MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Shawn Patrick Bowie Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 9, 2021

Court of Appeals Case No. 21A-CR-584

Appeal from the Marion Superior Court

The Hon. Cynthia Oetjen, Judge
The Hon. Anne Flannelly, Magistrate

Trial Court Cause No. 49D30-2008-F4-27001

Bradford, Chief Judge.

Case Summary

[1] In August of 2020, Indianapolis Metropolitan Police Officer Jonathon Phelps was on patrol in his marked police vehicle when he noticed a suspected drug deal occur between Shawn Bowie and another person. Officer Phelps followed Bowie's vehicle and pulled him over after witnessing three separate traffic infractions. As Officer Phelps approached Bowie's vehicle, he detected the odor of raw marijuana coming from the vehicle. Officer Phelps and another officer removed Bowie from the vehicle, and a search of the vehicle uncovered a loaded handgun, among other things. The State charged Bowie with Level 4 felony possession of a firearm by a serious violent felon ("SVF"). Prior to trial, Bowie moved to suppress evidence of the handgun, which motion the trial court denied. After trial, Bowie was convicted of SVF, and the trial court sentenced him to seven years of incarceration with three to be served in the Department of Correction ("DOC"), three to be served in community corrections, and one suspended to probation. Bowie contends that the trial court abused its discretion in admitting evidence of the handgun found in his vehicle. Because we disagree, we affirm.

Facts and Procedural History

[2] On August 24, 2020, Officer Phelps was patrolling the area near the intersection of 10th and Rural Streets, which was known by him to be a high-crime area. As Officer Phelps was eastbound on 10th, he noticed a male lean into a red Camaro in the alleyway behind a gas station and appear to receive an item from the driver, Bowie. Officer Phelps suspected that he had just witnessed an illegal

drug sale, and began following the Camaro eastbound on 11th Street. Officer Phelps could not read the Camaro's temporary license plate due to a tinted cover and the right rear tire was dangerously flat. Bowie eventually turned south onto Oxford Street and then west onto 10th before turning south onto Rural. As Bowie turned onto Rural, he crossed over a double yellow line into the northbound lane, the third traffic infraction Officer Phelps had witnessed since he had begun following him.

[3] Officer Phelps activated his overhead lights and noticed that Bowie "leaned to the left and then kind of twisted his body a little bit continuous to the left and then back to the right towards the center console as if he was moving and repositioning and possibly fumbling with something inside the vehicle." Tr. Vol. II pp. 119–20. Officer Phelps approached the stopped Camaro and detected the "very strong" odor of raw marijuana as he reached the rear bumper. Tr. Vol. II p. 121. Officer Phelps verified the argumentative Bowie's identity and waited for Officer Tyler Swoveland to arrive. The officers decided to remove Bowie from the vehicle and pat him down, and Officer Phelps found an empty holster in Bowie's waistband. Officer Phelps searched Bowie's vehicle and found a Glock 23 .40 caliber handgun with a live round in the chamber and fourteen in the magazine. Officer Phelps also discovered a partially burnt joint containing raw marijuana, several small baggies containing synthetic marijuana, a scale with a leafy green residue on it, an "off-white grainy white substance" that appeared to be heroin or cocaine, and a bottle of

the drug promethazine, a drug which is often used to enhance the effects of synthetic marijuana. Tr. Vol. II p. 14.

[4] On August 28, 2020, the State charged Bowie with Level 4 felony SVF and Level 5 felony cocaine possession. On February 4, 2021, Bowie moved to suppress the evidence recovered from his vehicle, a motion the trial court denied following a hearing on March 2, 2021. Officer Phelps testified at the suppression hearing that Officer Swoveland agreed with him that there was a "very pungent and overwhelming smell of raw marijuana coming from the vehicle[.]" Tr. Vol. II p. 12. On March 9, 2021, the State dismissed the cocaine possession charge. On March 11, 2021, following a bifurcated trial, judgement of conviction for SVF was entered against Bowie. On March 31, 2021, the trial court sentenced Bowie to seven years of incarceration, with three to be served in the DOC, three to be served in community corrections, and one suspended to probation.

Discussion and Decision

[5] Bowie contends that the trial court abused its discretion in admitting evidence regarding the handgun found during Officer Phelps's search of his vehicle on the basis that the search violated the Fourth Amendment to the United States Constitution.[1] A trial court has broad discretion in ruling on the admissibility

[1] Bowie frames his argument as a challenge to the trial court's denial of his pretrial motion to suppress. Because trial has occurred, however, it is actually a challenge to the admission of evidence, and we address it as on that basis. Additionally, Bowie cites to Article 1, Section 11, of the Indiana Constitution but does not develop a separate argument based on that provision. Consequently, any argument based on that provision is

of evidence. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). This Court will reverse a trial court's ruling on the admissibility of evidence only when it constitutes an abuse of discretion. *Id*. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id*.

