

‘Slight’ Smell of Marijuana Not Enough to Justify Extended Traffic Stop

A Rhode Island Superior Court judge recently cited the trend of decriminalizing and legalizing marijuana in granting a motion to suppress evidence that was obtained during a 2019 search of a vehicle after a traffic stop. Judge David Procaccini found that a ‘slight’ smell of marijuana, coupled with a driver’s nervousness and the fact that the car was travelling on Route I-95, known to law enforcement officers as a drug-trafficking corridor, was insufficient to justify a prolonged traffic stop in which a Rhode Island State Police trooper subsequently discovered 94 pounds of marijuana in the trunk of the vehicle. As a result, Judge Procaccini granted the defendant’s motion to suppress the evidence, because the traffic stop became unlawful when it was prolonged beyond the initial reason for the traffic violation (failure to wear a seat belt). [State v. Li](#), No. K2-2019-0513A (R.I. Super. May 10, 2021).

The case involved a relatively straightforward traffic stop by a Rhode Island State Police trooper on Route I-95 northbound on Memorial Day weekend in 2019. The trooper pulled over the car in Exeter because he observed the passenger sleeping and not wearing a seatbelt. In conversing with the driver and passenger, the trooper detected a “slight” odor of marijuana, and noticed that the driver and passenger were exhibiting nervous behavior. The trooper requested the driver leave the vehicle and sit in the front seat of the state police cruiser while he performed his checks of the driver’s license and vehicle registration. While the driver was in the cruiser, the trooper called for backup and for a canine trained in marijuana detection. After the canine indicated a marijuana odor from the vehicle’s trunk, the trooper opened it and found 94 one-pound vacuum-sealed bags of marijuana.

The driver and passenger were charged with possession with intent to deliver marijuana and with possession of one to five kilograms of marijuana. The defendants moved to suppress the evidence found during the search of the vehicle, on the grounds that the traffic stop became unlawful when it was prolonged beyond the initial reason for the stop, and, in the alternative, that the vehicle was searched and the marijuana was seized without probable cause.

Judge Procaccini reviewed the “growing movement across the United States” to either decriminalize or legalize the possession and use of recreational and medical marijuana. He also noted that Rhode Island currently has decriminalized the possession of one ounce or less of marijuana, has legalized the use of medical marijuana, and has proposed legislation before the General Assembly to legalize recreational marijuana possession and use and tax marijuana sales. He also stated that while the Rhode Island Supreme Court has not yet ruled on how the odor of marijuana affects the reasonable suspicion or probable cause determination in light of the decriminalization of marijuana, two other Superior Court decisions have held that the odor of marijuana can be a factor in the test for probable cause to search a vehicle, because marijuana is still contraband. (See decisions [here](#) and [here](#).)

Judge Procaccini went on to distinguish those two decisions because there were additional elements such as prior drug charges, untruthfulness, and visible marijuana, that were not present in the case before him. In addition, he was not persuaded that the officer removed the driver from the vehicle for the officer’s safety, in part because the officer did not conduct a pat down of the driver, did not ask the driver to stand outside the vehicle, and was unaware of whether the driver had a criminal history or existing warrants. Judge Procaccini concluded that removing the driver from the vehicle was a deviation from the traffic enforcement mission of the stop, and, therefore, the trooper prolonged the traffic stop when he removed the driver from the vehicle. He then concluded that nervousness, coupled with the route of travel and the “slight” odor of marijuana, was insufficient to establish reasonable suspicion to prolong the traffic stop. As a result, he granted the motion to suppress.

Because the court concluded that the traffic stop was unreasonably prolonged, the decision does not address whether the state trooper had probable cause to search the vehicle.

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Date Created

June 18, 2021