Nos. 129201 & 129237 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

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

REPLY BRIEF OF PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

ARGUMENT

I. The Odor of Cannabis Emanating from a Vehicle Provides Probable Cause to Search that Vehicle.

As the People's opening brief explained, Peo. Br. 7-18,[1] because the Vehicle Code prohibits an individual from using cannabis while in a vehicle and requires that individuals transport cannabis in odor-proof containers, the odor of cannabis — whether burnt or fresh — emanating from a vehicle provides police probable cause to search that vehicle. That is, based on the odor alone, a reasonable officer could suspect that cannabis had recently been used in the vehicle and/or was being transported in something other than an odor-proof container.

Defendants' arguments to the contrary, which once again ask this Court to overrule *People v. Stout*, 106 Ill. 2d 77 (1985), and hold that probable cause can no longer be based solely on the odor of cannabis, Molina Rep. 4-5; Redmond Rep. 3, misconstrue the probable cause standard in two ways.

First, defendants' argument that probable cause cannot be based on the odor of cannabis because — although the Vehicle Code requires cannabis to be transported in an odor-proof container[2] — there are "innocent

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[1] "Peo. Br.__" refers to the People's opening brief, "Molina Rep.__" refers to defendant Molina's reply brief, "Redmond Rep.__" refers to defendant Redmond's reply brief, and "RR__" refers to the supplemental report of proceedings in Redmond's case.

[2] The People's opening brief demonstrated that there is no conflict between the Vehicle Code and the Compassionate Use or Cannabis Acts, and that to the extent the provisions do conflict, the Vehicle Code controls. Peo. Br. 19-

explanations for the existence of the odor of cannabis," Molina Rep. 4, 6, overlooks the well-settled rule that "probable cause does not require officers to rule out a suspect's innocent explanation for suspicious facts," *Dist. of Columbia v. Wesby*, 583 U.S. 48, 61 (2018). Indeed, this Court already rejected defendants' argument in *People v. Hill*, 2020 IL 124595. There, Hill argued that "because cannabis may legally be owned in some circumstances," police needed to suspect more than a violation of the Vehicle Code to establish probable cause. *Id.* ¶ 33. In rejecting this argument, this Court explained that probable cause is not negated simply because there are "innocent explanations for suspicious facts." *Id.* ¶ 24. Rather than asking whether the odor of cannabis might have an innocent explanation, the question this Court must answer is whether the odor of cannabis would "justify a reasonable person in believing that the automobile contains contraband or evidence of criminal activity." *Id.* ¶ 23 (citing *People v. Smith,* 95 Ill. 2d 412, 419 (1983)). And even though cannabis *can* be legally possessed, an individual must nevertheless possess that cannabis in compliance with the Vehicle Code. *Id.* ¶ 34. Thus, where an officer reasonably believes that cannabis had recently been used in the vehicle or an individual is violating the Vehicle Code's regulations on the transportation of

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24. Molina, in reply, summarily asserts that the People are incorrect, Molina Rep. 5, but offers no argument as to why that would be so.

cannabis (that it be packaged in an odor-proof container), probable cause exists. *Id.*

Second, and relatedly, defendants overlook that the probable cause standard "is a flexible, commonsense standard that 'does not demand any showing that such a belief be correct or more likely true than false.'" *Id.* ¶ 24 (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983)). Indeed, "probable cause is not a high bar," and merely requires a "substantial chance of criminal activity, not an actual showing of such activity." *Wesby*, 583 U.S. at 57 (quotations omitted). This inquiry necessarily "depends, in the first instance, on the elements of the predicate criminal offense(s) as defined by state law." *Doe v. Gray*, 75 F.4th 710, 719 (7th Cir. 2023) (citing *Abbott v. Sangamon County, Ill.*, 705 F.3d 706, 715 (7th Cir. 2013)).[3] Here, the Vehicle Code prohibits the possession of cannabis in a vehicle unless that cannabis is in an odor-proof container and prohibits its use in any vehicle. 625 ILCS 5/11-502.1(b) & (c); 625 ILCS 5/11-502.15(b) & (c).

