IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

AUGUST SESSION, 1999

STATE OF TENNESSEE, NO.	)	**C.C.A.**
	)	M1998
00253 CCA R3 CD Appellee,	)	
	)	
WILLIAMSON COUNTY **V.**	)	
	)	
	)	**HON. TIMOTHY EASTER, JUDGE**
ADAM GEORGE COLZIE,	)	
	)	**(Reckless Driving; Possession of**
Appellant.	)	**Marijuana With Intent To Sell)**

FILED

November 30, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

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OPINION FILED _____

AFFIRMED IN PART;
REVERSED AND DISMISSED IN PART

THOMAS T. WOODALL, JUDGE

OPINION

The Williamson County Grand Jury indicted Defendant Adam George Colzie for reckless driving and possession of marijuana with intent to sell and deliver. Defendant filed a motion to suppress evidence that was obtained during a search of his vehicle. Following a hearing, the trial court denied the motion. Defendant pled guilty to reckless driving and possession of marijuana with intent to sell, reserving a certified question of law pursuant to Rule 37(b)(2)(i) of the Tennessee Rules of Criminal Procedure. The trial court imposed concurrent sentences of six months for reckless driving and two years for possession of marijuana with intent to sell, with both sentences to be served on probation. Defendant challenges his convictions, raising the following issue: whether the trial court erred when it denied the motion to suppress. After a review of the record, briefs of the parties, and applicable law, we reverse the conviction for possession of marijuana with intent to sell and dismiss that charge, and affirm the conviction for reckless driving.

I. FACTS

On December 15, 1996, Troopers Paul Cook and Richard Cash of the Tennessee Highway Patrol were parked in their vehicles near the 53 mile marker on Interstate 65. While Cash was operating a stationary radar, he observed Defendant's vehicle traveling at a speed of ninety-two miles per hour in a sixty-five mile per hour zone. Cash subsequently pursued and stopped Defendant, and Cook arrived at the scene shortly thereafter.

When Cook arrived at the scene, he observed that Cash had already placed Defendant under arrest for reckless driving. Cook then turned on his flashlight and looked into Defendant's vehicle without opening the door. At this point, Cook observed a package of cigarettes with some cigarette rolling papers in the

cellophane in plain view on the passenger's seat. Cook knew through his experience as a law enforcement officer that cigarette rolling papers are used to make cigarettes out of tobacco or narcotic substances such as marijuana.

After Cook reported his discovery of the cigarette rolling papers to Cash, Cash told him to conduct a search of Defendant's vehicle. During a search of the vehicle's trunk, Cook discovered a cardboard coffee box that contained marijuana.

II. RESERVATION OF A CERTIFIED QUESTION

Initially, the State contends that Defendant has waived appellate review of the denial of his motion to suppress. Specifically, the State contends that Defendant waived his challenge to the denial of the motion because he failed to properly reserve a certified question of law.

The general rule is that a plea of guilty waives all non-jurisdictional defects, procedural defects, and constitutional infirmities. State v. Pendergrass, 937 S.W.2d 834, 837 (Tenn. 1996). However, Rule 37(b)(2)(i) of the Tennessee Rules of Criminal Procedure provides for an appeal following a guilty plea in limited situations. Rule 37(b)(2)(i) states:

> (b) . . . An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction:
> . . . .
> (2) upon a plea of guilty or nolo contendere if:
> (i) defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the State and of the court the right to appeal a certified question of law that is dispositive of the case;

Tenn R. Crim. P. 37(b)(2)(i).

The Tennessee Supreme Court set forth the requirements for pursuing an appeal pursuant to Rule 37(b)(2)(i) in State v. Preston, 759 S.W.2d 647 (Tenn. 1988). The supreme court stated that

