NO. 23-_____

In the Supreme Court of the United States

JUNJIE LI,

Petitioner,

v.

STATE OF RHODE ISLAND,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Rhode Island

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the slight odor of marijuana coming from within a car stopped for a passenger's seatbelt violation, in a state where possession of one ounce or less of marijuana has been decriminalized, combined with the natural and meaningless nervousness of the driver and his travel on I-95, is sufficient to create a reasonable suspicion to prolong the traffic stop in order to have a drug-smelling dog search the vehicle for a criminal amount of marijuana?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellee below

- Junjie Li

Respondent and Plaintiff-Appellant below

- State of Rhode Island

Respondent and Defendant-Appellee below

- Zhong Kuang, a co-defendant of Petitioner

LIST OF PROCEEDINGS

Supreme Court of Rhode Island
No. 2021-153-C.A.
State of Rhode Island v. Junjie Li
consolidated with
No. 2021-154-C.A.
State of Rhode Island v. Zhong Kuang
Opinion: July 27, 2023

Rhode Island Superior Court, Kent County
No. K2-2019-0513A
State of Rhode Island v. Junjie Li
consolidated with
No. K2-2019-0513B
State of Rhode Island v. Zhong Kuang
Suppression Decision: May 10, 2021

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PETITION FOR A WRIT OF CERTIORARI

Junjie Li respectfully petitions for a writ of certiorari to review the decision of the Supreme Court of Rhode Island.

OPINION BELOW

The opinion of the Supreme Court of Rhode Island, No. 2021-153-C.A. (R.I., July 27, 2023) is attached in the (Appendix 3a, hereinafter App.3a). The opinion of the lower court, No. K2-2019-513A (R.I. Super., May 10, 2021), which granted a motion to suppress physical evidence, is attached in the Appendix. (App.45a).

JURISDICTION

The decision of the Rhode Island Supreme Court was entered on July 27, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a), because the issue was decided by the highest court of the state and Mr. Li's rights under the Fourth Amendment to the Constitution of the United States were violated, as explained herein.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

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.

R.I.G.L. § 1-28-4.01 (c)(2)(iii)

> Notwithstanding any public, special or general law to the contrary, the possession of one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older, and who is not exempted from penalties pursuant to chapter 28.6 of this title [the medical marijuana provisions], shall constitute a civil offense, rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars ($150) and forfeiture of the marijuana, but not to any other form of criminal or civil punishment or disqualification. Notwithstanding any public, special, or general law to the contrary, this civil penalty of one hundred fifty dollars ($150) and forfeiture of the marijuana shall apply if the offense is the first (1st) or second (2nd) violation within the previous eighteen (18) months.

R.I.G.L. § 21-28-5.06

> All controlled substances, which may be handled, sold, possessed, or distributed in violation of any of the provisions of this chapter shall be and are declared to be contraband; and shall be subject to seizure and confiscation by any state or local officer whose duty it is to enforce the laws of this state relating to controlled substances.

STATEMENT OF THE CASE

A. Proceedings below

On August 8, 2019, Mr. Li was charged by criminal information in Rhode Island Superior Court with (1) possession with intent to deliver marijuana, R.I.G.L. § 21-28-4.01(a)(4)(i); (2) possession of one to five kilos of marijuana, R.I.G.L. § 21-28-4.01.1(a)(5); and (3) possession of a "Kung Fu" weapon, R.I.G.L. § 11-47-42, arising from a traffic stop on Route I-95 for a seatbelt violation by the passenger, during which police seized 94 pounds of marijuana from the vehicle. Mr. Li's co-defendant, Mr. Kuang, who was the passenger and owned the car Li was driving, was also charged in Counts (1) and (2). Mr. Li and Mr. Kuang filed pre-trial motions to suppress evidence seized during the stop. The Superior Court held a suppression hearing on February 24, 2021 and issued a written decision granting the motion on May 10, 2021. (App.45a). The State of Rhode Island filed a notice of interlocutory appeal. After briefing and argument, the Supreme Court of Rhode Island entered a decision on July 27, 2023, reversing the decision

below (App.3a). The case is currently pending trial in Superior Court.

B. Facts

On Saturday, May 25, 2019, at 11:16 a.m., while monitoring northbound traffic on I-95 in Exeter, RI, Rhode Island State Trooper Justin Andreozzi observed a black Ford Taurus sedan bearing New York plates traveling in the right lane with the front seat passenger not wearing a seat belt. (Tr. 10-11). It appeared the male was sleeping as he passed the location. (Tr. 12). Trooper Andreozzi pulled his patrol car behind the vehicle and observed the front seat passenger sit up, look back at the patrol vehicle, and fasten his seat belt. The trooper then activated his emergency lights and conducted a traffic stop. (Tr. 13).

Trooper Andreozzi approached the stopped car from the passenger side, noticing there were two males inside and the passenger asleep again. After explaining the reason for the stop, the trooper requested driver's licenses, registration, and proof of insurance. (Tr. 14). Although the trooper noted that English was not the driver's primary language, he thought the driver understood what was being stated. (Tr. 16).[1] The driver, Junjie Li, indicated the car belonged to the passenger (his uncle), Zhong Ming Kuang. (Tr. 16). Mr. Li said his uncle was tired, so he

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[1] As noted in Superior Court Justice Procaccini's decision (App.50a, n.11): "While it was apparent to Andreozzi that English was not Li's primary language, Andreozzi did not believe there was a significant language barrier as Li appeared to understand what he was asking and provided proper responses. This Court believes it necessary to point out that both Defendants requested a court interpreter for the hearing."

was driving him to Chinatown in Boston, MA to see a friend. Li and Kuang planned to visit there for "a couple hours" and return to New York. (Tr. 17).

While speaking with Mr. Li, Trooper Andreozzi observed he was nervous, although he conceded drivers are inherently nervous when stopped for traffic offenses. The trooper saw[2] Mr. Li's chest pounding below his clothing and observed him begin to sweat. (Tr. 17-18, 44-45). While he was speaking with Mr. Li, the trooper also observed Mr. Kuang's chest pounding below his clothing. (Tr. 19). At the passenger window, the trooper detected a slight odor of fresh marijuana coming from inside the car. (Tr. 19, 45). These observations caused Trooper Andreozzi to suspect "some type of criminal activity." (Tr. 20).