Thus, an officer who detects the odor of cannabis necessarily has a "substantial chance" of uncovering criminal activity, and probable cause therefore exists. That there are other, innocent explanations for the odor, or

[3] For similar reasons, and as explained in the People's opening brief, Peo. Br. 18, Molina's reliance on *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023), Molina Rep. 3, is misplaced. As with all the foreign cases cited in defendants' opening briefs, Minnesota does not require that cannabis be transported in an odor-proof container, and the Minnesota Supreme Court's analysis is therefore inapplicable here.

that the officer's suspicion may prove incorrect, Molina Rep. 6, does not negate probable cause.

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

As demonstrated in the People's opening brief, even if the odor of cannabis alone did not provide probable cause to search Redmond's car, Tropper Combs could have reasonably believed that Redmond violated cannabis regulations under the totality of the circumstances, because the odor of cannabis emanated from Redmond's vehicle, not his person; the odor was strong, not faint; and Redmond had been in his car for several hours. Peo. Br. 25-26.

Redmond's argument that Combs lacked probable cause because he believed he had probable cause to search based on the odor of cannabis alone, *see* Redmond Rep. 4, misstates Combs's testimony and is, in any event, legally irrelevant. True, at the suppression hearing, Combs explained that "a large portion of my decision was based on the smell of burnt cannabis," RR11, but he also explained that "there were several things along with the smell of burnt cannabis," RR13. Moreover, not only does Redmond misstate Combs's testimony, Combs's subjective belief for why he believed he had probable cause is irrelevant, for "[p]robable cause is an objective standard, and an officer's subjective belief as to the existence of probable cause is not determinative." *People v. Buss*, 187 Ill. 2d 144, 209 (1999); *see also Brigham City, Utah v. Stuart*, 547 U.S. 398, 404 (2006) ("An action is 'reasonable'

under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify [the] action.") (quotation omitted). Here, viewing the totality of the circumstances objectively, Combs had probable cause to search Redmond's car.

For his part, Redmond provides no argument regarding the factors identified by the People's opening brief as providing probable cause, Peo. Br. 25-26 (noting evidence that an odor of cannabis emanated from Redmond's vehicle, that the odor was strong, and that Redmond had been in his car for several hours), but continues to argue only that Trooper Combs should not have relied on his belief that I-80 is a drug corridor or his belief that Redmond's answers to certain questions were suspicious, Redmond Rep. 4. Again, Combs's subjective belief is irrelevant here. Thus, that Combs believed he had probable cause based on factors that Redmond takes issue with does not mean that an objectively reasonable officer would not have probable cause based on the totality of the circumstances the People identified.

III. If this Court finds that Probable Cause did not Exist, It should Apply the Good-Faith Exception to the Exclusionary Rule.

Finally, even if this Court were to hold that probable cause did not exist in either or both cases, it should apply the good-faith exception to the exclusionary rule, as the officers in both cases conducted their searches in good-faith reliance on binding precedent from this Court — *People v. Stout*,

106 Ill. 2d 77 (1985) — that permitted the search of a vehicle based solely on the odor of cannabis. Peo. Br. 26-28.

The People have not forfeited this argument. True, as Molina notes, Molina Rep. 6-7, the People did not ask the appellate court to apply the good-faith exception. But the People have consistently argued that the trial court erred in suppressing the cannabis recovered from defendants' cars, and this Court only "require[s] parties to preserve issues or claims for appeal; [not] to limit their arguments here to the same arguments that were made below." *Brunton v. Kruger*, 2015 IL 117663, ¶ 76; *see also 1010 Lake Shore Ass'n v. Deutsche Bank Nat. Tr. Co.*, 2015 IL 118372, ¶ 17 (same). The People have pressed the claim throughout these proceedings that the trial court erred in suppressing the drug evidence in these cases, and the good-faith argument raised here is simply a further argument in support of that claim. In any event, as Molina concedes, Molina Rep. 7, forfeiture is a limitation on the parties, and not this Court, *People v. McCarty*, 223 Ill. 2d 109, 142 (2006), which may disregard a forfeiture "in the interest of maintaining a sound and uniform body of precedent," *O'Casek v. Children's Home & Aid Soc'y of Ill.*, 229 Ill. 2d 421, 438 (2008).

