

No.20_____

In the Supreme Court of the United States

JEREMIAH P. RICE,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

**On Petition for Writ of Certiorari
to the Illinois Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the detectable odor of burnt cannabis alone, without any other indicators, is sufficient for law enforcement to form probable cause to subject a citizen to a warrantless search of his vehicle, in light of laws in the State of Illinois, that decriminalized possession of small amounts of cannabis and allow for the legal use of cannabis for healthcare reasons, when all citizens have a fundamental right to healthcare?

The law in Illinois, which allows for a warrantless search of a vehicle when law enforcement merely smell burnt cannabis, conflicts with law in other States and rulings of the United States Supreme Court which appear to make individual healthcare decisions a fundamental right, in light of *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012). States such as Massachusetts and New York have held that the odor of burnt cannabis does not give law enforcement sufficient basis for probable cause to conduct warrantless searches of automobiles.

United States citizens traveling by vehicle on interstate highways are subjected to different degrees of Constitutional protections depending on which state they are in. This difference is substantial and may subject the citizen to an unreasonable search and seizure in violation of the Fourth Amendment. Further, citizens who exercise their fundamental right to healthcare by seeking relief through the lawful use of medical cannabis, may have their Fourth Amendment rights violated without due process.

PARTIES TO THE PROCEEDING

Petitioner

Jeremiah P. Rice, was convicted in Bureau County, Illinois (16-CF-77) of unlawful possession of a controlled substance in violation of 720 ILCS 570/402(a)(7.5)(B)(ii) and sentenced to 11 years in prison. His appeal was denied and his Petition for Leave to Appeal to the Illinois Supreme Court was denied.

Respondent

State of Illinois

LIST OF ALL PROCEEDINGS

People of the State of Illinois
vs. Jeremiah Paige Rice
Illinois Supreme Court
124869
Petition for Leave to Appeal
Denied on May 27, 2020

People of the State of Illinois
Vs. Jeremiah Paige Rice
Appellate Court of Illinois – Third District
3-17-0134
Denied on April 16, 2019

People of the State of Illinois
vs. Jeremiah Paige Rice
Circuit Court Bureau County
16-CF-77

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OPINIONS BELOW

People of the State of Illinois v. Jeremiah Paige Rice, Case No. 16-CF-77, Bureau County, Illinois, the Thirteenth Judicial Circuit. The Court issued an opinion on January 11, 2017, denying Petitioner's Motion to Suppress.

People of the State of Illinois v. Jeremiah Paige Rice, Case No. 3-17-0134 Illinois Court of Appeals, Third Judicial District. The Illinois Third District Court of Appeals denied Petitioner's appeal on April 16, 2019.

The Illinois Supreme Court denied Petitioner's leave to Appeal on May 27, 2020, with the mandate issued to the Illinois Court of Appeals on July 1, 2020.

JURISDICTION

This Court has jurisdiction to review this matter pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

- U.S. CONST. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

- U.S. CONST. amend. V

No person shall...nor be deprived of life, liberty, or property, without due process of law.

- U.S. CONST. amend. XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States... nor deny to any person within its jurisdiction the equal protection of the laws.

ILLINOIS LAW INVOLVED

A. Illinois Amends Cannabis Control Act

On July 29, 2016, Illinois amended the Cannabis Control Act, found at 720 ILCS 550/2. Under the amendments, possession of 10 grams or less was decriminalized.

B. Compassionate Use of Medical Cannabis Pilot Program

On January 1, 2014, Illinois enacted the Compassionate Use of Medical Cannabis Control Act. Under this act, a cardholder who has been issued a valid identification card from the Department of Public Health, will not be considered an unlawful user. It is lawful for a cardholder to purchase medical cannabis products at a licensed dispensing organization under this Act. The act distinguishes medical cannabis cardholders as qualifying patients who participate in the program and shall not be considered an unlawful user.
410 ILCS 130/7

C. Opioid Alternative Pilot Program

August 28, 2018, Illinois made changes to the Medical Cannabis Pilot Program by allowing people who are eligible for a prescription for opioids to have access to medical cannabis. This was in response to the rising opioid deaths and overdoses reported in 2017 being twice the number of fatal car accidents.
410 ILCS 130/5.

STATEMENT OF THE CASE

Probable cause should not exist to support a warrantless search of an automobile when based only on the detectable odor of burnt cannabis, without more facts observed or known to law enforcement, to justify the warrantless search to safeguard the Fourth Amendment right against unreasonable searches and the Fifth Amendment right to Due Process.

