

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 18, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2835-CR

Cir. Ct. No. 2012CF414

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW A. WHITE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
GREGORY B. HUBER, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Matthew White appeals a judgment convicting him on his no contest pleas of possession of methamphetamine and misdemeanor bail

jumping. Pursuant to WIS. STAT. § 971.31(10),¹ he challenges the circuit court's order denying his motion to suppress evidence seized from a car White was using at the time of arrest. White contends the evidence should have been suppressed because the search was based on an unreliable dog sniff for the presence of narcotics. Because the evidence supports the circuit court's finding that the State proved all of the factors necessary to establish probable cause based on the dog sniff, we affirm the judgment.

¶2 In June 2012, officers arrested White on an outstanding warrant as he sat in a parked car. Officer David Landretti brought his drug-sniffing dog, Foster, to the scene. Foster "alerted" to the car, indicating the presence of drugs in the car. In a subsequent search, officers discovered marijuana, methamphetamine and drug paraphernalia.

¶3 A vehicle is subject to a warrantless search if there is probable cause to believe evidence of a crime will be found inside. *State v. Brereton*, 2013 WI 17, ¶¶25-30, 345 Wis. 2d 563, 826 N.W.2d 369. In *State v. Miller*, 2002 WI App 150, ¶12, 256 Wis. 2d 80, 647 N.W.2d 348, this court adopted a three-part test to determine whether probable cause can be based on a dog sniff: (1) the State must show that the dog was trained in narcotics detection; (2) the dog must have demonstrated a sufficient level of reliability in detecting drugs in the past; and (3) the officer must be familiar with how the dog reacts when it smells contraband. *Id.* Whether a set of facts amounts to probable cause to search a vehicle is a question of law subject to de novo review. *Brereton*, 345 Wis. 2d 563, ¶17.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 The State presented sufficient evidence that Foster and Landretti met or exceeded each of the *Miller* requirements, and none of White’s arguments on appeal convince us otherwise. Foster was trained in the Netherlands in narcotics detection and, with Landretti, went through a five-week training course in Indiana leading to certification. Foster’s certifications were admitted into evidence and constitute sufficient proof of his qualifications. See *Florida v. Harris*, 133 S. Ct. 1050, 1057 (2013). In 2009 and 2010, Foster and Landretti took first place in drug detection competitions against forty to fifty teams. They took part in local training exercises twice per month for eight hours a day. Landretti estimated that in his eight years with Foster, the dog falsely alerted to the presence of drugs approximately five times during these exercises, and Landretti could not recall the last time Foster did so.

¶5 Foster’s field performance was established through Landretti’s testimony summarizing department data from May through December 2012, the dates for which complete data were kept. During that time, Foster was deployed and alerted to the odor of controlled substances on forty-seven motor vehicles. In thirty-nine of those instances, officers either found illicit drugs or the occupants admitted that they had either used or possessed controlled substances personally and/or in the vehicle. This success rate is sufficient to establish a “fair probability that evidence of a crime will be found,” *Miller*, 256 Wis. 2d 80, ¶14, based on an alert made by Foster.

¶6 Finally, Landretti testified he was familiar with how Foster reacts when he detects drugs. He and Foster worked together for eight years, did annual certifications, and had monthly training. Landretti testified that Foster “alerted” by a change in behavior consisting of sitting and pointing at the source of the odor.

¶7 Because the State established all three of the criteria set out in *Miller*, the circuit court properly denied the motion to suppress the evidence seized from the car.

By the Court.—Judgment affirmed.

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

