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DISTRICT I

January 13, 2026

To:

Hon. John A. Franke
Reserve Judge

Sara Lynn Shaeffer
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Jill Marie Skwor
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP2380-CR	State of Wisconsin v. Denzil R. Crosby, Jr. (L.C. # 2018CF1235)
2024AP2381-CR	State of Wisconsin v. Denzil R. Crosby, Jr. (L.C. # 2020CF1235)

Before White, C.J., Colón, P.J., and Geenen, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated cases, Denzil R. Crosby, Jr., appeals from two judgments of conviction, which were entered upon his guilty pleas after the circuit court denied his suppression motion. Based upon our review of the briefs and the records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

BACKGROUND

In Milwaukee County Circuit Court Case No. 2018CF1235, the State charged Crosby with possession with intent to deliver a controlled substance; fleeing or eluding an officer; and second-degree recklessly endangering safety. The charges stemmed from an incident that occurred in March of 2018. According to the complaint, police officers attempted to conduct a traffic stop of a vehicle driven by Crosby. In response, he fled at a high rate of speed, running through traffic control signs. He drove on a sidewalk and on the wrong side of the road before ultimately colliding with another vehicle. Crosby ran from the scene. The officers arrested Crosby after he slipped and fell on a parking slab. They found a bag containing marijuana and cocaine in the spot where Crosby fell. Following his initial appearance, Crosby posted bail and was released.

While Case No. 2018CF1235 was underway, the State filed a new criminal complaint against Crosby in Milwaukee County Circuit Court Case No. 2020CF1235. The State charged Crosby with seven crimes: second-degree reckless homicide; hit and run resulting in death; fleeing/eluding an officer resulting in the death of another; knowingly operating a motor vehicle while revoked causing the death of another; possession with intent to deliver a controlled substance; possession of a firearm by an adjudicated delinquent; and felony bail jumping. The complaint alleged that Crosby, while driving a car, fled from a traffic stop and crashed into another vehicle. As a result of the crash, the driver of the other vehicle was killed. Officers found cocaine, marijuana, and a loaded gun inside the vehicle Crosby had been driving. Crosby was arrested in Texas and extradited to Wisconsin.

In jail, Crosby invoked his right to an attorney. Officers then stopped questioning Crosby. Later, however, different officers went to Crosby's cell and asked if he would voluntarily provide a DNA sample. Crosby stated that he had retained an attorney and provided the attorney's name. Crosby asked what would happen if he did not voluntarily provide a DNA sample, and the officers told him they would obtain a warrant. Crosby then said something along the lines of, "well you already have my DNA on file anyway. So sure. Why not." Crosby provided the DNA sample.

Crosby subsequently moved to suppress that DNA sample "on the grounds that the buccal swab was seized in violation of the rights guaranteed to Crosby under the 4th, 5th, 6th and 14th Amendments to the United States Constitution; and article I, sections 1, 2, 7, 9, and 11 of the Wisconsin Constitution." While the suppression motion was pending, police applied for and were granted a search warrant. The police then obtained a second DNA sample from Crosby pursuant to the warrant.

Following a hearing, which took place after the second DNA sample was obtained, the circuit court denied Crosby's suppression motion. Crosby filed a petition for an interlocutory appeal, which this court denied. Crosby then pled guilty to second-degree recklessly endangering safety in Case No. 2018CF1235 and hit and run resulting in death in Case No. 2020CF1235.

DISCUSSION

The sole issue on appeal is whether the circuit court properly denied Crosby's suppression motion. "In reviewing a motion to suppress, we uphold the circuit court's findings

of fact unless they are clearly erroneous, and review the application of constitutional principles to those facts de novo." ***State v. Grady***, 2009 WI 47, ¶13, 317 Wis. 2d 344, 766 N.W.2d 729.