> This is an appropriate time for this Court to make explicit to the bench and bar exactly what the appellate courts will hereafter require as prerequisites to the consideration of the merits of a question of law certified pursuant to Tenn.R.Crim.P. 37(b)(2)(i) or (iv). Regardless of what has appeared in prior petitions, orders, colloquy in open court or otherwise, the final order or judgment from which the time begins to run to pursue a T.R.A.P. 3 appeal must contain a statement of the dispositive certified question of law reserved by defendant for appellate review and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. For example, where questions of law involve the validity of searches and the admissibility of statements and confessions, etc., the reasons relied upon by defendant in the trial court at the suppression hearing must be identified in the statement of the certified question of law and review by the appellate courts will be limited to those passed upon by the trial judge and stated in the certified question, absent a constitutional requirement otherwise. Also, the order must state that the certified question was expressly reserved as part of a plea agreement, that the State and the trial judge consented to the reservation and that the State and the trial judge are of the opinion that the question is dispositive of the case. Of course, the burden is on defendant to see that these prerequisites are in the final order and that the record brought to the appellate courts contains all of the proceedings below that bear upon whether the certified question of law is dispositive and the merits of the question certified. No issue beyond the scope of the certified question will be considered.

Id. at 650.

The judgments in this case state that Defendant "pled under rule 37" and that

> This Court, the State of Tennessee and the defendant all agree that the defendant will receive a hearing in the Court of Criminal Appeals, pursuant to Tenn. R. App. 3(b)(2), on the merits of the defense's pretrial motion to suppress the search of the trunk of the defendant's car heard by this Court on January 5, 1998. This Court, the State of Tennessee and the defendant all agree that this certified question is expressly reserved as part of the plea agreement and this Court, the State of Tennessee and the defendant all agree that this issue is dispositive of the case. Specifically, all parties, and this Court, agree that if the pretrial motion to suppress had been granted, the case against the defendant would have been dismissed, as it will should the Court of Criminal Appeals decide the motion to suppress was improperly denied.
>
> Specifically, this Court, the State of Tennessee and the defendant agree that the Court of Criminal Appeals shall consider whether the arrest of the defendant and subsequent search of his car conformed with the Fourth Amendment of the United States Constitution and Article I, Section 7 of the Tennessee Constitution.

A. Marijuana Conviction

The State apparently concedes that the judgment for the marijuana conviction contains a statement of the dispositive question of law, states that the certified question was expressly reserved as part of the plea agreement, and states that both

the State and the trial court have consented to the reservation and agree that the question is dispositive. See Preston, 759 S.W.2d at 650. However, the State argues that the judgment does not comply with the requirements of Preston because the dispositive question does not clearly identify the reasoning that Defendant relied upon during the suppression hearing.

We conclude that the statement contained in the judgment for the marijuana conviction is sufficient to reserve a certified question of law under Preston. The statement identifies the issue as whether the evidence should be suppressed because the arrest and subsequent search violated the Fourth Amendment and Article I, Section 7 of the Constitution of the State of Tennessee. It is evident that this statement of the issue reflects the grounds for suppression that Defendant asserted in the trial court. Although Defendant's statement of the issue could have been more artfully drafted, this Court has previously held that the statement of the issue does not have to be framed in a typical "law school" format. State v. Harris, 919 S.W.2d 619, 621 (Tenn. Crim. App. 1995). In fact, this Court held in Harris that the following statement was sufficient to reserve a certified question of law: "the validity of the search of defendant's property where the marijuana was found." Id. The statement of the issue in this case is far more clear and specific than the statement approved by this Court in Harris. Thus, we conclude that Defendant has properly reserved the certified question of law as to his conviction for possession of marijuana with intent to sell.

B. Reckless Driving Conviction

In Preston, the Tennessee Supreme Court stated that

> Before reaching the merits of a certified question, the appellate courts must first determine that the district attorney general and the trial judge have found the certified question to be dispositive of the case and then determine if the record on appeal demonstrates how that question is dispositive of the case. *If the appellate court does not agree that the certified question is dispositive, appellate review should be denied.*

759 S.W.2d at 651 (emphasis added and citation omitted). An issue is dispositive when this Court must either affirm the judgment or reverse and dismiss based on the resolution of the issue. State v. Wilkes, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984).

It is absolutely clear that the certified question reserved by Defendant is not dispositive as to his reckless driving conviction. Indeed, the validity of the search in this case has nothing to do with the case against Defendant for reckless driving because no evidence discovered during the search was the least bit relevant to that offense. Because the certified question is not dispositive as to the reckless driving conviction, we have no jurisdiction to entertain an appeal of that conviction. Thus, this appeal is dismissed and we affirm the judgment of the trial court as to Defendant's reckless driving conviction.

