IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ERNEST RUSHING III,
Appellant.

No. 2 CA-CR 2019-0290
Filed December 2, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201901127
The Honorable Patrick K. Gard, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

B R E A R C L I F F E, Judge:

¶1 Ernest Rushing appeals from his conviction after a jury trial for one count of possession of drug paraphernalia. The trial court sentenced Rushing to a presumptive term of 3.75 years' imprisonment. On appeal, Rushing contends that the court abused its discretion by denying his motion to suppress. We affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the trial court's ruling. *State v. Ellison*, 213 Ariz. 116, ¶ 25 (2006). In March 2019, Coolidge Police Department Officer George Coleman was on patrol when he spotted Ernest Rushing walking down the street. Coleman pulled his car over and exited the vehicle to speak with Rushing because Coleman believed Rushing might be the subject of an arrest warrant. Coleman confirmed Rushing's identity and detained Rushing by placing him in handcuffs so Coleman could then confirm the warrant. After Coleman placed Rushing in handcuffs, Coleman asked him whether he had anything on him that Coleman should know about. Rushing responded with a "moan[] and a grunt[]," and said he had some "shit." Coleman then asked what Rushing meant by "shit," and whether that meant something dangerous. Rushing said that it was nothing dangerous. Coleman testified that "shit" is a street term that sometimes means drugs.

¶3 Another officer then asked Rushing what was in his pockets, again asking if it was anything dangerous. The officers asked Rushing whether he had marijuana or fentanyl in his pocket, to which Rushing indicated it was "something." Coleman then asked Rushing where the object was located, and Rushing indicated by nodding his head toward his right, front pants pocket, where Coleman found a methamphetamine pipe. A third officer collected the pipe.

¶4 Rushing was charged with possession of drug paraphernalia. Before trial, Rushing requested a voluntariness hearing, claiming that his "statements were not the product of [his] free and unconstrained choice."

At trial, outside the presence of the jury, Rushing claimed that because he was under custodial detention, he should have been read his *Miranda* rights[1] prior to any questioning about what he had in his pockets. He claimed that the police officers "should have Mirandized him in the beginning, knowing they [were] going to arrest him on the warrant and then ask the incriminating questions." The state asserted that Rushing was not in custody for purposes of *Miranda*, the questions were investigatory in nature, and Officer Coleman patted down Rushing for officer safety reasons.

¶5 The trial court denied Rushing's request to suppress his statements. It found that Rushing "was being detained to verify the warrant," "he wasn't under arrest for it, [and] they don't need to Mirandize him for just detaining him on a warrant."

¶6 Rushing was convicted and sentenced as describe above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Analysis

¶7 On appeal, Rushing claims that the trial court abused its discretion by not suppressing his statements because they were obtained in violation of *Miranda*. The state contends that the court properly denied Rushing's request to suppress his statements because Officer Coleman would have inevitably found the pipe on Rushing's person during a search conducted pursuant to the valid arrest warrant.[2] "A trial court's decision to admit a defendant's statement is reviewed for an abuse of discretion." *Ellison*, 213 Ariz. 116, ¶ 25. In our review, we consider only the evidence presented at the suppression hearing. *Id.* We are obliged to affirm the

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[1]*Miranda v. Arizona*, 384 U.S. 436 (1996).

[2]Although the state did not make this argument below, we, in our discretion, will address it. *See State v. Kinney*, 225 Ariz. 550, n.2 (App. 2010) ("[W]e generally will not address an issue not raised below to reverse the trial court, [but] here we address a waived issue to uphold the trial court."); *State v. Payne*, 223 Ariz. 555, n.8 (App. 2009) ("If application of a legal principle, even if not raised below, would dispose of an action on appeal and correctly explain the law, it is appropriate for us to consider the issue." (quoting *Evenstad v. State*, 178 Ariz. 578, 582 (App. 1993))).

court's ruling if legally correct for any reason. *State v. Snyder*, 240 Ariz. 551, ¶ 25 (App. 2016). We agree with the state and thus we need not address Rushing's *Miranda* argument because, as we discuss below, the contraband inevitably would have been discovered.

¶8 Under the inevitable discovery doctrine, "evidence obtained as a result of an unlawful search need not be suppressed when, in the normal course of police investigation and conduct, and absent the illicit conduct, the evidence would have been discovered inevitably or ultimately." *State v. Acosta*, 166 Ariz. 254, 258 (App. 1990). The exception applies only "if the evidence would have been lawfully discovered despite the unlawful behavior and independent of it." *Brown v. McClennen*, 239 Ariz. 521, ¶ 14 (2016). For instance, in *State v. Lamb*, our supreme court held that evidence discovered during an illegal pat down of the defendant was admissible because he would have been arrested on independent grounds and the evidence inevitably discovered during the lawful search incident to arrest. 116 Ariz. 134, 138 (1977).

¶9 Similarly here, at the suppression hearing, Officer Coleman testified that Rushing "was going to get searched either way because the warrant was going to be confirmed" and that "[a]s soon as the warrant was confirmed, [Rushing was] obviously going to be searched before he [was] put into the car." The warrant was ultimately confirmed and thus Rushing would have been lawfully searched and the drug paraphernalia would have inevitably been found in Rushing's pocket. Therefore, even if we were to conclude the search was unlawful, the trial court properly denied the motion to suppress.

Disposition

¶10 For the foregoing reasons, we affirm Rushing's conviction and sentence.