COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2413-CR **Cir. Ct. No. 2011CF5912**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH TREMELL JONES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Joseph Tremell Jones appeals from a judgment of conviction, entered upon his guilty plea, on one count of possession of cocaine as a second or subsequent offense. Jones contends that the circuit court erroneously denied his suppression motion. We disagree and affirm the judgment.

BACKGROUND

¶2 On December 8, 2011, Milwaukee police officers Raynaldo Roman and Matthew Kaltenbrun were on patrol in their marked squad car when Roman smelled burnt marijuana coming from a gray Audi parked seventy to eighty feet away. Roman was driving and had the window rolled down. After the squad passed the car, which was on Roman's left, he turned the squad around, parked behind the car, and turned on the squad's lights to effect a formal traffic stop. As the officers got behind the car, they noticed a cover of some sort over the temporary license plate.

¶3 Kaltenbrun approached the passenger side of the vehicle, where Jones was in the front seat. As he approached, Kaltenbrun saw Jones "lean down and to his right." Kaltenbrun asked if Jones and the driver had been smoking marijuana; Jones stared forward and appeared nervous. Kaltenbrun ordered Jones out of the car and patted him down.

¶4 During the patdown, Kaltenbrun felt what he suspected was "a knotted plastic sandwich baggy that contained small round objects," which the officer believed to be drugs. Jones attempted to flee, but the officers subdued and arrested him. After the struggle, the officers tested pills found on the ground and a white substance found in the car's center console. The pills tested positive for MDMA (ecstasy) and the white substance was identified as cocaine. No marijuana was recovered, though some cigars—which are evidently used to smoke marijuana by removing and replacing the tobacco—were recovered. Jones was charged with one count of resisting and one count of possessing cocaine as a second or subsequent offense.

¶5 Jones moved to suppress the cocaine, arguing that officers had no reasonable suspicion for stopping the car. The circuit court held a hearing on the motion. Following Roman's and Kaltenbrun's testimony, the circuit court found that as Roman's squad car approached the car Jones was in, Roman began to smell "a strong odor of burnt marijuana" that got stronger as the squad approached the parked car and dissipated as it drove past. After Roman turned around and began to approach the parked vehicle, Roman could observe a "reflective license plate cover" over a temporary plate, "and it was hard to read the plate." In addition, Kaltenbrun noted a "tinted" license plate cover and first smelled the burning marijuana odor from about fifteen feet away as he approached the car on foot. The circuit court expressly found the officers' testimony credible, ruled there was a basis for the stop, and denied the suppression motion.

¶6 After losing the motion, Jones pled guilty to the possession charge. The circuit court sentenced him to one year in jail, imposed and stayed in favor of three years' probation. Jones appeals. *See* WIS. STAT. § 971.31(10).

DISCUSSION

¶7 Our review of a suppression motion involves a two-step analysis. *See* ***State v. Dubose***, 2005 WI 126, ¶16, 285 Wis. 2d 143, 154, 699 N.W.2d 582, 587. We uphold the circuit court's findings of fact unless clearly erroneous—that is, contrary to the great weight and clear preponderance of the evidence. *See* ***State v. Arias***, 2008 WI 84, ¶12, 311 Wis. 2d 358, 368, 752 N.W.2d 748, 753. We then independently apply constitutional principles to the facts. *See* ***Dubose***, 2005 WI 126, ¶16, 285 Wis. 2d at 154, 699 N.W.2d at 587.

¶8 Reviewing the reasonableness of a traffic stop presents a similar question of constitutional fact. *See* ***State v. Post***, 2007 WI 60, ¶8, 301 Wis. 2d 1, 6–7, 733 N.W.2d 634, 636–637. A valid investigatory stop requires "'a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law.'" ***State v. Washington***, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 470, 700 N.W.2d 305, 312 (quoting ***State v. Gammons***, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 301, 625 N.W.2d 623, 626) (brackets in ***Washington***). In determining whether reasonable suspicion has been met, the facts known to officers at the time are taken together with any rational inferences and considered under the totality of the circumstances. *See* ***Washington***, 2005 WI App 123, ¶16, 284 Wis. 2d at 470, 700 N.W.2d at 312. "The credibility of police officers … testifying at a suppression hearing outside the presence of the jury is a question for determination by the trial court." ***State v. Flynn***, 92 Wis. 2d 427, 437, 285 N.W.2d 710, 714 (1979).

