Truck Drivers and Pot Heads: Can the Two Ever Be Friends?

# Handling Marijuana Issues in Your Trucking Case

**By Patrick E. Foppe**

**Marijuana is the second most prevalent psychoactive substance involved in driving under the influence cases. As legalization efforts continue, attorneys should prepare to handle more marijuana issues in trucking cases.**

At last count, 23 states, the District of Columbia, and Guam now allow some form of legalized medicinal use of marijuana (cannabis). *See State Marijuana Laws Map*, www.governing.com http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html. *See also Legal Medical Marijuana States and DC: Laws, Fees, and Possession Limits*, ProCon.org (Mar. 3, 2016). Five of these jurisdictions—Washington, Colorado, Oregon, Alaska, and the District of Columbia—also legally permit some recreational use of marijuana. Wash. Rev. Code §69.50.4013, *et seq.*; Colo. Rev. Stat. 12-43.4-101, *et seq.*; Or. Rev. Stat. §475.320; D.C. Code §7-1671.02; Alaska Stat. §17.38.010.

It is widely known that marijuana is the most frequently abused illicit drug used in the United States. Further, it is second only to alcohol as the most prevalent psychoactive substance seen in cases of driving under the influence. *See* J.A. Phillips *et*

■ Patrick E. Foppe is a member with Lashly & Baer PC in St. Louis, Missouri. He has been representing trucking companies, brokers and logistics companies as well as their insurance carriers for more than a decade. He frequently handles disputes involving commercial transportation accidents, federal and state safety regulations, contract disputes, insurance coverage, freight claims, and other disputes involving trucking companies. Mr. Foppe serves on the DRI Trucking Law Committee steering committee and is the coordinator of its Specialized Litigation Groups (SLGs).

*al.*, *Marijuana in the Workplace: Guidance for Occupational Health Professionals and Employers*, 56 JOEM 459 (2015), *available at* http://www.acoem.org/uploadedFiles/Public_Affairs/Policies_And_Position_Statements/Guidelines/Guidelines/Marijuana percent20JointGuidance percent202015.pdf. Although some recent reports seem to indicate that traffic fatalities involving a party who has marijuana in his or her system have risen in states that have legalized marijuana in some form, the full effect of the legalization has been difficult to determine because of, in part, the lack of a good, quick, roadside test for marijuana as there is for alcohol. *See* Greg Fulton, *Legal Pot in Colorado: How It's Affected Trucking*, HDT Truckinginfo (Nov. 2015), http://www.truckinginfo.com/article/story/2015/11/legal-pot-in-colorado-the-view-from-the-state-trucking-industry.aspx. Regardless, attorneys should probably be prepared to handle marijuana issues in trucking cases increasingly.

This article reviews common problems encountered in trucking cases involving marijuana issues and provides some practitioner's guidance.

## Even Where It's Legal, Marijuana Is Still a Drag for Truck Drivers

Even where it's legal, marijuana is still a drag for truck drivers because the FMCSA repeats "Just say 'no' to marijuana." Specifically, under federal law, marijuana remains a Schedule I drug under the Controlled Substances Act, 21 U.S.C. §801, *et seq.* Further, the Federal Motor Carrier Safety Regulations (FMCSR) mandate that "no driver shall be on duty and possess, be under the influence of, *or use*, any substance set forth in Schedule I of the regulations, any amphetamine, any narcotic drug or derivative thereof" or "[a]ny other substance, to a degree which renders the driver incapable of safely operating a motor vehicle . . . ." *See* 49 C.F.R. §392.4 (emphasis added).

With respect to safety-sensitive transportation employees, including commercial truck drivers, the United States Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) take a zero tolerance stance on marijuana usage, whether for medical or recreational purposes. The DOT has remained firm that its drug and alcohol testing regulation—49 C.F.R. Part 40—does not authorize the use of Schedule I drugs, including marijuana for any reason. Specifically, medical review officers (MRO) have been instructed not to verify a negative drug test based upon learning that the employee used recreational or medical marijuana when states have passed such measures.

