COURT OF APPEALS
DECISION
DATED AND FILED

September 23, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-3062-CR **Cir. Ct. No. 02CF000392**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JACQUESIA A. JACKSON,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Affirmed*.

Before Dykman, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Jacquesia Jackson appeals judgments convicting her on two felony drug charges, and a misdemeanor resisting/obstructing charge. The drug charges resulted from a post-arrest body cavity search of Jackson. Jackson entered her plea after the trial court granted her suppression motion in

part, but denied it in larger part. This appeal concerns that suppression decision. We affirm.

¶2 A traffic stop resulted in Jackson's arrest for two outstanding warrants, both on minor matters, and for obstructing because she initially gave police a false name. After the arrest, Jackson told officers she had a quantity of drugs hidden in her anal cavity. The drugs were later recovered by medical personnel during a body cavity search.

¶3 After the State commenced this proceeding, Jackson filed a motion to suppress all statements she made after her arrest, and all of the evidence subsequently seized. She alleged that her inculpatory statements were the result of overreaching police methods that rendered those statements involuntary.

¶4 Testimony at the suppression hearing established that when police stopped and arrested Jackson they had grounds to suspect that she might have marijuana concealed somewhere on her person. Jackson appeared to be under the influence of marijuana, there was a strong odor of marijuana in the car and coming from her person, and her pants were unzipped when she exited the car. Consequently, upon arrival at the police station they planned a more detailed search than occurred at the arrest scene, but not a strip or body cavity search. Before the search occurred and before Jackson gave any statement to police, she invoked her ***Miranda*** rights and said she would not talk. Officer Amy Schwartz then proposed to search Jackson in an interview room that contained a toilet. In doing so, Schwartz introduced herself, explained that a more thorough search would now occur, and asked if Jackson knew what police were searching for. Jackson expressed reluctance about the search, stating that she was menstruating heavily. Although there were discrepancies in the suppression hearing testimony

as to what happened next, the trial court found that the following subsequently occurred in the interview room:

> While she's in there, according to Officer Moore in his testimony and apparently his report, he hears Miss Jackson say, "Yes, I do," which is the kind of statement that certainly sounds like it's being made in response to a question. And he's testified that he did hear a question precede that, and the question was, "Do you have something in there?"
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> ….
>
> And that is that Miss Jackson began pushing down her pants, her underwear came with. Officer Schwartz – or, Sergeant Schwartz saw there was a pad in the underpants which was clean and not consistent with what Miss Jackson had already described or what one might think the condition of the pad would be. And that Miss Jackson then made the sudden move and three steps to the toilet and tried to get herself seated on the toilet. And that Schwartz then pulled her away from the toilet for exactly the reasons I alluded to earlier, that is, the last place you want somebody who you suspect of drugs secreted in their crotch area is sitting on the toilet.
>
> It wouldn't surprise me if in the course of this sudden burst of activity and the follow-up activity of Miss Jackson trying to put her hand in her pants and get towards the toilet as described by Sergeant Schwartz, that Sergeant Schwartz would have said, "Do you have something in there?" And I think the "in there" is prompted by her observation of activities engaged in by Miss Jackson.

¶5 Police then transported Jackson to the hospital. While awaiting the body cavity search, Jackson made additional inculpatory statements, including another admission that she had drugs on her person. The subsequent search yielded a substantial quantity of cocaine and ecstasy pills. Afterwards, Jackson made yet more inculpatory statements.

¶6 The trial court held that Officer Schwartz's question to Jackson was a ***Miranda*** violation, and suppressed Jackson's "Yes, I do" answer. The court also

suppressed an inculpatory statement Jackson made just before the body cavity search, which the court found was also made in response to an impermissible inquiry. However, the trial court ruled that, independent of the suppressed statements, there was probable cause and statutory grounds to conduct the body cavity search and ruled that the evidence recovered during the search was admissible. The court also declined to suppress other inculpatory statements Jackson made about using and concealing drugs. On appeal, Jackson contends that the body cavity search evidence was inadmissible fruit of the ***Miranda*** violations, that all of her post-arrest statements were involuntary, and that police did not have statutory grounds for the search, even if there were no constitutional problems with it.

