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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 II

April 15, 2020

To:

Hon. Lloyd Carter
Circuit Court Judge
Waukesha County Circuit Court
515 W. Moreland Blvd.
Waukesha, WI 53188

Gina Colletti
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

John W. Kellis
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

Susan Lee Opper
District Attorney
515 W. Moreland Blvd., Rm. G-72
Waukesha, WI 53188-2486

Christopher D. Sobiechowski
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4116

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

2019AP480-CR

State of Wisconsin v. William L. Groce (L.C. #2015CF45)

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

William L. Groce appeals from a judgment convicting him of possession with intent to deliver marijuana as a second or subsequent offense. He challenges the lawfulness of his traffic stop and search of the car's trunk. 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.

In the early morning hours of October 7, 2014, Officer Nathan Smidt and his partner were on duty, watching for suspicious behavior at a gas station where there had been illegal drug activity. They observed a car exit from a nearby apartment building and pull into the gas station parking lot. The car parked without getting gas, remaining there for a short period of time. Eventually, Officer Smidt and his partner exited their vehicle and approached the car on foot.

Officer Smidt and his partner made contact with the car's driver, Groce. They spoke with him casually for a short period of time, asking why he had driven such a short distance to that location. During their conversation, Groce indicated that he was the primary driver of the car, which was registered to a woman. He explained that he had driven to the gas station to buy marijuana from another person who would be arriving in the next couple of minutes.

Officer Smidt checked department of transportation records via his squad car computer and learned that Groce did not have a driver's license. He also learned that Groce's operating privileges were revoked due to a prior operating while intoxicated conviction. Despite this knowledge, Officer Smidt did not issue Groce a citation for driving at that time. Instead, he and his partner permitted Groce to leave so that they could possibly apprehend Groce's drug dealer.

Thirteen days later, on October 20, 2014, Officer Smidt was again on duty—this time by himself. While at an intersection, he observed the same car he had seen at the gas station. He saw that the driver had Groce's same physical appearance; he was a black male with a shorter stature,

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

heavy build, and bald head. Officer Smidt believed that the driver was Groce. He also believed, based on the driving record he had previously reviewed, that Groce could not legally drive. Accordingly, he conducted a traffic stop.

Upon stopping the car, Officer Smidt approached the driver's side window and recognized the driver as Groce. While speaking with him, Officer Smidt noticed the "overpowering odor of fresh marijuana" in the car. Officer Smidt asked Groce when he last had marijuana in the car, and Groce replied that it had been two days. Officer Smidt searched the passenger compartment of the car but located only a noncollectible amount of marijuana flakes in the backseat area, where the odor was most concentrated.

Believing there was more marijuana in the car, Officer Smidt confronted Groce about the strong odor and asked where the marijuana was located. Groce again replied that it had been days since he had marijuana in the car. Groce consented to a search of his person, which revealed no marijuana. Ultimately, Officer Smidt opened the car's trunk and discovered a large sealed Ziploc bag, two sealed plastic baggies that were tied off, and a closed mason jar, all containing marijuana, as well as a scale.

Groce filed a motion to suppress the evidence found in the car's trunk, arguing that the traffic stop and search of the trunk were illegal. Following a hearing on the matter, the circuit court denied the motion.

Groce subsequently pled guilty to possession with intent to deliver marijuana as a second or subsequent offense. The circuit court imposed and stayed a sentence of imprisonment, placing Groce on probation for three years. This appeal follows.

On appeal, Groce renews his challenge to the lawfulness of his traffic stop and search of the car's trunk. He maintains that the circuit court should have granted his motion to suppress as both 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 de novo the court's application of constitutional principles to those findings. *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 Groce's traffic stop was lawful. As noted above, Officer Smidt was familiar with the car in question, having recently seen it at the gas station. He had reason to believe that Groce was driving it based upon (1) his past experience with the car; (2) his visual observations of the driver, who shared some of Groce's physical characteristics; and (3) Groce's prior claim of being the car's primary driver. Likewise, Officer Smidt had reason to believe that Groce was driving illegally, as it was highly unlikely that Groce had completed the steps necessary

to reinstate his operating privileges and obtain a valid license in the span of thirteen days. Collectively, these circumstances were sufficient to permit the stop.

We also conclude that the search of the car's trunk was lawful. The "overpowering odor of fresh marijuana" in the car provided probable cause for Officer Smidt to believe that the car contained evidence of a crime. See *Secrist*, 224 Wis. 2d at 210. Once he had that, Officer Smidt could search every part of the car that could conceal the marijuana, including the trunk. See *State v. Lefler*, 2013 WI App 22, ¶11, 346 Wis. 2d 220, 827 N.W.2d 650; see also *United States v. Ross*, 456 U.S. 798, 825 (1982). His decision to search the trunk was reasonable given the strong odor and the absence of collectible marijuana in the car's passenger compartment or on Groce's person. Accordingly, we agree with the circuit court that suppression was not required.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to 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