As recent as November 19, 2015, the DOT reiterated in a written statement its position, which left nothing open to interpretation:

> The Department of Transportation's Drug and Alcohol Testing Regulation—49 CFR Part 40, at 40.151(e)— does not authorize "medical marijuana" under a state law to be a valid medical explanation for a transportation employee's positive drug test result.
>
> That section states:
>
> §40.151 What are MROs prohibited from doing as part of the verification process? As an MRO, you are prohibited from doing the following as part of the verification process:
>
> * * *
>
> (e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (*e.g.*, under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted.)
>
> Therefore, [MROs] will not verify a drug test as negative based upon information that a physician recommended that the employee use "medical marijuana." Please note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. *It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana.*

*See DOT 'Medical' Marijuana Notice*, U.S. Dep't of Transportation (Nov. 19, 2015), https://www.transportation.gov/odapc/medical-marijuana-notice#sthash.t9vKQGzz.dpuf (emphasis added).

Accordingly, despite state law developments, marijuana remains an unauthorized drug for both recreational and medicinal purposes for truck drivers under the DOT's Drug and Alcohol Testing Regulation. Therefore, companies employing workers subject to DOT regulations must test workers in accordance with federal regulation.

## Motor Carriers Are Required to Test Truck Drivers for Marijuana

Marijuana legalization has the potential to exasperate the critical shortage of commercial truck drivers even further. Motor carriers must tell their truck drivers that they are in violation of the law if there is even a trace of marijuana in a person's system. *See* Fulton, *supra*.

In general terms, the FMCSR require alcohol and drug testing of drivers who are required to have a commercial driver's license (CDL), whereas the DOT rules include specific procedures for urine drug testing and breath alcohol testing. Testing must be administered in compliance with 49 C.F.R. Part 40, "Procedures for Transportation Workplace Drug Testing Programs." Under the rules, testing is required at these points: pre-employment; upon reasonable suspicion; post-accident; random; upon return to duty; and as follow-up after a positive drug-test result and return to duty.

Currently, testing for marijuana is conducted by analyzing a driver's urine specimen. *See generally* 49 C.F.R. Part 40. The analysis must be performed at a laboratory certified and monitored by the Department of Health and Human Services (DHHS). 49 C.F.R. §40.41. The list of approved laboratories is published monthly in the Federal Register. *Id*. The collection process remains highly regulated.

With respect to marijuana, a test result reflecting 50 nanograms per milliliter (ng/mL) or more must be reported as a positive test result. 49 C.F.R. §40.87. A driver with a positive drug test must be removed from safety-sensitive duty. The removal may not occur until after the MRO has interviewed the driver and determined that the positive drug test resulted from the unauthorized use of a controlled substance. Before a driver is permitted to return to safety-sensitive duty, he or she must be evaluated by a substance abuse professional, complied with any and all recommended rehabilitation, and has a negative result on a return-to-duty test. Further, follow-up testing is required to monitor the driver's continued abstinence from drug use.

**Testing and Review Requirements Prior to Driving**

Under the FMCSR, a motor carrier has an obligation, after obtaining a driver's written consent, to request information regarding the driver's prior alcohol and drug-test results before allowing a truck driver to go on the road. 49 C.F.R. §40.25. This requirement applies only to drivers seeking to begin performing safety-sensitive duties for the first time (*i.e.*, a new hire, an employee transferring into a safety-sensitive position). *Id.* For each driver, a motor carrier must request the following information from any DOT-regulated motor carriers that have retained the driver during any period during the two years before the date of the driver's application or transfer:

- Alcohol tests with a result of 0.04 or higher alcohol concentration;
- Verified, positive drug tests;
- Refusals to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing regulations; and
- For any driver who violated a DOT drug and alcohol regulation, documentation of the driver's successful completion of DOT return-to-duty requirements (including follow-up tests).

If a driver refuses to provide this written consent, the requesting motor carrier must not permit the driver to drive. There are limited circumstances when a motor carrier need not administer pre-employment testing as required by 49 C.F.R. Part 382, at §382.301. A motor carrier need not subject a driver to testing when the driver has participated in a controlled substances testing program that meets DOT and FMCSA standards within the previous 30 days and who while participating in the qualifying program was tested for controlled substances within the past six months or who participated in the random, controlled substances testing program for the previous 12 months, and the employer ensures that no prior employer of the driver has records of a violation within the previous six months. 49 C.F.R. §382.301.

