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STATE OF NORTH DAKOTA

Supreme Court No. 20130334

Criminal No. 09-2013-CR-00095

NORTH DAKOTA SUPREME COURT

State of North Dakota

Appellee

v.

Brian Alan Kuruc,

Appellant

On appeal from the July 06, 2013, Memorandum Opinion and Order Denying Defendant's Motion to Suppress Evidence and October 01, 2013, Memorandum Opinion Denying Defendant's Motion in Limine, the Honorable Wickham Corwin presiding

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BRIEF OF APPELLEE

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[¶3] JURISDICTIONAL STATEMENT

[¶4] A timely notice of appeal has been filed. This Court has jurisdiction under N.D.R.App.P. 35(b).

[¶5] STATEMENT OF THE ISSUES

I. [¶6] Whether the deputy's entry into the room and attempt to freeze the scene without a warrant was reasonable under the Fourth Amendment.

II. [¶7] Whether the deputy's actions constitute a warrantless search; if so, whether the district court correctly applied the independent source doctrine and doctrine of inevitable discovery.

III. [¶8] Whether the district court appropriately rejected the use of the marijuana permit as a defense under the prescription drug statute.

[¶9] STATEMENT OF THE CASE

[¶10] Brian Kuruc appeals the district court's final judgment entered October 21, 2013. (Appellant's App. at 21.) Kuruc entered conditional guilty pleas to counts one, two and three. (Appellant's App. at 20 and 21.) The guilty pleas came after the district court issued a Memorandum Opinion and Order on July 16, 2013, granting the motion to suppress as to some evidence and also a Memorandum Opinion entered on October 1, 2013, denying the request for a jury instruction to provide a defense for the crimes charged. (Appellant's App. at 8 and 17.) Notice of appeal was filed on October 25, 2013. (Appellant's App. at 28.)

[¶11] STATEMENT OF THE FACTS

[¶12] On January 9, 2013, at approximately 10:30 a.m., Cass County Sheriff's Deputies Tonya Grabinger and Eric Swenson responded to a reported

smell of marijuana at the Days Inn in Casselton, North Dakota. (Tr. 8:6-23). Grabinger and Swanson smelled marijuana upon entering the hotel. (Tr. 9:1-6; 54:18-20). The desk clerk told the deputies the smell was emanating from Room 104, which was being rented by a male and female who had been joined by about four others. (Tr. 9:23-25; 10:1-9). The clerk also indicated the renters were traveling in a white vehicle with out of state plates and had requested a late checkout time around 1 p.m. that day. (Tr. 10:9-12). The renters of Room 104 were Brian Kuruc and his fiancée, Rebecca Larson. (Tr. 69:25; 70:1-2; 70:13-14).

[¶13] Deputies Grabinger and Swenson followed the smell of marijuana from the hotel lobby to Room 104. (Tr. 9:20-22; 10:20-21). Deputy Grabinger knocked on the door, identified herself to Larson, and stated she was there because of a complaint about an odor of marijuana coming from the hotel room. (Tr. 10:14-16; 11:11-16). Deputy Grabinger stepped into the doorway and asked Larson for consent to enter Room 104. (Tr. 11:21-24). Larson did not consent to entry into the room. (Tr. 12:3-5). Deputy Grabinger placed her foot in the doorway to prevent Larson from shutting it, and had a conversation with Larson. (Tr. 12: 12-23; 19: 6-14). Deputy Grabinger again asked for consent to enter, and when denied, directed Deputy Swenson to apply for a search warrant. (Tr. 13:2-9). Deputy Swenson then walked down the hallway and into the lobby to avoid the noise while applying for the search warrant. (Tr. 50:23-25; 51:1-2). While Deputy Swenson was working on getting the search warrant, Deputy Grabinger requested everyone in the room provide their identification. (Tr.13:11-13).

