

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50365
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARRELL MONTEZ BROWN,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-99-CR-56-1

February 13, 2001

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Darrell Montez Brown (Brown) appeals his conviction for possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a). Brown challenges the district court's denial of his motion to suppress. He argues the search of his vehicle was unconstitutional because, *inter alia*, the trooper testified he was not positive the odor he smelled was marijuana and because no marijuana was found in the vehicle.

As noted in United States v. Reed, 882 F.2d 147, 149 (5th Cir. 1989), the distinct odor of burnt marijuana, by itself, will

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

provide probable cause to search a vehicle. Moreover, the detection of the odor of marijuana justifies a search of the entire vehicle, including locked compartments where contraband is likely to be concealed. Id.

As in Reed, "the resolution of this issue simply boil[s] down to a credibility choice," and because the trooper repeatedly testified that he believed the odor he smelled was marijuana, the district court did not err in denying Brown's motion to suppress. Reed, 882 F.2d at 149.

Neither is it relevant that the trooper did not ultimately find marijuana in the vehicle. "It is not controlling that the substance eventually discovered in the vehicle was cocaine, and that no marihuana was ever found." Id. "It is settled that the presence or absence of probable cause to search is not determined by what the search does or does not ultimately reveal." Id.

Brown's conviction is AFFIRMED.