**Motor carriers** must tell their truck drivers that they are in violation of the law if there is even a trace of marijuana in a person's system. .

**Testing Requirements During Employment or Under Lease**

During a driver's employment or while under lease, a driver may be tested post-accident, at random, upon reasonable suspicion, to return to duty and for follow-up purposes.

***Post-Accident Testing***

As soon as practicable after an occurrence involving a commercial motor vehicle operating on a public road in commerce, a motor carrier shall test for controlled substances in the system of each of its surviving drivers who were performing safety-sensitive functions with respect to the vehicle (if the accident involved the loss of human life), or the motor carrier shall test any driver who receives a citation within 32 hours of the occurrence under state or local law for a moving traffic violation arising from the accident if the accident involved bodily injury requiring immediate medical treatment or disabling damage to one or more motor vehicles. 49 C.F.R. §382.303. If a required alcohol test is not administered within eight hours after the accident, the motor carrier shall cease attempts to administer the alcohol test and must prepare and maintain a record of the same. *Id.* If a required controlled substance test is not administered within 32 hours after such an accident, the motor carrier shall cease attempts to administer the drug test and must prepare and maintain a record stating the reasons that the test was not promptly administered. *Id.*

***Random Testing***

With respect to drivers, the FMCSA has established a 25 percent random, drug-testing rate and a 10 percent random, alcohol-testing rate for 2016. *See DOT's Current Random Testing Rates*, U.S. Dep't of Transportation (Dec. 23, 2015), https://www.transportation.gov/odapc/random-testing-rates. Effectively then, for a motor carrier with 100 drivers, the motor carrier would have to ensure that 25 or more random drug tests are administered and 10 or more random alcohol tests were conducted during the calendar year. Testing dates should be unannounced and undertaken in a non-predictable pattern spread equally throughout the calendar year. When selected at random, a driver must proceed to the test site immediately for testing.

Even in states such as California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, Montana, New Jersey, New York, Vermont, and West Virginia, which restrict random testing in some capacity, truck drivers may nevertheless be tested at random as required by the FMCSR.

***Reasonable Suspicion Testing***

Under the FMCSR, a motor carrier shall require a driver to submit to a controlled-substances test when the motor carrier has reasonable suspicion to believe that the driver has violated the prohibitions against controlled substances usage. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. 49 C.F.R. §382.307. These observations may include indications of the chronic and withdrawal effects of controlled substances. *Id.* Decisions related to reasonable suspicion that subject a driver to testing must be made by a supervisor or a company official who is trained in accordance with 40 C.F.R. §382.603.

***Return-to-Duty Testing***

When a driver has a positive test or refuses to be tested, the DOT requires that a motor carrier immediately remove that driver from safety-sensitive functions. A motor carrier's failure to do so comes at a high price tag: a $10,000 fine per day if the motor carrier permits the driver to continue performing safety-sensitive functions. A truck driver may return to safety-sensitive functions in the transportation industry only after the successful completion of DOT's return-to-duty process and by providing

a negative result on a return-to-duty drug test. 49 C.F.R. §§40.303–305.

After a driver fails a test, the employer must furnish the driver with information about a substance abuse professional (SAP) for the purposes of evaluating and resolving the problems associated with the misuse of drugs. 49 C.F.R. §40.285. The SAP must be qualified as defined by the DOT standards. The SAP will identify an appropriate rehabilitation program, and upon successful completion, the SAP will reevaluate the driver to determine whether the driver complied with the rehabilitation program. 49 C.F.R. §§40.291–293. If so, the driver must then submit to a return-to-duty test that is directly observed. 49 C.F.R. §40.305.

#### *Follow-Up Testing*

After a SAP has determined that a driver may return to safety-sensitive functions and that a driver has passed his or her return-to-duty examination, the SAP will develop an individualized plan setting forth the number and frequency of follow-up tests and whether the tests will be for drugs, alcohol, or both. 49 C.F.R. §40.307. Although the SAP has discretion, at a minimum the driver must be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the driver's return. *Id*.