III. VALIDITY OF THE SEARCH

Defendant contends that the warrantless search of his vehicle violated his rights under the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Tennessee Constitution.

The Fourth Amendment provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . ." U.S. Const. amend IV. Similarly, Article I, Section 7 guarantees, "That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures . . . ." Tenn. Const. art. I, § 7. Under both the Fourth Amendment and Article I, Section 7, "a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was

conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997).

A. Search Incident to a Lawful Arrest

The State contends that the warrantless search of the trunk was reasonable under the Fourth Amendment and Article I, Section 7 because it was a search incident to a lawful arrest.

"One exception to the warrant requirement is a contemporaneous police search that follows a lawful arrest." State v. Crutcher, 989 S.W.2d 295, 300 (Tenn. 1999) (citing Chimel v. California, 395 U.S. 752, 762–63, 89 S.Ct. 2034, 2040, 23 L.Ed.2d 685 (1969)). "When police officers make a lawful custodial arrest, they are permitted, as incident to the arrest, to search the person arrested and the immediately surrounding area." Crutcher, 989 S.W.2d at 300 (citing Chimel, 395 U.S. at 763, 89 S.Ct. at 2040). When the arrestee is an occupant of a vehicle, police officers may conduct a contemporaneous search of the passenger compartment inside the vehicle. Crutcher, 989 S.W.2d at 300 (citing New York v. Belton, 453 U.S. 454, 457, 101 S.Ct. 2860, 2862, 69 L.Ed.2d 768 (1981)).

Initially, we note that the marijuana in this case was found in the trunk of the vehicle, not in the passenger compartment. Thus, regardless of whether Defendant was under lawful custodial arrest at the time of the search, the exception to the warrant requirement relied on by the State would not validate the search. In this case, both case law and statutory law did not authorize a full custodial arrest of the

Defendant, and therefore the warrantless search of the trunk of Defendant's vehicle cannot be justified as a search incident to a lawful custodial arrest.

In this case, there is essentially no dispute that Defendant committed the offense of reckless driving in the presence of Trooper Cash. Reckless driving is a Class B misdemeanor. Tenn. Code Ann. § 55-10-205(b) (1998). Tennessee law provides that a police officer may arrest a person who has committed a misdemeanor in the officer's presence. Tenn. Code Ann. § 40-7-103(a)(1) (1997). However, Tennessee Code Annotated section 40-7-118 provides:

> A peace officer who has arrested a person for the commission of a misdemeanor committed in such peace officer's presence . . . shall issue a citation to such arrested person to appear in court in lieu of the continued custody and the taking of the arrested person before a magistrate [unless:]
>
> (1) The person arrested requires medical examination or medical care, or if such person is unable to care for such person's own safety;
> (2) There is a reasonable likelihood that the offense would continue or resume, or that persons or property would be endangered by the arrested person;
> (3) The person arrested cannot or will not offer satisfactory evidence of identification, including the providing of a field-administered fingerprint or thumbprint which a peace officer may require to be affixed to any citation;
> (4) The prosecution of the offense for which the person was arrested, or of another offense, would thereby be jeopardized;
> (5) A reasonable likelihood exists that the arrested person will fail to appear in court;
> (6) The person demands to be taken immediately before a magistrate or refuses to sign the citation;
> (7) The person arrested is so intoxicated that such person could be a danger to such person or to others; or
> (8) There are one (1) or more outstanding arrest warrants for the person. (emphasis added)

Tenn. Code Ann. § 40-7-118(b)(1), (c) (1997). Essentially, this statute provides that although a person who has committed a misdemeanor in an officer's presence may be placed under *arrest*, the person may not be placed under *custodial arrest* unless one of the eight exceptions is applicable. Indeed, this Court has previously held that under this statute, a police officer must issue a citation and may not effect a full custodial arrest of a person who has committed a misdemeanor unless one of the eight exceptions is applicable. State v. Chearis, 995 S.W.2d 641, 644 (Tenn. Crim. App. 1999).

