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DISTRICT II

March 25, 2026

To:

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Electronic Notice

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Clerk of Circuit Court
Washington County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2024AP843-CR State of Wisconsin v. Abraham I. Robertson (L.C. #2021CF423)

Before Neubauer, P.J., Gundrum, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Abraham I. Robertson appeals from a judgment of conviction and an order denying his motion for postconviction relief. He contends that the circuit court erred in denying his motions to suppress. He also challenges the court's decision to set an eligibility date for his participation in the early release Substance Abuse Program (SAP). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

On the night of August 31, 2021, Deputy Thomas Boisvert of the Washington County Sheriff's Office observed a vehicle traveling on Interstate 41 with what appeared to be excessive window tint.[2] He executed a traffic stop.

Upon making contact with the vehicle, Deputy Boisvert and another officer[3] detected a strong odor of marijuana coming from inside. Deputy Boisvert subsequently searched the vehicle, discovering cocaine and fentanyl. He then placed the vehicle's driver—Robertson—under arrest.

Robertson filed motions to suppress the evidence found in the vehicle, arguing that both the traffic stop and subsequent search were illegal. Following multiple hearings on the matter, the circuit court denied the motions.

Ultimately, Robertson pled guilty to possession with intent to deliver cocaine (more than 40 grams) as a party to a crime. The circuit court sentenced him to five years of initial confinement and four years of extended supervision. The court also found Robertson eligible to participate in the early release SAP, but not until he had served 44 months of initial confinement.

After sentencing, Robertson filed a motion for postconviction relief, asserting that the circuit court lacked authority to dictate when he would be eligible to participate in the SAP. Again, the court denied the motion. This appeal follows.

[2] Deputy Boisvert also believed that the vehicle's license plate was obstructed; however, that belief proved to be incorrect. The State does not rely upon the perceived plate obstruction in justifying the traffic stop.

[3] The other officer was Deputy Dillon Glamann, who was riding along with Deputy Boisvert that night.

On appeal, Robertson first contends that the circuit court erred in denying his motions to suppress. He renews his arguments that both the traffic stop and subsequent search of the vehicle were illegal.

When reviewing a circuit court's decision on a motion to suppress, we apply the clearly erroneous standard to the court's findings of fact. ***State v. Guard***, 2012 WI App 8, ¶14, 338 Wis. 2d 385, 808 N.W.2d 718. However, we review the court's application of constitutional principles to those findings of fact de novo. ***Id.***

Investigative traffic stops are subject to the constitutional requirement of reasonableness. ***State v. Post***, 2007 WI 60, ¶12, 301 Wis. 2d 1, 733 N.W.2d 634. A police officer's reasonable suspicion that a motorist is violating or has violated a traffic law is sufficient to initiate a stop of the offending vehicle. ***State v. Houghton***, 2015 WI 79, ¶5, 364 Wis 2d 234, 868 N.W.2d 143.

Police may conduct a warrantless search of a vehicle if it is readily mobile and probable cause exists for the search. ***State v. Marquardt***, 2001 WI App 219, ¶¶31-33, 247 Wis. 2d 765, 635 N.W.2d 188. "The unmistakable odor of marijuana coming from an automobile provides probable cause for an officer to believe that the automobile contains evidence of a crime." ***State v. Secrist***, 224 Wis. 2d 201, 210, 589 N.W.2d 387 (1999).

Here, we are satisfied that Deputy Boisvert had reasonable suspicion to stop Robertson's vehicle on the basis of excessive window tint. At one of the hearings on Robertson's motions, Deputy Boisvert testified that he was familiar with the lawful threshold of window tint by virtue of his training and experience. He then explained why, based upon his observations, he believed Robertson's window tint exceeded that. In particular, Deputy Boisvert cited his inability to see virtually anything inside Robertson's vehicle, including the vehicle gauge lights and the

vehicle's occupants. We conclude that Deputy Boisvert's testimony was sufficient to justify the stop. *See* ***State v. Conaway***, 2010 WI App 7, ¶7, 323 Wis. 2d 250, 779 N.W.2d 182 (an officer need only reasonably suspect that the vehicle violates the window tint regulation).

We are also satisfied that Deputy Boisvert's subsequent search of the vehicle was lawful. As noted, both Deputy Boisvert and another officer detected a strong odor of marijuana coming from Robertson's vehicle. That odor provided them with probable cause to believe that the vehicle contained evidence of a crime. ***Secrist***, 224 Wis. 2d at 210. Although there may have been an innocent explanation for the odor, none was provided in this case.[4] Moreover, "[i]t is black letter law that 'an officer is not required to draw a reasonable inference that favors innocence when there also is a reasonable inference that favors probable cause.'" ***State v. Moore***, 2023 WI 50, ¶15, 408 Wis. 2d 16, 991 N.W.2d 412 (citation omitted).

Robertson next challenges the circuit court's decision to set an eligibility date for his participation in the early release SAP. He insists that such a decision rests solely with the department of corrections.

Case law makes clear that circuit courts have, as part of their sentencing discretion, authority to decide when a defendant may participate in an early release program like SAP.

[4] The circuit court specifically found, "there was no evidence in this record of any innocent explanation whatsoever that would have necessitated the officers dispelling such an explanation before continuing on with their investigation."

See ***State v. White***, 2004 WI App 237, ¶¶6-9, 277 Wis. 2d 580, 690 N.W.2d 880. Because we are bound by such precedent, we must reject Robertson's challenge.[5]

Upon the foregoing reasons,

IT IS ORDERED that the judgment and the order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

[5] Robertson acknowledges the adverse precedent but suggests that we certify his case to the supreme court to determine if it is still good law. We are not persuaded that certification is appropriate in this matter.