

24-7160
No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

_____*_____
PRENTISS JACKSON,
Petitioner,
VS.

UNITED STATES OF AMERICA,
Respondent.

_____*_____
On Petition for Writ of Certiorari

To the United States Court of Appeals
For the Seventh Circuit

_____*_____
PETITION FOR WRIT OF CERTIORARI
_____*_____

PRENTISS JACKSON

PRO SE REPRESENTATION

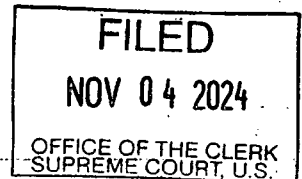
REG NO. 15033-26

FCI RAY BROOK

P.O. BOX 900

RAY BROOK, NY 12977

ORIGINAL



QUESTIONS PRESENTED FOR REVIEW

Whether it is constitutional to search a vehicle for the odor of marijuana alone, in a state that has legalized marijuana for possession, for consumption, and to cultivate?

Whether Illinois odorless container law (625 ILCS 5/11 - 502.15) is constitutional ... being that the actual person can legally smell of marijuana?

Whether it is constitutional for a state police officer to enforce federal law?

PARTIES TO THE PROCEEDINGS

Prentiss Jackson #15033-026, Petitioner

FCI Ray Brook

P.O. BOX 900

Ray Brook, NY 12977

Pro se representation for Petitioner

Attorney for Respondent,

United States,

Sarah M. Harris;

Acting Solicitor General

Department of Justice

Washington, D.C. 20530

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE(S)</u>
QUESTIONS PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDINGS.....	ii
INDEX OF AUTHORITIES.....	iv
CITATIONS OF OPINIONS AND ORDER IN CASE.....	1.
JURISDICTIONAL STATEMENT.....	1.
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.....	1.
STATEMENT OF THE CASE.....	2.
EXISTENCE OF JURISDICTION BELOW.....	3.
REASONS FOR GRANTING WRIT.....	3.
CONFLICT WITH FOURTH AMENDMENT JURISPRUDENCE; CONFLICT WITH OTHER JURISDICTIONS AND FEDERAL LAW.....	3.
ARGUMENTS AMPLIFYING REASONS FOR WRIT BASED ON THE FOURTH AND FOURTEENTH AMENDMENTS AND ERR'S OF THE SEVENTH CIRCUIT	
COURT OF APPEALS.....	7.
ARGUMENT 1.	7.
ARGUMENT 2.	9.
ARGUMENT 3.	9.
ARGUMENT 4.	10.
ARGUMENT 5.	11.
CONCLUSION.....	12.
PROOF OF SERVICE.....	14.
APPENDIX TO PETITION	
APPENDIX A (Original Judgment of Conviction)	
APPENDIX B (Published Opinion of U.S. Court of Appeals 7th Cir.)	

INDEX OF AUTHORITIES

JURISPRUDENCE

PAGE(S)

<u>Commonwealth v. Craan</u> , 469 Mass. 24, 13 N.E. 3d 569, 577 (Mass. 2014).....	11.
<u>Consumers Union of the United States, Inc. v. Walker</u> , 145 F. 2d 33, 79 U.S. App. D.C. 229, 1944 U.S. App. LEXIS 2399 (D.C. Cir. 1944).....	8.
<u>G&S Holdings LLC. v. Continental Cas. Co.</u> , 697 F. 3d. 534, 538, 540 (7th Cir. 2012).....	9.
<u>Pennsylvania v. Mimms</u> , 434 U.S. 106, 111 n.6, 98 S.Ct. 330, 54 L. Ed. 2d. 331 (1977).....	10.
<u>People v. Redmond</u> , 210 N.E. 3d 786, 463 Ill. Dec. 630 (Ill. 2023).....	7.
<u>People v. Stribling</u> , 2022 Ill. App. 3d 210098 ¶29 (Ill. App. 3d 2022).....	7.
<u>Printz v. United States</u> , 521 U.S. 898, 918-19, 117 S.Ct. 2365, 138 L. Ed. 2d 914 (1997).....	11.
<u>United States v. Cade</u> , 93 F. 4th 1056, 1062 (7th Cir. 1991).....	9.
<u>United States v. Gonzalez</u> , 933 F. 2d 417, 448 (7th Cir. 1991).....	9.
<u>United States v. Jones</u> , 438 F. Supp. 3d. 1039, 2020 U.S. Dist. LEXIS 23642 (N.D. Cal. 2020).....	10.
<u>United States v. Maffei</u> , 417 F. Supp. 3d 1212, 2019 U.S. Dist. LEXIS 70314 (N.D. Cal. 2019).....	10.
<u>United States v. McGuire</u> , 957 F. 2d. 310, 314 (7th Cir. 1992).....	9.
<u>United States v. Payne</u> , 102 F. 3d. 289, 293	

