

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY  
APPELLATE DIVISION**

**STATE OF FLORIDA,  
Appellant,**

**v.**

**UCN: 512016CF002651A000WS  
Appeal No.: CRC1602651CFAWS  
Lower No.: CTC1501631MMAWS**

**CODY ZACHERY BRUCE,  
Appellee.**

\_\_\_\_\_  
On appeal from Pasco County Court,  
Honorable Marc Salton,

Office of the State Attorney,  
for Appellant,

Office of the Public Defender,  
for Appellee.

**ORDER AND OPINION**

The trial court erred in granting Appellee's motion to suppress evidence. There was probable cause to support a search of Appellee's car. The order of the trial court is reversed and the cause is remanded for further proceedings.

**STATEMENT OF THE CASE AND FACTS**

Appellee was charged with possession of drug paraphernalia in violation of Section 893.147(1)(b), Florida Statutes. Appellee moved to suppress the evidence obtained as a result of a traffic stop, alleging that there was no probable cause to search his vehicle. The trial court granted Appellee's motion, and Appellant filed this timely appeal.

On August 31, 2015, Sergeant Shoup of the Pasco County Sheriff's Office stopped Appellee for failure to stop at a red light. Sergeant Shoup testified that during the stop, he smelled a burnt marijuana odor coming from the vehicle. At the time of the stop, Appellee was smoking an e-cigarette. Sergeant Shoup asked Appellee if he was smoking "anything else" besides that because he was "kind of detecting the odor of marijuana coming from [the] car." Appellee responded that there was no marijuana in the car, but that he had

smoked in the car the previous night. Sergeant Shoup had Appellee step out of the car and conducted a search. Pursuant to the search, the officer found a digital scale with marijuana residue, which is the subject of the motion to suppress.

The trial court granted the motion, finding that Sergeant Shoup had no basis to believe that marijuana was recently smoked in the vehicle, and that the Sergeant was not even sure the odor he smelled was from marijuana. We reverse, finding that Sergeant Shoup had probable cause to believe Appellee was in possession of marijuana.

### **STANDARD OF REVIEW**

Appellate review of a motion to suppress involves questions of both law and fact. *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). The appellate court reviews the trial court's application of the law to the facts of the case pursuant to a *de novo* standard. *Id.*; *Omelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Petion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). A trial court's ruling on a motion to suppress comes to the appellate court "clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling." *See Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002). The reviewing court is bound by the trial court's factual findings if they are supported by competent, substantial evidence. *Id.*

### **LAW AND ANALYSIS**

Appellant argues that after an initial stop, the smell of previously burnt marijuana alone gives probable cause to detain and search a suspect's vehicle. There is abundant case law to support Appellant's assertions. *State v. T.P.*, 835 So. 2d 1277, 1279 (Fla. 4th DCA 2003) (holding that an officer has probable cause to search a defendant, or his vehicle, after smelling the odor of burnt marijuana emanating from that vehicle). *See also State v. Betz*, 815 So. 2d 627, 633 (Fla. 2002); *State v. T.T.*, 594 So. 2d 839, 840 (Fla. 5th DCA 1992). In the present case, the Sergeant is trained to identify the odor of marijuana, and testified that he indeed smelled burnt marijuana coming from Appellee's vehicle. The facts establish the requisite probable cause to support the search of Appellee's car.

Further, the Sergeant never dismissed his suspicion that there was marijuana in the vehicle. In part, the trial court based its ruling on Sergeant Shoup's discussion with

Appellee. While the trial court did not question the credibility of the witness, the court perceived the Sergeant's statement as an indication that he no longer believed that there was marijuana present in the car. On the contrary, the body camera footage revealed that in response to Appellee's admission that he had smoked marijuana in the car on the previous night, Sergeant Shoup asked "is that part of why I'm getting the odor?" The Sergeant's suspicions were not dispelled by Appellee's statements. Rather, the Sergeant was continuing a line of inquiry. Additionally, Sergeant Shoup's testimony dismissed any indefinite language as mere semantics.

In light of this, we agree with Appellant's contentions that the Sergeant had probable cause to search Appellee's vehicle based on the smell of marijuana. The order of the trial court is reversed.

### **CONCLUSION**

It was error for the trial court to grant Appellee's motion to suppress evidence. The order of the trial court is reversed and the cause is remanded for further proceedings.

It is ORDERED AND ADJUDGED that the Order of the trial court is hereby REVERSED AND REMANDED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this \_\_\_\_ day of February, 2017.

Original Order entered on February 7, 2017 by Circuit Judges Daniel D. Diskey, Linda Babb and Kimberly Campbell.

*Copies to:*  
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**Honorable Marc Salton**