[6] The Fourth Amendment provides that

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. A warrantless search or seizure is *per se* unreasonable, and the State bears the burden to show that one of the "well-delineated exceptions" to the warrant requirement applies. *M.O. v. State*, 63 N.E.3d 329, 331 (Ind. 2016) (citations omitted). Moreover,

> when a trial court has admitted evidence alleged to have been discovered as the result of an illegal search or seizure, we generally will assume the trial court accepted the evidence presented by the State and will not reweigh that evidence, but we owe no deference as to whether that evidence established the constitutionality of a search or seizure.

Johnson v. State, 992 N.E.2d 955, 957 (Ind. Ct. App. 2013), *trans. denied*.

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waived for appellate review. *See, e.g.*, *Henderson v. State*, 769 N.E.2d 172, 175 n.6 (Ind. 2002) ("The defendant also cites Article 1, Section 11 of the Indiana Constitution, but because the defendant presents no authority or independent analysis supporting a separate standard under the state constitution, any state constitutional claim is waived.").

[7] Bowie argues that the State failed to establish that Officer Phelps had probable cause to search his vehicle when he pulled it over, contending that Officer Phelps's detection of the odor of raw marijuana was insufficient. It is well-settled that police officers may search the interior of a vehicle without a warrant if they have probable cause to suspect that evidence of criminality or contraband is located inside. *State v. Hobbs*, 933 N.E.2d 1281, 1285 (Ind. 2010). Of specific relevance here, the odor of raw marijuana emanating from a vehicle's interior, when detected by a trained police officer, generally provides sufficient grounds to support a probable-cause finding to justify the search the interior of a vehicle. *See, e.g.*, *U.S. v. Johns*, 469 U.S. 478, 482 (1985); *Cleveland v. State*, 129 N.E.3d 227, 232 (Ind. Ct. App. 2019), *trans. denied*; *K.K. v. State*, 40 N.E.3d 488, 495 (Ind. Ct. App. 2015). As for the amount of evidence necessary to establish sufficient experience, the Indiana Supreme Court recently held that "an officer who affirms that they detect the odor of raw marijuana based on their training and experience may establish probable cause without providing further details on their qualifications to recognize this odor." *Bunnell v. State*, 172 N.E.3d 1231, 1238 (Ind. 2021).

[8] At the suppression hearing, Officer Phelps testified that he had been a police officer for approximately four years and had been trained to identify the odor of both raw and burnt marijuana. Officer Phelps also testified that he had been exposed to marijuana "hundreds" of times in his time as a police officer and that raw marijuana had a "very pungent" and "very distinctive" odor. This testimony regarding Officer Phelps's training and experience goes beyond

merely citing "training and experience" and is therefore more than sufficient to support a finding of probable cause pursuant to *Bunnell*.

[9] As for the particular facts of this case, Officer Phelps testified at trial that, as he approached Bowie's vehicle, he "smelled the very strong distinguished pungent specific odor of raw marijuana[,]" an odor that intensified as he drew closer to the driver's window. Tr. Vol. II p. 121. It stands to reason that when a person detects an odor, there is a reasonable probability that its source is nearby. *See e.g.*, *U.S. v. Ventresca*, 380 U.S. 102, 111 (1965) (concluding that officers had probable cause to believe that mash liquor was being fermented inside a home based on the odor coming from the room); *Johnson v. U.S.*, 333 U.S. 10, 12 (1948) (reaching the same decision with respect to the smell of opium). Here, Officer Phelps had been trained in the identification of raw marijuana by smell and had encountered marijuana in the field hundreds of times. When he detected that distinctive and pungent odor near Bowie's vehicle, it grew stronger the closer he got to the open window. This is sufficient to establish probable cause to believe that raw marijuana would be found somewhere within Bowie's vehicle once it was established that it was not on his person. In the end, Bowie's arguments regarding Officer Phelps's supposed lack of training are nothing more than invitations to reweigh the evidence, which we will not do. *See Johnson*, 992 N.E.2d at 957. Bowie has failed to establish that the trial court abused its discretion in admitting evidence of the firearm found in his vehicle.

[10] We affirm the judgment of the trial court.

Robb, J., and Altice, J., concur.