The trooper asked Mr. Li to exit the car and sit in the passenger seat of the patrol car while he conducted checks of the vehicle registration and its occupants. (Tr. 20, 46) At 11:22 a.m., four minutes after the 11:16 a.m. stop, the trooper entered information for Mr. Li and Mr. Kuang into his computer. (Tr. 11, 47). Search results indicated that the men's licenses and vehicle registration were valid and there were neither criminal records nor warrants for the men. (Tr. 48). At 11:23 a.m., Trooper Andreozzi contacted Trooper D'Angelo and his K-9 "Chuck," a trained narcotics detection dog, to assist with the stop. (Tr. 22-24, 48-49). Trooper Andreozzi had his own police dog in the car, but sought assistance from another K-9.

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[2] Trooper Andreozzi testified that he did not hear the pounding, but observed the chest pounding through the two men's clothing (Tr. at 44-45), apparently as in the cartoon heart pressing in and out from the body.

(Tr. 23-24).

While seated in the patrol car, the trooper asked Mr. Li if his uncle's car contained any illegal contraband, specifically asking about firearms, cocaine, heroin, methamphetamine, marijuana, and large amounts of currency. (Tr. 21-22, 49-50). Upon mentioning marijuana, the trooper observed Mr. Li "target glance" at his uncle's car parked 15 feet directly in front of them, look back at the trooper, and respond "no," as he had to all questions. Li also stated that "he did not know what marijuana was." (Tr. 22-23, 38, 52). The trooper said that "[t]hrough prior narcotic arrest experience and training, the 'target glance' is a non[-]verbal indicator of criminal activity, specifically the transportation of narcotics." (Tr. 52-53).

Trooper D'Angelo and his dog arrived less than five minutes after the call. (Tr. 64). With Mr. Li still in the police vehicle, Trooper Andreozzi asked Mr. Kuang to exit the car and stand outside. As Mr. Kuang exited, the trooper detected an odor of raw marijuana coming from his clothes. (Tr. 25). Trooper D'Angelo next took his K-9 around the car. Chuck placed his nose on the trunk and sat down, indicating the presence of a narcotic odor. (Tr. 25-26, 66). The troopers opened the trunk, where they discovered five large laundry style bags containing suspected marijuana. (Tr. 26-27).

The two men were arrested and taken to the State Police Barracks, along with the bags from the trunk and the car. Troopers removed 94 approximately one-pound bags from the five laundry bags. Field testing indicated the presence of marijuana. (Tr. 27-28). A further search of the car yielded a set of nunchucks in the map pocket of the driver's side

door. A search of Mr. Kuang yielded $6,165 in his wallet. (Tr. 28-29).

C. Decision of Trial Justice Granting Motion to Suppress

Superior Court Justice Daniel A. Procaccini found a violation of *Rodriguez v. United States*, 575 U.S. 348 (2015), because Trooper Andreozzi detoured from the mission of a traffic stop (to enforce a seatbelt violation by a passenger) to perform an investigation into other crimes, without reasonable suspicion to do so. (App.70a). While an officer may order a driver to exit a vehicle, Justice Procaccini "believe[d] that [Trooper] Andreozzi's actions [were] more akin to using officer safety as a mechanism to facilitate a detour from the traffic enforcement mission." (App.60a). While the trooper insinuated that the "level of nervous behavior" of the occupants "could be a type of action that could jeopardize his safety," when asked if he felt unsafe when he took Mr. Li out of the driver seat, he answered "I wouldn't use that adjective, but it was uncomfortable." *Id*.

Justice Procaccini found that "Andreozzi's conduct was at odds with someone who has legitimate concerns for their safety," because the only thing observed of Mr. Li was that he was nervous, "which [Andreozzi] acknowledged was a common reaction exhibited by vehicle occupants during traffic stops." (App.61a). Moreover, "rather than asking Li to step out of the vehicle and stand alongside it so he could get a better glance of Li's person, Andreozzi immediately asked Li to sit next to him in the front passenger seat of

his cruiser, while he ran law enforcement checks"[3]; "did not conduct a pat down of Li" after having him exit the vehicle; and did not pat down or ask the passenger to exit the car. *Id.* "[T]his Court is unable to conclude Li was asked to exit the vehicle based upon a valid concern for Andreozzi's safety." *Id.* Nor was Justice Procaccini "persuaded by Andreozzi's two additional justifications: to separate the parties and to prevent the prolongation of the traffic stop." (App.61a-62a).[4]

The trooper could have had Mr. Li stand next to his car, in front of the police car, or in the breakdown lane. The removal of Li from his car and escorting him to the cruiser prolonged the traffic stop. The judge found that "Andreozzi departed from his seatbelt violation mission and pursued a narcotics investigation when he removed Li from the vehicle." (App.62a). He "never pursued follow-up questioning regarding the traffic violation." *Id.* Rather, (App62a-63a):

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3. Justice Procaccini recognized that Andreozzi's requiring Mr. Li to sit in the police cruiser with him and a police dog was significantly different in terms of privacy concerns than asking the driver or passenger of a car stopped for a traffic violation to exit the car and stand next to it on the roadside, as in *Rodriguez, supra*; *Maryland v. Wilson*, 519 U.S. 408 (1997); and *Pennsylavnia v. Mimms,* 434 U.S. 106 (1977). The judge found and the testimony showed that Trooper Andreozzi asked Mr. Li to "get out of his car and get into the police cruiser," although at times in his opinion, the trial judge used a shorthand version of referring to "removing Mr. Li from his car," as did the attorneys during the hearing.

4 Justice Procaccini essentially was making a credibility determination regarding Trooper Andreozzi's testimony.

> Andreozzi clearly shifted his focus to a narcotics investigation because he not only called for a dog sniff, but he exploited Li's detention in his vehicle to gain more information about possible criminal activity as evidenced by his line of questioning concerning the presence of different types of contraband in the vehicle.

