime.

¶ 43 Accordingly, we are not persuaded that the legal landscape has changed in such a

way as to render the supreme court's opinions in *Stout* and *Hill* inapplicable. Regardless of recent changes in the law legalizing possession of small amounts of cannabis, there are still, among other things, (1) illegal ways to transport it, (2) illegal places to consume it, and (3) illegal amounts of it to possess. We note that the supreme court in *Stout* did not limit its holding in any way that would suggest the smell of cannabis constituted probable cause only because cannabis was generally illegal. Instead, the court stated simply, "[A]dditional corroboration is not required where a trained and experienced police officer detects the odor of cannabis emanating from a defendant's vehicle." *Stout*, 106 Ill. 2d at 88.

¶ 44 We reiterate the requirements for probable cause: probable cause exists where the facts and circumstances known to the police officer at the time would warrant a reasonable person to believe there is a reasonable probability that the automobile contains contraband or evidence of criminal activity. *Hill*, 2020 IL 124595, ¶ 23. Accordingly, an officer who smells cannabis in a vehicle he has just stopped is almost certain to discover a violation of the Vehicle Code because the law clearly states that when cannabis is transported in a private vehicle, the cannabis must be stored in a *sealed, odor-proof* container—in other words, the cannabis should be undetectable by smell by a police officer. See 625 ILCS 5/11-502.15 (West 2020).

¶ 45 4. *The Trial Court's Musings About Possible "Innocent Reasons" for the Presence of the Odor of Raw Cannabis*

¶ 46 We note that when the trial court granted defendant's motion to suppress, the court mused about several possible innocent explanations for why someone's car could smell of cannabis. This was error.

¶ 47 First, as the State points out, no evidence was presented to the trial court to support any of the court's musings. Although trial courts, like juries, may "consider all the evidence in the

light of your own observations and experience in life" (see Illinois Pattern Jury Instructions, Criminal, No. 1.01 (approved July 18, 2014)), musing about possible explanations for the presence of the odor of raw cannabis cannot be justified based upon "common experiences."

¶ 48 Second, and most important, the trial court's musings about possible innocent explanations for the odor of raw cannabis was clearly prohibited by the Illinois Supreme Court's decision in *Hill* to which the trial court had even referred in its ruling granting defendant's motion to suppress. In *Hill*, the Illinois Supreme Court quoted from multiple United States Supreme Court decisions and wrote the following:

> "Probable cause deals with probabilities, not certainties. [Citation.] It is a flexible, commonsense standard that 'does not demand any showing that such a belief be correct or more likely true than false.' [Citation.] Therefore, probable cause does not require an officer to rule out any innocent explanations for suspicious facts. [Citation.] Instead, it requires only that the facts available to the officer—including the plausibility of an innocent explanation—would warrant a reasonable man to believe there is a reasonable probability 'that certain items may be contraband or stolen property or useful as evidence of a crime.' " *Hill*, 2020 IL 124595, ¶ 24.

¶ 49 5. *Cannabis Need Not Be Treated Like Alcohol Under Illinois Law*

¶ 50 Defendant also argues that cannabis should be treated like alcohol, pointing out that the smell of alcohol alone has never been held to provide probable cause for a vehicle search. The implication of defendant's argument is that because cannabis—an intoxicating drug—has been legalized and regulated, Illinois case law for another intoxicating drug—specifically, alcohol—should control over established precedent. We disagree and note that defendant provides no

authority for us to conclude otherwise.

¶ 51 Alcohol is regulated differently than cannabis—for instance, it is not illegal to possess more than 30 grams of alcohol. Similarly, there are no statutes like sections 11-502.1 and 11-502.15 of the Vehicle Code requiring alcohol to be transported in an odor-proof container.

