

TRAFFIC STOPS AND ODOR OF CANNABIS IN ILLINOIS

In *People v. Redmond*, 2024 IL 129201, the Illinois Supreme Court held that the odor of burnt cannabis alone does not provide probable cause for police to search a car.

- The court reasoned that the mere odor of burnt cannabis alone does not establish that a person used cannabis while driving or otherwise violated applicable motor vehicle laws. A person may smell of burnt cannabis from being near other people who were using cannabis long before entering the car, for example.
- However, police may consider the odor of burnt cannabis among the totality of circumstances to determine if there is probable cause to search a car. For example, if police observe clouds of cannabis smoke emanating from a moving vehicle, they could reasonably conclude that the occupant of the vehicle is violating the prohibition on using cannabis within a motor vehicle and could stop and search the car to look for burning cannabis.

In *People v. Molina*, 2024 IL 129237, the Illinois Supreme Court held that the odor of raw cannabis alone does provide probable cause for police to search a car.

- The difference in the Court’s treatment of burnt and raw cannabis turns on a “stringent” provision of the Illinois Vehicle Code requiring cannabis to be transported in an “odor proof” container in a car. *Molina*, 2024 IL 129237, ¶ 58. The Court held that the odor of raw cannabis provides probable cause to believe that the occupant of the vehicle possesses cannabis that is not in an “odor proof” container as required by statute.
- The Court specifically encouraged the legislature to amend the Vehicle Code and the Cannabis Regulation Act “so users of cannabis know how to possess cannabis without violating the laws and so police officers know when they have probable cause to enforce the laws.” *Molina*, 2024 IL 129237 ¶59.

The different holdings in *Redmond* and *Molina* may cause confusion. For example, it is fair to ask whether law enforcement officers are able to distinguish the odors of burnt and raw cannabis. It is also uncertain whether police will be permitted to rely on drug-sniffing dogs (canines) trained to detect cannabis, because dogs are not trained to distinguish the odors of burnt and raw cannabis. Fundamentally, drivers are rightfully confused why police can search them and their car based on the odor of an item that they are lawfully permitted to possess in Illinois.

The confusion can be resolved by:

- Removing the “odor proof” container requirement from the Illinois Vehicle Code.
- Including an affirmative statement in the law that the odor of cannabis – burnt or raw – does not provide probable cause to stop or search an individual, a vehicle, or a person’s belongings.