INDEX OF AUTHORITIES (continued)

<u>JURISPRUDENCE</u>	<u>PAGE(S)</u>
(7th Cir. 1996).....	9.
<u>Johnson v. United States</u> , 333 U.S. 10, 14-15	
68 S.Ct. 367, 92 L. Ed. 436 (1948).....	4.
<u>Haines v. Kerner</u> , 404, U.S. 519, 520-21,	
92 S.Ct. 594, 30 L. Ed. 2d 652 (1972).....	12.
 <u>Illinois State Codes & Statues</u>	
410 ILCS 705/10-5	
410 ILCS 705/10-10	
625 ILCS 5/11-502.15	
 <u>United States Code</u>	
18 U.S.C. § 922(g)(1)	

Petitioner, Prentiss Jackson, prays that this Honorable Court will issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered in the above proceeding June 4, 2024.

I.

CITATIONS OF OPINIONS AND ORDERS IN CASE

The original judgment of conviction of Petitioner in the United States District Court for the Central District of Illinois was not reported and is attached hereto as Appendix "A".

The opinion and order of the United States Court of Appeals for the Seventh Circuit is published and is attached hereto as Appendix "B".

II.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on June 4, 2024. This jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

III.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fourth Amendment of the United States Constitution provides:

"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."

2. The Fourteenth Amendment of the United States Constitution

provides:

"Sec. 1 [Citizens of the United States] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State derive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

*

IV.

STATEMENT OF THE CASE

On July 11, 2022, a federal grand jury for the Central District of Illinois, returned a one count indictment charging Prentiss Jackson with the offense of "Felon in Possession of a Firearm" [Count One], in violation of 18 U.S.C. § 922(g)(1).


On October 7, 2022, Petitioner filed a motion to suppress evidence, and was denied November 21, 2022.

Petitioner entered a conditional guilty plea to "Felon in Possession of a Firearm under 18 U.S.C. § 922(g)(1), still reserving the right to appeal the district courts denial of his motion to suppress on December 20, 2022.

Petitioner was Sentenced to 72 months for Count One "Felon in

possession of a firearm", by the U.S. District Court judge on April 10, 2023.

Petitioner's direct appeal was filed after his sentencing to the U.S. Court of Appeals to the Seventh Circuit. It was denied June 4, 2024.

Petitioner filed a Rehearing and Rehearing En Banc July 22, 2024. It was denied August 7, 2024. 

_____*_____
V.

EXISTENCE OF JURISDICTION

Petitioner was indicted and convicted in the United States District Court for the Central District of Illinois, for Felon in possession of a firearm under 18 U.S.C. § 922(g)(1). A motion to suppress evidence was made in the district court and denied. A timely appeal to the United States Court of Appeals for the Seventh Circuit was filed.

_____*_____
VI.

REASONS FOR GRANTING WRIT

CONFLICT WITH FOURTH AMENDMENT JURISPRUDENCE; CONFLICT WITH OTHER JURISDICTIONS AND FEDERAL LAW.