### Lifting the Haze: Proving or Disproving Marijuana Impairment in a Trucking Case—A Practitioner's Guide

How do you handle the issue of marijuana after it appears in a trucking accident case? First, if you have been retained by the motor carrier or its insurer, and your truck driver tests positive for marijuana after an accident, then you will likely have to retain criminal legal counsel for the truck driver because he or she will likely be subject to criminal prosecution. Of course, any positive test result for marijuana in a truck driver is a violation of 49 C.F.R. §392.4. Thus, as discussed further below, you will likely need to retain a toxicologist to determine whether or not the driver was impaired at the time of the accident, hopefully to keep the violation out of the evidence for a trial.

On the other hand, if you suspect that the plaintiff might have been impaired by marijuana, then you need to take certain steps immediately to preserve all possible evidence. Many law enforcement agencies, hospitals, coroners, and testing laboratories will only retain blood or urine samples for a short period of time. Thus, you are advised to collect the samples when possible or at least send a preservation letter to anyone who may have taken physical samples from plaintiff. In most jurisdictions, you will not be able to subpoena such samples until after a lawsuit is filed. However, if you do nothing before the lawsuit is filed, it is likely that this key forensic evidence will have been discarded. Likewise, any hope that you might have of proving a plaintiff's contributory fault for intoxication will likely be gone, unless you have compelling witness testimony.

Next, you will likely need to retain a toxicology expert to opine whether or not the person was sufficiently impaired at the time of the accident so that if you can admit into or exclude the marijuana consumption as evidence as a possible contributory cause to the accident. Often, medical records from the hospital will show that a person tested positive for marijuana, but they will not provide sufficient detail to prove the level of impairment or intoxication needed for consumption to become admissible into evidence. Thus, a toxicologist can review witness testimony and medical records and independently test the physical specimens to determine whether or not the person was in fact impaired or intoxicated at the time of the accident.

Finally, you are well advised to research your jurisdiction's law carefully to discover the foundation and admissibility standards for submitting marijuana impairment into evidence. The following sections compare state and federal court decisions in Illinois on this issue, which highlight some of the nuances that you might find in your jurisdiction.

#### Can I Meet the Stringent Standard of Proof of Showing Actual Intoxication?

State courts in Illinois require that "actual intoxication with impairment of physical or mental capabilities" be shown before evidence of a party's consumption of drugs or alcohol be admitted into evidence. *Sullivan-Coughlin v. Palos Country Club, Inc.*, 349 Ill. App. 3d 553 (1st Dist. 2004). *See also Petraski v. Thedos*, 382 Ill. App. 3d 22 (1st Dist. 2008). In Illinois, mere involvement in an accident is not indicative of impairment. *Id*. Standing alone, the fact that a party consumed marijuana is not sufficient under Illinois law to demonstrate that he or she was intoxicated or impaired in his or her physical or mental abilities.

Also under Illinois law, lay opinion regarding alcohol intoxication is admissible when one personally observes an allegedly intoxicated person because observations of intoxicated persons "are within the competence of all adults of normal experience . . . ." *People v. Jacquith*, 129 Ill. App. 3d 107, 84 Ill. Dec. 357, 472 N.E.2d 107 (1st Dist. 1984). However, evidentiary questions regarding intoxication become more complicated when the allegedly intoxicating substance is a drug. An attorney may have a problem under Illinois law establishing a foundation requirement due to two distinct reasons: (1) the observations of a person impaired by drugs are not "within the competence of all adults of normal experience" as is the case with alcohol; and (2) different drugs and combinations of them can cause impairment in different ways. *People v. Workman*, 312 Ill. App. 3d 305, 311, 244 Ill. Dec. 784, 726 N.E.2d 759 (2nd Dist. 2000). Thus, greater scrutiny must arguably be given to the foundation for intoxication by drugs before such an opinion is admitted.

**During a driver's** employment or while under lease, a driver may be tested post-accident, at random, upon reasonable suspicion, to return to duty and for follow-up purposes.

