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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

April 1, 2025

To:

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Circuit Court Judge
Electronic Notice

Kari Tidquist
Clerk of Circuit Court
Trempealeau County Courthouse
Electronic Notice

Nicholas DeSantis
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Daniel P. Ryan
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You are hereby notified that the Court has entered the following opinion and order:

2023AP2248-CR State of Wisconsin v. Muammar Qaddafi Ali
(L. C. No. 2022CF41)

Before Stark, P.J., Hruz and Gill, 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).

Muammar Qaddafi Ali appeals from a judgment convicting him of possession of a firearm by a felon. *See* WIS. STAT. § 941.29(1m)(b) (2023-24).[1] Ali argues that the arresting officer had no probable cause to search his vehicle and that the circuit court therefore should have granted his motion to suppress evidence obtained as a result of the search. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we affirm. *See* WIS. STAT. RULE 809.21.

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

Ali was charged with possession of a firearm by a felon following a traffic stop conducted by Wisconsin State Patrol Trooper Joseph Redman. Redman initially stopped Ali for driving ninety-eight miles per hour. Redman later discovered a gun and marijuana inside Ali's vehicle. Ali stipulated that the traffic stop was valid, but he moved to suppress use of the gun and marijuana as evidence, arguing that Redman's observations during the stop did not give rise to the probable cause necessary to search Ali's vehicle.

At the suppression hearing, Redman testified to multiple observations that, based on his training and experience, were "indications of possible criminal behavior." When he initially approached the vehicle, Ali's window was partially down. Redman asked Ali to roll down his window so they could talk; however, Ali rolled the window down only "a couple more inches." During this time, Redman smelled a strong odor of burnt marijuana, which led him to suspect that Ali was trying to mask the smell by rolling down the window as little as possible. In addition, Redman noticed that Ali appeared "very nervous." Ali's hands were shaking, and he was sweating even though it was a winter night, which led Redman to conclude that Ali was "very nervous."

Redman further testified that following these observations, he checked Ali's criminal history and learned that Ali had prior felony convictions for murder, robbery, and drug charges. At this point, Redman radioed for backup and ordered Ali out of the vehicle. After Ali exited the vehicle, Redman noticed that Ali's eyes were glassy, bloodshot, and yellow, which Redman recognized as signs indicative of marijuana use. He "made the odor of marijuana known" to Ali, who replied that he had smoked earlier that day. Redman then searched the vehicle and found, as relevant here, marijuana and a gun.

On cross-examination, Redman admitted that he could not recall Ali's exact words describing which substance Ali had smoked. He admitted that his police report said that Ali "smoked earlier" without specifically using the word "marijuana." Redman further admitted that although he testified that the odor he detected was "burnt marijuana," his training did not enable him to distinguish between the smell of marijuana and that of "burnt legal products like CBD or hemp"; he could only make this distinction after "looking at [the substance] roadside" following a search.

The circuit court denied Ali's motion to suppress. The court found that Redman was trained to identify the odor of marijuana and that he not only smelled that odor when he approached Ali's vehicle, but he also noticed that Ali appeared nervous, sweaty, and had only partially rolled down his window. The court also noted that Ali was the sole occupant of the vehicle, and he exhibited other signs of impairment, such as bloodshot eyes. The court did not consider it significant whether Ali admitted to smoking marijuana or merely "smoking" because, in the context of their conversation, Redman could reasonably infer that Ali was referring to marijuana.

After the suppression motion was denied, Ali pled guilty to possession of a firearm by a felon. Other charges were dismissed and read in. This appeal follows.

On appeal, Ali argues that the circuit court erred by determining that Redman had probable cause to search his vehicle. Citing the dissent in ***State v. Moore***, 2023 WI 50, ¶¶18-34, 408 Wis. 2d 16, 991 N.W.2d 412 (Dallet, J., dissenting), he contends that Redman's smelling burnt marijuana should not provide probable cause because the smell could have come from a legal product. He also contends that Redman's training and experience should not be considered

because he never testified to the number of traffic stops he conducted during his tenure as a state patrol officer that involved drug-related crimes. Ali further argues that the nervousness he exhibited during the traffic stop was not unusual, *see* ***State v. Sumner***, 2008 WI 94, ¶38, 312 Wis. 2d 292, 752 N.W.2d 783 ("[n]ervousness during a routine traffic stop is typical, but unusual nervousness of a suspect may indicate wrongdoing"), and that his shaking may have been due to the cold. Finally, Ali argues that his admission to smoking *something* earlier that day does not provide enough evidence for Redman to believe that Ali had, in fact, smoked marijuana, such that there was probable cause to believe his vehicle contained marijuana.

The circuit court's decision denying Ali's motion to suppress evidence presents a question of constitutional fact. *See* ***State v. Hajicek***, 2001 WI 3, ¶26, 240 Wis. 2d 349, 620 N.W.2d 781. This court reviews questions of constitutional fact based on a two-step analysis. ***Id.*** First, the circuit court's findings of historical fact are reviewed under the clearly erroneous standard. ***Id.***, ¶27. Second, the court applies the law to those facts de novo. ***Id.*** "The State has the burden to prove that a warrantless search was reasonable and in compliance with the Fourth Amendment." ***State v. Kieffer***, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998).