Judge Procaccini "conclude[d] that removing Li from the vehicle was a deviation from the traffic enforcement mission of the stop, and therefore, Andreozzi prolonged the stop when he removed Li from the vehicle." (App.63a).[5]

Justice Procaccini then turned to the question of whether Trooper Andreozzi had adequate reasonable suspicion to justify prolonging the stop. He only looked to the facts that occurred prior to when the traffic stop was prolonged—prior to when Mr. Li was

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[5] During argument at the hearing, the State admitted that the removal of Mr. Li to the police cruiser was the point where the routine traffic stop became a criminal narcotics investigation. At Tr. 78, the prosecutor states:

> Now a couple of comments about Trooper Andreozzi's testimony. I would submit that the one thing that he said that was incorrect on cross-examination was that he was asked . . . . When he was in his vehicle with Mr. Li, and he was asking him the questions about the contraband in the car, whether or not it was still a routine traffic stop at that point and he said yes. That is incorrect. I submit it was not a routine traffic stop at that point. It was a criminal investigation. So, the stop was prolonged even though it was a very short period of time. I'm not contesting that it wasn't.

asked to exit his car and sit in the patrol car. (*Id*). Justice Procaccini found (App.65a-66a):

> [T]here were few facts that when viewed together, could provide Andreozzi with reasonable suspicion to believe criminal activity was afoot. The Defendants were fully compliant with Andreozzi's requests, they did not display aggressive behavior, they did not make furtive movements, and they did not act evasively. Thus, . . . the only articulable facts available to Andreozzi were Li's nervousness, the slight odor of marijuana, and the fact that Defendants were traveling on a public highway known to be part of a drug trafficking corridor.

Nervousness was of little use to the Court because "[n]ervousness is a common and entirely natural reaction to police presence[.]" (App.67a, citing *United States v. McKoy*, 428 F.3d 38, 40 (1st Cir. 2005)). Andreozzi testified that "everybody is nervous when they get stopped by the police." (App.61a, at n.16, App.67a). The Court also said that "it is unreasonable to infer that a person is a drug trafficker simply from a use of the highway when there is no indication that the interstate highway has fallen so out of favor with travelers not engaging in the trafficking of narcotics." (App.67a, citing *State v. Bowen*, 481 P.3d 370, 374 (Or. Ct. App. 2021)).

As for the slight odor[6] of marijuana, this is where recent trends regarding marijuana laws, and

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[6] At the suppression hearing, Trooper Andreozzi attempted to modify his written report by testifying regarding "the slight odor of fresh marijuana" that appeared therein (Tr. 19):

Rhode Island's decriminalization of less than one ounce of marijuana were considered by the Court, which noted that "Andreozzi never followed up on the slight odor he detected," (App.68a), by asking if either man in the car had a medical marijuana card, or whether they had smoked that day, or if and how much marijuana they had in their possession. Instead, Andreozzi directed Li to his patrol car and began questioning him related to a narcotics investigation, such as whether the car contained any cocaine, methamphetamines, large amounts of cash, or marijuana—without reasonable suspicion to do so. To find reasonable suspicion in such circumstances would allow police to prolong traffic stops and conduct drug investigations whenever they stop a nervous occupant of a car and detect the slight odor of marijuana. (App.69a). "This result would surely be incompatible with the State's changing perception of marijuana usage and its prevalence in our daily lives." *Id*. There was no "independent reasonable suspicion to prolong the traffic stop of [the] vehicle." (App.70a)

D. Decision of R.I. Supreme Court Reversing the Trial Justice

The Rhode Island Supreme Court recognized that "the primary question presented by the instant appeal is whether Officer Andreozzi possessed reasonable suspicion to believe criminal activity was afoot, justify-

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> So fresh marijuana I meant green, unsmoked (sic) green marijuana not burnt. As far as the slight, obviously I wrote this post, post arrest so in my eyes, 94 pounds of marijuana which is what was later located, I would have thought that it would have had a stronger odor but that was my mentality at the time.

ing the prolongation of the stop to conduct a dog sniff." (App.14a-15a) Disagreeing with the trial justice, the majority found that reasonable suspicion existed when the trooper removed Mr. Li from his car. (App.20a, App.32a, n.14).

Because marijuana remains a controlled substance, and marijuana in excess of one ounce remains contraband, the Court, at App.27a:

> reject[ed] defendants' position that law enforcement officers may not rely upon the odor of marijuana, with no other facts indicating quantity, to establish reasonable suspicion. Such a standard would be impracticable to impose on law enforcement officers and their K-9 police dogs, who are specifically trained to identify the presence of scheduled narcotics through scent, regardless of quantity. Thus, for these reasons, it is our opinion that the odor of raw or fresh marijuana, standing alone, remains a factor to be considered in a totality of the circumstances, reasonable suspicion of criminal activity analysis because possession of marijuana by an individual that exceeds the amount permitted by statute remains a crime subject to arrest and prosecution.

The Court concluded, App.32a-33a, that:

> While we acknowledge that defendant's nervousness and their route of travel on a public highway were not strong indicators of criminal activity in and of themselves, when considering the totality of the circumstances from the vantage point of an expe-

> rienced police officer, defendant's abnormal nervousness and route of travel of short duration, coupled with the odor of marijuana, could very well create a reasonable suspicion that the defendants were engaged in some sort of criminal activity.

E. Dissenting Opinion of the Rhode Island Supreme Court

The dissenting opinion noted that the "undisputed historical fact found by the trial justice was that '[a]fter obtaining the vehicle registration as well as Li and Kuang's licenses, Andreozzi requested Li to exit the vehicle and directed him to sit in the front passenger seat of his cruiser while he performed law enforcement checks.'" (App.36a, n.1). Moreover, the dissent pointed out that the trial justice made a credibility determination regarding the testimony of Trooper Andreozzi—that he was not required to accept an officer's testimony or inferences unquestioningly, nor was he required to be persuaded by it. (App.39a, n.2). "[A] trial justice who is not fully persuaded by a police officer's testimony, or who perceived contradictions in that testimony, does not clearly err by assigning less than full weight to that testimony." (*Id*).

The dissenter stated that: "Considering the recent legislative developments legalizing recreational marijuana in Rhode Island, I respectfully but unequivocally disagree with the decision to allow law enforcement officers to presume that an individual possesses an *illegal* quantity of an otherwise *legal* substance." (App.42a, n.3).