#### Is There a Less Onerous Standard of Proof Available?

On the other hand, federal courts in Illinois are not as onerously demanding on the

foundation for the admissibility of marijuana evidence. Of course, federal judges have wide discretion to make evidentiary rulings and manage the efficiency of a trial. *Whitfield v. International Truck and Engine Corp*., 755 F.3d 438 (7th Cir. 2014); *Palmquist v. Selvik*, 111 F.3d 1332, 1341–42 (7th Cir. 1997). In *Levitt v. H.J. Jeffries, Inc*., 517 F.2d 523, 525 (7th Cir. 1975), the Seventh Circuit held that even in a diversity action, federal evidentiary rules govern over any state exclusionary rules on the issue of drug consumption.

In *Levitt*, the trial court had applied Illinois law regarding the admissibility of evidence of intoxication (proof of "actual intoxication") and had barred such evidence. The Seventh Circuit reversed the trial court and held that the trial court's exclusion of the evidence of the consumption of intoxicants prior to the collision at issue, even though the defendants were not prepared to prove intoxication, was an abuse of the court's discretion. The Seventh Circuit concluded that the defendants should have been permitted to introduce evidence concerning the plaintiff's consumption of intoxicants prior to the accident without having to show intoxication, as a circumstance to be weighed by the jury in determining whether or not the plaintiff exercised ordinary care for his own safety, or whether the plaintiff was contributorily negligent in failing to maintain a proper lookout of the roadway ahead and by failing to slow his car, or bring it to a stop, and avoid colliding with the tractor-trailer unit. In support of their position, the defendants argued that both the defendant driver and his passenger would testify that when they opened the door of the Camaro automobile after the collision, they detected the strong smell of alcohol, and further, the defendants argued that during a pre-trial deposition, a passenger acknowledged that he and the plaintiff had consumed a number of bottles of beer during a period of several hours before the accident. *Id*. The Seventh Circuit noted that the evidence comported with Federal Rule of Evidence Rule 401, which was only proposed at the time and not officially adopted. The *Levitt* decision did not address Federal Rules of Evidence 403.

Since the *Levitt* case, the Seventh Circuit has analyzed the admissibility of drug consumption based on Federal Rules of Evidence 401 and 403, and not Illinois law. *Saladino v. Winkler*, 609 F.2d 1211, 1214 (7th Cir. 1979). *See also Casares v. Bernal*, No. 08 CV 4198, 2011 WL 1988788, at *11–12 (N.D. Ill. May 20, 2011); *Davis v. Duran*, 276 F.R.D. 227, 230 (N.D. Ill. 2011); *Boyd v. Venticinque*, No. 93 C 6108, 1996 WL 238802, at *6–7 (N.D. Ill. May 7, 1996). However, other federal circuits are divided on the issue. *Compare Rovegno v. Geppert Bros., Inc*., 677 F.2d 327, 329 (3rd Cir.1982), *with United States v. Leonard*, 439 F.3d 648 (10th Cir. 2006) (probative value of prescription history did not outweigh any risk of prejudice); *Romine v. Parman*, 831 F.2d 944 (10th Cir. 1987) (concluding that evidence that driver drank some beer on day of accident, relevant to question of driver's reflexes, reaction time, and overall ability to drive car at time accident occurred, did not have to be excluded on ground that its probative value was substantially outweighed by danger of unfair prejudice).

In *Davis v. Duran*, 276 F.R.D. 227, 230 (N.D. Ill. 2011), the U.S. District Court for the Northern District of Illinois considered this issue. The defendant's toxicologist, Dr. O'Donnell, concluded:

> Mr. Tyrone Dandridge was experiencing the toxic effects of alcohol and was impaired by alcohol when he fought with his brother and disobeyed the Police order to stop stabbing Curtis. The BAC of 0.07g/dL (71mg percent) is associated with impairments to the behavior, judgment, and risk taking. The 0.07 g/dL represents the alcohol equivalent of 4 12 ounce beers.