Everyone in the room complied and Deputy Grabinger stated they were being detained and should not move around the room because she believed criminal activity was afoot. (Tr.13:14-19). Deputy Grabinger testified her purpose for "freezing" the scene was to minimize the inconvenience while waiting for the search warrant. (Tr. 19:15-21). She also had concerns about evidence being destroyed. (Tr. 19:25; 20:1-12). During her interaction with Deputy Grabinger, Larson stated she was lawfully permitted to possess marijuana because she had a prescription from the State of Washington. (Tr. 73:24-25; 74:1).

[¶14] Kuruc then stated he was going into the bathroom to brush his teeth. (Tr. 13:21-22). Deputy Grabinger advised Kuruc against such action for officer safety reasons. (Tr. 13:21-23). On his way into the bathroom, Kuruc grabbed a large orange and black duffle bag. (Tr. 13:25; 14:1-6). Deputy Swenson returned from the lobby around the time Kuruc was attempting to enter the bathroom. (Tr. 51:3-16). Deputy Grabinger attempted to prevent Kuruc from entering the bathroom, but Larson stepped into her way. (Tr. 14:23-25; 15:1-2). Deputies Grabinger and Swenson ordered the other individuals into the hallway and Deputy Grabinger entered the bathroom by force. (Tr. 52:5-17). Kuruc was found in the bathroom, with his arm wet and a green leafy substance all over it. (Tr. 52:19-20). Deputy Grabinger viewed an empty baggie on the bathroom floor. (Tr. 15:24-25). Kuruc was brought into the hallway, and the door into Room 104 was closed. (Tr. 16:17). Deputy Swenson raised concerns about the green substance on Kuruc's

arms. (Tr. 52:20-22). Kuruc replied he was "trying to get rid of it." (Tr. 17:7-8; 53:1-2). Deputy Swenson handcuffed Kuruc. (Tr. 16:25; 17:1).

[¶15] All of the individuals inside Room 104 were assembled in the hallway and mirandized by Deputy Grabinger (Tr. 17:12-14). Narcotics detectives arrived, re-mirandized the individuals, asked for consent to search, and following their consent had them sign a form indicating consent to search. (Tr. 17:24-25; 18:1). The consent from was signed at approximately 11:49 a.m. (Tr. 65:6-14). Ultimately, a search warrant was signed at approximately 12:51 p.m.; Detective Joe Gress called and told agents he had secured the warrant and the search commenced at 1:02 p.m. (Tr. 64:8-9; 65:15-18). Marijuana and paraphernalia were found in the room during the search. (Tr. 18:13-21; 53:14-23). Some marijuana was found in the bathroom and in the toilet. (Tr. 18:22-24). The search of Kuruc's vehicle produced marijuana and paraphernalia as well. (Tr. 54:3-6). Kuruc and Larson were arrested and taken to the Cass County Jail. (Tr. 54:7-9).

[¶16] Kuruc moved to suppress all evidence gathered on the basis of an illegal search and seizure. The district court concluded the physical evidence from Defendant's rental car and the incriminating statements must be suppressed, but that the remaining physical evidence from the hotel room was admissible under the inevitable-discovery and independent-source doctrines. (Appellant's App. at 8). Kuruc also attempted to gain a pretrial determination through a motion in limine for a jury instruction that his medical marijuana prescription from the State of Washington could be introduced as a defense to his charges. The motion

was denied. (Appellant's App. at 17). Following these rulings, Kuruc conditionally pled guilty and now appeals.

[¶17] **STANDARD OF REVIEW**

[¶18] When reviewing a district court's ruling on a motion to suppress, this Court defers to the district court's findings of fact and resolves conflicts in testimony in favor of affirmance. City of Fargo v. Thompson, 520 N.W.2d 578, 581 (N.D. 1994). A district court's findings of fact in a suppression hearing "will not be reversed if, after the conflicts in the testimony are resolved in favor of affirmance, there is sufficient competent evidence fairly capable of supporting the . . . court's findings, and the decision is not contrary to the manifest weight of the evidence." Id. Although underlying factual disputes are findings of fact, the ultimate conclusion of whether the facts meet a particular legal standard is a question of law, fully reviewable on appeal. State v. Albaugh, 2007 ND 86, ¶ 8, 732 N.W.2d 712.