The Illinois Supreme Court's decision directly conflicts with decisions from other state and federal courts that have recognized the diminished evidentiary value of marijuana odor in jurisdictions

where cannabis has been legalized or decriminalized. Many jurisdictions have recognized that the odor of marijuana alone, without other corroborating evidence, is insufficient to establish probable cause. This is true in light of the increasing legalization of cannabis and the availability of products designed to mask its odor.

The decision of the Supreme Court of Illinois conflicts with established Fourth Amendment jurisprudence regarding probable cause and the exigent circumstances exception to the warrant requirement. In Johnson v. United States, 333 U.S. 10, 14-15, 68 S.Ct. 367, 92 L. Ed. 436 (1948), this Court emphasized the importance of warrants and the limitations on warrantless searches. The Illinois court's ruling effectively eliminates the need for a warrant in a vehicle searches involving cannabis, even when allegedly contained in a sealed container, based solely on the odor. This expansion of the automobile exception, significantly erodes Fourth Amendment protections.

Impact of Odorless Containers: The Illinois "odorless container" law creates a legal fiction that effectively ignores the reality of sealed containers. The law's presumption that the odor of cannabis automatically provides probable cause, even when allegedly emanating from the actual person undermines the reasonable expectation of privacy. This issue requires this Courts attention to ensure consistent application of Fourth Amendment principles. Also the Illinois "odorless container" law, which allows for the legal transport of cannabis in sealed containers,

directly contradicts the assertions that the odor of marijuana automatically implies illegal activity.

National Importance: This issue has significant national implications as more states legalize cannabis. This Court's guidance is crucial to establish a uniform standard for determining probable cause in vehicle searches involving cannabis, balancing law enforcement needs with individual Fourth Amendment rights. The current state of law is inconsistent and creates confusion for law enforcement and citizens alike. In states where cannabis is legal or decriminalized, the odor of marijuana no longer unequivocally indicates criminal activity. The Illinois Supreme Court's decision fails to account for the reasonable possibility that the odor of marijuana may be associated with lawful possession.

State Supreme Courts Ruling Against Vehicle Searches Based on Marijuana Odor Alone:

1. Pennsylvania: In 2021, the Pennsylvania Supreme Court ruled that police cannot search vehicles based solely on the smell of marijuana, considering the state's legal medical cannabis program.
2. Vermont: The Vermont Supreme Court ruled that the smell of burnt marijuana alone cannot justify a vehicle search due to marijuana's legalization in the state.

Because of the above mentioned, the Court of Appeals for the Seventh Circuit erred in their decisions affirming denial of Petitioner Prentiss Jackson's, motion to suppress in the U.S. District Court.

For the following reasons, Petitioner respectfully request that the Court grant the petition for a writ of certiorari to review the judgment of the Supreme Court of Illinois. Also Petitioner urges that all aspects of the U.S. District Court and Court of Appeals decisions are erroneous and undermines Petitioner Fourth Amendment protections against unreasonable searches and seizures.

*

ARGUMENTS AMPLIFYING REASONS FOR WRIT BASED ON THE FOURTH AND
FOURTEENTH AMENDMENTS AND ERR'S OF THE SEVENTH CIRCUIT COURT OF
APPEALS

ARGUMENT 1.

The Seventh Circuit said, to rebut the officer's testimony and the district courts credibility finding, Jackson must show that the district court clearly erred in determining that the officer smelled unburnt marijuana and was able to differentiate that odor from burnt marijuana ... from the officer's own testimony, he is trained in the odor's of burnt and unburnt marijuana, well. He should also be trained in the "language" of burnt and unburnt marijuana. The conversation starts with the officer asking Mr. Jackson has he been "smoking" that night. It is prevalent that if you imply about "smoking" that you are implying about "burnt" marijuana (smoking is synonymous with burnt). The officer also stated that he was investigating a "DUI" also "burnt" marijuana (See, Dist. Ct. trans., page 5 & 6). Even the district court judge said that the officer's testimony of investigating a DUI contradicts his testimony of smelling unburnt marijuana (the officer only said that he smelled unburnt marijuana after Jackson passed him a baggie of unburnt marijuana). This case is identical to (People v. Redmond, 210 N.E. 3d 786, 463 Ill. Dec. 630 (Ill. 2023)) and (People v. Stribling, 2022 Ill. App. 3d 210098 ¶29 (Ill. App. 3d 2022)). Jackson contends that after the passage of (410 ILCS 705/10-5) and (410 ILCS 705/10-10) that even if the officer could have miraculously smelled 2 grams of unburnt marijuana,

