

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

KEVIN ZETROUER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-1693

April 29, 2022

Appeal from the Circuit Court for DeSoto County; Don T. Hall,
Judge.

Howard L. Dimmig, II, Public Defender, and Dane K. Chase, Special
Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee; Michael S. Roscoe,
Assistant Attorney General, Tampa; and Cynthia Richards,
Assistant Attorney General, Tampa (substituted as counsel of
record), for Appellee.

MORRIS, Chief Judge.

Kevin Zetrouer appeals his convictions, after a jury trial, for
trafficking in oxycodone, possession of methamphetamine,

possession of marijuana, and possession of drug paraphernalia. Zetrouer raises two issues on appeal, only one of which warrants a reversal.

Zetrouer argues that he is entitled to a judgment of acquittal on the possession of marijuana count because the State did not introduce evidence of the marijuana that he allegedly possessed or evidence that the marijuana was legitimately unavailable. The State correctly concedes error on this issue. *See G.E.G. v. State*, 417 So. 2d 975, 977 (Fla. 1982) ("[W]hen a defendant is charged with possession of a controlled substance, that substance, if available, must be introduced into evidence"); *see also D.R.S. v. State*, 912 So. 2d 1280, 1281 (Fla. 2d DCA 2005); *Williams v. State*, 870 So. 2d 71, 71 (Fla. 2d DCA 2003). Accordingly, we reverse Zetrouer's conviction for possession of marijuana and remand for a new sentencing hearing using a corrected scoresheet. *See Fernandez v. State*, 199 So. 3d 500, 502 (Fla. 2d DCA 2016) ("In general, when the vacation of a conviction would result in changes to the defendant's scoresheet, the defendant is entitled to be resentenced using a corrected scoresheet."). We affirm Zetrouer's other convictions.

Affirmed in part; reversed in part; remanded.

SLEET and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official publication.