The dissenting opinion concluded, App.42a:

[B]ecause possession by an adult of one ounce or less of marijuana is not criminal, and because it is no longer criminal for a person with a valid medical marijuana prescription to possess marijuana, I agree with the trial justice that our Fourth Amendment jurisprudence required Officer Andreozzi to "increase the scope of his investigation by degrees" before calling for a sniffer dog, thereby prolonging the traffic stop. *United States v. Ruidiaz*, 529 F.3d 25, 29 (1st Cir. 2008) (quoting [*United States v.*] *Chhien*, 266 F.3d [1,] 6) [(1st Cir. 2001)]. Moreover, like the trial justice, I also acknowledge the prevalence of legal marijuana in contemporary society and agree that, when viewed together under the totality of circumstances, the three factors articulated by Officer Andreozzi did not constitute reasonable suspicion sufficient to prolong the traffic stop. [footnote omitted].

REASONS FOR GRANTING THE WRIT

There are two reasons for granting the writ of certiorari: (1) the R.I. Supreme Court has decided an important Fourth Amendment question in a way that conflicts with the decision of other state courts of last resort, and (2) because a large majority of states have decriminalized the possession of small amounts of marijuana, the R.I. Supreme Court has decided an important Fourth Amendment question that has not been, but should be, settled by the Supreme Court of the United States.

A. Conflicting Decisions of State Courts of Last Resort

At least nine states (Alaska, Colorado, Massachusetts, Michigan, Minnesota, New Hampshire, Oregon, Pennsylvania, and Vermont) with statutes decriminalizing the possession of small amounts of marijuana have determined that the odor of marijuana during a traffic stop, without more, does not provide reasonable suspicion to prolong the stop to investigate whether there is a violation of marijuana laws. In Mr. Li's case, Rhode Island has joined the minority of at least four states (Arizona, Illinois, Maryland, and Oklahoma) that have found decriminalization does not change the law with regard to the odor of marijuana.

Massachusetts had a similar marijuana decriminalization statute, prior to the Commonwealth's and Rhode Island's more recent legalization of recreational marijuana, which it interpreted to change the law regarding odor providing reasonable suspicion or

probable cause. For that reason, and the more complete development of the law regarding the issue, Massachusetts' cases provide an example of Mr. Li's arguments regarding the effect of decriminalization in Rhode Island, and are more fully discussed below at Section D. Rhode Island's decriminalization statutes are specifically discussed in Section C below.

1. Summary of Conflicting Decisions

Following the passage of decriminalization statutes, of the nine states that have found the odor of marijuana no longer provides either reasonable suspicion or probable cause, only two did not involve traffic stops (Alaska and Michigan), although the Michigan case involved the search of an occupied car. Four states (Massachusetts, New Hampshire, Oregon, and Vermont) found the odor of marijuana no longer provides reasonable suspicion, while five (Alaska, Colorado, Michigan, Minnesota, and Pennsylvania) states found the odor no longer provides probable cause. While the issue was raised under both the Fourth Amendment to the U.S. Constitution and similar state constitutional provisions in all of the cases, two (Alaska and New Hampshire) states relied on state constitutional provisions, although one of the cases in New Hampshire (*State v. Perez*, 239 A.3d 975, 989 (N.H. 2020)) indicates the Court reaches the same result under the Federal Constitution. The remainder relied on the Fourth Amendment.

Of the five states that found decriminalization statutes did not change the effect of the odor of marijuana, three involved traffic stops (Illinois, Oklahoma, and Rhode Island), while two did not (Maryland and Arizona). Three states (Illinois, Maryland, and

Rhode Island) found the odor of marijuana sufficient to provide reasonable suspicion, and two (Arizona and Oklahoma) found the odor sufficient to provide probable cause. Each of these five states decided the issue on Fourth Amendment grounds.

2. Cases Finding Odor of Marijuana Alone No Longer Sufficient

Each of the nine states finding odor of marijuana alone is not sufficient for reasonable suspicion or probable cause, indicated that the odor could be considered along with other facts addressing individualized, articulable suspicion or cause. Some cases, however, along with the odor of marijuana, have listed factors that are common and meaningless regarding the totality of circumstances in finding suspicion or cause, thereby indicating a continuing importance of marijuana odor despite the decision that it is not sufficient alone for suspicion or cause.

The **Michigan** Court of Appeals[7], in *People v. Armstrong*, No. 360693 (Mich.Ct.App. Nov. 22, 2022), recognized three positions that state appellate courts have adopted following decriminalization of marijuana statutes: (1) the "emerging majority approach" holds that the smell of marijuana does not establish probable cause for either a search of a vehicle or a command to the occupants to get out of the vehicle; (2) the "minority view" states that a law enforcement officer has probable cause to search when he detects an odor of marijuana coming from a vehicle if mari-

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[7] The Michigan Supreme Court hears appeals by leave only, *People v. James*, 725 N.W.2d 71 (Mich.Ct.App. 2006), making the Court of Appeals effectively the court of last resort.

juana in any amount remains contraband; and (3) the "middle ground" that the smell of marijuana may be a factor, combined with others, in determining whether the totality of the circumstances established probable cause to permit a police officer to conduct a warrantless search of a vehicle or to seize a driver or passenger found in the vehicle. The Court adopted the middle ground, finding the odor of marijuana coming from a car parked on the street with two people in it, was all that the officers relied upon to search the car, because the other argued factors occurred after the detention, and upheld the suppression of the evidence.

The **Minnesota** Supreme Court, in *State v. Torgerson*, No. A22-0425 (Minn. Sept. 12, 2023), held that following decriminalization, the odor of marijuana can be considered in the totality of circumstances analysis in determining if there is a fair probability that contraband or evidence of a crime will be found in the location searched. Since, after a traffic stop, the only indication that a criminal amount of marijuana would be found in the car was the "medium-strength" odor, the suppression of the evidence was allowed.

The **Colorado** Supreme Court, in *People v. Zuniga*, 372 P.3d 1052 (Colo. 2016), found that, following decriminalization of the possession of an ounce or less of marijuana, as well as medical marijuana, the trial court erred when it completely disregarded the odor of marijuana in its probable cause analysis of the search of a car following a traffic stop. The Court then, considering the odor of marijuana in the analysis, found probable cause to search the car based on the "remarkably disparate accounts" given

by the driver and the passenger of their visit to Colorado; the "heavy odor" of raw marijuana coming from the vehicle; the alert from the officer's K-9 narcotics dog as he traveled around the car; and the "extreme" nervousness of both the driver and the passenger and their delayed response times. The trial court's suppression order was reversed.