¶ 52 We acknowledge that cannabis is in a different position in society than it was even four years ago, but that position is not so different that we need to reevaluate the law of probable cause, particularly in light of the supreme court's recent decision in *Hill* not to overrule *Stout*. Accordingly, we conclude that (1) *Stout* remains good law and (2) the smell of raw cannabis, without any corroborating factors, is sufficient to establish probable cause to search a person's vehicle.

¶ 53 C. *People v. Stribling*

¶ 54 In *People v. Stribling*, 2022 IL App (3d) 210098, the Third District recently considered a case very similar factually to the one now before this court and held that "the smell of the burnt cannabis, without any corroborating factors, is not enough to establish probable cause to search the vehicle." *Id.* ¶ 29. The Third District also concluded as follows: "[This holding] comports with the supreme court's holding in *Hill* and its treatment of the analogous situation regarding alcohol. [Citation.] Thus, the supreme court's holding in *Stout* is no longer applicable to postlegalization fact patterns." *Id.* The Third District based this conclusion upon various statutory amendments that occurred after *Hill*, including "Illinois [becoming] the eleventh state to legalize marijuana for adult, recreational use." *Id.* ¶ 23.

¶ 55 We disagree with the Third District's holding and reasoning. As we stated earlier, *Stout* remains good law because the Illinois Supreme Court in *Hill*, knowing that the law had changed, chose not to overrule *Stout*, and we are required to follow that precedent. Additionally,

despite the legalization of the possession of small amounts of cannabis for personal use, a person still may not use cannabis while in a vehicle (410 ILCS 705/10-35(a)(3)(D) (West 2020)) or drive a vehicle if the person has a certain tetrahydrocannabinol (THC) concentration in his or her blood, urine, or other bodily substance (*id.* § 10-35(a)(5); 625 ILCS 5/11-501(a)(7), 11-501.2(a) (West 2020)).

¶ 56 We note that this court issued its opinion in *Rowell* in January 2021, which was 18 months before the Third District issued its opinion in *Stribling* in September 2022. Yet, despite the similarity of the issue before both this court in *Rowell* and the Third District in *Stribling*, the Third District in *Stribling* made no mention of *Rowell*. Interestingly, the trial court in this case, in its discussion of defendant's motion to suppress, also never mentioned *Rowell* even though the State cited that case in its motion asking the court to reconsider its ruling granting the motion to suppress.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 59 Reversed and remanded.

People v. Molina, 2022 IL App (4th) 220152

Decision Under Review:	Appeal from the Circuit Court of Whiteside County, No. 20-TR-5612; the Hon. Daniel Dalton, Judge, presiding.
Attorneys for Appellant:	Terry Costello, State's Attorney, of Morrison (Patrick Delfino, David J. Robinson, and Luke McNeill, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Attorneys for Appellee:	James W. Mertes, of Mertes & Mertes, P.C., of Sterling, for appellee.

SUPREME COURT OF ILLINOIS

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FIRST DISTRICT OFFICE
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March 29, 2023

In re: People State of Illinois, Appellee, v. Vincent E. Molina, Appellant.
Appeal, Appellate Court, Fourth District.
129237

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

The Court also ordered that this cause be consolidated with:

129201 People v. Redmond

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

A list of all counsel on these appeals is enclosed.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-22-0152
	)	Circuit Court No: 2020TR5612
	)	Trial Judge: Daniel Dalton
v	)	
	)	
	)	
MOLINA, VINCENT E	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

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PEOPLE VS. MOLINA, VINCENT E