[¶19] A pre-trial motion in limine is a procedural tool to ensure that unfairly prejudicial evidentiary matters are not discussed in the presence of the jury. Williston Farm Equip., Inc. v. Steiger Tractor, Inc., 504 N.W.2d 545, 550 (N.D. 1993). This Court reviews a district court's denial of a motion in limine under an abuse of discretion standard. Id. at 548-49. A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a

rational mental process leading to a reasoned determination. City of Fargo v. Levine, 2008 ND 84, ¶ 5, 747 N.W.2d 130.

[¶20] The interpretation of a statute is fully reviewable by this court. Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712, 718 (N.D.1984). In interpreting a statute, the Court first looks to the language of the statute and, if the intent of the statute is apparent from its face, there is no room for construction. State v. Grenz, 437 N.W.2d 851, 853 (N.D. 1989). Words must be given their plain, ordinary and commonly understood meaning, and consideration should be given to the ordinary sense of the statutory words, the context in which they are used, and the purpose which prompted their enactment. Coldwell Banker v. Meide & Son, Inc., 422 N.W.2d 375, 379 (N.D. 1988). The court construes a statute which is part of a uniform law with the aim to conform it with the law of those states which enacted it. N.D.C.C. § 1-02-13.

[¶21] **LAW AND ARGUMENT**

I. [¶22] Deputy Grabinger's attempt to freeze the motel room and its contents without a warrant was reasonable under the Fourth Amendment.

[¶23] The district court held any evidence discovered as the sole (emphasis added) result of Deputy Grabinger's illegal entry must be suppressed. (Appellant's App. at 7). The district court found that Deputy Grabinger unreasonably searched Room 104 when she stepped into the doorway. (Appellant's App. at 9-10). The district court was mistaken in its analysis because Deputy Grabinger's actions amounted to a reasonable attempt to seize Room 104,

its contents and inhabitants, in order to preserve evidence. When probable cause is present, an officer's attempts "to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents." Segura v. United States, 468 U.S. 796, 810 (1984). A seizure of a motel room affects only possessory interests and does not infringe upon the heightened protection typically extended to privacy interests. Segura, 488 U.S. at 810. "[S]ociety's interest in the discovery and protection of incriminating evidence form removal or destruction can supersede, at least for a limited period, a person's possessory interest in property, provided that there is probable cause to believe that the property is associated with criminal activity." Id. at 808.

[¶24] Illinois v. McArthur, 531 U.S. 326 (2001) lays out a four prong test to determine the reasonableness of a warrantless seizure to protect evidence. In McArthur, a recently separated couple requested police assistance in moving Tera McArthur's possessions to her new residence. 531 U.S. at 328. The police did not enter the couple's trailer during the time Tera removed her belongings. Id. at 329. Once all her belongings were removed, Tera informed law enforcement that "Chuck had dope in there"; the word "there" referring to the couple's home, and the name Chuck referring to her husband. Id. More specifically, Tera stated the drugs were underneath the couch. Id. Chuck would not allow law enforcement to search the trailer without a warrant when confronted with this information. Id. Chuck was subsequently not allowed to enter the trailer, unless accompanied by

police, while the search warrant was being drafted. Id. The search warrant was served about two hours after Tera's revelation and marijuana was found. Id.