Dr. O'Donnell cited in part a large-scale review of the experimental literature dealing with the effects of alcohol on cognitive function and skills such as reaction time, tracking, concentrated attention, divided attention, performance, information-processing capabilities, visual function, perception, and psychomotor performance. The plaintiff sought to exclude Dr. O'Donnell on the bases that his report "deliberately stop[ped] short of opining to intoxication" and that "impairment" is insufficient to qualify for admissibility. The plaintiff argued that Dr. O'Donnell's characterization of Mr. Dandridge's "impairment" was inadmissible because it failed to provide evidence of "actual intoxication." The U.S. District Court for the Northern District of Illinois refused to exclude Dr. O'Donnell's testimony under the Federal Rules of Evidence. The court in *Davis* noted:

> Despite the Federal Rules of Evidence's inclusionary and liberal thrust, "relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403. (Emphasis supplied). It is not enough to say that evidence is prejudicial. All evidence is prejudicial; that is why it is used. *Old Chief v. United States*, 519 U.S. 172, 193, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997); *United States v. Duran*, 407 F.3d 828, 835 (7th Cir. 2005). *See* Ronald Allen & Richard B. Kuhns, *An Analytical Approach To Evidence* 104–06 (1989). To be excludable under Rule 403, the evidence must be unfairly prejudicial and its probative significance must be substantially outweighed by the danger of that prejudice. Evidence is unfairly prejudicial if it induces the jury to decide the case on an improper basis rather than on the evidence presented. *United States v. Conner*, 583 F.3d 1011, 1025 (7th Cir. 2009).

In addition, in *Boyd v. Venticinque*, No. 93 C 6108, 1996 WL 238802, at *6–7 (N.D. Ill. May 7, 1996), the plaintiff sought to bar the testimony of the defendant's expert toxicologist, Dr. Bederka, who was prepared to testify that the plaintiff was under the influence of a controlled substance. Dr. Bederka's opinion was based in part on the results of Boyd's toxicological analysis generated by the medical examiner. The court denied the plaintiff's motion and noted:

> Evidence of a plaintiff's intoxication is relevant to the extent that it affects the care that he takes for his own safety and is therefore admissible as a circumstance to be weighed by the trier of fact in its determination of the issue of due care." *Marshall v. Osborn*, 213 Ill.App.3d 134, 140 (3rd Dist. 1991). Quoting the Illinois Supreme Court in *Illinois Central R.R. Co. v. Cragin*, 71 Ill. 177, 181-82 (1973), the court in *Marshall* went on to explain the probative value of this

**Marijuana Issues**, continued on page 83

**Marijuana Issues**, from page 76

> type of evidence: 'A person who voluntarily uses intoxicating drinks until he has become physically helpless, or his powers so far impaired that he is unable to exert the necessary effort to avoid danger, is guilty of negligence when he places himself in a position of danger; and so when he thus stupefies and deadens his intellectual powers, so that he is unable to foresee and guard against danger. It was, then, highly important for the jury to be possessed of all the facts tending to show his mental and physical condition. Otherwise their conclusions as to whether he exercised reasonable care, might be altogether erroneous.'

Further, the court in *Boyd* found that evidence of the plaintiff's drug levels in his blood during the relevant time period and expert testimony speaking to the possible effects of those drugs "makes the fact of consequence to the action— [the plaintiff's] intoxication at the time of the [incident]— more probable than it would be without the evidence." The fact that the jury might draw inferences from the evidence of the plaintiff's drug usage was not unfair prejudice. This was "prejudicial" to the defendants only because of its probative force. Damning evidence is not inadmissible on that account.

## Conclusion

Trucking cases with marijuana issues pose unique challenges. Understanding the DOT and FMCSR's strict prohibition against marijuana consumption and the duties of motor carriers to drug test their drivers is critically important. Failing to follow the FMCSR can expose motor carriers not only to enforcement by the FMCSA, but also to civil liability if a violation causes or contributes to cause injuries to the motoring public. Further, lawyers should carefully research their jurisdiction's law in regard to the foundation and admissibility standards for submitting marijuana impairment into evidence. A toxicology expert can be invaluable to opine whether or not the person was sufficiently impaired at the time of the accident to make it possible to admit or to exclude marijuana consumption into the evidence, depending on your position in the trial. FD