"through a tied plastic baggie in a closed middle console of a car." That smell did not provide either suspicion or probable cause to believe that there was contraband in the car. Jackson also contends that Illinois odorless container law (625 ILCS 5/11-502.15) should be abrogated by Illinois legalization of marijuana law (410 ILCS 705/10-5 and 705/10-10), being that Illinois has legalized marijuana for possession (raw marijuana), for consumption (burnt marijuana), and to cultivate (fresh marijuana). Even if a person has marijuana in the vehicle stored in a odorless container, that still does not prevent that actual "person" from "legally" smelling of marijuana him or herself, and without any corroborating factors like, the officer seeing drugs, or drug paraphernalia in plain view. The only way know if that person violated the odorless container law, "or not", the officer would first have to violate that persons Fourth Amendment rights.

~~Jackson argue's that it is impossible for these laws to coexist without creating untenable situation's, See (Consumers Union of United States, Inc. v. Walker, 145 F. 2d 33, 79 U.S. App. D.C. 229 , 1944 U.S. App. LEXIS 2399 (D.C. Cir. 1944); "While it is duty of courts, whenever they can to interpret statutes in such manner as to avoid doubt of constitutionality, there is also a duty to avoid absurdity or injustice." Illinois marijuana laws is inane and unclear because 1.) "burnt" marijuana is synonymous with "DUI", but yet, Illinois Supreme Court ruled that a person "cannot" be searched for the odor of burnt marijuana. 2.) "raw" marijuana is synonymous with "possession". In the state of Illinois it is legal to possess up to 30 grams of marijuana, but yet, Illinois Supreme Court ruled that a person "can" be searched for the odor of raw~~

marijuana. As long as it is legal for "people" to smell like marijuana, the odorless container law cannot exist. The officer has no way way of knowing if it is the "person" or the "container".

ARGUMENT 2.

The Seventh Circuit erred when it ruled that Jackson did not have license because this argument was not raised in the district court , and thus should be waved. See G&S Holdings LLC. v. Continental Cas. Co., 697 F. 3d 534, 538, 540 (7th Cir. 2012). See also United States v. Payne, 102 F. 3d 289, 293 (7th Cir. 1996), "The courts have repeatedly held that a party that fails to press an argument before the district court waives the right to present that argument on appeal" (citing United States v. Gonzalez, 933 F. 2d 417, 448 (7th Cir. 1991)). But Jackson did have a drivers license (See officer body cam video). When asked by the officer did he have license, Jackson stated "yes I do have drivers license". Jackson even gave the officer his "state ID" so he could check. The officer never checked.

ARGUMENT 3.

Case's cited by the Seventh Circuit are either outdated or is distinguishable from Jackson's case, See United States v. Cade, 93 F. 4th 1056, 1062 (7th Cir. 2024)(citing United States v. McGuire, 957 F. 2d 310, 314 (7th Cir. 1992)) (holding where a driver admits to drinking alcohol, and an officer sees an open alcohol container in the car, the officer had probable cause to search the driver and the car). The officer in Jackson's case testified that he did not see anything in the vehicle (there was no

corroborating factors) and second, Jackson told the officer that he had smoked earlier in the day (he did not say that he had smoked right then), for it is legal for Jackson to have smoked earlier that day, "just not in the car". Even in Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6, 98 S.Ct. 330, 54 L. Ed. 2d. 331 (1977), which the Seventh Circuit also cited, Jackson's case is distinguishable. In "Mimms" it was common practice of the officer to make people get out of the vehicle, plus, the officer feared for his safety. The officer in Jackson's case testified that he did not fear for his safety, and the "only" reason given for why Jackson had to get out of the vehicle, was because the officer said that he smelled a little bit of weed (See officer body cam). The officer stated "since I smelled a little weed, I'm going to search".

