

People v. Moore

(2021) 64 Cal.App.5th 291

Issue

Did an officer have probable cause to search a vehicle for marijuana?

Facts

A Sacramento police sergeant on patrol noticed a Jeep SUV parked on a curb. He also noticed that the front passenger seat was open, and that a man—later identified as Jemondre Moore—was standing outside the door leaning inside. Suspecting a drug deal, the sergeant stopped behind the Jeep, at which point Moore walked away but watched from a nearby park. As the sergeant approached the Jeep, he detected “a strong smell of fresh [i.e., unburnt] marijuana” and asked the driver “if there was anything illegal” in the vehicle? The driver responded, “Not that I know of,” which was somewhat suspicious because he was essentially saying, “I might be carrying something illegal but, if so, I don’t know anything about it.”

When asked about the odor of marijuana, the driver said he keeps his marijuana in a glass mason jar but had recently smoked all of it. He then showed the sergeant a mason jar that contained some marijuana residue.

At this point, the sergeant noticed there was backpack on the floorboard on the front passenger’s side where Moore had been standing. Believing he had probable cause, he conducted a search for illegal marijuana. When he picked up the backpack, Moore walked back to the Jeep and claimed the backpack was his, and that he didn’t want the sergeant to search it.

Unmoved, the sergeant searched the vehicle and found a jar containing approximately one-quarter pound of marijuana, a loaded .40-caliber handgun, and digital scales. Moore was arrested and, when his motion to suppress the evidence was denied, he pled guilty to one count of possession of a firearm by a convicted felon. He was sentenced to five years in prison.

Discussion

Although it is legal for adults to possess marijuana for recreational purposes under certain circumstances, probable cause to search for it cannot exist unless, in addition to proof of possession, there was a fair probability that it was possessed illegally. Among other things, it is illegal to possess more than one ounce,¹ possess it in a vehicle in an “open” container,² and ingest marijuana while driving or riding in a vehicle.³ Proof that a person was smoking marijuana in a vehicle is often based on the odor of “burnt” marijuana, as opposed to “fresh” or unsmoked marijuana.⁴

¹ Health & Saf. Code § 11357(a).

² See Health & Saf. Code § 11362.3(a)(4). Also see *People v. Hall* (2020) 57 Cal.App.5th 946, 957 [the officer’s “entire testimony on the container of marijuana in Hall’s car was as follows: ‘I observed clear plastic baggies, inside of which was a green leafy substance’ The officer offered no description of the state of the plastic bag”].

³ Health & Saf. Code § 11362.3(a)(7).

⁴ See *People v. Waxler* (2014) 225 Cal.App.4th 712, 721 [the officer “had probable cause to believe appellant’s truck contained contraband after smelling burnt marijuana near the truck and seeing burnt marijuana in the truck, irrespective of whether possession of up to an ounce of marijuana is

As noted, the sergeant testified that he detected a strong odor of fresh marijuana in the Jeep. Although he did not see any fresh marijuana at the time, the court ruled that he had probable cause to search based on “the strong odor of fresh marijuana emanating from the Jeep,” and the driver’s “implausible explanation” that the odor came from previously-burnt marijuana. Said the court:

The sergeant testified to the “strong” odor of fresh marijuana he noticed emanating from the Jeep that, in his training and experience, he reasonably believed could not be accounted for by the empty mason jar [the driver] produced or from [the driver’s] explanation that the smell was caused by the residual traces of recently burnt marijuana.

Also noted, but less important, the court cited Moore’s sudden decision to distance himself from the backpack, the driver’s statement that he was merely “unaware” of any marijuana in the vehicle, that the incident occurred in a “high-crime area,” and that the sergeant believed that Moore’s conduct indicated “a potential drug transaction occurring in the Jeep.”

Consequently, the court ruled the sergeant had probable cause to search. POV

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an infraction and not an arrestable offense”]; *U.S. v. Talley* (2020 N.D. Cal.) 467 F.Supp.3d 832, 835 [“a person cannot smoke marijuana while driving or while a passenger in a car”].