

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 14, 2009**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

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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. 2008AP1452-CR**

**Cir. Ct. No. 2005CF14**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHRIS A. HOFFMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Outagamie County:  
NANCY J. KRUEGER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Chris Hoffman appeals an order denying his postconviction motion to vacate his conviction for possession of methamphetamine as a repeater. He argues that physical evidence and his statements should have been suppressed because he was unreasonably detained, he

involuntarily turned over the methamphetamine to a police investigator, and the trial court improperly applied the doctrine of inevitable discovery. He also argues ineffective assistance of trial counsel based on his attorney's failure to call a witness at the suppression hearing, and misleading the court by suggesting Hoffman was involved in an earlier counterfeit drug transaction. Finally, he contends he is entitled to the return of \$136 seized as contraband. We reject these arguments and affirm the order.

¶2 Hoffman was a backseat passenger in a car driven by Michael Zimmerman when the car was stopped by police. Drug enforcement officers had arranged a controlled buy of methamphetamine from Zimmerman for \$200. Zimmerman had sold counterfeit methamphetamine earlier that day. After the officers stopped the car, they placed its three occupants in separate squad cars. Zimmerman told an investigator that Hoffman had in his possession in the back seat a white film canister containing methamphetamine. Investigator Dietzen searched the car and found an empty film canister along with two packets of Sudafed, a primary ingredient of methamphetamine. A police drug dog at the scene sniffed the canister and indicated the presence of narcotics. Zimmerman also told the investigators Hoffman had burned his hand when anhydrous ammonia escaped while Hoffman was "cooking" methamphetamine. Hoffman had a bandage on his hand. Hoffman conceded he attempted to cook methamphetamine and purchased Sudafed earlier that day. After some discussion about whether Hoffman would be going to jail that night, and Hoffman's concession that his probation officer would likely put a probation hold on him because of prior incidents, Hoffman turned over the methamphetamine that was hidden in his cap.

¶3 Hoffman was lawfully detained by the police. The car and driver had been involved in a prior counterfeit drug deal and arrangements had been made for a second controlled purchase. The police reasonably stopped the car and detained its occupants. During the approximately thirty-minute detention, Zimmerman's statements implicating Hoffman and the confirmation of the film canister containing drugs and the burn on Hoffman's hand provided the officers with probable cause to arrest Hoffman. The stop and inquiry were reasonably related in scope to the justification for the stop. See *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). In light of the officers' reasonable belief that the car contained a small quantity of methamphetamine, detaining its occupants for thirty minutes was reasonable under the circumstances.

¶4 We need not determine whether Hoffman voluntarily turned over the methamphetamine because the evidence supports application of the doctrine of inevitable discovery. Under that doctrine, the State must prove by the preponderance of the evidence it is reasonably probable the evidence would have been discovered by lawful means; police already had leads making the discovery inevitable before the allegedly unlawful police conduct occurred; and police were actively pursuing these leads at the time of the allegedly unlawful police conduct. *State v. Lopez*, 207 Wis. 2d 413, 427-28, 559 N.W.2d 264 (Ct. App. 1996). Zimmerman's statements, confirmed by the drug dog's indication that the film canister contained narcotics and the burn on Hoffman's hand, provided sufficient grounds for Hoffman's arrest. Upon his arrest, Hoffman would have been searched at the jail. Therefore, the methamphetamine would have been discovered in Hoffman's cap regardless of any statements he made and regardless of whether police engaged in any improper tactics to coerce or trick Hoffman into turning over the methamphetamine.

¶5 Hoffman argues his statements should have been suppressed because he was not given his *Miranda* warnings.<sup>1</sup> To the extent the argument relates to the search and seizure of the methamphetamine, the inculpatory statements are irrelevant because the police had sufficient probable cause to arrest Hoffman without considering his own statements. To the extent Hoffman directly challenges admissibility of his statements, the issue is not properly before this court. A no contest plea constitutes a waiver of nonjurisdictional defects and defenses. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). WISCONSIN STAT. § 971.31(10) (2007-08), creates a limited exception to that rule, allowing an appeal from an order denying a motion to suppress evidence. The trial court denied Hoffman's motion to suppress the physical evidence and that issue can be raised on appeal. However, the court did not deny a motion to suppress Hoffman's statements. Therefore, that issue is not properly preserved for appeal.

¶6 Hoffman argues his trial counsel was ineffective for failing to call Zimmerman to testify at the suppression hearing. We conclude Hoffman was not prejudiced by that decision. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984). At the postconviction hearing, Zimmerman confirmed that he implicated Hoffman in the planned sale of methamphetamine, and conceded he may have told investigators that Hoffman participated in the earlier sale of the counterfeit drug. Therefore, Zimmerman's testimony at the suppression hearing would not have provided any basis for not applying the doctrine of inevitable discovery. To the extent his testimony might have supported Hoffman's arguments regarding the

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

officers' interrogation techniques, the testimony would not undermine this court's confidence in the outcome because the methamphetamine would have been inevitably discovered.

¶7 Likewise, Hoffman's counsel's suggestion that Hoffman may have participated in the earlier counterfeit drug sale does not undermine our confidence in the outcome. Hoffman's participation in the earlier sale was not necessary to establish probable cause to arrest him and perform a custodial search. Although Zimmerman's postconviction testimony made clear that Hoffman was not present during the earlier sale, Zimmerman did not disclaim any involvement by Hoffman. Furthermore, he conceded he may have told investigators during the traffic stop that Hoffman was involved. Whether Hoffman was actually involved in both transactions is not the question. Rather, if Zimmerman told investigators that Hoffman was involved, the police had sufficient grounds to arrest Hoffman and perform a custodial search.

¶8 Finally, the \$136 found on Hoffman was properly seized as contraband. The officers' testimony at the suppression hearing, as corroborated by Zimmerman's testimony at the postconviction hearing, establishes the cash represented Hoffman's proceeds from the earlier drug deal where he was a participant, even if he was not present. The cash transactions involving the purchase of Sudafed and disbursement of the profits were sufficiently established to support the finding that the cash constituted contraband.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).