[¶25] The Supreme Court stated the circumstances presented by the case did not render the warrantless seizure *per se* unreasonable. McArthur, 531 U.S. 326, at 331. The case presented a "plausible claim of specially pressing or urgent law enforcement need, *i.e.*, 'exigent circumstances.'" Id. The Court's principal goal was to "balance the privacy-related and law-enforcement related concerns to determine if the intrusion was reasonable." Id. The Court utilized a four-step analysis in finding the restrictions were reasonable: (1) the police had probable cause to believe that McArthur's trailer home contained evidence of a crime and contraband, namely, unlawful drugs; (2) the police had good reason to fear that, unless restrained, McArthur would destroy the drugs before they could return with a warrant; (3) the police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy by refraining from searching the premise and merely preventing McArthur from entering the trailer unaccompanied; (4) the police imposed the restraint for a limited period of time, namely two hours. Id. at 332. In defending the basis for such a holding the Court stated "we have found no case in which this Court has held unlawful a temporary seizure that was supported by probable cause and was designed to prevent the loss of evidence while the police diligently obtained a warrant in a reasonable period of time." Id. at 334.

[¶26] Deputy Grabinger's actions qualify as a reasonable seizure under the four part analysis put forth in McArthur. First, Deputy Grabinger determined the odor of marijuana was emanating from Room 104, thus creating probable cause to believe drugs were inside Room 104. Second, after seeking consent to search the room, Deputy Grabinger had good reason to fear that evidence would be destroyed if the room's inhabitants were not restrained. Third, her actions struck the proper balance between her needs as law enforcement and the personal privacy demands of the inhabitants. Room 104 was never searched and the inhabitants were not arrested before the warrant was obtained. Finally, the detainment of the inhabitants was imposed only for the two hours it took to obtain a warrant.

A. [¶27] McArthur has been applied in several jurisdictions to support similar seizures.

[¶28] McArthur has been applied in several cases which can be used as a guideline for this Court to follow. In United States v. Walker, the Four Bears Casino and Lodge security supervisor detected an odor of marijuana emanating from the defendant's hotel room. No. 4:09-CR-087, 2010 WL 3271392, at *4(D.N.D. Aug. 17, 2010). The court found probable cause was present based upon the odor, law enforcement were allowed into the room by the defendant, and drugs were seen in plain view. Id. Defendant was then restrained, the hotel room was secured, and the search was conducted after a warrant was issued. Id. The seizure was deemed reasonable. Id.

[¶29] In United States v. Burrell, a homeowner refused consent to search her home without a warrant after she had invited law enforcement into her home. No. 06-81 (JNE/RLE), 2006 WL 1715608, at *21 (D. Minn. June 19, 2006). Law enforcement had probable cause to believe drugs were within the residence because Burrell was a known drug trafficker and had been inside the residence the morning of his arrest. Id. at 18. Officers refrained from searching until the arrival of an expeditiously obtained warrant. Id. at 21. The court held it was reasonable to infer evidence would be destroyed if the premises were not secured and its inhabitants restrained. Id. Furthermore, probable cause existed to justify law enforcement's seizure of the residence. Id. The motion to suppress was denied because the seizure was supported by probable cause. Id.

[¶30] In Hester v. State, police were denied consent to search, but they had gathered enough information from reliable informants to give law enforcement probable cause to believe drugs were present inside the defendant's residence. 208 S.W.3d 747, 754 (2005). Officers had good reason to fear the defendant would destroy evidence unless restrained, because it was reasonable to think the defendant observed law enforcement's conversations with the informants. Id. at 385-86. Defendant's residence was not searched until a search warrant was obtained, however, the defendant was not allowed inside his residence for a limited period of time. Id. at 386. The court upheld law enforcement's action under McArthur. Id.

[¶31] In State v. Tillman, a complaint about marijuana directed police to an apartment unit where officers smelled the odor of burnt marijuana outside the door of Unit 4. 2012 S.D. 57, 817 N.W.2d 812, 814. Officers were allowed to enter the unit, but not to search without a warrant. Id. at 814-15. Jessica Wallace, the leaseholder, was detained and the scene was secured. Id. Wallace was patted down for weapons, but not formally arrested. Id. The court found law enforcement had probable cause to believe the unit contained drugs based upon the smell of burnt marijuana and the presence of raw marijuana in plain view. Id. at 817. There was good reason for officers to fear the evidence would be destroyed. Id. Even though Wallace was de facto arrested and kept in a holding room at the police station, the circumstances of the detention did not implicate general privacy rights because the police already had sufficient probable cause to arrest Wallace. Id. Although officers could have easily imposed a restraint more in line with McArthur, the detention of Wallace for eight hours was not unreasonable in light of their de facto arrest. Id. at 817-18. Finally, the duration of the restraint of Wallace was no longer than reasonably necessary to obtain a warrant. Id. at 818. The court upheld the actions of law enforcement under McArthur. Id.