The Fourth Amendment affords protection against unreasonable searches and seizures. ***State v. Wantland***, 2013 WI App 36, ¶5, 346 Wis. 2d 680, 828 N.W.2d 885. This protection extends to automobiles. ***United States v. Jones***, 565 U.S. 400, 404 (2012). While searches conducted without a warrant are generally unreasonable, *see* ***Wantland***, 346 Wis. 2d 680, ¶5, there are "specifically established and well-delineated exceptions" to the warrant requirement, *see* ***Katz v. United States***, 389 U.S. 347, 357 (1967).

One such exception is the automobile exception, under which police may conduct a warrantless search if the vehicle is readily mobile and if there is probable cause to believe contraband is in the vehicle. ***State v. Jackson***, 2013 WI App 66, ¶8, 348 Wis. 2d 103, 831 N.W.2d 426.

"[P]robable cause is a flexible, common-sense standard." ***State v. Tompkins***, 144 Wis. 2d 116, 124, 423 N.W.2d 823 (1988) (citation omitted). It merely requires that the facts available to the officer would warrant a person of reasonable caution to believe that contraband is likely to be in the place searched. ***Id.*** "Probable cause 'is not a high bar," requiring "only a probability or substantial chance of criminal activity, not an actual showing of such activity." ***District of Columbia v. Wesby***, 583 U.S. 48, 57 (2018) (citations omitted). The officer's conclusions "need not be unequivocally correct or even more likely correct than not." ***State v. Pozo***, 198 Wis. 2d 705, 711, 544 N.W.2d 228 (Ct. App. 1995). It is enough if the conclusions are "sufficiently probable that reasonable people—not legal technicians—would be justified in acting on them in the practical affairs of everyday life." ***Id.***

Whether an officer has probable cause to search must be viewed in light of the knowledge and experience of the officer and turns on the facts of a particular case. *See* ***State v. Lefler***, 2013 WI App 22, ¶8, 346 Wis. 2d 220, 827 N.W.2d 650. An officer may draw "factual inferences based on the commonly held knowledge they have acquired in their everyday lives." *See* ***Kansas v. Glover***, 589 U.S. 376, 384-85 (2020). Moreover, "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. Nieves***, 2007 WI App 189, ¶14, 304 Wis. 2d 182, 738 N.W.2d 125. "A factor viewed in isolation is often more 'readily susceptible to an innocent explanation' than one viewed as part of a totality." ***Wesby***, 583 U.S. at 62 (citation omitted). Accordingly,

the United States Supreme Court and our state supreme court have cautioned lower courts against assessing individual factors in isolation from each other because this type of "divide-and-conquer analysis" does not account for the totality of circumstances. *See* ***id.*** at 60-61; *see also* ***State v. Genous***, 2021 WI 50, ¶12, 397 Wis. 2d 293, 961 N.W.2d 41 (rejecting the "divide-and-conquer" approach in the reasonable suspicion context).

In Wisconsin, the odor of marijuana can provide probable cause to search. ***State v. Secrist***, 224 Wis. 2d 201, 218, 589 N.W.2d 387 (1999) ("If under the totality of the circumstances, a trained and experienced police officer identifies an unmistakable odor of a controlled substance and is able to link that odor to a specific person or persons, the odor of the controlled substance will provide probable cause to arrest."). Specifically, "[t]he strong odor of marijuana in an automobile will normally provide probable cause to believe that the driver and sole occupant of the vehicle is linked to the drug." *See* ***id.***

Based on the totality of the circumstances and applicable law, Redman had probable cause to search Ali's vehicle. As the circuit court found, Redman was trained in identifying the smell of marijuana, and he not only smelled what he believed to be marijuana coming from the vehicle in which Ali was the sole occupant, but he also noticed that Ali appeared nervous, sweaty, and only partially rolled his window down when asked to roll it down all the way. Ali's eyes appeared glassy, bloodshot, and yellow, and he admitted to smoking something earlier that day—something that, given the context of the conversation, Redman could have reasonably inferred was marijuana. *See* ***Moore***, 408 Wis. 2d 16, ¶15. Furthermore, Ali had been clocked speeding nearly thirty miles per hour above the speed limit, and he had a prior criminal record that included a felony and drug charges. *See* ***State v. Lange***, 2009 WI 49, ¶33, 317 Wis. 2d 383,

766 N.W.2d 551 (explaining that prior convictions may be considered in a probable cause analysis).

Ali's arguments to the contrary are not compelling. Ali's reliance on the ***Moore*** dissent is not persuasive because it is not the law. *See* ***State v. Perry***, 181 Wis. 2d 43, 49, 510 N.W.2d 722 (Ct. App. 1993) ("A dissent is what the law is not."). Marijuana laws are evolving, and the smell of marijuana and legal products may be indistinguishable, but "[i]t is black letter law that 'an officer is not required to draw a reasonable inference that favors innocence when there is also a reasonable inference that favors probable cause.'" *See* ***Moore***, 408 Wis. 2d 16, ¶15 (citation omitted). In other words, just because Redman could have inferred that Ali may have been smoking a legal product does not mean that he was required to do so. Similarly, just because there may have been innocent explanations for Ali's nervousness or shaking does not mean they could not have factored into Redman's probable cause analysis. *See* ***Genous***, 397 Wis. 2d 293, ¶12.

Moreover, Ali's contention that Redman's training and experience was inadequate is not persuasive. Redman testified that he was trained in identifying the smell of marijuana and had three years of experience working as a state patrol officer. The circuit court found Redman credible, and Ali points to no law or set of facts to challenge the court's finding. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (this court does not consider undeveloped arguments).

For the foregoing reasons, we reject Ali's challenge to the circuit court's denial of his suppression motion and summarily affirm the judgment.

Therefore,

IT IS ORDERED that the judgment is 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