		Judge	CR
12/08/2020	Complaint filed on 12/08/2020.		
	Recognizance bond authorized.		
	First appearance set for 01/08/2021 at 9:00 in courtroom 2.		
01/08/2021	Not Guilty Plea filed.		
	Peo by ASA Houzenga	JFH	
	Deft pro se	JFH	
	Deft arraigned & admonished re R 401 & 402	JFH	
	Deft waives jury	JFH	
	PTC 1-27-21 at 1:00 pm	JFH	
	Deft seeking private counsel	JFH	
	Plea and Waiver filed, copy to SA		
01/27/2021	Appearance of Attorneys for Defendant filed with certificate of electronic service.		
	Defendant's Motion for Discovery filed with certificate of electronic service.		
	Notice of Intent to Appear Remotely filed with certificate of electronic service.		
	Peo by ASA Houzenga, Deft and Atty Rude via Zoom.	JFH	
	On Deft's mtn, PTC cont'd to 3-24-21 at 9 AM.	JFH	
03/01/2021	Notice of Compliance filed.		
03/23/2021	Notice of Intent to Appear Remotely filed		
03/24/2021	Peo by ASA Houzenga	JFH	
	Deft by Atty Rude via zoom	JFH	
	On Deft's mtn, PTC 4-28-21 at 9:00 a.m.	JFH	
04/20/2021	Motion to Suppress Evidence filed.		
	Notice of Intent to Appear Remotely filed.		
04/28/2021	Peo by ASA Houzenga, Deft via Zoom; Atty Fagerman appears.	JFH	
	On Deft's mtn, PTC + hearing on motion to supress 6-11-21 at 1 PM.	JFH	
05/24/2021	Supplemental Notice of Compliance filed.		
06/11/2021	Deft by Atty Mertes, State by SA Costello.	DPD	
	Opening statements made by both parties.	DPD	
	Trooper Wagand is called and testifies, direct, redirect.	DPD	
	Def offers closing, State responds, def responds, state responds, def responds.	DPD DPD	

PEOPLE VS. MOLINA, VINCENT E

		Judge	CR
	Parties to file briefs. Def to file brief in 30 days, state has 30	DPD	
	days to respond.	DPD	
	Parties to set hearing on relief, 1 hour. Late Sept, Early Oct or	DPD	
	available.	DPD	
07/14/2021	Defendant's Brief in Support of Motion to Suppress filed - copy to SA.		
08/13/2021	People's Brief in Opposition to Defendant's Motion to Suppress filed w/pos.		
09/27/2021	Hearing set for 10/22/2021 at 1:00 in courtroom 2.		
	Notice of Special Set Hearing filed. (10-22-21 at 1 PM)		
10/22/2021	Hearing set for 11/19/2021 at 1:00 in courtroom A.		
	Amended Notice of Special Set Hearing filed.		
	Sent to Morrison.		
11/19/2021	Order filed, copy to Atty Mertes & SAO		
12/17/2021	People's Motion to Reconsider and Request For Clarification filed.		
	Request for Hearing on The People's Motion to Reconsider and Request For Clarification To Be Set Before The Honorable Daniel Dalton filed.		
02/02/2022	Peo by SA Costello.	JFH	CZ
	Deft appears with Atty J. Mertes.	JFH	CZ
	Hearing on People's motion to Reconsider and Request for	JFH	CZ
	Clarification conducted.	JFH	CZ
	Status hearing will be set with Court Administrator.	JFH	CZ
02/03/2022	Court Administrator advised that both parties contact Court Administrator to set up Status Hearing. Clerk notified both parties.		
02/23/2022	NOTICE OF APPEAL w/Notice of Filing filed.		
	Docketing Statement w/Notice of Filing filed.		
	Certificate of Impairment w/Notice of Filing filed.		
	Letter requesting preparation of appeal filed.		
	Report of Proceedings - Motion to Reconsider 2/2/22 - filed.		
02/28/2022	Notice of Status Hearing filed with certificate of electronic service.		
	Current Docketing Order - Due Dates filed.		

E-FILED
Transaction ID: 4-22-0152
File Date: 3/24/2022 11:34 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 4-22-0152
	)	Circuit Court No: 2020TR5612
	)	Trial Judge: Daniel Dalton
v	)	
	)	
	)	
MOLINA, VINCENT E	)	
Defendant/Respondent	)	

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Secured by the Circuit Court:
REPORT OF PROCEEDINGS MOTION TO RECONSIDER 2/2/22