**CASE NO. 1D22-1412**

IN THE
DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

**JASON HASSAN BAXTER**

*Appellant*,

*v.*

**STATE OF FLORIDA**

*Appellee*.

ON APPEAL FROM THE COUNTY COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

# APPELLEE'S ANSWER BRIEF

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## PRELIMINARY STATEMENT

Appellant Jason Hassan Baxter was the defendant in the trial court. This brief will refer to Appellant as such, as Defendant, or by Baxter. Appellee, the State of Florida, was the prosecution below. The brief will refer to Appellee as such or as the State.

The record on appeal is cited as "R" followed by the page number.

## STATEMENT OF THE CASE AND FACTS

The State recognizes Appellant's statement of the case and facts, absent any legal argument, as generally supported by the record.

## SUMMARY OF ARGUMENT

The search in this case began as a consensual encounter that became an investigation once Baxter voluntarily rolled his window down and Officer Accra smelled marijuana. The smell of marijuana was sufficient probable cause to detain and investigate Baxter further.

## ARGUMENT

ISSUE: WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS

### A. Standard of Review

"[A] motion to suppress [is reviewed] under a mixed standard, affording deference to the trial court's factual findings (when supported by competent, substantial evidence), but considering de novo any legal issues presented." *Taylor v. State*, 326 So. 3d 115, 117 (Fla. 1st DCA 2021).

### B. Burden of Persuasion

Appellant bears the burden of demonstrating prejudicial error. Section 924.051(7), Fla. Stat. (2000), provides:

> In a direct appeal or a collateral proceeding, the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court. A conviction or sentence may not be reversed absent an express finding that a prejudicial error occurred in the trial court.

Moreover: "In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the Appellant to demonstrate error." *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Additionally,

because the trial court's decision is presumed correct, "the appellee can present any argument supported by the record even if not expressly asserted in the lower court." *Dade County School Bd. V. Radio Station WQBA*, 731 So. 2d 638, 645 (Fla. 1999).

**C. Law and Argument**

Officer Accra pulled into the CVS parking lot to ensure Baxter was not in need of any assistance as Baxter had parked outside of a closed business at night. (R-46). While Officer Accra did consider his job's mission statement to ensure property crimes aren't being committed, his primary concern in approaching Baxter was to ensure his well-being. (R-46). "The protections against unreasonable searches and seizures afforded by the Florida Constitution must be construed in conformity with the Fourth Amendment to the United States Constitution as interpreted by the United States Supreme Court." *Caldwell v. State*, 41 So. 3d 188, 195 (Fla. 2010). The United States Supreme Court has stated that "[s]ubjective intent alone . . . does not make otherwise lawful conduct illegal or unconstitutional." *Scott v. United States*, 436 U.S. 128, 136, 98 S. Ct. 1717, 1723, 56 L. Ed. 2d 168 (1978); *see also Whren v. United States*, 517 U.S. 806,

813, 116 S. Ct. 1769, 1774, 135 L. Ed. 2d 89 (1996)("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis"). As such, even though Officer Accra did consider the possibility of a property crime being committed, that bears no weight in determining whether the stop was lawful.

Officer Accra's initial approach to Baxter falls under the community caretaking doctrine. "Welfare checks fall under the 'community caretaking doctrine,' which recognizes the duty of police officers to 'ensure the safety and welfare of the citizenry at large.'" *Taylor v. State*, 326 So. 3d at 117 (quoting *State v. Brumelow*, 289 So. 3d 955, 956 (Fla. 1st DCA 2019)). Officer Accra's approach to Baxter's vehicle to inquire about his wellbeing was a consensual encounter "which involve[d] minimal police contact and does not invoke constitutional safeguards." *G.M. v. State*, 19 So. 3d 973, 977 (Fla. 2009). "It is well established that an officer does not need to have a founded suspicion to approach an individual to ask questions." *Popple v. State*, 626 So. 2d 185, 187 (Fla. 1993).

In *Greider v. State*, Greider was legally parked at 11:00 P.M. with towels rolled up in the windows so that you could not see inside. 977 So. 2d 789, 791 (Fla. 2d DCA 2008). An officer approached the vehicle to determine if anyone was inside, and Greider rolled down the passenger window and verified he was fine. *Id.* The officer then walked to the driver's side and ordered Greider to roll down his window, which caused a towel to fall and allowed the officer to see a crack pipe in the center console. *Id.* The court in *Greider* agreed with the trial court that the initial welfare check was appropriate. *Id.* at 792. The court stated the "consensual encounter concluded after the initial conversation with Mr. Greider which dispelled the officer's concern for his safety." *Id.* Similarly, in *Gentles v. State*, an officer approached Gentles' car as it was running and parked at 4:15 AM in the lot of a closed mall. 50 So. 3d 1192, 1195 (Fla. 4th DCA 2010). Once the officer had woken Gentles, he ordered him to turn off his car. *Id.* It was not disputed that the officer was justified in his approach, but that the order to turn off the car was a seizure. *Id.* at 1196. In this case, Officer Accra's initial approach to Baxter's vehicle is a consensual encounter of the same nature as *Gentles* and *Greider*.