In this case, there is absolutely no evidence that any of the eight exceptions to the citation requirement applied to Defendant's situation. In fact, the officer who actually effected the arrest of Defendant, Trooper Cash, did not testify at the suppression hearing. Indeed, the State has never even argued that any of the exceptions were applicable. Under these circumstances, Troopers Cash and Cook were limited to issuing a citation to Defendant and they could not lawfully effect a full custodial arrest. Id. Because the "search incident to a lawful arrest" exception to the warrant requirement only applies when the arrest is *custodial*, see Crutcher, 989 S.W.2d at 300, the exception was not applicable in this case because Defendant was never placed under lawful custodial arrest.

The State also argues that the search was incident to a lawful arrest because the troopers had probable cause to arrest Defendant for possession of drug paraphernalia when the cigarette rolling papers were observed in the passenger compartment of Defendant's vehicle. Trooper Cook testified that, based upon his experience as a law enforcement officer, the cigarette rolling papers could be used to either "roll tobacco or some narcotic substance." No illegal drugs were observed by the officers in the passenger compartment of the vehicle.

In order to analyze whether or not the officers had probable cause to arrest the Defendant for possession of drug paraphernalia under the particular circumstances of this case, we first examine pertinent statutes. Tennessee Code Annotated section 39-17-402(12) defines "drug paraphernalia" generally as all "equipment, products, and materials of any kind which are used, intended for use, or designed for use in . . . concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance . . . ." More specifically, that statute states that "drug paraphernalia" includes, but is not limited to:

> (C) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, acrylic, glass, stone, or plastic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
(ii) Water pipes;
(iii) Carburation tubes and devices;
(iv) Smoking and carburation masks;
(v) Chamber pipes;
(vi) Caburater pipes;
(vii) Electric pipes;
(viii) Chillums;
(ix) Bongs; and
(x) Ice pipes or chillers;

Tenn. Code Ann. § 39-17-402(12)(c) (1997).

Tennessee Code Annotated section 39-17-424 states as follows:

> **39-17-424. Determination whether object is drug paraphernalia. –** in determining whether a particular object is drug paraphernalia as defined by § 39-17-402, the court or other authority making such determination shall in addition to all other logically relevant factors consider the following:
>
> (1) Statements by the owner or anyone in control of the object concerning its use;
>
> (2) Prior convictions, if any, of the owner or of anyone in control of the object for violation of any state or federal law relating to controlled substances;
>
> (3) The existence of any residue of controlled substances on the object;
>
> (4) Instructions, oral or written, provided with the object concerning its use;
>
> (5) Descriptive materials accompanying the object which explain or depict its use;
>
> (6) The manner in which the object is displayed for sale;
>
> (7) The existence and scope of legitimate uses for the object in the community; and
>
> (8) Expert testimony concerning its use.

Tenn. Code Ann. § 39-17-424 (1997).

There is case law in this jurisdiction which holds that possession of cigarette rolling papers, combined with other specific factors relevant to the above-cited statutory provisions, can support a conviction for unlawful possession of drug paraphernalia. See, e.g., State v. Robert Strickland, No. 03C01-9707-CC-00289,

1998 WL 667875, at *2 (Tenn. Crim. App, Knoxville, Sept. 24, 1998), perm. to appeal denied, (Tenn. 1999) (holding that evidence was sufficient to support conviction for possession of drug paraphernalia when defendant had possession of both marijuana and rolling papers). We also note that Tennessee Code Annotated section 39-17-402(12)(C), while not specifying that the items listed are the only items which can be paraphernalia, still does not list cigarette rolling papers. Furthermore, taking into consideration the statutory provisions set forth by the legislature in Tennessee Code Annotated section 39-17-424, the only one of eight factors listed which could arguably support probable cause for possession of drug paraphernalia in this case, is item (8), expert testimony concerning the use of rolling papers. However, the trooper who testified acknowledged that the cigarette rolling papers could also be for use with tobacco.

At the trial court level, the State argued that the presence of the cigarette rolling papers were indicative of use of controlled substances because they were found inside the cellophane container of a package containing manufactured cigarettes. The State argued that since Defendant obviously had manufactured cigarettes in his possession, and there was no loose tobacco observed in the vehicle, then one could infer that the cigarette rolling papers were used, not for tobacco, but for controlled substances. On appeal, the State does not expressly set forth this argument, but appears to take the position that the existence of the cigarette rolling papers is evidence of contraband per se.

