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Two recent court of appeals cases examined a new concept in Indiana law: the extent to which a law enforcement officer's detection of a distinct odor will supply probable cause for a search or reasonable suspicion for an investigatory stop.

In the first case, a police officer observed the defendant's vehicle commit two traffic infractions. The defendant turned into a parking lot, and the officer followed. As the officer approached the vehicle, he smelled marijuana coming from it. The officer, after checking the defendant's license, told him that he smelled marijuana. The defendant admitted smoking a marijuana cigarette but had thrown the remainder out earlier. The officer asked if he could search the vehicle, but the defendant refused. The officer then told the defendant that he felt he had probable cause to search the vehicle. At that point the defendant reached into the glove compartment and handed the officer a cigarette package containing marijuana.

The trial court held that the search was valid because, in handing the marijuana to the officer, the defendant consented to the search. But the court of appeals stated that even if this "consent" was invalid, the officer had probable cause to search the vehicle under the automobile exception to the warrant requirement. The officer detected the distinct odor of marijuana, and the defendant admitted to having smoked marijuana earlier. While no Indiana cases have held that probable cause is established solely by the odor of marijuana in a vehicle, the courts of other states have. Therefore, the court of appeals felt that the odor of marijuana, *coupled with* the defendant's admission, was enough to establish probable cause in this case.

In the second case, an officer stopped the defendant's vehicle for speeding. He asked for identification and registration. The defendant complied. The car was registered to another person. The defendant was asked to exit the car and when he did, the officer smelled raw marijuana. The officer issued a warning ticket and told defendant the traffic stop was over. The officer asked if the defendant would mind answering a few questions. The officer then asked for permission to search the vehicle, which was refused. The officer then radioed for a canine unit. He told the defendant he was free to leave but the car had to stay. About 30 minutes later the canine unit arrived, and the dog alerted to the presence of illegal drugs. A search of the vehicle led to the discovery of a trash bag containing 12 pounds of marijuana.

The court in this case specifically refused to decide whether the odor of marijuana alone can establish probable cause to search because it was not necessary to the case. The search did not occur until after the narcotics dog alerted, which was what established probable cause. But the court noted that the odor of marijuana is distinctive and capable of being detected by trained or experienced law enforcement personnel. The officer in this case was an experienced officer, with hundreds of arrests involving marijuana and other drugs. The officer's detection of the smell of marijuana, together with reasonable inferences arising from it, would permit an ordinary prudent person to believe that criminal activity has or was about to occur. Therefore, the smell of marijuana can satisfy the reasonable suspicion requirement justifying an investigatory stop and detention.

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Another issue faced in the second case is the permissible length of an investigatory stop. Such a stop begins when the person being questioned no longer remains free to leave (the same rule applies where the person being questioned is free to leave but his property is detained). The police must diligently pursue a means of investigation that is likely to confirm or dispel their suspicions quickly.

Here, the stop lasted 45 minutes, including 30 minutes necessary for the arrival of the canine unit. The court felt the officer acted diligently in obtaining the dog to confirm or dispel his suspicion ("obviously there will be inevitable delay in obtaining a dog").

Cody v. State, 702 N.E.2d 364 (Ind. App. 1998).

Kenner v. State, 703 N.E.2d 1122 (Ind. App. 1999).

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