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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

QUINCY LEWIS,

Defendant and Appellant.

A135540

(San Mateo County  
Super. Ct. No. SC074588B)

Defendant Quincy Lewis appeals a judgment entered upon his plea of no contest to possession of cocaine base for sale. (Health & Saf. Code, § 11351.5.) He contends on appeal that the trial court erred in denying his motion to suppress evidence obtained as a result of a search of his car after a traffic stop. We shall affirm the judgment.

**I. BACKGROUND**

Officer Paul Slagle of the Foster City Police Department was on patrol in September 2011. He saw a car driving above the speed limit. He followed the car, and saw it make a left-hand turn without use of the turn indicator, then make a right turn from the center lane into a driveway. Slagle performed a traffic stop for Vehicle Code violations, and saw defendant in the driver's seat and a passenger in the right front seat. Slagle distinctly smelled the odor of marijuana coming from the car. He could not tell whether the marijuana was burnt or unburnt, and could not tell what part of the car the smell was coming from.

Slagle asked defendant about the odor, and defendant said there was a marijuana cigarette, or a “blunt,” on the center console. At the same time, Slagle saw the cigarette, which was about four inches long. It appeared to be intact, without any burnt ends. Defendant told Slagle he had a medical marijuana card, and showed him a card. Based on his training and experience, Slagle did not believe the single marijuana cigarette could have produced such a strong odor.

Slagle asked defendant’s permission to search the car, and defendant refused. Slagle had both defendant and the passenger get out of the car, and searched the driver’s area of the car. He was looking to see whether there was more marijuana, and whether there were any materials, such as baggies, scales, or ledger sheets, that would indicate the marijuana was possessed for sale. In addition to the marijuana cigarette, he found a bag with two or three marijuana buds in the console, and two or three more marijuana buds in another compartment. The buds were all in dispensary packaging. In a jacket in the rear of the car, he found four baggies, each containing a white powdery substance that appeared to be cocaine. He believed he had probable cause to arrest defendant, and did so. In the trunk of the car, he found a digital scale.

Defendant moved to suppress evidence derived from the search. (Pen. Code, § 1538.5.) The trial court denied the motion, concluding the search was lawful. In reaching this conclusion, the court noted that Slagle had testified that the smell of marijuana was consistent with a larger amount of the substance than defendant admitted to possessing, and ruled that Slagle had probable cause for the search.

## **II. DISCUSSION**

Defendant points out that he showed Slagle a medical marijuana card, and argues that the smell of marijuana and the sight of one marijuana cigarette did not give rise to probable cause either to arrest him or to believe the car contained contraband. Therefore, he contends, the warrantless search of the car was unlawful and the evidence obtained

should be suppressed. The Attorney General argues that the search was justified under the automobile exception to the warrant requirement.

In *People v. Strasburg* (2007) 148 Cal.App.4th 1052, 1059 (*Strasburg*), our colleagues in Division One of the First Appellate District described the standard of review we apply here. “We review the trial court’s express or implied findings of fact under the deferential substantial evidence standard. We review the trial court’s selection of applicable legal principles, and the application of those principles to the facts, independently. As such, we determine as a matter of law whether there has been an unreasonable search.”

Under the automobile exception to the warrant requirement, “[w]hen the police have probable cause to believe an automobile contains contraband or evidence they may search the automobile and the containers within it without a warrant. [Citation.] The ‘“specifically established and well-delineated” ’ [citation] automobile exception to the Fourth Amendment’s warrant requirement is rooted in the historical distinctions between the search of an automobile or other conveyance and the search of a dwelling. [Citation.]” (*People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 100 (*Nasmeh*). Moreover, “ ‘ “[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” ’ [Citation.]” (*Id.* at pp. 100–101.)