[¶32] State v. Fuller presents a scenario where law enforcement was allowed to freeze a premise because they reasonably feared the imminent destruction of the evidence inside. No. A12-2075, 2013 WL 5777901, at *3 (Minn. Ct. App. Oct. 28, 2013). The Minnesota Court of Appeals held that police may have good reason to fear the imminent destruction of evidence when a person

who witnessed officers nearby has access to a location believed to contain a drug stash and an interest in destroying the drugs. Id. The specific fear was that an employee of a pawn shop suspected to contain drugs witnessed the arrest of two individuals suspected of purchasing drugs at the pawn shop. Id. If the employee was aware of the nearby arrest, it is reasonable to fear they may destroy the evidence if given the chance. Id. Freezing the pawn shop pending a search warrant was constitutional because officers reasonably feared the imminent destruction of evidence and had probable cause to believe evidence was inside the pawn shop. Id.

[¶33] A common theme in all of these cases is law enforcement seeking consent to search. When denied consent to search, it was reasonable for law enforcement to believe evidence would be imminently destroyed. In every case, probable cause to seek a search warrant was present. Another important theme is that no privacy rights were implicated by law enforcement's actions, because searches were never executed before a warrant was obtained. Only possessory interests were implicated, which amounts to a lesser intrusion than a warrantless search.

[¶34] The one major distinction between these cases and the case at hand is Deputy Grabinger's use of force to completely enter Room 104 and prevent the destruction of evidence in the bathroom. Although more dramatic than the actions of law enforcement presented in the cases above, Deputy Grabinger's actions were reasonable because they were made in an attempt to effectuate a reasonable

seizure and preserve evidence. The Supreme Court has said there is no "constitutional right" to destroy evidence as this would defy logic and common sense. Segura, 488 U.S. 796, 816.

B. [¶35] Kuruc's counter arguments should be rejected.

[¶36] Kuruc contends that law enforcement acted in bad faith in order to expedite the gathering of evidence by unlawfully entering and searching Room 104. Kuruc's contention should be rejected because no search occurred until a valid warrant was secured. It is not as if Deputy Grabinger searched the inhabitants' personal effects because she knew she could have gotten a warrant. Deputy Grabinger merely froze the scene until a valid search warrant was issued. There was no attempt to expedite the gathering of evidence without a warrant.

II. [¶37]In the alternative, if the Court finds Deputy Grabinger's actions constitute a warrantless search, the Court should adopt the district court's reasoning in its entirety.

[¶38] The district court suppressed the verbal statements given to Deputy Grabinger while she stood in the doorway. Furthermore, the district court also suppressed the evidence discovered in the rental car. Although the initial contact between Larson and Deputy Grabinger was found to be a constitutional violation, the independent-source doctrine and inevitable discovery doctrine serve to remove the taint from evidence that would otherwise be classified as fruit of the poisonous tree. As a result, the physical evidence obtained within the hotel room was properly admitted by the district court.

