

ODOR OF MARIJUANA AS PROBABLE CAUSE FOR WARRANTLESS SEARCH OF A VEHICLE

TAMARA ANNE HOEHAVER, Appellant, v. **STATE OF FLORIDA**, Appellee. 5th District. Case No. 2022-CF-007980-A. **June 28, 2024**. 49 FLA. L. Weekly D1386b

On August 16, 2022, Detective Clayburne Bridge of the Jacksonville Sheriff's Office made a routine vehicle stop on I-95 in Duval County. As he approached the vehicle, he smelled the odor of burnt marijuana coming from the interior of vehicle. He asked all of the vehicle occupants if they possessed a medical marijuana card or had any hemp in the vehicle, and they all replied no. The Detective searched the vehicle and found a lunch box on the rear seat, which was determined to belong to rear seat passenger Tamara Hoehaver. The lunch box was searched and determined to contain fentanyl and Hoehaver was then arrested. Additionally, a search of Hoehaver's person, incident to arrest, located a plastic bag containing methamphetamine.

A motion to suppress was filed by Hoehaver on the basis that the initial search of the vehicle based on marijuana odor was unlawful, because marijuana odor alone did not give probable cause to search the vehicle. Hoehaver argued that recent legalization of medical marijuana and hemp allowed for the possibility that such marijuana odor could be the result of legal activity. Despite some longstanding case law recognizing marijuana odor could provide probable cause for search of a vehicle, she maintained that odor alone would now only provide a "hunch" or "suspicion", rather than the probable cause needed to allow a warrantless search under the vehicle exception to the warrant requirement.

Historical Florida cases have held that the smell of marijuana is sufficient to give officers probable cause to search a vehicle and its occupants. *See, e.g., State v. Williams*, 967 So. 2d 941 (Fla. 1st DCA 2007). A totality-of-the-circumstances approach 'allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.' *Hatcher v. State*, 342 So. 3d 807, 810 (Fla. 1st DCA 2022). No recent case law has affirmatively held that marijuana odor alone is insufficient to establish probable cause. The most recent case law with a conclusive ruling on the matter is *Owens v. State*, 317 So. 3d 1218 (Fla. 2d DCA 2021), which upheld the precedent that marijuana odor emanating from a vehicle continues to provide probable cause for a warrantless search of the vehicle. 317 So. 3d at 1220. Accordingly, because Detective Bridge smelled burnt marijuana emanating from the vehicle, his reliance on the current law was objectively reasonable, and he had probable cause to search the vehicle. The trial court denied the motion to suppress, and the appellate court AFFIRMED.

CONSIDERATION: Many agencies have now adopted an '*smell plus*' standard for probable cause, requiring marijuana odor coming from the vehicle, plus some additional corroboration factor(s) to strengthen probable cause under the totality-of-circumstances rationale. FDLE sworn members are reminded that case law is subject to change and provisions and authorities may vary over time and by particular jurisdiction.

FDLE Regional Legal Advisor Gregory Cowser