In *State v. Nagel*, 232 A.3d 1081 (Vt. 2020), the **Vermont** Supreme Court found that the police, who had stopped defendant for driving with a suspended license, prolonged the stop to investigate drug offenses when he was asked to get out of the car and questioned regarding narcotics. To do so, the officers needed reasonable suspicion of a drug offense. The faint smell of burnt marijuana had limited probative value, which would not, by itself, support the state's seizure. *Id*. at 1087, citing *Zullo v. State*, 205 A.3d 466, 502-503 (Vt. 2019) (odor of marijuana and presence of eye drops and an air freshener insufficient to seize car in order to search). The other factor cited by police, that the car had been seen at a house connected to known criminal activity was insufficient to create reasonable suspicion to investigate drug offenses. *Id*.

The **New Hampshire** Supreme Court, in *State v. O'Brien*, No. 2022-0081 (N.H. Apr. 26, 2023), cited its earlier opinion in *State v. Perez*, 239 A.3d 975 (N.H. 2020), which adopted a middle, totality-of-the-circumstances approach to the issue. Following decriminalization of small amounts of marijuana, Ms. O'Brien was stopped for driving with the left license plate light out, when the officer noticed the odor of marijuana. The Court said the defendant's innocent responses to the officer's inquiry, including that she had been smoking marijuana earlier in the

day, and the lack of any other evidence suggesting criminal activity should have dispelled the officer's suspicion of illegal drug activity or of possession of more than three-quarters of an ounce of marijuana. The Court held that the officer's detection of an odor of marijuana, standing alone, was insufficient to justify his expansion of the traffic stop to ask for consent to search the defendant's vehicle.

In *Commonwealth v. Barr*, 266 A.3d 25 (Pa. 2021), the **Pennsylvania** Supreme Court faced facts similar to those in Mr. Li's case. After midnight, a state trooper stopped a car for failing to come to a complete stop at a stop sign. There were three people in the car, the defendant in the passenger's seat, his wife who was driving, and a passenger in the back seat who appeared to drift in and out of sleep. Approaching the car, the officer smelled the odor of marijuana. He asked the driver to get out of the car so he could judge whether she was driving while impaired. The defendant started arguing with the officer, saying no one was getting out of the car. The trooper then searched the car, finding marijuana and a handgun. The trial judge suppressed the evidence, finding that the search was based on the odor of marijuana alone. A Superior Court three-judge panel then reversed, agreeing that odor alone was not sufficient, but that the officer's experience in narcotic's investigation, the fact that the car was in a "high crime" area, and the demeanor of the defendant amounted to cause to search the car.

The Supreme Court reversed the three-judge panel and reinstated the suppression of the evidence by the trial judge, agreeing that following decriminalization, the odor of marijuana is not sufficient for

cause to search the car. The Court noted that the trial judge was aware of the training and experience of the officer, found the character of the neighborhood of the stop was legally irrelevant to the issue of probable cause, and discredited the trooper's contention that the argument from defendant was indicative of criminal activity. Since the trial judge was acting within his discretion in evaluating the testimony of the trooper, his legal conclusion regarding the odor of marijuana as being the sole reason for the search was supported by the record. His suppression order was reinstated.

In *State v. Moore*, 488 P.3d 816 (Or.Ct.App. 2021),[8] an **Oregon** state trooper stopped defendant's car for speeding. He noticed a "very strong odor" of green marijuana coming from the vehicle. He asked about the odor and the defendant answered that he had less than an ounce of marijuana in a ceramic container resting on the passenger seat. The trooper asked for the container and the demeanor of the defendant changed—he became sad and deflated. Looking inside the container, the trooper determined that it was well more than the legally possessed ounce or less. The Court found that the traffic stop was changed to a drug investigation and was prolonged without reasonable suspicion when the driver was questioned about the odor. The "very strong odor" of marijuana was found to be subjective and not determinative of quantity, and, following decriminalization, does not support a reasonable suspicion that defendant pos-

8. The Oregon Court of Appeals acts as a court of last resort, although a petition for review can be filed in the Oregon Supreme Court. O.R.S. § § 2.516 and 2.520.

sessed an unlawful amount of marijuana. *Id*. at 820-821.

The **Alaska** Court of Appeals,[9] in *State v. Crocker*, 97 P.3d 93 (Alaska Ct.App. 2004), held that, under the state constitution, no search warrant for a home can issue for evidence of marijuana possession unless the State affirmatively establishes probable cause to believe that the marijuana exceeds the statutory ceiling of four ounces that may be legally possessed, or is being commercially sold. The "strong odor" of marijuana coming from the home was not sufficient to establish an illegal amount. *Id*. at 97.

California is not listed here as a tenth state where decriminalization has rendered the odor of marijuana not persuasive for reasonable suspicion or probable cause, because the Supreme Court of California, which can resolve conflicts among the various appellate courts within that state (Cal. App. Rule 8.500), has not acted yet, as there appears to be no conflict. However, a number of appellate courts within California have found that, following traffic stops, various combinations of marijuana odor and observation of closed packages containing small amounts of marijuana are not sufficient for reasonable suspicion to investigate or probable cause to search a car. *See People v. Aaron Sung Min Yim*, No F081023 (Cal.Ct.App. June 28, 2022); *Blakes v. Superior Court*, 287 Cal.Rptr.3d 799 (Cal.Ct.App. 2021); *People v. Hall*, 271 Cal.Rptr.3d 793 (Cal.Ct.App. 2020); *People*

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[9] There is the possibility of applying for an appeal to the Alaska Supreme Court (Alas. Stats. §§ 22.05.010 and 22.07.020), but the decision of the Court of Appeals acts as a court of last resort.

v. McGee, 266 Cal.Rptr.3d 650 (Cal.Ct.App. 2020); *People v. Johnson*, 264 Cal.Rptr.3d 103 (Cal.Ct.App. 2020); *People v. Schumake*, 259 Cal.Rptr.3d 405 (Superior Ct. for County of Alameda 2019); and *People v. Lee*, 253 Cal.Rptr.3d 512 (Cal.Ct.App. 2019). These courts require a showing of reasonable suspicion or probable cause to believe that an additional amount of marijuana, beyond the decriminalized threshold, would be found before authorizing a search.

