COURT OF APPEALS
DECISION
DATED AND FILED

August 25, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2964-CR **Cir. Ct. No. 2003CM678**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JENNIFER L. ANDERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County: DANIEL S. GEORGE, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.[1] Jennifer Anderson appeals a judgment of the circuit court convicting her of one count of possession of THC, contrary to WIS.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

STAT. § 961.41(3g)(e) (2001-02), and one count of possession of drug paraphernalia, contrary to WIS. STAT. § 961.573(1) (2001-02). Anderson argues that her motion to suppress the marijuana and drug paraphernalia should have been granted because: (1) the evidence was the fruit of an intentional ***Miranda*** violation; (2) her consent to search was coerced; and (3) the evidence was the fruit of her coerced statements. We affirm the circuit court.

Background

¶2 On August 27, 2003, Deputy Sheriff Brian Pulvermacher performed a traffic stop of a vehicle, in which Anderson was a passenger, while it was traveling on interstate 90/94 in Columbia County, for suspected Wisconsin Transportation Code violations. The deputy noted that the vehicle took an unusually long time to pull to the side of the road and stop. Upon approaching the driver's side door, the deputy discovered the driver's side window remained rolled up. When the window was rolled partially down, Deputy Pulvermacher immediately smelled a strong odor of "burnt marijuana."

¶3 Deputy Pulvermacher requested identification from both the driver and Anderson, and questioned them both, one at a time. During his questioning of the driver, the deputy indicated that he would search the vehicle. When he questioned Anderson, the deputy again stated his intention to search the vehicle, and asked Anderson if there were any illegal substances in the vehicle or in her purse. Anderson directed the deputy to her purse, which contained a small amount of marijuana and two marijuana pipes. At no time did Deputy Pulvermacher give Anderson ***Miranda*** warnings. A subsequent canine search and hand search of the vehicle yielded two "marijuana cigarette ends."

¶4 Anderson moved to suppress the statements she made to the deputy during his roadside questioning. She also moved to suppress the marijuana and drug paraphernalia discovered in her purse. The trial court found that the statements were made in violation of Anderson's ***Miranda*** rights, and granted the motion to suppress them. The trial court denied the motion to suppress the physical evidence because it found the statements were voluntary. In a motion to reconsider Anderson's motion to suppress the physical evidence, Anderson argued the ***Miranda*** violations were intentional and, therefore, necessitated suppression. The trial court found that the violations were not intentional but that, regardless, the doctrine of inevitable discovery applied to render the physical evidence admissible. The court denied the motion. After a jury trial, Anderson was convicted of possession of THC and possession of drug paraphernalia.

Discussion

¶5 Anderson advances three arguments in support of her contention that the marijuana and drug paraphernalia should have been suppressed. First, Anderson argues that Deputy Pulvermacher's failure to read Anderson her ***Miranda*** rights was intentional and, under ***State v. Knapp***, 2005 WI 127, ¶2, No. 2000AP2590-CR, the evidence should have been suppressed as the fruit of that violation. Second, Anderson contends that Deputy Pulvermacher's search of her purse was illegal because it was based on coerced consent. Third, Anderson contends that the marijuana and drug paraphernalia were the fruit of her coerced statements.

¶6 The State counters that regardless of the deputy's intent in failing to give Anderson ***Miranda*** warnings, and regardless of whether Anderson's statements or consent were given voluntarily, the trial court was correct in

concluding that the evidence was admissible under the doctrine of inevitable discovery. We agree and affirm the trial court. Because this issue is dispositive of the appeal, we need not address Anderson's primary arguments. *See* ***Norwest Bank Wisconsin Eau Claire v. Plourde,*** 185 Wis. 2d 377, 383 n.1, 518 N.W.2d 265 (Ct. App. 1994).

¶7 The doctrine of inevitable discovery is an exception to the exclusionary rule that renders illegally obtained evidence and its fruits admissible if the evidence would have been discovered by legal means absent the illegality. ***Nix v. Williams***, 467 U.S. 431, 444 (1984).[2] Inevitable discovery presents a constitutional question because it is an exception to the exclusionary rule protecting Fourth Amendment interests. *See* ***State v. Anderson***, 160 Wis. 2d 307, 315, 466 N.W.2d 201 (Ct. App.), *rev'd on other grounds*, 165 Wis. 2d 441, 477 N.W.2d 277 (1991). We review constitutional questions *de novo*. *See* ***State v. Bollig***, 224 Wis. 2d 621, 628, 593 N.W.2d 67 (Ct. App. 1999), *aff'd*, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199.

