2011 IL App (2d) 101027-U
No. 2-10-1027
Order filed November 9, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Boone County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CM-434
JOSEPH D. DISHON,	)	Honorable John H. Young,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's motion to quash his arrest and suppress evidence on the ground that the search of his person was invalid: a drug-sniffing dog's alert to the vehicle in which he was riding gave the police probable cause to search the passengers.

¶ 1 Following a stipulated bench trial in the circuit court of Boone County, defendant, Joseph D. Dishon, was found guilty of possession of cannabis (720 ILCS 550/4(b) (West 2008)) and was placed on court supervision for 12 months. On appeal, defendant argues that the trial court erred in denying his motion to quash his arrest and suppress evidence. We affirm.

¶ 2 At the hearing on the motion to quash and suppress, Belvidere police officer David Bird testified that on the night of June 8, 2009, he stopped an automobile that had no rear registration light. The vehicle was registered to Tyree Davis, who was driving it. Defendant was seated in front with Davis, and another passenger, Maddy Clare Renslow, was riding in the back seat. Bird approached the passenger side of the vehicle. He testified that he smelled the odor of burnt cannabis emanating from the vehicle's interior when defendant rolled down the window. Bird called for backup, and another officer arrived at the scene. That officer had defendant, Davis, and Renslow step out of, and away from, the vehicle.

¶ 3 Bird testified that he had worked with a drug detection dog named Lex since 2006. According to Bird, Lex was trained as an aggressive alert dog, meaning "he will bark, bite, or scratch *** at the thing he's alerting on." Bird walked Lex around Davis's vehicle. Lex scratched the driver's side door. Bird then placed Lex inside the vehicle, and Lex "alerted" on the storage pocket on the front passenger-side door. Lex also alerted on the ashtray. Bird did not have Lex sniff defendant, Davis, or Renslow. Bird searched the vehicle and found an empty plastic baggie. Bird detected the odor of cannabis inside the baggie. Bird testified that he had received training in the detection of cannabis in classes at "the academy" and also during his field training while employed as a police officer.

¶ 4 Bird searched defendant's person, and he discovered what appeared to be cannabis in defendant's shoe.

¶ 5 Our supreme court has held that the odor of burning cannabis emanating from a lawfully stopped automobile supplies probable cause to conduct a warrantless search of the driver's person. *People v. Stout*, 106 Ill. 2d 77 (1985). In *Stout*, the driver was accompanied by two passengers, but the court did not confront the question of whether a warrantless search of the passengers would have

been permissible. The Fourth District extended *Stout* to passengers in *People v. Boyd*, 298 Ill. App. 3d 1118, 1127 (1998). The *Boyd* court reasoned that there was no logical basis for treating the passengers differently from the driver in such circumstances. The *Boyd* court also noted authority from other jurisdictions that an officer who detects burning cannabis in an automobile may arrest and search all the occupants. *Id.* at 1127-28. However, defendant offers four reasons why, in his view, the search of his person cannot be upheld on the basis of Bird's testimony that he detected the odor of burnt cannabis in Davis's vehicle.

¶ 6 First, defendant contends that there was no evidence that Bird was trained to recognize the odor of *burnt* cannabis. Defendant notes that Bird was asked about his training in connection with his testimony that he detected the odor of cannabis in an empty plastic baggie found in Davis's vehicle. Thus, defendant evidently reads Bird's testimony that he was trained in the detection of cannabis as pertaining only to the odor of the plant material itself rather than the odor it produces when burned. The argument is meritless. Bird did not testify to any such limitation on his training, and the context of his testimony does not imply any such limitation. It is practically inconceivable that formal training in the detection of cannabis would not extend to the detection of burnt or burning cannabis. Indeed, there is authority from a sister state that a police officer's general experience and training supports an inference that the officer is familiar with the characteristics of cannabis. See *People v. Tsouristakis*, 82 A.D. 3d 612, 613, 920 N.Y.S.2d 28, 30 (2011) (officer who observed the defendant rolling marijuana cigarettes in his car had probable cause to arrest the defendant; "[a]lthough the officer did not specifically testify as to his experience and training regarding marijuana, his general police experience and training permitted the inference that he could identify marijuana, for probable cause purposes, under the circumstances he observed"). Notably,

defendant did not object to Bird's testimony that he smelled burnt cannabis. Nor did he question Bird about his familiarity with the odor of burnt cannabis.

¶ 7 Second, defendant argues that Bird did not testify as to how strong or fresh the odor was. In this respect, however, this case appears to be no different than *Stout*. In *Stout*, there is no indication that the officer testified about the strength or freshness of the burning cannabis odor he detected.

¶ 8 Third, defendant argues that, because Bird had Lex sniff Davis's vehicle, Bird must not have trusted his own sense of smell. The argument is founded on pure speculation. It is just as likely—perhaps more likely—that Bird used Lex to pinpoint the location of any cannabis within the vehicle and perhaps to locate other contraband that might be within the car.

¶ 9 Fourth, defendant argues that, although the odor of burnt cannabis can supply probable cause to search a motor vehicle's passengers, a different rule applies in cases "where canine units are involved." Defendant relies on the Fourth District's decision in *People v. Fondia*, 317 Ill. App. 3d 966 (2000). In *Fondia*, police officers searched the persons of the driver of a motor vehicle and her passengers after a drug-sniffing dog alerted to the rear seam of the driver's door while the driver and passengers were seated in the vehicle. The *Fondia* court held that it was improper to search the occupants of the vehicle without first having the drug-sniffing dog sniff them individually to sharpen the officer's focus on whom to search. *Id.* at 970. However, we have recently rejected *Fondia*'s analysis. See *People v. Neuberger*, 2011 IL App (2d) 100379.

¶ 10 In *Neuberger*, we explained, "The *Fondia* court reasoned, in essence, that when a dog's alert casts collective suspicion on a vehicle's occupants, the police may not abstain from gathering additional available information that might help to confirm or dispel that suspicion as to each occupant individually." *Id.* ¶ 10. We acknowledged "authority suggesting that the existence of

probable cause may depend not only on what information is known to police, but also on whether the police refrained from obtaining additional readily available information" *Id.* ¶ 11 (citing 2 W. LaFave, Search and Seizure § 3.2(d), at 51-55 (4th ed. 2004)). Moreover, we allowed that "[t]his expansion of the probable cause inquiry might be appropriate in cases involving obvious lapses by police." *Id.* ¶ 11. We concluded, however, that the failure to have a drug-sniffing dog sniff the occupants of a vehicle did not fit that description. *Id.* We expressed reluctance to "endorse a probable cause analysis that gives courts broad power to declare that specialized investigative techniques are constitutionally mandatory." *Id.* ¶ 12. We added, "to the extent the probable cause inquiry may properly be expanded to look not only at what information was known to police, but also at what additional information was readily obtainable, we believe that the burden properly rests on the defendant to establish that a particular investigative technique should have been employed." *Id.*

¶ 11 In this case there was no evidence establishing that subjecting the occupants of Davis's vehicle to individual dog sniffs would be an appropriate investigative technique. If anything, the opposite would appear to be true, inasmuch as Lex was trained as an aggressive alert dog and might cause injury to the individuals involved. Indeed, even if we were to follow the rule announced in *Fondia*, a dog sniff of the occupants of the vehicle would be excused under these circumstances. See *People v. Staley*, 334 Ill. App. 3d 358, 368-69 (2002).

¶ 12 For the foregoing reasons the judgment of the circuit court of Boone County is affirmed.

¶ 13 Affirmed.