3. Cases Finding Odor Alone Remains Sufficient

The **Maryland** Court of Appeals,[10] in an opinion similar to the Rhode Island Supreme Court in Mr. Li's case, *In re D.D.*, 277 A.3d 949, 968 (Md. 2022), decided that, following decriminalization, the odor of marijuana alone provides reasonable suspicion to investigate narcotics offenses, although not probable cause to search. The odor of marijuana caused the police to stop several young men as they were walking on a stairway in an apartment building, following which, during questioning, the police developed reasonable suspicion that D.D. was armed and dangerous and then frisked him, finding the illegal weapon with which he was charged. Since possession of 10 or more grams of marijuana is still a crime, the Court felt any other ruling would significantly hamper the investigation of criminal activity in Maryland. The Court of Appeals overruled the Court of Special

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10 The Maryland Court of Appeals was, and remains, the court of last resort in the state. The name was changed to the Supreme Court of Maryland on December 14, 1922, following the opinion in this case. *See courts.state.md.us* and click on "history."

Appeals, which had reversed the trial judge's ruling upholding the search. *See also Robinson v. State*, 152 A.3d 661, 681 (Md. 2018).

The **Illinois** decriminalization statute also made possession of less than 10 grams of cannabis no longer criminal, but subject to a civil violation subject to a fine. The Illinois Court of Appeals,[11] in *People v. Os*, 112 N.E.3d 621 (Ill.App.Ct. 2018), faced a case where the police, when driving by a car that was idling in a no parking zone, noticed the odor of marijuana coming from the vehicle. The three officers pulled in front of the car, cutting off the chance to escape and the officers surrounded the vehicle. The Court held that since the possession of 10 grams or more remains a crime, as does driving while impaired by the ingestion of marijuana, the odor of marijuana alone was indicative of criminal activity and provided the officers with reasonable suspicion to believe that criminal activity was afoot. When the three occupants rolled down the window, the odor of marijuana was even stronger and they saw a marijuana cigarette tucked behind the ear of the rear seat passenger, which provided probable cause to search the car and its occupants. *Id.* at 634. *See also People v. Rice*, 125 N.E.3d 546 (Ill.App.Ct. 2019).

The **Arizona** Supreme Court, in *State v. Sisco*, 373 P.3d 549 (Ariz. 2016), faced the issue of whether decriminalization, by passage of the Arizona Medical Malpractice Act, altered the law regarding the odor of marijuana providing probable cause to search a building. There, the police received a tip that one of

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11 Appeals in criminal cases in Illinois go to the Illinois Court of Appeals. Ill. Sup. Ct. R. 603.

several storage warehouses smelled of marijuana. Police went to the warehouse and smelled a strong odor of fresh marijuana, and cited that fact to obtain a search warrant. The Court found that since Arizona still generally prohibited the possession and cultivation of marijuana, the odor of marijuana alone provides probable cause to search, unless probable cause is dispelled by indicia of compliance with medical marijuana possession or cultivation laws. It used this "odor unless" standard to reverse the court of appeals, which had suppressed the evidence for lack of probable cause. *See Id*. at 553-556.

The **Oklahoma** Criminal Appeals Court,[12] in *State v. Roberson*, 492 P.3 620 (Okla.Crim.App. 2021), found that decriminalization of medical marijuana does not change the fact that marijuana possession otherwise is generally a crime. A police officer saw an SUV with an expired tag leave the parking lot of a motel known for drug use. The driver was not wearing a seat belt; his passenger ducked down as if she were hiding something when the vehicle was pulled over; both driver and passenger did not produce driver's licenses; the driver was nervous and had Irish Mob tattoos; and a records check revealed both driver and passenger had extensive criminal records, including drug convictions. The Court held that the seatbelt violation and the expired tag made the traffic stop lawful, and the other facts mentioned above provided reasonable suspicion to question the driver, which resulted in him telling the officer that there was a small amount of marijuana in the ash tray. After the

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[12] The Oklahoma Criminal Appeals Court is the court of last resort for criminal cases. *Meyer v. Engle*, 369 P.3d 37, 39 (Okla. Crim.App. 2016).

officer entered the car to look for the marijuana, he noticed a strong odor of raw marijuana and then searched the entire vehicle.

Because the medical marijuana law did not change the fact that marijuana possession otherwise is generally a crime in Oklahoma, the limited decriminalization did not affect a police officer's formation of probable cause based on the presence or odor of marijuana. Upon being told about marijuana in the ash tray, the officer had probable cause to search the car, and acquired further probable cause after he entered the car and smelled a strong odor of raw marijuana inside. The trial judge's order granting the motion to suppress was reversed. *Id*. at 623-624.

B. Important Fourth Amendment Questions After Decriminalization

Although it is difficult to keep up with the number of states that have decriminalized marijuana in some fashion, there are approximately 40 states that have decriminalized marijuana in some form. The typical process in an individual state is decriminalization of medical marijuana, followed by decriminalization for possession of a small amount of marijuana, and finally, decriminalization of recreational use of marijuana in small amounts. The website *marijuanamoment.net* is currently tracking 1300 cannabis, psychedelics, and drug policy bills in state legislatures and Congress for the 2023 sessions.

Decriminalization is also an important revenue source for state governments, which impose additional taxes on sales of marijuana. In the small state of Rhode Island, the R.I. Department of Business Regulation reported that retailers sold nearly $9.7

million worth of legal marijuana in August 2023—the fourth month in a row of record-setting sales (compare August 2023 Maryland sales of $90 million and Illinois sales of $140 million). *See marijuanamoment.net*, Sept. 26 and Oct. 5, 2023 newsletters. The numbers indicate that all around the country the legal possession of small amounts of marijuana has and will continue to increase, making the issue of the conflicting decisions regarding Fourth Amendment violations a large and growing concern.