We have found no Tennessee case which addresses the issue under identical or similar circumstances. However, other jurisdictions, in similar cases, have held that the existence of the cigarette rolling papers does not provide probable cause for an arrest or search.

In State v. Galloway, 116 N.M. 8, 859 P.2d 476 (1993), the defendant was a passenger in a vehicle which was stopped at a fixed border patrol checkpoint.

During the stop, a law enforcement officer observed cigarette rolling papers on a shelf beneath the glove compartment in the vehicle. The defendant stated that he intended to roll cigarettes with the papers, made from tobacco in butts in the ash tray. The officer saw two packs of manufactured cigarettes in the console of the vehicle and recalled that he had seen the defendant smoking a manufactured tobacco cigarette. The New Mexico court, in reversing the defendant's conviction for possession of marijuana with intent to distribute held:

> We do not believe that the circumstances in this case provided probable cause for the search of the vehicle. The presence of both rolling papers and commercially produced cigarettes would not provide probable cause for an arrest for possession of marijuana. The district court did not rely upon the cellular phone, and we do not believe the combination of other circumstances was sufficient to support a finding of probable cause to support a non-consensual search of the vehicle.

116 N.M. at 11, 859 P.2d 476 at 479 (citations omitted).

In People v. Kolody, 200 Ill. App. 3d 130, 558 N.E.2d 589 (1990), the State appealed from an order of the lower court granting the defendant's motion to suppress evidence. The defendant was standing next to his vehicle when a law enforcement officer retrieved a bottle of beer from the back seat which had been placed there by an underage acquaintance of the defendant. While retrieving the open bottle of beer, the officer noticed cigarette rolling papers on the floor of the vehicle. The officer searched the center console of the vehicle where a bag of marijuana was found. The officer claimed in the trial court that he was searching for any other open liquor when he looked inside the console or the glove compartment (there was a conflict in the testimony not resolved by the trial court). The appellate court of Illinois affirmed the trial court's suppression of the evidence. In doing so, the court stated:

> In this context, probable cause exists when, considering the totality of the circumstances known to the police officer at the time of the search, a reasonable person would believe that contraband was present in the vehicle.
>
> As defendant correctly argued to the trial court, the presence of rolling papers alone does not constitute probable cause to believe that the vehicle contained marijuana/contraband.

200 Ill. App. 3d at134–35, 558 N.E.2d at 593 (citations omitted).

In People v. Baldon, 51 A.D.2d 880, 380 N.Y. Supp. 2d 181 (1976), the appellate court of New York stated the sole issue presented on appeal was "whether the mere presence of 'zig-zag' cigarette rolling paper on the floor of an automobile presents the requisite facts and circumstances to justify a finding of probable cause to search the vehicle and its occupants." Concluding that that set of circumstances does not support probable cause to search, the court stated:

> The fact that a police officer has knowledge that marijuana is often used in conjunction with cigarette rolling paper is insufficient to sustain a finding that there is probable cause to believe that criminal activity is occurring. Cigarette rolling paper is a commodity that is openly bought and sold in the marketplace. By definition, it is associated and commonly used in a totally innocent manner. That it also may be frequently used in the furtherance of an illicit scheme cannot, as a matter of law, without more, provide the basis for a finding of probable cause to search without a warrant. Thus, we conclude that the officer's observation of "zig-zag" cigarette rolling papers in the car, although arguably suspicious, is susceptible of various innocent interpretations. Suspicion alone does not constitute probable cause to search.

51 A.D.2d at 880–81, 380 N.Y. Supp. 2d at 183 (citation omitted).

In a later case, the same appellate court of New York, in People v. Lazarus, 159 A.D.2d 1027, 552 N.Y. Supp. 2d 722 (1990), stated in a memorandum opinion which reversed a denial of a motion to suppress that,

> Although the vehicle was lawfully stopped for speeding, the officer's alleged observation of cigarette rolling paper in the center console and a hand-rolled cigarette butt in the ashtray did not constitute probable cause for a search of the vehicle.

159 A.D.2d at 1027, 552 N.Y. Supp. 2d at 723.

We therefore conclude, based upon the pertinent statutes, case law, and the particular facts of this case, that the troopers did not have probable cause to arrest defendant for unlawful possession of drug paraphernalia.

