NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-14413
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD DEWAYNE SMITH, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:25-cr-00106-PGB-RMN-3

Before NEWSOM, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

Ronald Smith, Jr., appeals his conviction for possession of a firearm by a convicted felon, challenging the district court's denial of his motion to suppress evidence seized during a warrantless

search of a car he occupied. Smith asserts, for the first time on appeal, that because of recent changes to Florida's marijuana laws, the odor of marijuana alone cannot establish probable cause to search a car under the automobile exception to the Fourth Amendment's warrant requirement. After review, we affirm Smith's conviction.

Any theories supporting a motion to suppress that were not raised in the district court will be reviewed by this Court for plain error. *United States v. Young*, 350 F.3d 1302, 1305 (11th Cir. 2003) "Plain error occurs if (1) there was error, (2) that was plain, (3) that affected the defendant's substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings." *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010) (quotation marks omitted).

Before the district court, Smith argued that the officers lacked probable cause to search the car because the officers' testimony that they smelled marijuana was not credible and the smell of marijuana "was not strong enough based on what [the officers] knew at the time." Smith does not appeal the district court's finding that officers were credible when they testified they smelled the odor of marijuana coming from the car. Because Smith does not appeal this finding, we accept it.

Smith did not assert the issue, as he does here, that the plain smell of marijuana alone could not provide officers with probable cause for a search, rather, he argued that the officers were not credible when they claimed to smell marijuana. This is a different issue

than that raised in the district court, not merely an alternative argument on the same issue. *See United States v. Horn*, 129 F.4th 1275, 1298 (11th Cir. 2025) ("[W]hile an issue can be waived, alternative arguments on an issue cannot.").

The district court did not plainly err in denying Smith's motion to suppress. The officers had sufficient probable cause under our prior precedent to search the car because they smelled the odor of marijuana emanating from the car prior to the search. In *United States v. Tobin*, we held the smell of marijuana emitting from a home established probable cause for a warrantless search. *See United States v. Tobin*, 923 F.2d 1506, 1512 (1991) (en banc) ("There is no doubt that the agent's suspicions rose to the level of probable cause when, as the door stood open, he detected what he knew from his law enforcement experience to be the odor of marijuana."). In *United States v. Harden*, we held "[t]he smell of marijuana alone . . . provide[s] probable cause" for a search. *United States v. Harden*, 104 F.4th 830, 839 n.5 (11th Cir. 2024).

Under the prior panel precedent rule, this Court's holding that the smell of marijuana alone provides probable cause remains binding until the Supreme Court or this Court sitting en banc overrules the holding or undermines it to the point of abrogation. *See United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (explaining under our prior-panel-precedent rule, "a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting en banc" (italics omitted)); *United States v.*

Gillis, 938 F.3d 1181, 1198 (11th Cir. 2019) ("The prior panel precedent rule applies regardless of whether the later panel believes the prior panel's opinion to be correct, and there is no exception to the rule where the prior panel failed to consider arguments raised before a later panel."). Accordingly, Smith's argument that probable cause did not exist because the Florida District Courts of Appeal have recently concluded that the smell of marijuana alone does not clearly indicate the presence of contraband fails, as Smith does not cite any binding authority overruling or abrogating this Court's holdings in *Harden* and *Tobin* that the smell of marijuana establishes probable cause. *See Archer*, 531 F.3d at 1352. Thus, Smith cannot show plain error, and we affirm the district court's denial of Smith's motion to suppress.

AFFIRMED.