¶8 To avail itself of the inevitable discovery doctrine, the State must demonstrate by a preponderance of the evidence that: (1) there is a reasonable probability that the evidence in question would have been discovered by lawful means but for the police misconduct; (2) the leads making the discovery inevitable were possessed by the government at the time of the misconduct; and (3) prior to the unlawful search, the government also was actively pursuing some alternate line of investigation. ***State v. Schwegler***, 170 Wis. 2d 487, 500, 490 N.W.2d 292 (Ct.

[2] Because we rely on the inevitable discovery doctrine, we need not address whether the deputy's questioning of Anderson and the search of her purse were illegal.

App. 1992). Because the first and third prongs depend on the existence of the leads mentioned in the second prong, we will first address prong two, then prongs one and three, respectively.

¶9 The trial court found, and Anderson effectively concedes, that Deputy Pulvermacher had probable cause to conduct a warrantless search of the vehicle in which Anderson was a passenger pursuant to the automobile exception to the warrant requirement. *See* ***State v. Secrist***, 224 Wis. 2d 201, 210, 589 N.W.2d 387 (1999).

¶10 The authority to search a vehicle under the automobile exception encompasses all containers within the vehicle that are capable of containing the item or items being searched for, regardless of ownership. ***Wyoming v. Houghton,*** 526 U.S. 295, 301 (1999). After Deputy Pulvermacher stopped the vehicle in which Anderson was a passenger, he smelled "a strong odor of burnt marijuana" when the driver's side window was rolled down. This fact alone is enough to provide probable cause to search the vehicle under the automobile exception. *See* ***Secrist***, 224 Wis. 2d at 210. Deputy Pulvermacher also testified that, after he had activated his emergency lights in affecting the stop, the driver only pulled over after traveling an "excessive distance compared to other traffic stops" the deputy had performed. Finally, Deputy Pulvermacher thought it suspicious that the driver failed to roll down the driver's side window of the vehicle until after the deputy had arrived at the driver's side door. This court is satisfied that these facts constitute sufficient probable cause to search the vehicle and Anderson's purse, as they could contain items being searched for. These facts also constitute sufficient leads to satisfy the second prong of the inevitable discovery test.

¶11 The first prong of the inevitable discovery test for the case at bar requires a reasonable probability that, but for the allegedly illegal search of Anderson's purse, the deputy would have discovered the evidence during a legal search of the vehicle. We conclude that there is such a reasonable probability. Probable cause to search a vehicle for marijuana and drug paraphernalia grants the authority to search the vehicle and any containers therein that could contain those items. *See* ***Houghton,*** 526 U.S. at 301. Anderson's purse could have contained marijuana, as the drug tends to vary in size and weight. As was the case here, the drug paraphernalia could also have been small enough to fit in a purse. The deputy discovered a small marijuana pipe and a "one-hitter," roughly the girth and half the length of a pencil, in Anderson's purse. As a law enforcement officer with several years of experience and training, Deputy Pulvermacher was no doubt aware of the possibility that these items could be found in a purse. Were he to conduct a search, in all probability it would have included a search of Anderson's purse.

¶12 We conclude that the deputy in this case would have conducted the legal search. Deputy Pulvermacher testified not only to his intent to search the vehicle, but also testified that he made his intention clear to both the driver of the vehicle and Anderson prior to the search of Anderson's purse. Additionally, the deputy did ultimately conduct both a canine and a hand search of the vehicle. The trial court found that the deputy would have conducted those searches based on the probable cause he had acquired, regardless of his illegal questioning of Anderson and the search of her purse. We have no reason to disturb that finding.

¶13 The third prong of the inevitable discovery test requires that, prior to his search of Anderson's purse, Deputy Pulvermacher was actively pursuing some legal alternate line of investigation. Anderson contends that the discovery of the

facts that gave rise to the probable cause to search the vehicle and the illegal questioning of Anderson constitute one linear investigation, precluding any alternate line of investigation.[3] We disagree.

¶14 Anderson's principal contention is that there cannot have been two separate investigations because there was only one officer performing the investigation. The inevitable discovery test, however, requires only the existence of an alternate *line* of investigation, not an alternate person doing the investigating. We are satisfied that more than one line of investigation can be, and was in this case, performed by a single officer. As explained above, Deputy Pulvermacher had the requisite probable cause to search the vehicle and containers therein. The trial court found that the deputy had decided to search the entire vehicle both with the assistance of a canine and by hand "prior to his receiving any statement from the Defendant that the marijuana or any paraphernalia was located in fact in her purse." We find no reason to disturb that finding, and we have no doubt that either search would have revealed the evidence in question.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

[3] In both her brief filed January 24, 2005, and her reply brief filed April 20, 2005, Anderson cites ***State v. Roberson***, No. 2003AP2802-CR (Wis. Ct. App. 2004), for support. That opinion was issued on September 30, 2004, and ordered withdrawn by this court on October 21, 2004. It was, therefore, improper for Anderson to cite to that opinion in either brief and, as the opinion has been withdrawn, it will not be considered.