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**DISTRICT I**

June 2, 2026

To:

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Circuit Court Judge  
Electronic Notice

Brian Patrick Mullins  
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Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Michael C. Sanders  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2024AP1469-CR                      State of Wisconsin v. Deon J. Sanders (L.C. # 2021CF3813)

Before Donald, C.J., Colón, P.J., and Geenen, J.

**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).**

Deon J. Sanders appeals the judgment convicting him of battery to a law enforcement officer, possession of cocaine with intent to deliver, and possession of narcotics (fentanyl) with intent to deliver. Sanders contends that the circuit court erroneously denied his motion to suppress. 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).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

## **BACKGROUND**

According to the complaint, which served as the basis for Sanders' guilty pleas, Officer Aaron Lemke smelled the odor of burnt marijuana coming from an unoccupied car in the parking lot of a hotel that was known for drug dealing and other criminal activity. Lemke also saw a gun inside the car. He subsequently unlocked the car, searched it, and found, among other things, an identification card for Sanders, two guns, one of which had been reported stolen, electronic scales, and a package containing residue suspected to be marijuana. Police officers surveilled the car, and upon seeing Sanders open the car's door, they arrested him. The officers searched Sanders and recovered approximately \$1,800 from his pants pocket. When the officers searched his backpack, they recovered cocaine, fentanyl, and marijuana.

Sanders sought to suppress all evidence seized as a result of the search of the car. At the suppression hearing, Lemke testified that he was patrolling the parking lot of a hotel known to be frequented for criminal activity around 1:00 a.m. He saw a Mazda Protege that was missing a front license plate parked in the hotel's parking lot. Lemke subsequently obtained the vehicle identification number to make sure the car was not stolen.

While standing next to the car, Lemke testified that he "detected the moderate odor of burnt marijuana emanating from the vehicle." Lemke said he was one foot away from the car, near its front bumper, when he smelled the marijuana and that the car's windows were closed. Lemke testified that he shined his flashlight into the car and saw a gun on the front passenger floorboard.

Lemke obtained permission from his sergeant to search the Mazda. Lemke testified that he used a “lockout kit” to access the interior of the car. In addition to the gun that was on the floor, Lemke testified that he saw a second gun in the driver’s side door compartment. Lemke seized two scales, an identification card for Sanders, and a “marijuana package” from the center console. Lemke said he smelled marijuana inside the car.

While still at the scene, Lemke said he learned that the gun seized from the floor was reported as stolen. Lemke testified that he subsequently turned the evidence over to another police officer, placed his business card on the front driver’s seat, and locked the car doors.

Lemke additionally testified that he was familiar with cannabidiol (CBD), which he knew was legal to possess in Wisconsin. He confirmed that CBD looks like illegal marijuana.

Officer Robert Poetzl also testified. He said that he provided backup support for Lemke and arrived at the scene shortly after Lemke obtained permission to search the car. Poetzl testified that as he looked inside the car, he made his own independent observation of “the moderate odor of marijuana” and saw a gun on the floorboard.

Poetzl testified about the items that were recovered after Lemke used the lockout kit to enter the car. He said that he was familiar with CBD, but was not trained to tell the difference between CBD and illegal marijuana. Poetzl said that he had no way to know whether what he smelled was CBD or illegal marijuana.

Officer Nicholas Smith testified that he was among the police officers who arrested Sanders as he tried to enter the car. The officers seized cash and narcotics from Sanders’ person and his backpack.

In denying the suppression motion, the circuit court expressly referenced and relied upon Lemke's testimony.<sup>2</sup> The court found "that Lemke credibly testified that ... he smelled the odor of marijuana emanating from the vehicle. He observed a gun in plain view on the front passenger floorboard. Lemke lawfully entered the vehicle to seize the gun, and in the course of doing so found the other contraband."

Sanders subsequently pled guilty to battery to a law enforcement officer, possession of cocaine with intent to deliver, and possession of narcotics (fentanyl) with intent to deliver.

## DISCUSSION

Sanders challenges the suppression ruling on appeal. He argues that the circuit court's finding that Officer Lemke smelled a moderate odor of burnt marijuana from the car was clearly erroneous because the State did not establish that Lemke had adequate training and experience to identify burnt marijuana or to distinguish illegal marijuana from CBD. Alternatively, Sanders argues that even if Lemke smelled a moderate odor of marijuana, the State did not prove police had probable cause to search the car.