A. [¶39] The district court correctly applied the independent source doctrine.

[¶40] The independent source doctrine "allows admission of evidence that has been discovered by means wholly independent of any constitutional violation." State v. Gregg, 2000 ND 154, ¶52, 615 N.W.2d 515. (citing State v. Winkler, 552 N.W.2d 347, 353 (N.D. 1996)). If the independent source doctrine is to be applied, the evidence must have been discovered by lawful means. Id. at ¶ 52. The use of the independent source doctrine should place law enforcement in the same, not a worse, position than if no error or misconduct had occurred. Murray v. United States, 487 U.S. 533, 537 (1988). This Court, in accordance with Murray, has used a two-step analysis in applying the independent source doctrine: (1) the warrant must be supported by probable cause derived from sources independent of the illegal search; and (2) the decision to seek the warrant must not be prompted by observations made during the illegal search. Gregg, 2000 ND 154, ¶ 54.

i. [¶41]The warrant is supported by probable cause derived from sources independent of the illegal search.

[¶42] The mere smell of marijuana, as detected by a trained and experienced officer, is sufficient to establish probable cause. See State v. Schmalz, 2008 ND 27, ¶20, 744 N.W.2d 734. The Affidavit attached to the warrant application clearly states the deputies smelled marijuana coming from Room 104. (Appellant's App. at 34). The statement provided probable cause. Schmalz, 2008 ND 27, at ¶ 20. No other information was necessary.

[¶43] Kuruc contends that because the magistrate was presented information gathered during the illegal entry, the independent source doctrine fails. However, "what counts is whether the actual illegal search had any effect in producing the warrant…." Murray, 487 U.S 533, 542 n.3 (1988). The mere presence of such testimony in an application for a search warrant is not an automatic bar to the application of the independent source doctrine.

[¶44] In analyzing the issue, the Court should excise the portions of the affidavit based upon what the district court determined to be an unlawful entry and then analyze whether the magistrate would have had probable cause to issue the warrant based upon the untainted information. This Court has utilized this framework. See State v Fields, 2005 ND 15, ¶ 6, 691 N.W.2d 233 (after removing tainted evidence from consideration, evidence . . . remain[s] to establish probable cause.) See also State v. Winkler, 552 N.W.2d 347, 353 (N.D. 1996) (excluding evidence gained from independent legal means would put police in a worse position than if the unlawful conduct hadn't occurred); State v. Winkler, 1997 ND 144, 587 N.W.2d 330, n.3 (must examine search warrant absent illegally obtained information to determine whether untainted portion of affidavit sets forth probable cause).

[¶45] This, at the very least, leaves the magistrate judge with one paragraph of untainted information:

> On 1/09/2013, the Cass County Sheriff's Office received a complaint from staff at the Day's Inn hotel in Casselton for an odor of marijuana. Upon arrival Deputy Eric Swenson and Deputy Tonya

> Grabinger were able to smell what they know through their training and experience as a police officer to be the odor of marijuana coming from Room 104. Room 104 is currently being rented by Brian Alan Kuruc.

Appellant's App. at 33.

[¶46] Under Schmalz, the odor of marijuana is sufficient to establish probable cause. 2008 ND 27, ¶20. The first prong of Murray is met. The warrant was supported by probable cause stemming from a source independent of the unlawful entry.

ii. [¶47] The decision to seek the warrant was not prompted by observations made during the unlawful entry.

[¶48] The second prong of the independent source doctrine requires that "the decision to seek the warrant must not be prompted by observations made during the illegal search." State v. Gregg, 2000 ND 154, ¶ 54, 615 N.W.2d 515. The district court had ample opportunity to judge the credibility of each officer's testimony and stated "[a]ll of the testimony offered at the hearing appeared to be candid and credible." (Appellant's App. at 8). The district court concluded the "initial decision to seek the warrant was not prompted by any observations made during the illegal entry. According to the testimony, Swenson first called for a warrant before the illegal entry yielded any new information of significance." (Appellant's App. at 13).

[¶49] The transcript is helpful in determining the timing of events important to this inquiry. Deputy Swenson testified that he sought the search warrant after Deputy Grabinger was denied consent to search and informed the inhabitants they

were being detained. (Tr. 50:10-15). Deputy Swenson then left the area near the room to call in the search warrant request. (Tr. 50:23-25; 51:1-2). Deputy Swenson eventually ended up near the doorway of Room 104 once again, just before Kuruc entered the bathroom to destroy evidence. (Tr. 51:3-16). At the time the warrant was initially sought, the only information available to Deputies Swenson and Grabinger was the odor of marijuana emanating from Room 104.