REASONS FOR GRANTING THE WRIT

I. Review Is Necessary Due To A Conflict In The States Over Whether The Smell Of Cannabis Amounts To Probable Cause to Conduct A Warrantless Search Of An Automobile

The State of Illinois recently affirmed in the case of *People v. Hill*, No. 124595, 2020 WL 1302313, at *6-*7 (Ill. Mar. 19, 2020), that found the smell of cannabis *plus an observation of a cannabis plant* established probable cause to conduct a valid warrantless search of a vehicle. In *Hill*, a traffic stop led to the arresting officer detecting the smell of raw cannabis and observing a cannabis plant. *Id.*

In 1985, the Illinois Supreme Court ruled that the odor of burnt cannabis without other corroborating evidence provides an officer probable cause to search a vehicle. See *People v. Stout*, 106 Ill. 2d 77, 87 (1985). The *Hill* court decided it did not need to reconsider *Stout* because the arresting officer in *Hill* “relied on more than the odor of raw cannabis.” *Hill*, No. 124595, 2020 WL 1302313, at *3 (Ill. Mar. 19, 2020). Thus, *Stout* is controlling in Illinois and should be ruled

unconstitutional in light of legalized medical cannabis and decriminalization of certain amounts of cannabis.

Petitioner's case involves the smell of burnt cannabis only. *People v. Rice*, 2019 IL App (3rd) 170134, app. A, p. 1 (3rd Dist. April 16, 2019). In his Petition for Leave to Appeal to the Illinois Supreme Court, Petitioner argued that Illinois "law under *People v. Stout*, 106 Ill. 2d 77, 87 (1985) and its progeny is inconsistent with the intent of the Illinois Legislature as communicated by the amendment of the Cannabis Control Act, the expansion of the Compassionate Use of Medical Cannabis Pilot Program and the creation of the Opioid Alternative Pilot Program." The Illinois Supreme Court denied his leave to appeal.

On October 9, 2016, Petitioner, a resident of Texas at the time, was driving through Illinois in a rental vehicle with New Mexico plates. *People v. Rice*, 2019 IL App (3rd) 170134, app. A, p. 2 (3rd Dist. April 16, 2019). The arresting officer stopped Petitioner for speeding. *Id.* Upon approaching Petitioner's vehicle, the arresting officer detected what he described as a strong odor of burnt cannabis. *Id.* Other than this smell, the arresting officer made no other observations that would corroborate a determination of probable cause. *Id.* at p. 3. No weapons, drugs, paraphernalia, lighters, ash or rolling papers were observed. *Id.* According to this sworn testimony at the hearing on Petitioner's motion to suppress, the arresting officer determined he had probable cause the moment he smelled the burnt cannabis, a smell he was trained to detect. *Id.* Petitioner's vehicle was searched, but no cannabis was found. *Id.* at p. 4. Prior to impounding the vehicle, \$37,000.00 in U.S. currency was located in an envelope. *Id.*

The Illinois Third District Court of Appeals denied Petitioner's direct appeal reasoning, "Illinois courts have repeatedly recognized that the smell of burnt cannabis emanating from a vehicle will provide officers familiar with and trained in the detection of controlled substances with probable cause to search a vehicle." See *Id.*; *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 34; *People v. Strong*, 215 Ill. App. 3d 484, 489-90 (1991). However, not all of the States agree on this point despite having similar laws on the medical use of cannabis and the decriminalization of small amounts of cannabis.

The Supreme Court of Vermont held that the odor of burnt cannabis alone may not always be sufficient to arrest an individual. *Zullo v. State*, 205 A.3d 466, 501 (Vt. 2019). In *Zullo*, the officer detected a faint odor of burnt marijuana accompanied by a bottle of Visine and an air freshener. This led the officer to investigate whether the defendant was driving under the influence. *Id.* at 474. We urge this court to follow the *Zullo* holding that, "In short, our caselaw has made it clear that an odor of marijuana is a factor, but not necessarily a determinative factor, as to whether probable cause exists." *Zullo*, 205 A.3d at 502.