ARGUMENT 4.

The Seventh Circuit ruled that although the state of Illinois has legalized marijuana, marijuana is still illegal under federal law, and thus gives a state officer the right to search under federal law. In United States v. Maffei, 417 F. Supp. 3d 1212, 2019 U.S. Dist. LEXIS 70314 (N.D. Cal. 2019) and United States v. Jones, 438 F. Supp. 3d. 1039, 2020 U.S. Dist. LEXIS 23642 (N.D. Cal. 2020), (Officers are San Francisco Police officers charged with enforcing California law, not federal law, and the court is not persuaded by the governments arguments that notwithstanding the passage of Proposition 64, which is synonymous with 410 ILCS 705/10-5) the officers could rely on the smell of marijuana alone to search the car because marijuana is illegal under federal law).

Jackson contends that the officer was an Urbana, IL officer charged with enforcing Illinois law, not federal law. (See Commonwealth v. Craan, 469 Mass. 24, 13 N.E. 3d 569, 577 (Mass. 2014)). "Federal law does not supply an alternative basis for investigating possession of one ounce or less of marijuana so to allow state officers to defy the state laws they are entrusted with upholding so that they might enforce federal laws which they cannot be compelled to enforce would be unjust", See Printz v. United States, 521 U.S. 898, 918-19, 117 S.Ct. 2365, 138 L. Ed. 2d 914 (1997).

ARGUMENT 5.

Jackson argues that this case only deals with hypothetical situations, despite the fact that a trained officer testified that Jackson showed no signs of impairment; Jackson wasn't driving erratic, ~~Jackson's speech was not slurred; Jackson was alert and responsive.~~ The Seventh Circuit still ruled that Jackson "could have" been impaired. The facts of the case are, Jackson only did what Illinois law said he could do, and the only infraction "known" ~~to the officer at the time the officer announced that he~~ was going to search, is that Jackson was driving with his headlights off on a "well lighted street". Jackson contends that a plain reading of Illinois statute suggest that the odor of marijuana "burnt or raw" in Illinois is permissible, and to allow the governments strained interpretation of Illinois odorless container law , which states that (the odor of marijuana should be undetectable to an officer) would render the whole legalization of marijuana in Illinois statute meaningless, See (410 ILCS 705/10-5

and 705/10-10). Jackson could of had "HEMP" which is legal state and federal and does not require an odorless container, when the state of Illinois legalized marijuana "de facto" Illinois legalized the "odor" of marijuana also, and under the 4th Amendment by way of the 14th Amendment, it is unreasonable to search a vehicle for a "legal" odor alone, "alcohol", "HEMP", or "marijuana". Basically alcohol is required to be in a odorless container also "can or bottle" but yet, a vehicle cannot be searched for the odor of alcohol alone.

*

CONCLUSION

Petitioner, Prentiss Jackson, has been deprived of basic fundamental rights guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution and seek relief in this Court to restore those rights. Based on the arguments and authorities presented herein, Petitioner's "Search and Seizure" and "Equal Protection" rights were violated. Petitioner was deprived of these rights through his encounter with law enforcement officers in Illinois, the U.S. District Court and the Seventh Circuit Court of Appeals. Petitioner prays this Court will issue a writ of certiorari and give an decision to the conflicting states and federal courts regarding search and seizure issues regarding marijuana odors in legalized states and reverse the judgment of the Seventh Circuit Court of Appeals. "The Court must liberally construe a pro se litigants pleadings." See, Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L. Ed. 2d 652 (1972).