The court in *Strasburg* considered a claim nearly identical to that made here—that because the defendant possessed a doctor’s prescription for marijuana, a sheriff’s deputy lacked probable cause to search the defendant’s vehicle when he approached a vehicle and smelled marijuana. The defendant there admitted he had been smoking marijuana. (*Strasburg, supra*, 148 Cal.App.4th at p. 1055.) The trial court denied the defendant’s motion to suppress evidence seized in the subsequent search of the car. (*Id.* at p. 1056.) On appeal, the defendant contended that once he produced his prescription, the deputy had no basis to search his car. (*Id.* at p. 1057.) The Court of Appeal rejected this

argument. In doing so, it noted that the Compassionate Use Act of 1996 (Health & Saf. Code, § 11362.5) (the CUA) did not confer complete immunity from prosecution to a qualified medical marijuana patient, but rather provided a limited immunity that a qualified patient could raise as an affirmative defense at trial or as a ground to set aside an indictment or information before trial. (*Strasburg, supra*, 148 Cal.App.4th at pp. 1057–1058, citing *People v. Mower* (2002) 28 Cal.4th 457, 468–475.)<sup>1</sup> Thus, “the [CUA] does not impair reasonable police investigation and searches,” and a prescription or identification card “does not provide an automatic protective aegis against reasonable searches.” (*Strasburg, supra*, 148 Cal.App.4th at p. 1058.)

The court in *Strasburg* concluded the operative issue was whether the deputy had probable cause to search the defendant’s car “at the moment he smelled the odor of marijuana, at the outset of his encounter with defendant . . . .” (*Strasburg, supra*, 148 Cal.App.4th at p. 1058.) The court answered that question in the affirmative. The defendant admitted smoking marijuana, and the deputy sheriff saw another bag in the car. “Armed with the knowledge that there was marijuana in the car, ‘a person of ordinary caution would conscientiously entertain a strong suspicion that even if defendant makes only personal use of the marijuana found in [the passenger area], he might stash additional quantities for future use in other parts of the vehicle, including the trunk.’ [Citation.] [¶] The fact that defendant had a medical marijuana prescription, and could lawfully possess an amount of marijuana greater than that [which the deputy] initially found, does not detract from the officer’s probable cause.” (*Id.* at pp. 1059–1060.)

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<sup>1</sup> The CUA provides that “patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (Health & Saf. Code, § 11362.5, subd. (b)(1)(B).) The Medical Marijuana Program (Health & Saf. Code, § 11362.7 et seq.) “provides for a voluntary program for the issuance of a medical marijuana identification card by the State Department of Health Services.” (*Strasburg, supra*, 148 Cal.App.4th at p. 1057.)

The same is true here. Not only did Officer Slagle smell and see marijuana in the car, but he testified that based on his experience, he did not think the amount he saw would produce such a strong odor. In these circumstances, an officer could reasonably suspect that more marijuana was present in the car. The CUA did not protect defendant from a search for more marijuana in his vehicle.

Without addressing the holding or reasoning of *Strasburg*, defendant argues that under *People v. Torres* (2012) 205 Cal.App.4th 989, the search of his car was unreasonable. *Torres* is readily distinguishable. There, the court concluded that the exigent circumstances exception to the warrant requirement did not authorize a warrantless entry into a hotel room where officers investigating a burglary noticed a strong smell of marijuana from outside the door. (*Id.* at pp. 993–998.) As the court noted, a hotel room is considered a home for purposes of the Fourth Amendment, and searches and seizures inside a home without a warrant are presumptively unreasonable, although they may be authorized if there is probable cause to believe that entry is justified in order to prevent imminent destruction of evidence. (*Id.* at pp. 993–994.) The court concluded that even if there was a risk of destruction of the marijuana, the crime of marijuana possession was too minor to justify a warrantless entry based on exigent circumstances. (*Id.* at p. 995; see also *People v. Hua* (2008) 158 Cal.App.4th 1027, 1035–1036 [exigent circumstances exception did not justify warrantless entry of home where officers suspected presence of marijuana].)

Here, of course, defendant’s car, not his home, was the object of the search. The automobile exception to the warrant requirement, which “is rooted in the historical distinctions between the search of an automobile or other conveyance and the search of a dwelling” (*Nasmeh, supra*, 151 Cal.App.4th at p. 100), authorizes the search of a vehicle in these circumstances. (See *Strasburg, supra*, 148 Cal.App.4th at pp. 1058–1060.)

Because we conclude the search was justified under the automobile exception, we need not consider defendant's alternative arguments that the search was not justified as a search incident to arrest.

**III. DISPOSITION**

The judgment is affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Humes, J.