The Supreme Judicial Court of Massachusetts held that the mere smell of burnt cannabis does not give rise to reasonable suspicion even though there were other factors involved such as a cigar known to conceal the smell of cannabis and being in a high-crime neighborhood. *Commonwealth v. Cruz*, 945 N.E.2d 899, 907 (2011). For police to give an exit order based on suspicion of an offense, the offense must be one that is criminal. *Id.* at 908.

In *Cruz*, there were other factors involved and the court still held that this was insufficient to search a vehicle. *Id.* at 907. The court further held that given the change in status of possession of a certain amount of cannabis from criminal to civil, the smell of burnt cannabis alone cannot provide suspicion of criminal activity. *Id.* at 910. Illinois and Massachusetts have amended their laws to decriminalize certain amounts of cannabis.

New York has also ruled on a similar set of facts. *People v. Brukner*, 25 N.Y.S.3d 559. In the *Brukner* case, officers on bike patrol detected a strong odor of burnt cannabis coming from one person. *Id.* The suspect was observed by law enforcement as he placed a cell phone next to a drainpipe and moved a tin can with his shoe. *Id.* The officers believed this gave them probable cause to search the individual's person for cannabis. The *Brukner* Defendant moved to suppress the evidence and the Tompkins County Court agreed finding the officers did not have enough to establish probable cause.

The Petitioner in this case was returning to his home in Texas when he was stopped in Illinois and searched. The United States Supreme Court should settle the conflicts between the various states to ensure standardized constitutional protections for citizens engaging in interstate travel. The law in Illinois, and other states, subjects citizens to unreasonable searches and seizures, in violation of the Fourth Amendment. There are too many non-criminal reasons that a person may have the odor of cannabis detected from their vehicle during a traffic stop. Law enforcement should be required to develop more before concluding they have probable cause to search a vehicle.

II. Review Is Necessary To Ensure Due Process Under The Fifth Amendment In Light Of Decriminalization Of Certain Amount Of Cannabis

Cannabis is widely used in the United States. The use is both recreational and medical. Illinois has legalized the use of medical cannabis, as has Montana, North Dakota, Minnesota, Missouri, Utah, Arizona, New Mexico, Oklahoma, Pennsylvania, New York, New Hampshire, Connecticut, New Jersey, Delaware, Maryland and Washington D.C. Specifically, on January 1, 2014, Illinois enacted the Compassionate Use of Medical Cannabis Control Act. Citizens have a fundamental right to health care in the United States, as the Supreme Court has recognized that, “[e]veryone will eventually need health care at a time and to an extent they cannot predict.” See *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).

Illinois decriminalized possession of ten grams or less of cannabis, expanded the Compassionate Use of Medical Cannabis Pilot Program and created the Opioid Alternative Pilot Program. These actions by Illinois, and similar statutes in other states, recognizes this fundamental right to healthcare by citizens. This decision to use medical cannabis is a personal one, that is done in private. However, the smell of cannabis clings to the clothing of those who choose to smoke medical cannabis as opposed to those who chose to use the available edible versions.

A citizen could smoke less than ten grams of cannabis in his home (or some other private setting) and then decided to operate his vehicle shortly thereafter, bringing with him the lingering smell of burnt cannabis. If the citizen was then stopped for a minor traffic violation, an officer could be able to detect the odor of

burnt cannabis coming from the clothing of the suspect, even if cannabis was not present in the vehicle or the citizen was able to safely drive the vehicle. Simply put, the odor of burnt cannabis, can be present at a location where no crime has occurred.

The Illinois legislature recognized the uneven enforcement of drug laws across the state. Illinois passed the Criminal Identification Act on January 1, 2018 (20 ILCS 2630/5.2) which required expungement of citations and court records for possessing ten grams or less of cannabis.

The Fifth Amendment to the United States Constitution holds that “[n]o person shall...be deprived of life, liberty, or property, without due process of law...” Since a citizen’s right to make personal decisions regarding their healthcare is a fundamental right, their appearance in public with the smell of that decision upon them cannot subject them to a warrantless search absent significant evidence of criminal conduct and narrowly tailored to serve a compelling state interest. In this case, the only evidence that justified the search, was the smell of cannabis and there was no evidence of improper vehicle operation that amounts to a state interest or public safety concern.

CONCLUSION

The petition should be granted for the reason set forth above.

The United States Supreme Court should uphold a citizen's fundamental right to healthcare and ensure due process. Citizens should not be subjected to unreasonable searches and seizures merely based on their exercise of healthcare decisions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Chuck Schierer", written over a horizontal line.

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