There is also another concern. In the case of *United States v. Miguel E. Pavao*, case No. 1:22-CR-00034-MSM-PAS, U.S. District Court for the District of Rhode Island, counsel faces an argument reminiscent of the "silver platter doctrine" of *Elkins v. United States*, 364 U.S. 206 (1960)—that state or local police or prosecutors can refer cases to federal court, without regard for state decriminalization statutes, because the federal laws still list marijuana as a Schedule I drug, possession of which is illegal, allowing the odor of marijuana alone to find reasonable suspicion or probable cause. By doing so, they hope to avoid the issues regarding the odor of marijuana in decriminalization states.

Virginia v. Moore, 553 U.S. 164 (2008), provides an example of the problem. In *Moore,* a custodial arrest for driving under the influence was disallowed under Virginia law, which provided that a citation should have been issued. The search incident to arrest located crack cocaine supporting the drug arrest. The Court found the Fourth Amendment was not violated by the state law prohibiting a custodial arrest and that the search incident thereto was lawful under the Fourth Amendment, which allows a

custodial arrest for a misdemeanor crime. The Court found that when a state chooses to protect privacy beyond the level required by the Fourth Amendment, it does not change the application of the Fourth Amendment. Basically, while Virginia can protect privacy interests more than the protections offered by the Fourth Amendment, the state cannot amend the federal constitution. *Moore* does not address the state, under its police powers, altering substantive crimes.

In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Court held that Congress' Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana in compliance with California medical marijuana law. This 18-year-old case, by a 6 to 3 majority vote, found that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the Controlled Substances Act. The underlying rationale of the *Raich* decision has been eroded by both state decriminalization laws and federal policies regarding the prosecution of marijuana cases, as pointed out by the opinion of Justice Thomas in a case in which certiorari was denied.

In *Standing Akimbo, LLC v. United States*, 141 S.Ct. 2236 (2021), in his statement regarding the denial of certiorari, Justice Thomas, in language worth quoting, stated the problems with the *Raich* decision as follows:

> Whatever the merits of *Raich* when it was decided, federal policies of the past 16 [now 18] years have greatly undermined its reasoning. Once comprehensive, the Federal Government's current approach is a half-in,

half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary.

This case is a prime example. Petitioners operate a medical-marijuana dispensary in Colorado, as state law permits. And, though federal law still flatly forbids the intrastate possession, cultivation, or distribution of marijuana, Controlled Substances Act, [] 21 U.S.C. §§ 802(22), 812(c), 841(a), 844(a), the Government, post-*Raich*, has sent mixed signals on its views. In 2009 and 2013, the Department of Justice issued memorandums outlining a policy against intruding on state legalization schemes or prosecuting certain individuals who comply with state law. In 2009, Congress enabled Washington, D.C.'s government to decriminalize medical marijuana under local ordinance. Moreover, in every fiscal year since 2015, Congress has prohibited the Department of Justice from "spending funds to prevent states' implementation of their own medical marijuana laws." *United States v. McIntosh*, 833 F.3d 1163, 1168, 1175-1177 (CA9 2016) (interpreting the rider to prevent expenditures on the prosecution of individuals who comply with state law). That policy has broad ramifications given that 36 States allow medicinal marijuana use and 18 of those States also allow recreational use. [the number of states is constantly increasing: Rhode Island is one

> of the states that has recently legalized recreational marijuana, R.I.G.L. § 21-28-4.01 (c)(2)(iv), (v)] [footnotes omitted].

In *Standing Akimbo,* 141 S.Ct. at 2238, a case involving provisions of the Federal Tax Code regarding deductible expenses for state marijuana businesses, Justice Thomas, after pointing out problems with conflicts between state and federal laws enforcement of marijuana laws, concluded that:

> [T]he Federal Government's current approach to marijuana bears little resemblance to the watertight nationwide prohibition that a closely divided Court found necessary to justify the Government's blanket prohibition in *Raich*. If the Government is now content to allow States to act "as laboratories" "'and try novel social and economic experiments,'" *Raich*, 545 U.S. at 42 [] (O'Connor, J., dissenting), then it might no longer have authority to intrude on "[t]he States' core police powers . . . to define criminal law and to protect the health, safety, and welfare of their citizens." *Ibid*. A prohibition on intrastate use or cultivation of marijuana may no longer be necessary *or* proper to support the Federal Government's piecemeal approach.

A decision that allows local police to enforce federal marijuana laws in conflict with state marijuana laws would allow a state or city police officer to circumvent and nullify the state legislature's determination of state criminal law, allowing local police to ignore state laws passed under the police powers reserved to the states by the federal constitution, and conduct themselves as they had prior to state mari-

juana decriminalization, based on federal drug policy. Local officers could simply take evidence seized illegally under state laws to the federal courts for prosecution. Such an approach reincarnates the "silver platter doctrine" disallowed in *Elkins, supra.*

C. Rhode Island Decriminalization and Controlled Substances Acts

Possessing less than one ounce of marijuana was decriminalized by R.I.G.L. § 21-28-4.01(c)(2)(iii).[13] The statute provides:

> *Notwithstanding any public, special or general law to the contrary*, the possession of one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older, and who is not exempted from penalties pursuant to chapter 28.6 of this title [the medical marijuana provisions], shall constitute a *civil offense*, rendering the offender liable to a *civil penalty* in the amount of one hundred fifty dollars ($150) *and forfeiture of the marijuana*, but not to any other form of criminal or civil punishment or disqualification. [emphasis added].

Marijuana remains listed as a controlled substance under the Uniform Controlled Substances Act of Rhode Island, R.I.G.L. § 21-28-1.02(8). A person

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[13] Following the events in Mr. Li's case, the state legislature enacted the Rhode Island Cannabis Act, R.I.G.L. §§ 21-28.11-1 *et seq*., which went into effect on May 25, 2022. The Act allows adult recreational use of marijuana, allowing an adult to purchase and possess on his person one ounce or less of cannabis, and possess in his primary residence up to 10 ounces of cannabis per resident. R.I.G.L. § 21-28.11-22.

possessing more than one ounce of marijuana remains subject to criminal punishment. R.I.G.L. § 21-28-5.06 provides:

> SEIZURE OF CONTRABAND—All controlled substances, which may be handled, sold, possessed, or distributed *in violation of any of the provisions of this chapter* shall be and are declared to be contraband; and shall be subject to *seizure and confiscation* by any state or local officer whose duty it is to enforce the laws of this state relating to controlled substances. [emphasis added].