¶7 Evidence derived from intentional ***Miranda*** violations must be suppressed. ***State v. Knapp***, 2003 WI 121, ¶79, 265 Wis. 2d 278, 666 N.W.2d 881, *cert. granted*, 124 S. Ct. 2932 (U.S. June 30, 2004) (No. 03-590). Jackson argues that this rule applies to the actions of Officer Schwartz after she entered the interview room, because Schwartz's initial statements and her subsequent question, that elicited the "Yes, I do" answer, must be deemed an intentional ***Miranda*** violation. Jackson further contends that Jackson's answer led directly to the search and the subsequent discovery of evidence. However, Jackson's argument does not comport with factual findings made by the circuit court, findings which we conclude are supported by the record. *See* ***State v. Fields***, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279 ("When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous.").

¶8 There was considerable evidence supporting the finding that Jackson lied about menstruation and that she engaged in suspicious and impulsive actions.

This behavior by Jackson triggered both Officer Schwartz's question as well as the subsequent body cavity search. There is no evidence to support Jackson's contention that Officer Schwartz entered the interview room intending to elicit an incriminating response. Schwartz's initial statements were explanatory, not interrogative. *See* ***State v. Bond***, 2000 WI App 118, ¶17, 237 Wis. 2d 633, 614 N.W.2d 552, *aff'd*, 2001 WI 56, 243 Wis. 2d 476, 627 N.W.2d 484 (definition of interrogation extends to only those words or actions police should know are reasonably likely to elicit inculpatory statements). Consequently, the trial court's inference was the only one reasonably available from the evidence.

¶9 The evidence also supports the trial court's finding that Jackson's appearance, demeanor, and actions formed an independent basis for the body cavity search, such that the discovered evidence was not fruit of the ***Miranda*** violations. *See* ***State v. Lopez***, 207 Wis. 2d 413, 427, 559 N.W.2d 264 (Ct. App. 1996) (tainted evidence remains admissible if discovery was inevitable anyway). Jackson's behavior and actions from the time of her arrest until the interview room struggle were suspicious and strongly suggested the presence of hidden drugs. Any reasonable police officer upon viewing those actions would have had probable cause to search for those drugs, up to and including a body cavity search.

¶10 The trial court properly held that most of Jackson's statements were voluntary and therefore admissible. Whether a statement is voluntary depends on whether police used coercion or improper means to compel it. ***State v. Franklin***, 228 Wis. 2d 408, 413, 596 N.W.2d 855 (Ct. App. 1999). Here, the trial court's finding of no coercive or improper means used to elicit the statements is not clearly erroneous. Factors relevant to the issue of coercion include the length of the interrogation, delay in arraignment, the conditions during the questioning, the use of excessive physical or psychological pressure, the use of inducements or

threats, and the presence or absence of ***Miranda*** warnings. ***Id.*** There was no evidence favorable to Jackson on any of these factors, even within her own testimony. Although Jackson points to such factors as her drug-induced impairment, and the fatigue and stress she was experiencing, those factors are not in any way attributable to police misconduct. Nor was any relationship established between the two "technical" ***Miranda*** violations and the admissible statements Jackson later made.

¶11 The search complied with statutory requirements. WISCONSIN STAT. § 968.255(1)(a)[1] limits strip searches to: (1) those arrested for felonies and certain serious misdemeanors; and (2) those arrested for other civil or criminal violations, but only on probable cause to believe the person is concealing either a weapon or evidence of the offense for which the person is detained. Jackson contends that because the search had nothing to do with weapons or with the reasons why she was arrested, it violated those provisions. However, by the time she was searched, police had probable cause to arrest her for a drug offense, and probable cause to believe she was concealing drug evidence. As noted, that probable cause existed even without considering the excluded statements Jackson made. Under these circumstances, the search fell within those permitted by this statute. In any event, § 968.255 does not require suppression of evidence obtained in violation of its provisions. ***State v. Wallace***, 2002 WI App 61, ¶25, 251 Wis. 2d 625, 642 N.W.2d 549.

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

By the Court.—Judgments affirmed.

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