¶9 Jones argues that "[t]he circuit court's findings that the officer smelled marijuana from the car and that the car's license plate was illegible were clearly erroneous[.]" Specifically, he contends that "[i]t is important … to determine the extent of the officer's training and experience in dealing with the odor of marijuana or other controlled substance" because that training and experience "bears on the officer's credibility in identifying the odor as well as its strength, its recency, and its source." *See* ***State v. Secrist***, 224 Wis. 2d 201, 216, 589 N.W.2d 387, 394 (1999). However, Jones asserts, the State failed to offer sufficient evidence of Roman's training and experience and it offered no evidence of Kaltenbrun's training or experience. Because of these deficiencies, Jones contends that the circuit court should not have credited the officers' testimony. He directs our attention to two foreign cases to support his contention.

¶10 In ***State of Indiana v. Holley***, 899 N.E.2d 31 (Ind. Ct. App. 2008), an officer stopped Holley for speeding. ***Id.*** at 32. Holley did not stop immediately, so when he finally did stop, the officer put Holley and his passenger in handcuffs for officer safety. ***Ibid.*** The officer later testified that he had detected the smell of raw marijuana on both subjects and from the car's passenger compartment. ***Id.*** at 32–33. In upholding the circuit court's grant of a suppression motion, the court of appeals explained that the State had not shown that the officer, who had attended just one seminar where he saw what raw marijuana looked liked but had no formal training on identifying raw marijuana by scent, was qualified to identify raw marijuana by odor or was able to distinguish it from other substances. ***Id.*** at 35. In ***State of Ohio v. Birdsong***, 2009-Ohio-1859, ¶12 (Ohio Ct. App. 2009), the court of appeals agreed with a defendant that when the odor of marijuana is relied upon to establish probable cause for a warrantless search, "the State must present evidence of an arresting officer's qualifications in detecting the odor of marijuana before any evidence discovered during such a search is admissible."

¶11 However, Jones cites to no Wisconsin case that requires a specific threshold level of training or experience before an officer's testimony may be believed. "What is imperative … is that the officer be able to link the unmistakable odor of marijuana … to a specific person or persons. The linkage must be reasonable and capable of articulation." ***Secrist***, 224 Wis. 2d at 216–217, 589 N.W.2d at 394; *cf.* ***State v. Hollingsworth***, 160 Wis. 2d 883, 895–896, 467 N.W.2d 555, 560 (Ct. App. 1991) (rule for admission of expert testimony "does not condition an expert's competence on formal education"; experience is adequate); *see also* ***In Re Ondrel M.***, 918 A.2d 543, 555 (Md. Ct. Spec. App. 2007) (concluding that a police officer "who is capable of identifying marijuana

by smell *through past experience*" is providing lay, not expert, testimony (emphasis added)).

¶12 Here, Roman testified that he had smelled burnt or burning marijuana "[h]undreds of times" in over five years as a police officer. He testified that the odor was stronger as he approached the car Jones was in, and that it weakened when he passed the vehicle. He also testified that the vehicle's sunroof was open slightly. Kaltenbrun then testified that he smelled the odor as they approached on foot. It is true that Kaltenbrun did not testify about his own experiences with marijuana, but even excluding his testimony, corroboration is not required. ***Secrist***, 224 Wis. 2d at 216, 589 N.W.2d at 394.

¶13 In short, then, Roman testified about his experience identifying the odor of burnt marijuana, and he testified about how he linked it to a specific vehicle and its occupants. The circuit court believed that testimony, a decision which is not clearly erroneous. This effectively ends our review: ***Secrist*** holds that the odor of controlled substances provides probable cause to arrest, ***id.***, 224 Wis. 2d at 204, 589 N.W.2d at 389, so it necessarily also provides reasonable suspicion for an investigatory stop. We therefore do not consider the circuit court's determination relative to the license plate, as cases should be decided on the narrowest possible grounds.[1] *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989).

[1] WISCONSIN STAT. § 341.15(2) requires that vehicle registration plates "shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read." The officers testified about a cover over the Audi's plate that may or may not have made the plate difficult to read. Jones argues that there is no evidence at all to suggest that the Audi's plate was illegible. Implicit in his challenge is an argument that police relied on the supposedly obstructed plate as a pretext for the stop. As noted, however, we need not resolve this dispute, because the marijuana odor was a sufficient basis for the stop.

By the Court.—Judgment affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.