Finally the State contends that under subsection (h) of section 40-7-118, the troopers were entitled to search Defendant's vehicle even if they had only issued a citation in lieu of custodial arrest. Subsection (h) provides: "Nothing herein shall be construed to affect a peace officer's authority to conduct a lawful search even though the citation is issued after arrest." Tenn. Code Ann. § 40-7-118(h) (1997). Contrary

to the State's assertions, the United States Supreme Court has held that a statute may not constitutionally authorize a search in situations where police elect not to make a custodial arrest and instead only issue a citation. Knowles v. Iowa, --- U.S. ---, 119 S.Ct. 484, 488, 142 L.Ed 492 (1998). Thus, subsection (h) does not authorize police officers to conduct a warrantless search in cases where they are statutorily prohibited from making a custodial arrest.

In short, Defendant should have never been placed under full custodial arrest in this case. Therefore, the "search incident to a lawful arrest" exception to the warrant requirement of the Fourth Amendment and Article I, Section 7 did not authorize the search in this case.

B. Probable Cause

The State also contends that the warrantless search of the trunk was reasonable under the Fourth Amendment and Article I, Section 7 because Trooper Cook had probable cause to believe that Defendant's vehicle contained illegal contraband.

The law is well established that, if a car is readily mobile and police officers have probable cause to believe that it contains contraband the police may search the vehicle without obtaining a warrant. Pennsylvania v. LaBron, 518 U.S. 938, 940, 116 S.Ct. 2485, 2487, 135 L.Ed.2d 1031 (1996). If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle as well as the containers in the vehicle. United States v. Ross, 456 U.S. 798, 825, 102 S.Ct. 2157, 2173, 72 L.Ed.2d 572 (1982). Where probable cause to search exists, the immediate search of a vehicle is no more intrusive than a seizure and subsequent search. Chambers v. Maroney, 399 U.S. 42, 51–52, 90 S.Ct. 1975, 1981, 26 L.Ed.2d 419 (1970). Therefore, the police may either seize and hold the vehicle until

a search warrant has issued or search the vehicle immediately. Id., 399 U.S. at 51–52, 90 S.Ct. at 1981.

The State argues that once Trooper Cook saw the cigarette rolling papers that were in plain view, the troopers had probable cause to believe that Defendant's vehicle contained contraband and they were therefore entitled to search the vehicle. We agree with Defendant that mere observation of the rolling papers did not provide the troopers with probable cause to believe that the vehicle contained contraband.

For the same reasons and analysis as discussed above concerning probable cause to arrest Defendant for unlawful possession of drug paraphernalia, we disagree with the State that the officers had probable cause to search the entire contents of Defendant's vehicle based upon the existence of the cigarette rolling papers.

In this case, there were no other circumstances that arguably indicated that Defendant's vehicle contained marijuana. Trooper Cook admitted during the suppression hearing that at the time of the search, there was no indication that Defendant was under the influence of any intoxicating substance. Cook also admitted that the vehicle did not contain any marijuana that was in plain view. Further, Cook admitted that there was absolutely nothing unusual about his encounter with Defendant as compared to every other instance where a driver is stopped for reckless driving.

In short, while the fact that Defendant's vehicle contained both rolling papers and commercially produced cigarettes may have been slightly suspicious, that fact alone did not provide reasonable grounds to believe that the vehicle contained marijuana. Therefore, the exception to the warrant requirement of the Fourth Amendment and Article I, Section 7 that allows for the search of a vehicle if police

officers have probable cause to believe that the vehicle contains contraband did not authorize the search in this case.

IV. CONCLUSION

Because Defendant's certified question is not dispositive as to his reckless driving conviction, we dismiss the appeal and affirm the judgment of the trial court as to that conviction. Because no exceptions to the warrant requirement are applicable in this case and the warrantless search of Defendant's vehicle was not authorized under the Fourth Amendment and Article I, Section 7, we reverse Defendant's conviction for possession of marijuana and we dismiss the charge for that offense.

_____
THOMAS T. WOODALL, Judge

CONCUR:

_____
JOE G. RILEY, JR., Judge

_____
L.T. LAFFERTY, Senior Judge