

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 30, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 02-0914-CR

Cir. Ct. No. 00-CF-218

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VAUGHN P. POLLARD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
RANDY R. KOSCHNICK, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Vaughn Pollard appeals a judgment convicting him of possessing between 40 and 100 grams of cocaine, and less than 500 grams of marijuana, as party to the crime and with intent to deliver both drugs. A Wisconsin state trooper seized some of the evidence used to charge Pollard during a warrantless search of Pollard's automobile. Pollard entered a guilty plea to the

charges after the trial court denied his motion to suppress that evidence. The issue on appeal is whether the trial court properly decided the suppression issue. We affirm.

¶2 At the suppression hearing, the testimony of the two state troopers involved in arresting Pollard was uncontroverted and was deemed credible by the trial court. State Trooper Block testified that he observed two cars with Michigan license plates traveling very close together at eighty-one miles per hour on Interstate 94 in Jefferson County. He pursued until the lead car, driven by Richardson, pulled over. Pollard then pulled over further down the highway.

¶3 Richardson told Block that he was traveling with Pollard from Grand Rapids, Michigan, to a family reunion in Minnesota. Block subsequently learned that Richardson had a prior drug arrest.

¶4 In the meantime, Trooper Jenswold arrived and spoke with Pollard. Trooper Block learned from Trooper Jenswold that Pollard offered a conflicting reason for the trip to Minnesota. Block ran a check on Pollard and discovered that he, too, had a prior drug arrest.

¶5 At this point, Pollard was still on the scene voluntarily. Block issued Richardson a speeding ticket and Richardson then consented to a search of his car. Block discovered receipts with Pollard's name in two different locations in Richardson's car. One receipt was found in a rear seat armrest compartment along with loose marijuana and marijuana seeds.

¶6 Block then found cocaine base, a quantity of marijuana, a handgun, and drug paraphernalia in Richardson's trunk and rear passenger seat area. Shortly thereafter, Block issued Pollard a ticket for following Richardson too

closely. Block's subsequent nonconsensual search of Pollard's trunk revealed more cocaine base.

¶7 Trooper Jenswold's testimony confirmed Block's. Jenswold added that, while Block dealt with Richardson, Jenswold advised Pollard that Pollard was free to leave, but that Pollard chose to wait for his friend. Jenswold then learned that Block intended to ticket Pollard as well, and after Richardson's arrest Jenswold told Pollard that he was mistaken earlier, and that Pollard could not leave. Pollard's arrest and the search of his car ensued. Jenswold added that before the search, he and Block discovered that Pollard and Richardson were convicted of the same offense on the same date.

¶8 Based on the troopers' testimony, the trial court concluded that Block had probable cause to search Pollard's car. The court also concluded that the cocaine discovered in Pollard's car was admissible evidence under the rule of inevitable discovery. Faced with the court's ruling, Pollard accepted a plea bargain, was convicted, and subsequently pursued this appeal.

¶9 Law enforcement officers may conduct a warrantless search of a car, under the automobile exception to the Fourth Amendment, if there is probable cause to believe that the vehicle contains contraband. *State v. Matejka*, 2001 WI 5, ¶23, 241 Wis. 2d 52, 621 N.W.2d 891. Probable cause means a fair probability that a search will reveal contraband. *State v. Pallone*, 2000 WI 77, ¶74, 236 Wis. 2d 162, 613 N.W.2d 568. Whether a given set of facts constitutes probable cause is a question of law which we review without deference to the trial court. *State v. Babbitt*, 188 Wis. 2d 349, 356, 525 N.W.2d 102 (Ct. App. 1994). In determining probable cause, we consider the totality of the circumstances concerning the search in question. *See Pallone*, 2000 WI 77 at ¶74.

¶10 Given the totality of the circumstances at the scene, a fair probability existed that Pollard's car contained drug-related contraband. The most persuasive factors were: that Pollard and Richardson were traveling together but told different versions of their trip's purpose; that Richardson had a weapon and a large amount of drugs in his car; that Richardson and Pollard had previously been convicted of the same crime on the same date and, therefore, appeared to have been criminal accomplices in the past; that each man had a prior drug offense arrest; and that Pollard's receipts, found in two locations in Richardson's car, including in a compartment with a small amount of marijuana, showed Pollard's strong link with both Richardson's car and Richardson. Pollard had clearly been in Richardson's vehicle recently. Those facts, taken together with all of the other circumstances, allowed a reasonable inference that Pollard was involved in Richardson's criminal enterprise, and created a fair probability that evidence of that enterprise would be discovered in Pollard's car.

¶11 Our decision on probable cause makes it unnecessary to address whether the evidence in Pollard's car would have been admissible under the inevitable discovery rule.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