When illegally possessed, marijuana may be "seized and confiscated." If legally possessed, however, marijuana is not "*in violation of any of the provisions of this chapter;*" and therefore, it is not "*contraband subject to seizure and confiscation.*"[14] Possession of less than one ounce of marijuana is subject to a "civil penalty" and "forfeiture." The use of differing language in the two provisions clarifies the underlying rationale of the decriminalization statute.

Medical marijuana, the subject of a lawful prescription, is lawfully possessed and should not be considered contraband or subjected to seizure. R.I.G.L. § 21-28-4.01(c)(1) provides:

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14 Nor is less than an ounce of marijuana "contraband" under the accepted definition of the term. *See* BLACK'S LAW DICTIONARY, Fourth Pocket Edition (2011) ("contraband" is defined as "goods that are unlawful to . . . possess," "property whose possession is unlawful regardless of how it is used," and "property whose possession becomes unlawful when it is used in committing an illegal act.").

> It shall be unlawful for any person knowingly or intentionally to possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice *or except as otherwise authorized by this chapter*. [emphasis added].

R.I.G.L. § 21-28.6 provides the specific regulations for "medical marijuana."

The "[n]otwithstanding any public, special or general law to the contrary" clause of the decriminalization statute, R.I.G.L. § 21-28-4.01(c)(2)(iii), refers to, among other provisions, the "seizure and confiscation" of "contraband" provision of R.I.G.L. § 21-28-5.06. The decriminalization statute provides for "forfeiture" of one ounce or less of marijuana. Since it is no longer criminal to possess one ounce or less of marijuana, as provided by R.I.G.L. § 21-28-4.01(c)(2)(iii) , this quantity of marijuana does not violate the Rhode Island Uniform Controlled Substances Act and is not contraband "subject to seizure and confiscation." Rather, possession of one ounce or less solely "constitute[s] a civil offense," subject to "a civil penalty in the amount of one hundred fifty dollars ($150) and forfeiture," if in plain view.

Mr. Li's contention is that, based on these state statutes, police may not rely upon the odor of marijuana, with no other facts indicating quantity, to establish reasonable suspicion to prolong a traffic stop for a narcotics investigation or probable cause to search. The Rhode Island Supreme Court "reject[ed] defendant's position that law enforcement officers may not rely upon the odor of marijuana, with no other

facts indicating quantity, to establish reasonable suspicion." (App.27a).

D. Massachusetts' Interpretation of Its Decriminalization Statute

Following the decriminalization of possessing one ounce or less of marijuana in Massachusetts, cases found that the odor of marijuana is not sufficient to justify a stop or search of a car, or an exit order for the driver. *See*, *e.g.*, *Commonwealth v. Rodriguez*, 37 N.E.3d 611 (Mass. 2015); *Commonwealth v. Craan*, 13 N.E.3d 569 (Mass. 2014); *Commonwealth v. Overmyer*, 11 N.E.3d 1054 (Mass. 2014); *Commonwealth v. Cruz*, 945 N.E.2d 899 (Mass. 2011); *Commonwealth v. Locke*, 51 N.E.3d 484 (Mass. App. 2016). Further, the odor of burnt or unburnt marijuana alone cannot provide reasonable suspicion of criminal activity to justify an exit order, or probable cause to search a vehicle under the automobile exception to the warrant requirement. *Overmyer,* 11 N.E.3d at 1058; *Cruz,* 945 N.E.2d at 910. Nor does the odor of marijuana allow police to even stop a car to issue the driver a citation for a civil infraction that does not relate to highway safety. *Rodriguez,* 37 N.E.3d at 620.

The Supreme Judicial Court, most recently in *Commonwealth v. Cordero*, 74 N.E.3d 1282 (Mass. 2017), considered the authority of a police officer to prolong a routine traffic stop to investigate suspected, unrelated criminal activity. The Court concluded that "once a police officer has completed the investigation of a defendant's civil violations, and the facts do not give rise to reasonable suspicion of criminal activity, the officer is required to permit the defendant to drive away." Police authority to seize an individual in the context of a traffic stop ends "when tasks tied

to the traffic infraction are – or reasonably should have been – completed." *Id*. at 1287-1288 (citing *Rodriguez*, 575 U.S. at 354).

In *Craan*, when the defendant was asked if there was more marijuana in the car, he opened the glove compartment to reveal a small plastic bag containing a substance believed to be marijuana. The Court found that "[t]he mere possibility that more marijuana was present in the vehicle does not amount to probable cause to believe that the defendant had committed, or was committing, a crime, namely possession of more than one ounce of marijuana." 13 N.E.3d at 576. *See also Commonwealth v. Daniel*, 985 N.E.2d 843 (Mass. 2013) (defendant's surrender of two small bags of marijuana did not give rise to probable cause to search the vehicle). In *Overmyer,* the strong smell of unburnt marijuana and the discovery of a "fat bag" were insufficient to warrant a reasonable belief by police that there was more than one ounce of marijuana present inside a car. The presence of less than one ounce of marijuana does not give rise to probable cause to search for additional marijuana. *Commonwealth v. Jackson*, 985 N.E.2d 853, 859 (Mass. 2013).

The Massachusetts Supreme Judicial Court noted that the intent of the decriminalization law was clear —"possession of one ounce or less of marijuana should not be considered a serious infraction worthy of criminal sanction." *Cruz*, 945 N.E.2d at 909. Therefore, the Massachusetts Supreme Judicial Court concluded that its analysis must give effect to the clear intent of the statute, and it held that the investigation of marijuana should only be reserved for the instance in which there is probable cause to believe that the search or investigation would yield a criminal amount

of marijuana. *Cruz,* 945 N.E.2d at 905-909. Essentially, the Massachusetts Supreme Judicial Court reasoned that the decriminalization statute, making possession of one ounce or less of marijuana a minor civil infraction, reflects the underlying intent that possession of marijuana, without probable cause to believe the suspected amount is more than an ounce, does not permit police to invade property and privacy rights entailed by a search. The Massachusetts holdings stand for the proposition that odor alone does not give rise to reasonable suspicion of criminal activity, and that the probable cause necessary to conduct a search cannot be established solely with information to believe a civil infraction has occurred.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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