B. [¶50] The district court correctly applied the doctrine of inevitable discovery as well.

[¶51] Although very similar, the independent source doctrine and inevitable discovery doctrine are two distinct approaches to unpoisoning fruit of the poisonous tree. Gregg, 2000 ND 154, ¶ 40. The inevitable discovery doctrine is considered an "extrapolation" of the independent source doctrine. Id. at ¶ 50. "The inevitable discovery doctrine provides that evidence obtained from information procured in an unlawful search or seizure is admissible under the fruit-of-the-poisonous-tree doctrine if the evidence would inevitably have been discovered without the unlawful conduct." Id. at ¶ 51 (citing State v. Handtmann, 437 N.W.2d 830, 837 (N.D. 1989)).

[¶52] The use of the inevitable discovery doctrine here would cure the duffel bag and the marijuana it contained from any taint as a result of Deputy Grabinger's entrance into Room 104 and the room's bathroom. The initial observation of the duffel bag and its marijuana may have been the result of an unlawful entry, but the earlier requested search warrant certainly contemplated the

possibility of drugs being hidden in such a bag. Kuruc argues that Deputy Grabinger acted in bad faith when she unlawfully entered Room 104. Kuruc further states the inevitable-discovery doctrine is not permitted where "the police have [] acted in bad faith to accelerate the discovery of the evidence in question." State v. Smith, 2005 ND 21, ¶ 31, 691 N.W.2d 203. (citing Handtmann, 437 N.W.2d 830, 837-38 (N.D. 1989)). This prong of the inevitable discovery test was created in order to prevent law enforcement from using shortcuts in evidence gathering under the authority of inevitable discovery. State v. Holly, 2013 ND 94, ¶ 54, 833 N.W.2d 15. Deputy Grabinger's actions were not made in bad faith, nor were they made in order to gather evidence under the guise of inevitable discovery. (Tr. 19:15-24). Deputy Grabinger was motivated to act because it was apparent that Mr. Kuruc was destroying evidence. (Tr. 20:13-20). Deputy Grabinger was not seeking to gather the evidence; she was seeking to preserve it. (Tr. 19:15-24).

[¶53] The inevitable discovery analysis is straightforward in this case. When the district court deemed the entry unlawful, Deputy Grabinger's observations of the duffle bag full of marijuana amounted to a constitutional violation. The warrant requested clearly contemplated the possibility that drugs would be hidden in containers like the duffel bag and law enforcement would have inevitably searched the bag while executing the warrant.

III. [¶54] The district court correctly harmonized marijuana's classification as a Schedule I narcotic with North Dakota's valid prescription statute when finding a valid prescription defense inapplicable in this case.

[¶55] Kuruc argues the Century Code allows him to possess marijuana because they secured an out-of-state marijuana permit. The Century Code states it is illegal to possess a controlled substance "unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice." N.D.C.C. § 19-03.1-23(7). A "valid prescription" is consistently defined in the Century Code as "a prescription that was issued for a legitimate medical purpose . . . . " N.D.C.C §19-02.1-15.1(f) and 19-03.1-22.4(1)(e). Under N.D.C.C. § 19-03.1-05(5)(h), marijuana is classified as a schedule I controlled substance. A schedule I substance is found to have "no accepted medical use in treatment in the United States" or to lack "accepted safety for use in treatment under medical supervision." N.D.C.C § 19-03.1-04(2).

[¶56] "Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase where it occurs in the same or subsequent statutes, except when a contrary intention plainly appears." N.D.C.C. § 1-01-09. Related statutes must be construed together, with the goal of reaching a harmonious interpretation which avoids conflict and repugnancy. N.D.C.C. § 1-02-07; Locken v. Locken, 2011 ND 90, ¶ 9, 797 N.W.2d 301.

