

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JASON HASSAN BAXTER,
Appellant,

v.

CASE NO. 5D23-0118

LT CASE NO. 16-2021-MM-014027-AXXX

STATE OF FLORIDA,
Appellee.

DATE: November 16, 2023

BY ORDER OF THE COURT:

Pursuant to Florida Rule of Appellate Procedure 9.331(d), the Court has determined to rehear this case en banc. Accordingly, it is

ORDERED that to assist the Court in its analysis, each of the parties must file *one* supplemental brief addressing the following issues in light of the record facts and relevant provisions of state and federal law:

- I. Whether an officer's belief that the smell coming from inside a stopped vehicle is marijuana is by itself enough to establish reasonable suspicion of criminal activity for an investigatory detention despite Florida laws allowing for the possession and use of hemp, the smell of which is indistinguishable from marijuana? In answering this question, your analysis must include a discussion of Burnett v. State, 246 So. 3d 516 (5th DCA 2018), and Kilburn v. State, 297 So. 3d 671 (1st DCA 2020), and their applicability to the facts of this case.
- II. If not, whether reasonable suspicion can be established under the totality of the circumstances test, which includes the smell of marijuana?
- III. If so, do the facts presented here support a finding of reasonable suspicion under a totality of the circumstances?

Both supplemental briefs are limited to no more than **10,000** words (computer generated) or **thirty-five** pages (typed) and must be filed within

forty-five days of the date hereof. No response to the supplemental briefs will be permitted.

The Court solicits the view of amici curiae, who may file motions to brief these issues pursuant to Rule 9.370(a). Each amicus is limited to filing a single brief that complies with Rule 9.370(b). All amici curiae briefs are limited to no more than **5,000** words (computer generated) or **twenty** pages (typed) per Rule 9.370(b) and must be served on the parties and submitted to the Court within **thirty** days of the date hereof. Only amici briefs that comply with the Florida Rules of Appellate Procedure, are timely filed and are focused on the issues set forth above will be accepted by the Court. The parties may respond to arguments made by the amici curiae in their supplemental briefs.

No extensions of time will be granted absent a showing of genuine emergency circumstances. En banc oral argument will be scheduled at a later date.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams

SANDRA B. WILLIAMS, CLERK



cc:

Adam B. Wilson
Fourth Judicial Circuit
Public Defender

Christina Piotrowski,
Assistant Attorney
General
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The Florida Bar