As detailed above, the detectives obtained two separate DNA samples from Crosby. The first sample is the subject of Crosby's suppression motion. The second sample was obtained pursuant to a valid search warrant, the validity of which Crosby does not dispute. The State argues that the independent source doctrine prevents suppression because the detectives obtained the second sample of Crosby's DNA through a valid search warrant.[2]

This court has explained: "When the police obtain evidence through unconstitutional means, we apply the exclusionary rule, which makes the evidence 'generally inadmissible in court proceedings.' The purpose of the exclusionary rule is to deter unlawful police conduct." ***State v. Gant***, 2015 WI App 83, ¶15, 365 Wis. 2d 510, 872 N.W.2d 137 (citation omitted). The independent-source doctrine, however, is an exception to the exclusionary rule. In ***State v. Van Linn***, 2022 WI 16, 401 Wis. 2d 1, 971 N.W.2d 478, our supreme court elaborated:

> The doctrine is an exception to the exclusionary rule in that it allows for the admissibility of evidence or information tainted by an illegal evidence-gathering activity when the State otherwise acquires the same information—or "rediscover[s]" it—by lawful means "in a fashion untainted" by that illegal activity. Subsequent lawful means, such as a subpoena, are "untainted" when the State can show that the illegal conduct neither "affected" the circuit court's decision to approve its subpoena request nor "prompted" the State's decision to seek a subpoena in the first place. The

[2] The circuit court ruled that the police would have inevitably discovered Crosby's DNA and, therefore, denied his suppression motion. The inevitable discovery doctrine and the independent source doctrine are "related but distinct." ***State v. Anker***, 2014 WI App 107, ¶25, 357 Wis. 2d 565, 855 N.W.2d 483. In resolving this appeal, we rely on the independent source doctrine. *See* ***Vanstone v. Town of Delafield***, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995) (noting that we may affirm on grounds different than those relied on by the circuit court).

> former question turns on "whether the [subpoena's supporting affidavit] contain[s] sufficient evidence of probable cause without the references to the tainted evidence."

Id., ¶12 (alteration in original; citations omitted).

To sum it up, "the independent-source doctrine applies when the State has a separate reason to seek the challenged evidence apart from the knowledge it gains from an unlawful [seizure]." ***Id.***, ¶14. If a "later, lawful seizure is genuinely independent of an earlier, tainted one ... there is no reason why the independent source doctrine should not apply." ***State v. Carroll***, 2010 WI 8, ¶44, 322 Wis. 2d 299, 778 N.W.2d 1 (citation omitted). The independent source doctrine "derives from the principle that when the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation." ***Id.*** (citation modified).

Here, the challenged DNA evidence had an independent source. At the suppression hearing, Detective Michael Fedel testified that when he asked Crosby to consent to the search, he explicitly told Crosby that they would get a search warrant if he did not consent. Fedel testified: "We have a training as far as a voluntary DNA collection procedure. That's our training. We have a form which clearly lays out how this works. If they volunteer to provide their DNA sample, we take it. If they say no, we apply for a search warrant. This is very common." Consequently, the State disputes Crosby's claim that "[t]here was no evidence that the police or prosecution would have discovered his DNA evidence but for the police misconduct." The record here shows that if Crosby had refused to consent to a buccal swab of his DNA, his DNA would have been obtained—and ultimately was obtained here—pursuant to a search warrant.

Assuming without deciding that the first DNA sample was improperly seized, we agree with the State that the independent source doctrine prevents suppression. In light of this conclusion, we do not reach Crosby's claims that his constitutional rights were violated. "This court does not normally decide constitutional questions if the case can be resolved on other grounds." ***Adams Outdoor Advert., Ltd. v. City of Madison***, 2006 WI 104, ¶91, 294 Wis. 2d 441, 717 N.W.2d 803 (citation omitted); *see also* ***State ex rel. Oitzinger v. City of Marinette***, 2025 WI App 19, ¶76, 415 Wis. 2d 635, 19 N.W.3d 663 (stating that we "decide cases on the narrowest possible grounds" (citation omitted)).

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals