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DISTRICT II

February 20, 2019

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

2018AP1035-CR State of Wisconsin v. Dylan T. Gentzen (L.C. #2017CF171)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Dylan Gentzen appeals from his judgment of conviction for possession of THC with intent to deliver. He argues the circuit court erred in denying his motion to suppress the incriminating evidence police found in the trunk of his car. 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 (2017-18).¹ We affirm.

At the evidentiary hearing on Gentzen’s motion to suppress, the following relevant testimony was provided by the only witness, the arresting officer.

The officer performed a traffic stop on Gentzen due to speeding. While speaking with Gentzen, who was the only occupant of the vehicle, the officer observed his eyes to be “bloodshot, reddish” and detected a moderate odor of burnt marijuana. The officer searched the inside of Gentzen’s vehicle, during which search the smell of burnt marijuana “was stronger” and the officer found what he “believed to be marijuana seed” and “a lot of small bits of ... what [he] believed to be marijuana [flakes] ... scattered all throughout the vehicle.”² The officer then searched the trunk and found “a backpack ... containing a glass jar with plastic baggies of what appeared to be fresh marijuana.” The circuit court determined the officer had probable cause to search the vehicle, including the trunk, and denied Gentzen’s suppression motion.

On appeal, Gentzen contends the evidence the officer found in the trunk should have been suppressed because the officer did not have probable cause to search that location. He more specifically asserts “the loose bits of purported marijuana strewn about a dirty car and a

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² The officer testified, and the circuit court found, that he was able to recognize the odor and appearance of marijuana based on his sixteen years of training and/or experience as a police officer.

purported marijuana seed do not give rise to an inference that the driver is transporting drugs in his trunk or otherwise create an independent basis to extend the search.” Gentzen’s position falls flat.

The legal principles at issue are straightforward. “Whether a given set of facts provides probable cause for a search is an issue of law that we determine *de novo*.” ***State v. Jackson***, 2013 WI App 66, ¶8, 348 Wis. 2d 103, 831 N.W.2d 426. In general, when an officer detects an odor of marijuana emanating from a lawfully stopped vehicle, the officer has probable cause to conduct a warrantless search of the vehicle for additional evidence that the occupant is in possession of marijuana, *see State v. Secrist*, 224 Wis. 2d 201, 211, 589 N.W.2d 387 (1999), including searching “every part of the vehicle and its contents that may conceal the object of the search,” ***Jackson***, 348 Wis. 2d 103, ¶8 (citation omitted). In ***State v. Lefler***, 2013 WI App 22, 346 Wis. 2d 220, 827 N.W.2d 650, we reiterated this latter principle when we noted that ***United States v. Ross***, 456 U.S. 798, 825 (1982), “allows a search of the vehicle’s trunk if probable cause exists to believe the vehicle contains evidence of a crime and that evidence *is capable of being concealed* in the trunk.” ***Lefler***, 346 Wis. 2d 220, ¶11 (emphasis added). Additionally, the United States Supreme Court has stated, “When there is probable cause to search for contraband in a car, it is reasonable for police officers ... to examine packages and containers without a showing of individualized probable cause for each one.” ***Wyoming v. Houghton***, 526 U.S. 295, 302 (1999); *see also Ross*, 456 U.S. at 825.

In the case now before us, once the officer detected the odor of marijuana while speaking with Gentzen, the officer had probable cause that Gentzen was in possession of marijuana and to search the vehicle for additional evidence related to that offense. While searching inside the vehicle, the officer noticed the odor of marijuana was even stronger and also found marijuana

flakes “scattered all throughout the vehicle” and marijuana seed. These observations further added to the likelihood that other evidence of the crime of marijuana possession, such as additional amounts of marijuana, would be found elsewhere in the vehicle. The odor, the seed, and the flakes provided the officer with probable cause to search other areas of the vehicle that could conceal the object of the search, including a container such as the trunk, without requiring “a showing of individualized probable cause” for such areas. Evidence of marijuana possession was “capable of being concealed in the trunk,” *Lefler*, 346 Wis. 2d 220, ¶11; therefore, the officer could lawfully search it. The circuit court properly denied Gentzen’s motion to suppress the evidence found in the trunk.

Therefore,

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

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

Sheila T. Reiff
Clerk of Court of Appeals