"[W]hether law enforcement officers' conduct violated the Fourth Amendment's protections against unreasonable searches and seizures" presents "questions of constitutional fact." *State v. Brereton*, 2013 WI 17, ¶17, 345 Wis. 2d 563, 826 N.W.2d 369. A reviewing court will "uphold the circuit court's findings of historical fact unless those findings are clearly

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<sup>2</sup> The circuit court did not explicitly find Officer Poetzl's testimony credible. However, the court did not say anything to suggest that it did not find his testimony credible or did not believe it.

erroneous; however, the application of Fourth Amendment principles to the facts found presents a question of law” reviewed independently. *Id.*

A warrantless search is per se unreasonable, unless an exception to the warrant requirement applies. *State v. Faust*, 2004 WI 99, ¶11, 274 Wis. 2d 183, 682 N.W.2d 371. The State argues that the automobile exception applies in this case, which allows police to search a vehicle without a warrant if an officer has probable cause to believe the vehicle contains contraband. *See State v. Jackson*, 2013 WI App 66, ¶8, 348 Wis. 2d 103, 831 N.W.2d 426. “Whether a given set of facts provides probable cause for a search is an issue of law that we determine de novo.” *Id.*

Sanders asserts that Lemke did not indicate whether he was trained to identify marijuana by smell or to distinguish a difference between the odors of burnt and fresh marijuana. Additionally, Sanders highlights that while Lemke testified he previously conducted drug investigations and searches based on the odor of marijuana, Lemke did not specify how many investigations. These perceived shortcomings in Lemke’s testimony relate to his credibility, which is a question left to the fact-finder, not this court. *See State v. Moore*, 2023 WI 50, ¶16, 408 Wis. 2d 16, 991 N.W.2d 412 (explaining that questions regarding training and experience to detect the smell of marijuana go to the credibility of the officers, which is a question of fact left to the fact-finder).

Sanders’ contention that Lemke’s testimony that he smelled burnt marijuana was not corroborated because he did not find any burnt marijuana inside the car also fails. Sanders does not point to any legal authority suggesting that corroboration was necessary. The circuit court’s

finding that Lemke smelled the odor of marijuana emanating from the car was not clearly erroneous.

Consequently, we turn to Sanders' alternative argument that the State did not prove the officers had probable cause to believe the Mazda contained marijuana. Sanders claims: (1) a car was parked next to the Mazda, which provided another source for the odor; (2) the officers only detected a "moderate" odor of marijuana, which, according to Sanders, "suggests that the marijuana was either not used recently or came from a location further away from where the officers were standing"; and (3) the marijuana odor was not unmistakable.<sup>3</sup>

Sanders acknowledges 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." *Id.*, ¶15 (citations omitted). Despite this acknowledgement, Sanders points to inferences favoring innocence. In terms of whether the car parked next to the Mazda provided another source of the odor, the officers were not required to draw this inference. *See id.*

Regarding the strength of the odor required, we note that the defendant in *Moore* sought a bright-line rule that an officer's observation of the odor of marijuana could provide probable cause only if the officer was trained and experienced such that he or she could identify the odor as unmistakably marijuana (as opposed to CBD). *Id.*, ¶11. The supreme court concluded that this argument "misses the mark." *Id.* Instead, when conducting a totality of the circumstances analysis, the *Moore* court explained that the questions to consider are the following: "Was the

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<sup>3</sup> We address Sanders' claims in slightly different order than they were presented in his appellate briefing.

odor sufficiently identified as an illegal substance, most likely by someone (a law enforcement officer) who could make such an identification? If so, it was reasonable to believe that some illegal activity had occurred or was occurring.” *Id.*

Neither a strong nor unmistakable odor is required. As aptly summed up by the State: “There is no basis to require a human being’s detection of a scent to exceed some arbitrary threshold of intensity.” Rather, “when an officer smells the odor of a controlled substance, the common sense conclusion is that a crime has probably been committed.” *Id.*, ¶9 (citation modified). Such were the circumstances here.

Sanders argues that smelling a moderate odor of marijuana on its own is not enough. In making this argument, he overlooks the other facts found by the circuit court. Namely, the Mazda was in a parking lot known for drug dealing and other criminal activity, the officers observed a gun on the front seat floorboard, *and* there was an odor of marijuana coming from the car.<sup>4</sup> This was enough. Under the totality of the circumstances, the officers had probable cause to believe the Mazda contained contraband.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*

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<sup>4</sup> The circuit court did not determine that the gun on the floorboard itself was sufficient for probable cause, and the State does not make this claim on appeal.