[¶57] Statutory harmony between the valid prescription statute and the controlled substances act is reached through applying the valid prescription defense to only those substances recognized as having some kind of accepted medical use. There can be no legitimate medical purpose for a prescription for

marijuana in North Dakota, because North Dakota does not recognize any acceptable medical use for the drug. This is supported through marijuana's classification as a Schedule I controlled substance. N.D.C.C. 19-03.1-05(s)(h).

[¶58] The State of Washington has found that the use of marijuana may benefit individuals who suffer from certain medical conditions. RCW 69.51A.005. Washington has also allowed individuals to seek medicinal marijuana permits from health care professionals, effectively providing them immunity from prosecution based solely on their medical use of cannabis. RCW 69.51A.005(2)(a). Kuruc may very well have a valid prescription in Washington, but North Dakota is not required to give full faith and credit to Washington's medicinal marijuana statutes. "The Full Faith and Credit Clause does not compel a state to substitute the statutes of another state for its own statutes dealing with a subject matter which it is competent to legislate." Franchise Tax Bd. Of California v. Hyatt, 538 U.S. 488, 494 (2003) (citations omitted). The North Dakota Century Code has explicitly rejected the contention that marijuana provides any medicinal benefit. N.D.C.C. §§ 19-03.1-04(2) and 19-03.1-05(s)(h). Kuruc would have the policy preference of Washington usurp the preference of North Dakota.

[¶59] Experiments with medical marijuana in other states have no bearing on North Dakota's classification of marijuana as a schedule I controlled substance. This Court has gone as far to say it does not believe questions regarding the accepted medical use of marijuana "can be resolved by the simple fact that some

states may now be experimenting with the use of marijuana as a prescriptive drug under very limited circumstances." State v. Ennis, 334 N.W.2d 827, 834 (N.D. 1983). Kuruc's use of Lindsey v. Wyatt, 2013 WL 2319324 (D. Or. May 27, 2013) as an example for this Court to follow is misleading. Kuruc's analysis ignores the fact that marijuana is classified as a Schedule II substance in the state of Oregon. Or. Admin. R. 855-080-0022. See also Or. Rev. Stat. Ann. § 475.059 (West). When recognized as a Schedule II controlled substance in Oregon, a court can harmoniously apply their valid prescription statute to marijuana because it has been recognized to have accepted medical use in treatment or with severe restrictions. Or. Rev. Stat. § 475.752(3) See also Unif. Controlled Substances Act 1994 § 205, Schedule II Tests. Kuruc also cites case law supporting the proposition that North Dakota does not limit its valid prescription statute to in-state practitioners. The crux of this case does not rest upon the qualifications of the issuing doctor; it rests upon the lack of a recognized medicinal use of the marijuana prescribed by the practitioner when brought into North Dakota.

[¶60] The order of the district court was limited to the use of the Washington prescription as a statutorily based defense within the North Dakota Century Code. The district court did not abuse its discretion in harmonizing the classification of marijuana as a Schedule I controlled substance with North Dakota's valid prescription statute. The district court also did not rule out the possibility of the prescription being admitted into evidence for other purposes, it merely stated marijuana prescription does not qualify as a statutory defense.

[¶61] CONCLUSION

[¶62] The Court should find that Deputy Grabinger's entry into the room was reasonable under the Fourth Amendment; therefore all evidence obtained should be admissible. In the alternative, the Court should affirm the district court's opinion and reasoning with regard to the motion to suppress. Further, this Court should affirm the district court's rejection of the marijuana permit as a defense under the prescription drug statute.

Dated this 9th day of January, 2014

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Benjamin Sand
Law Clerk
Certified under the Limited Practice Rule

[¶63] CERTIFICATE OF SERVICE

[¶64] A true and correct copy of the foregoing document was sent by e-mail on the 14th day of January, 2014, to: mfriese@vogellaw.com and nroesler@vogellaw.com.

Kara Schmitz Olson