



MICHIGAN STATE POLICE LEGAL UPDATE

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SEARCH & SEIZURE

The smell of marihuana, standing alone, no longer constitutes probable cause to search for that substance.

In *People v Armstrong*, Armstrong was a passenger in a Jeep parked on the street as police drove by. While driving past, a police officer smelled the scent of burnt marihuana emanating from the Jeep. As a result, several officers stopped and surrounded the Jeep on foot while another officer approached to speak with both persons in the Jeep about the scent of burnt marihuana. While doing so, the officer noted Armstrong's hands were shaking, he gave inconsistent answers about where he lived, and he had leaned down as the officer approached. Armstrong was then instructed to exit the Jeep, immediately searched, and placed into handcuffs before a firearm was found under the passenger seat. As a result, Armstrong was charged with carrying a concealed weapon under [MCL 750.227](#), felon in possession of a firearm under [MCL 750.224f](#), and felony firearm under [MCL 750.227b](#).

Armstrong moved to suppress the firearm as the fruit of a search done in violation of the Fourth Amendment. The trial court granted Armstrong's motion to suppress and dismissed the case. The prosecutor appealed.

The Court of Appeals affirmed the trial court's dismissal and held that officers seized Armstrong before he was ordered out of the Jeep because a reasonable person in Armstrong's position would not have felt free to terminate or leave the encounter when the parked Jeep was blocked by officers. Because probable cause was required to justify Armstrong's removal and subsequent search of the Jeep without a warrant, the question on appeal focused on whether the smell of marihuana, *standing alone*, still constitutes probable cause under *People v Kazmierczak* after passage of the Michigan Regulation and Taxation of Marihuana Act (MRTMA). The Court held it does not.

Noting that search-and-seizure law is now much more complicated and nuanced than it was when marihuana was unlawful in all circumstances in Michigan, the Court held the smell of marihuana, by itself, does not give rise to probable cause unless it is combined with other factors that bolster the concern about illegal activity that may flow from the smell of marihuana. Although the smell of marihuana may be considered like other factors in the calculus of probable cause, the Court held the additional facts articulated as suspicious by the prosecutor in this case cannot be considered because they were observed *after* the Jeep was unconstitutionally seized by officers.

VEHICLE CODE

Violation for impeding traffic requires evidence the accused's conduct actually affected the normal flow of traffic.

In *People v Lucynski*, Lucynski was the driver of a vehicle observed stopped in the middle of a road who appeared to be talking to the driver of another vehicle facing the opposite direction. Both vehicles began to move when the officer was about 800 feet away. Although there were no other vehicles in the area and the officer did not have to slow down or avoid either vehicle, the officer believed the vehicles were impeding traffic in violation of [MCL 257.676b](#). After following Lucynski's vehicle into a private drive and parking behind it to block his only path of egress, the officer contacted Lucynski and subsequently arrested him for operating while intoxicated and other traffic offenses. Lucynski challenged the validity of the stop for impeding traffic under [MCL 257.676b](#).

The Michigan Supreme Court eventually granted Lucynski's application for leave to appeal. After holding that Lucynski was seized under the Fourth Amendment when the officer used his vehicle to block Lucynski's only path of egress, the focal issue in determining the legality of the seizure was whether [MCL 257.676b\(1\)](#) requires evidence that the accused's conduct actually affected the normal flow of traffic or whether the mere possibility of it affecting traffic was sufficient.

Noting the conduct clearly prohibited under [MCL 257.676b\(1\)](#) is to "block, obstruct, impede, or otherwise interfere with the normal flow of vehicular, streetcar, or pedestrian traffic upon a public street or highway," the Court held that impeding traffic requires an assessment of traffic at the time of the alleged offense and some evidence of conduct that actually affected the usual smooth, uninterrupted movement or progress of the normal flow of traffic on the roadway.

Officers should be aware that interference with a police officer's ability to travel on a road could sustain a violation of [MCL 257.676b\(1\)](#) just as easily as interference with other vehicles traveling on a road. However, the impeding traffic statute is not violated if the normal flow of traffic was never impeded, blocked, or interfered with.

CRIMINAL LAW AND PROCEDURE MANUAL

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