



## **LGIT'S ROLL CALL REPORTER MAY 2007**

### **THE ODOR OF BURNT MARIJUANA EMANATING FROM THE PASSENGER COMPARTMENT OF A VEHICLE, BY ITSELF, ESTABLISHES PROBABLE CAUSE TO SEARCH THE VEHICLE'S TRUNK AND THE CONTAINERS IN IT UNDER THE AUTOMOBILE EXCEPTION TO THE WARRANT REQUIREMENT OF THE FOURTH AMENDMENT**

**QUESTION:** Does the odor of burnt marijuana emanating from the passenger compartment of a vehicle provide probable cause to search not only the passenger compartment, but the entire vehicle, including the trunk and containers found in it?

**ANSWER:** Yes. The odor of burnt marijuana provides probable cause to believe that additional marijuana is present elsewhere in the vehicle, including the trunk and the containers found inside it.

**CASE:** *WILSON V. STATE*, Court of Special Appeals of Maryland, Decided May 2, 2007

In *Wilson v. State*, the Court of Special Appeals considered whether the trial court had erred in denying a motion to suppress marijuana found in the trunk of a car after a traffic stop for speeding. The only basis for the search of the trunk, and of a container found in it, was the fact that the stopping officer smelled an odor of burnt marijuana emanating from the open driver's side window. In an opinion emphasizing the "common sense" and "practical" standard that is probable cause, the Court upheld the ruling of the trial judge and the conviction of the Defendant.

The facts in the *Wilson* case established that on October 27, 2004, Maryland State Police Trooper Larry Fortino was operating radar in an unmarked patrol vehicle on U.S. 13 in Worcester County. Radar indicated that a gray Chevy Impala with Virginia tags was traveling southbound at 62 miles per hour in a 55 mile per hour zone. Trooper Fortino initiated a traffic stop. When the Chevy pulled onto the shoulder, Trooper Fortino observed that, in addition to the driver, there was a passenger in the front seat. The trooper approached and asked the driver for his license and registration. The driver produced a Virginia driver's license which identified him as Mario Wilson. He also produced a rental agreement for the vehicle. Wilson immediately became argumentative, complaining that he had never been stopped before on U.S. 13. While Wilson complained, Trooper Fortino detected the odor of burnt marijuana coming from the vehicle. He informed Wilson of the odor and asked him to exit the vehicle. Wilson quickly denied having any marijuana in the car. By this time, a deputy sheriff had arrived

at the scene. After Wilson exited the car, the deputy then searched the passenger compartment, including the glove compartment and ashtray. He also searched the air filter and hubcaps. No evidence of a crime was discovered. Wilson's key was then used to open the trunk. Inside, six and one-half pounds of marijuana were recovered from a black suitcase. A narcotics detecting canine did not arrive until after the contraband had been recovered.

Wilson was charged with possession of marijuana with the intent to distribute. Prior to his criminal trial, Wilson filed a motion to suppress the marijuana recovered from the vehicle. The trial judge denied the motion, and Wilson subsequently was found guilty and sentenced to two years' imprisonment. He appealed.

On appeal, the Court of Special Appeals affirmed Wilson's conviction. In doing so, it reviewed cases from around the country and reached the conclusion that marijuana and other illegal drugs, by their very nature, can be stored almost anywhere within a vehicle. The location-specific principle that probable cause must be tailored to specific compartments and containers within an automobile does not apply when officers have only probable cause to believe that contraband is located somewhere within the vehicle, rather than in a specific compartment or container within the vehicle. Thus, the Court found that it is not unreasonable for an officer to believe that the odor of burnt marijuana indicates current possession of unsmoked marijuana somewhere inside the vehicle, including the trunk.

**NOTE:** On appeal, Wilson did not specifically contend that the search of the trunk should not have extended to the suitcase found in it. If he had done so, he would have been unsuccessful. As a general rule, probable cause to search a vehicle justifies the search of every part of the vehicle *and its contents* that may conceal the object of the search. Where there is probable cause to search for contraband in a car, it is reasonable for police officers to examine packages and containers without a showing of individualized probable cause for each one. Further, a passenger's personal belongings, just like the driver's belongings, or containers attached to the car like a glove compartment or an air bag compartment, are "in" the car, and the officers have probable cause to search for contraband "in" the car.

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