Officer Accra wanted to confirm the wellbeing of the person parked at a closed business in an empty parking lot at night and was justified in approaching Baxter to inquire if he needed assistance.

The initial scope of Officer Accra's welfare check was limited as "[w]ithout any reasonable suspicion that criminal activity is or was afoot, the welfare check should end when the need for it ends." *Taylor*, 326 So. 3d at 118. However, when Baxter voluntarily rolled his window down, Officer Accra immediately smelled marijuana. (R-47). In *State v. Baez*, an officer received a call about a car parked in an abandoned warehouse area. 894 So. 2d 115, 115 (Fla. 2004). The officer approached the vehicle and noticed Baez inside, slumped over the wheel. *Id.* The officer tapped the driver side window, waking Baez, and asked if Baez was alright. *Id.* at 116. Baez voluntarily exited his vehicle to hear the officer better and handed over his license when identification was requested. *Id.* The officer discovered an outstanding warrant for Baez and, after arresting Baez, found two small bags of cocaine in Baez's vehicle. *Id.* Baez was charged for possession of cocaine and moved to suppress the evidence arguing that the officer unlawfully detained him by taking his license and

running the check. *Id.* The Court found that Baez gave his license to the officer in a consensual encounter and the question was whether the officer retained that consent long enough for the computer check. *Id.* at 117. Due to Baez's being found in a "suspicious condition," the Court found "[i]t was not unreasonable for the officer to proceed with the computer check when he had not yet eliminated reasonable concern and justified articulable suspicion of criminal conduct." *Id.* In this case, once Baxter rolled down his window and Officer Accra smelled the fresh scent of marijuana, Officer Accra could proceed with a detention to determine if a crime was being committed.

Baxter argues that the smell of marijuana alone is not sufficient to establish probable cause because of recent changes to Florida and federal law. Section 893.02(3), Fla. Stat. (2022) and 21 U.S.C. § 802(16)(B)(i) no longer include hemp within the definition of cannabis or marihuana, respectively. Section 381.986, Fla. Stat. (2022) legalizes the use of medical marijuana in Florida. Baxter contends that these changes mean the scent of marijuana could come from a legal activity such as hemp or medical marijuana. This Court has already held that "the *possibility* that a driver might be a medical-

marijuana user would not automatically defeat probable cause." *Johnson v. State*, 275 So. 3d 800, 802 (Fla. 1st DCA 2019)(emphasis in original); *see also Collie v. State*, 331 So. 3d 1240 (Fla. 1st DCA 2022); *Owens v. State*, 317 So. 3d 1218, 1220 (Fla. 2d DCA 2021)(holding that "regardless of whether the smell of marijuana is indistinguishable from that of hemp, the smell of marijuana emanating from a vehicle continues to provide probable cause for a warrantless search of the vehicle"). Additionally, even lawful conduct may justify reasonable suspicion. *See United States v. Sokolow*, 490 U.S. 1, 9 (1989)("Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion.); *see also Reid v. Georgia*, 448 U.S. 438, 441 (1980)(per curiam)("[T]here could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot."); *Illinois v. Gates*, 462 U.S. 213, 243-244, n.13 (1983)("[I]nnocent behavior will frequently provide the basis for a showing of probable cause."); *State v. Koch*, 455 So. 2d 492 (Fla. 1st DCA 1984)("It has been held that otherwise innocent factors, considered in combination, may give rise

to a reasonable suspicion that justifies a stop."). In fact, the original reasonable suspicion case, *Terry v. Ohio*, involved wholly legal activity. 392 U.S. 1, 6 (1968)(noting that the activity that justified the detention was two men repeatedly peering into storefronts). Therefore, once Baxter voluntarily rolled down his window, and Officer Accra smelled the scent of marijuana coming from the vehicle, Officer Accra had probable cause to detain Baxter and search the vehicle.

## CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email to Elizabeth Hogan, at ehw@pd4duval.coj.net on December 21, 2022.

Respectfully submitted and served,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing contains 2121 words, per the "word count" feature in Microsoft Word and was printed in 14-point Bookman Oldstyle and thereby satisfies the requirements of Florida Rule of Appellate Procedure 9.045.

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