COURT OF APPEALS
DECISION
DATED AND FILED

July 24, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1671-CR **Cir. Ct. No. 2009CF2523**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDISON J. BUSANET-PEREZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL GUOLEE, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Edison J. Busanet-Perez appeals from a judgment of conviction, entered on his guilty plea, for one count of possession with intent to

deliver more than forty grams of cocaine, as a party to a crime, contrary to WIS. STAT. §§ 961.41(1m)(cm)4. and 939.05 (2009-10).[1] Busanet-Perez presents a single issue on appeal: he argues that the circuit court erroneously denied his suppression motion "without affording Busanet-Perez a meaningful opportunity to challenge the probable cause basis for the search warrant."[2] (Bolding omitted.) Specifically, he argues that the circuit court should have granted Busanet-Perez's motion to compel the State to produce detailed records concerning a drug detection dog's training, experience, and "alert" history. Because Busanet-Perez previously stipulated to the dog's qualifications, we reject his argument and affirm the judgment.

BACKGROUND

¶2 A police detective applied for a search warrant for a specific apartment in Milwaukee. The affidavit in support of the warrant indicated that detectives had received information that Hispanic males were "storing large amounts of cocaine inside of the residence" and that a drug-detection dog named "Honey" had alerted outside the door of the apartment. The affidavit contained information about Honey's training and past performance, as well as the experience of her handler.

¶3 A circuit court judge approved a "no-knock" warrant for the residence. When the warrant was executed, police officers found over 1100 grams

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] The Honorable Carl Ashley decided the motion to compel and the motion to suppress that are at issue in this appeal, while the Honorable Michael D. Guolee accepted Busanet-Perez's guilty plea and sentenced him.

of cocaine worth an estimated $118,565. The landlord of the residence indicated that the apartment had been rented to Busanet-Perez and a man named Jose Reyes.

¶4 Both Busanet-Perez and Reyes were charged with possession with intent to deliver cocaine. They both moved to suppress evidence, including the drugs, on numerous bases. As relevant to this appeal, they sought relief through a ***Franks-Mann*** motion. *See* ***Franks v. Delaware***, 438 U.S. 154, 155-56 (1978) (where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, a hearing should be held to determine the falsity and whether the affidavit continues to establish probable cause with the offending information excised); ***State v. Mann***, 123 Wis. 2d 375, 385-86, 367 N.W.2d 209 (1985) (***Franks*** permits an attack on a criminal complaint where there has been an omission of critical material where inclusion is necessary for an impartial judge to fairly determine probable cause). Although the circuit court ruled that Reyes lacked standing to pursue the ***Franks-Mann*** motion, Busanet-Perez was allowed to pursue it. The circuit court heard testimony for several days between December 2009 and May 2010 on issues such as the lack of information in the search warrant affidavit about prior law enforcement contacts with Busanet-Perez, Reyes, and the apartment.

¶5 Before a March 8, 2010 hearing, Busanet-Perez filed a motion to compel the State to produce the names of any drug dogs and their handlers who were at the apartment over a three-day period. The State agreed to produce the information and the hearing proceeded. One of the witnesses Busanet-Perez called was Detective Steve Dettmann, Honey's handler. Busanet-Perez's trial counsel briefly questioned Dettmann about Honey's training and certifications and then asked Dettmann about Honey's alert at Busanet-Perez's residence.

¶6 On cross-examination, the State attempted to elicit additional testimony about Honey's training and experience. When the questions echoed those asked on direct examination, the circuit court inquired whether detailed testimony was needed, stating: "I don't even think there's an objection as to the qualifications of the dog. Are there?" In response, trial counsel replied, "No…. As to the qualifications of the dog, no." When the State indicated that it thought additional testimony might be required by case law, the circuit court asked the State to make an offer of proof. The State and trial counsel then had the following exchange:

> [State]: The point I'm trying to make is that Mr. Dettmann was qualified, Honey was qualified. Honey was deployed on that given occasion. Honey has alerted in the past. Honey has alerted in detecting controlled substance[s] more than 300 times.
>
> The alerts have been the basis for more than 10 search warrants as of [the date Busanet-Perez's residence was searched], and in addition more than 25 searches of motor vehicles. In those situations Honey was found … to have found a substance that they alerted to as some sort of drug nexus was found [sic].
>
> If counsel's willing to stipulate to those facts –
>
> [Trial counsel]: We so stipulate.
>
> [State]: Okay. Thank you. Then I won't pursue that anymore.

The State then asked several questions to confirm that Dettmann was not involved in prior contacts with Busanet-Perez and Reyes. Thereafter, Dettmann was excused.

