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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

July 15, 2025

To:

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Circuit Court Judge
Electronic Notice

John Blimling
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Caroline Brazeau
Clerk of Circuit Court
Marinette County Courthouse
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Nelida Cortes
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1205-CR

State of Wisconsin v. Ryan James Kovacich
(L. C. No. 2018CF143)

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).

Ryan Kovacich appeals from a judgment convicting him, following a jury trial, of two felony and three misdemeanor drug charges. Kovacich contends that evidence seized from his vehicle during a traffic stop should have been suppressed because the behavior of a K9 unit dog who sniffed his vehicle was not sufficiently indicative of the presence of drugs to provide probable cause to search the vehicle. 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 on the grounds that Kovacich’s own behavior, in conjunction with that of the dog, provided probable cause for the search.

When reviewing a motion to suppress evidence, we will uphold the circuit court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); *State v. Harris*, 2017 WI 31, ¶9, 374 Wis. 2d 271, 892 N.W.2d 663. We will independently determine, however, whether the facts found by the court satisfy applicable constitutional provisions. *Harris*, 374 Wis. 2d 271, ¶9.

The constitutional provisions at issue here are the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution, which each prohibit unreasonable searches. See *State v. Dearborn*, 2010 WI 84, ¶14, 327 Wis. 2d 252, 786 N.W.2d 97. A warrantless search is per se unreasonable unless it falls within a clearly delineated exception to the warrant requirement. *State v. Parisi*, 2016 WI 10, ¶28, 367 Wis. 2d 1, 875 N.W.2d 619. One such exception allows law enforcement officers to conduct a warrantless search of a vehicle when they have probable cause to believe that the vehicle contains contraband. *State v. Jackson*, 2013 WI App 66, ¶8, 348 Wis. 2d 103, 831 N.W.2d 426.

Probable cause to search exists when—under the totality of the circumstances, including the knowledge and experience of the officer conducting the search—sufficient facts exist to “excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that the objects sought will be found in the place to be searched.” *State v. Lefler*, 2013 WI App 22, ¶8, 346 Wis. 2d 220, 827 N.W.2d 650 (citation omitted).

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

Canine scent evidence derived from having a dog sniff around a vehicle does not, in and of itself, constitute a Fourth Amendment search. *Illinois v. Caballes*, 543 U.S. 405, 410 (2005). Such evidence may be considered as part of the totality of the circumstances to determine the existence of probable cause to search the vehicle. See *State v. Miller*, 2002 WI App 150, ¶12, 256 Wis. 2d 80, 647 N.W.2d 348. More specifically, a dog's alert on an object for the presence of drugs provides probable cause to search that object, provided that the dog is trained in narcotics detection, the dog has demonstrated a sufficient level of reliability in detecting drugs in the past, and the officer handling the dog is familiar with how the dog reacts when it smells drugs. *Id.*

The following factual findings made by Judge David G. Miron are supported by the testimony of two law enforcement officers and are not clearly erroneous. Deputy Spencer Elias initiated a traffic stop of Kovacich's vehicle because the Wisconsin license plate registration on the vehicle was expired. Rather than complying with Elias's requests to see Kovacich's driver's license and vehicle registration, Kovacich spent nearly seven minutes questioning Elias's authority. Kovacich eventually provided Elias with a copy of his Michigan medical marijuana card before providing him with his license. At some point during this exchange, Elias requested backup.

Deputy Benjamin Hicks, a certified K9 unit officer with a trained drug-sniffing dog, responded to Elias's call for backup. Hicks arrived while Elias was still attempting to obtain basic information from Kovacich. Prior to conducting a dog sniff, Hicks asked Kovacich to step out of his vehicle, but Kovacich refused. While Elias was working on issuing a citation, Hicks ran his K9 dog around Kovacich's vehicle.

As the K9 dog circled the vehicle, he first stuck his nose toward the driver's door handle, indicating that he was trying to get close to an odor of marijuana, cocaine, heroin, or methamphetamine. Then, as he continued his way around the vehicle, the K9 dog jumped up on the rear passenger door of the vehicle, again indicating that he was working toward an odor. At that point, the K9 dog became distracted by another dog that was inside Kovacich's vehicle.

Kovacich cites additional testimony by Hicks that the K9 dog never made a final "alert" on the vehicle. Although the circuit court failed to make any specific finding on that point, we will assume that the court implicitly accepted Hicks's testimony that the dog never made a final alert because the court did not give any indication that it did not find Hicks credible.

Kovacich argues that without a final alert from the K9 dog, the officers lacked probable cause to search his vehicle. We disagree. The totality of the circumstances providing the officers with probable cause for the search included Kovacich's evasive failure to cooperate with Elias's routine questioning, his refusal to exit his vehicle, and his possession of a medical marijuana card, in addition to the K9 dog changing its behavior in a manner that indicated to its trainer that it was searching for a source of narcotics as it circled Kovacich's vehicle. The lack of a final "alert" is not dispositive.

Kovacich contends that his failure to cooperate with law enforcement or to exit his vehicle could be attributed to his sovereign citizen beliefs and that nothing should be read into his possession of a medical marijuana card from Michigan, where medical marijuana is legal. However, an officer is not required to accept an innocent explanation where competing reasonable inferences could be drawn. *See State v. Kutz*, 2003 WI App 205, ¶12, 267 Wis. 2d 531, 671 N.W.2d 660. In sum, we are satisfied that the facts known to the officers before they

conducted the search were sufficient to lead a reasonable officer to believe that Kovacich was attempting to hide narcotics in his vehicle.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction is summarily affirmed. 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