As noted in the People's opening brief, Peo. Br. 26-27, the exclusionary rule exists to deter future violations of the Fourth Amendment, and is reserved for situations where that deterrent purpose is "'thought most efficaciously served,'" *People v. Manzo,* 2018 IL 122761, ¶ 62 (quoting *United*

States v. Calandra, 414 U.S. 338, 348 (1974)); *see also People v. Burns,* 2016 IL 118973, ¶ 51 ("Exclusion of evidence is a court's last resort, not its first impulse."). Here, there is little deterrent value in suppressing the evidence obtained from defendants' cars because the officers conducted their searches in accordance with binding precedent from this Court that the smell of cannabis, alone, sufficed to provide probable cause to search a vehicle. *See Stout*, 106 Ill. 2d at 87. In so doing, the officers acted as reasonable officers should. *People v. LeFlore,* 2015 IL 116799, ¶ 27.

Molina's argument that the officers could not reasonably rely on binding precedent because *Stout* was implicitly abrogated by the legalization of cannabis in 2020, Molina Rep. 7-8, places an unreasonable burden on officers to evaluate novel legal questions. Molina suggests that a reasonable police officer would have understood that the Cannabis Act so sufficiently changed the probable cause analysis that this Court would eventually overrule decades of established precedent. But such an argument unreasonably requires police officers to consider and decide novel legal issues by themselves, and directly conflicts with the purpose of the good-faith exception, which encourages *reliance* on binding precedent. *Davis v. United States*, 564 U.S. 229, 241 (2011) (noting that "when binding appellate precedent specifically *authorizes* a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities" and that "[t]e deterrent effect of exclusion in

such a case can only be to discourage the officer from 'do[ing] his duty'") (quoting *United States v. Leon*, 468 U.S. 897, 920 (1984)) (emphasis in original). Indeed, contrary to Molina's argument that *Stout* was clearly bad law the moment the Cannabis Act passed, even the appellate court was divided on that point. As noted, Peo. Br. 17, both the Fourth District in Molina's case below and the Second District in *People v. Harris,* 2023 IL App (2d) 210697, concluded that the odor of cannabis, alone, continues to provide probable cause to search a vehicle even after the passage of the Cannabis Act and this Court's decision in *Hill*. This Court cannot expect a reasonably trained officer to accurately predict its eventual holdings when even the appellate court has expressed disagreement over the Cannabis Act's effect on *Stout*.

Molina's related argument that an officer should have understood that the Court "expressly foreshadowed that *Stout* would be overruled" in *Hill*, 2020 Il 124595, Molina Rep. 8, is similarly ill-considered. Leaving aside that a "reasonably well trained officer" is not required to read the dicta in this Court's opinions and presume from that dicta the eventual abrogation of binding precedent, *Hill* did not foreshadow *Stout's* downfall but instead explicitly left it in place. *Hill*, 2020 IL 124595, ¶ 18 ("[W]e need not address the validity of *Stout* after the enactment of the Compassionate Use of Medical Cannabis Pilot Program Act."). Indeed, this Court recently reiterated that "[d]espite defendant's arguments concerning changes to the case law

following passage of the Act, *Campbell* and *Stout* remain binding authority." *People v. Webb*, 2023 IL 128957, ¶ 34.

Finally, Molina's suggestion that application of the good-faith exception turns on an officer's testimony that he was aware of the governing precedent and conducted the search in reliance upon it, Molina Rep. 7, ignores this Court's holding that the "'pertinent analysis of deterrence and culpability is objective, not an inquiry into the subjective awareness of arresting officers.'" *LeFlore*, 2015 IL 116799, ¶ 25 (quoting *Herring v. United States*, 555 U.S. 135, 145 (2009)). In other words, this Court "asks 'the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal in light of all of the circumstances,'" *id.*, and not whether the officer in a given case knew that his search was justified.

Because the officers in both cases reasonably relied on *Stout*, this Court should apply the good-faith exception to the exclusionary rule to uphold these searches, even if the Court were to now overrule *Stout* and hold that the odor of cannabis, alone, no longer provides probable cause to search a vehicle.

CONCLUSION

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

December 13, 2023

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10 pages.

s/Mitchell J. Ness
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PROOF OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 13, 2023, the **Reply Brief of People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

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