¶7 After the hearing was continued, Busanet-Perez filed a motion to compel the State to produce detailed information about Honey and her handler. For instance, he sought: the name and address of Honey's veterinarian; all records

of her training, testing, and certifications; copies of training and course certification materials; "videotapes of Honey training and alerting"; "all records showing the number of times [Honey] has been exposed to suspected illegal material and number of occasions on which the dog has correctly alerted and the number of times the dog has incorrectly alerted"; information concerning the handler's training and education; and "[c]opies of all reports of the Milwaukee Police Department concerning Honey and the handler." The State objected, arguing that the request was "overbroad and irrelevant." The State also noted that trial counsel had already had an "ample opportunity" to question Dettmann about "the qualifications of the canine drug detection team."

¶8 In his reply brief, Busanet-Perez argued that he was entitled to challenge the truthfulness of the factual statements made in support of the search warrant and that "to properly challenge the veracity of the affidavit[,] additional information under the control of the government must be delivered to the defense."

¶9 At the hearing on Busanet-Perez's motion to compel, the State provided certification records related to Honey, but did not provide everything Busanet-Perez had sought. The State argued that it need not turn over additional information because there had already been testimony by Dettmann about the information included in the search warrant affidavit and Honey's qualifications. It also presented legal argument concerning the type of information that must be provided about a dog's reliability. In response, trial counsel recognized that she was asking for the information "after the fact" and did not have it when she elicited testimony from Dettmann. She said that she might need to examine Dettmann again once additional detailed information on Honey was provided.

¶10 The circuit court denied Busanet-Perez's motion. In addition to discussing the case law, it noted that Busanet-Perez had been "given ample opportunity to go into the qualifications of the dog" when Dettmann testified. The circuit court concluded: "I'm denying your motion for any further information on the dog based on lack of any indication that there is something out there other than a fishing expedition."

¶11 The circuit court subsequently denied Busanet-Perez's motion to suppress. Busanet-Perez ultimately entered a plea agreement with the State and pled guilty. He was sentenced to two years of initial confinement and three years of extended supervision, but the sentence was stayed and he was placed on probation for two years. This appeal follows.

STANDARD OF REVIEW

¶12 On review of a trial court's ruling on a motion to suppress, this court will uphold the trial court's factual findings unless they are clearly erroneous, but "[w]hether the facts satisfy constitutional principles is a question of law for this court to decide." ***State v. Bridges***, 2009 WI App 66, ¶9, 319 Wis. 2d 217, 767 N.W.2d 593.

DISCUSSION

¶13 Although Busanet-Perez presented numerous arguments in favor of suppression at the circuit court, he raises only a single issue on appeal.[3] He argues

[3] Notably, Busanet-Perez does not argue that the circuit court erroneously denied his motion to suppress based on the testimony and information before it. We infer his argument to be that he was entitled to detailed information about the dog that would have enabled him to more effectively argue for suppression.

that "the circuit court erred in denying [his] motion to suppress evidence because it denied the motions without affording [him] a meaningful opportunity to challenge the probable cause basis for the search warrant." (Bolding omitted.) Busanet-Perez asserts that his "opportunity to meaningfully challenge the probable cause basis for the search warrant required full disclosure of the police dog's training, certification and performance records as such materials directly pertained to the reliability of the dog's 'alert.'" (Bolding omitted.) He takes issue with what he asserts were internal inconsistences in the search warrant affidavit concerning the number of alerts and search warrants obtained. He contends that "without the actual training and performance records, [he] could not meaningfully challenge" the search warrant affidavit.

¶14 In response, the State argues that when Busanet-Perez pled guilty, he "waived any challenge to the circuit court's decision denying his motion to compel additional discovery regarding the drug dog." (Uppercasing omitted.) We decline to consider the potential application of the guilty-plea-waiver rule to Busanet-Perez's argument concerning the denial of the motion to compel. Instead, we conclude that the circuit court did not err when it denied the motion to compel because before Busanet-Perez even filed the motion to compel the production of detailed information about Honey, Busanet-Perez stipulated to Honey's background. Specifically, at the March 8, 2010 hearing, trial counsel explicitly stipulated to Honey's qualifications, experience, and alert history. "[O]ral stipulations made in open court, taken down by the reporter, and acted upon by the parties and the court are valid and binding." ***Wyandotte Chemicals Corp. v. Royal Elec. Mfg. Co., Inc.***, 66 Wis. 2d 577, 589, 225 N.W.2d 648 (1975); *see also* ***Birts v. State***, 68 Wis. 2d 389, 395 n.6, 228 N.W.2d 351 (1975) (recognizing that rule applies in both civil and criminal cases). Busanet-Perez has not explained

why he should not be bound by trial counsel's in-court stipulation. We decline to develop an argument for him. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (holding that we will not address arguments inadequately briefed).

¶15 For the foregoing reasons, we reject Busanet-Perez's argument that the circuit court erroneously denied his suppression motion "without affording Busanet-Perez a meaningful opportunity to challenge the probable cause basis for the search warrant." (Bolding omitted.) We affirm the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.