



Roll Call Reporter

LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

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Court of Appeals of Maryland Confirms That the Odor of Marijuana Coming From a Vehicle Still Provides Probable Cause to Search the Vehicle

Question: In light of the decriminalization of possession of less than ten grams of marijuana, does a law enforcement officer have probable cause to search a vehicle upon detecting an odor of marijuana emanating from the vehicle?

Answer: Yes. A law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle, as marijuana in any amount remains contraband (goods that are illegal but not necessarily criminal to possess), and the odor of marijuana gives rise to probable cause to believe that the vehicle contains evidence of a crime.

Case: *Jermaul Rondell Robinson v. State of Maryland* (and companion cases)
Court of Appeals of Maryland
Decided January 20, 2017

The Odor of Marijuana, the Street Encounter, and the Vehicle Search:

On October 18, 2014, Officer Steven A. Vinias of the Baltimore Police Department was on patrol, driving in the 3100 block of Oakfield Avenue in Baltimore. Sergeant Luis Ruiz was a passenger in the marked law enforcement vehicle. Officer Vinias saw a man, later identified as Jermaul Robinson, leaning against a Nissan Maxima, which was the only vehicle on that side of Oakfield Avenue. Officer Vinias noticed an overwhelming smell of fresh marijuana. Based on his training and experience, Officer Vinias was familiar with the odor of marijuana, and was able to distinguish the odor of fresh marijuana from the odor of burnt marijuana. Officer Vinias stopped, and he and Sergeant Ruiz exited and approached Robinson, who was within arm's length of the Nissan at that time. Robinson made a movement toward his waistband, and Sergeant Ruiz detained him. Once Robinson was detained, Officer Vinias could tell that the smell of marijuana was coming from the Nissan.

Robinson told Officer Vinias that he had been driving the Nissan, and that there was marijuana in the Nissan. Officer Vinias searched the Nissan and seized sixteen small bags of marijuana and one oxycodone pill. At the time of the seizure, Officer Vinias estimated that the marijuana weighed more than ten grams. The officer knew, however, that the strength of the odor of marijuana and the amount of marijuana were not always the same.

The Arrest, Charges, Motion to Suppress, and Conviction

Robinson was arrested at the scene and charged with three offenses, including possession of at least ten grams of marijuana. He moved to suppress the evidence, arguing that a law enforcement officer lacks probable cause to search a vehicle for marijuana unless the law enforcement officer has reasonable suspicion that the vehicle contains more than ten grams of marijuana. The State argued that nothing had changed as a result of the amendment to the marijuana statute with respect to a law enforcement officer's ability to search a vehicle based on the odor of marijuana. The trial court agreed, and denied Robinson's motion to suppress. Robinson was found guilty and sentenced to time served. Robinson noted an appeal

The Decision by the Court of Appeals of Maryland

The Court of Special Appeals affirmed the circuit court and the Court of Appeals agreed to review the case. The Court of Appeals ("the Court") affirmed the decision of the Court of Special Appeals and Robinson's conviction was upheld. The Court accepted the State's contention that the odor of marijuana provides probable cause to believe that a vehicle contains contraband *or* evidence of a crime. Under the *Carroll* doctrine, a vehicle may be searched if there is probable cause to believe it contains contraband. Many later cases made clear that a vehicle can be searched if there is probable cause to believe it contains contraband *or* evidence of a crime. The distinction is that contraband means goods that are illegal to possess, regardless of whether possession of the good is a crime. The term "contraband" includes more than items or goods that are criminal to possess, but may also include items or goods that are simply illegal to possess. So, even though it is no longer a crime in Maryland to possess an amount of marijuana that is less than

ten grams, marijuana is still contraband and illegal to possess.

Simply stated, legalization is not the same as decriminalization. Even though possession of less than ten grams of marijuana is no longer a crime, it is still illegal. And since marijuana, in any amount, is still contraband and illegal to possess, a vehicle may be searched simply based on the odor of fresh or burnt marijuana coming from the car.

The Court rejected outright Robinson's argument that, since the human nose cannot determine the quantity of marijuana smelled, the mere odor of marijuana cannot give rise to probable cause to search. The Court also rejected any requirement that the odor must be strong or overwhelming to provide probable cause, opting instead to hold that the odor of marijuana alone provides probable cause to search a vehicle. This holding is sound because, as experience and trained officers know, it is effectively impossible to identify a quantity of marijuana based on odor alone.

Summing up, the decriminalization or possession of small amounts of marijuana did and does not affect existing case law allowing law enforcement officers to search a vehicle based, not only upon a K-9 alert to the smell of marijuana (see Roll Call Reporter, December 2015), but also based upon a law enforcement officer's own detection of the smell of marijuana.

NOTE: Permitting law enforcement officers to conduct a warrantless search of a vehicle based on the odor of marijuana will have no effect upon the statutes and regulations pertaining to medical marijuana. Use of marijuana for legitimate medical purposes is an affirmative defense to be raised by the defendant. In practice, if a law enforcement officer stops a person who is eligible to possess marijuana for medical reasons, the person does not have to disclose that he or she possesses marijuana and does not have to consent to a search. However,



if a search is conducted, and the officer finds marijuana, the person should offer the officer his or her Cannabis Commission-issued identification card and direct the law enforcement officer to the Commission's database.

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