STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2010AP899-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHAM OKERY OMOT,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND DENIAL OF POSTCONVICTION MOTION ENTERED IN THE DUNN COUNTY CIRCUIT COURT, THE HONORABLE WILLIAM C. STEWART, JR., PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT STATE OF WISCONSIN

J.B. VAN HOLLEN
Attorney General

MICHAEL J. LOSSE
Assistant Attorney General
State Bar #1015216

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-7063
lossemj@doj.state.wi.us

TABLE OF CONTENTS

CASES CITED

Page

Page

Page

Page

STATUTES CITED

OTHER AUTHORITIES

STATE OF WISCONSIN

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument because the briefs adequately present the issues. The State does not request publication because the case involves only the application of well-settled law to the particular facts of the case.

SUPPLEMENTAL STATEMENT OF THE CASE

The State elects to not present a supplemental statement of the case pursuant to Wis. Stat. § 809.19(3)(a)2.

ARGUMENT

I. SUMMARY OF OMOT'S CLAIM AND THE STATE'S RESPONSE.

Omot's claim is that: **1)** the evidence was insufficient to find him guilty beyond a reasonable doubt, even as a party to the crime; and **2)** the circuit court erroneously admitted a picture of a "brick" of marijuana and drawings signed "Cham Omot" depicting the shooting of police informants.

The State's response is that: **1)** Omot interprets aiding and abetting too narrowly, because it can be nothing more than evincing to the primary actor a willingness to assist if necessary; **2)** in circumstantial evidence cases the jury may "connect the dots" and draw inferences, especially regarding intent and mental state; and **3)** while Omot's drawings of guns and murder scenes may have been damning, they certainly were not unfairly prejudicial.

II. THE CIRCUMSTANTIAL EVIDENCE WAS SUFFICIENT TO CONVICT OMOT AS A PARTY TO THE CRIMES.

A. The Standard Of Review Is Extremely Deferential To The Jury's Verdict.

The burden for a defendant alleging that there was insufficient evidence to support a jury's verdict is extremely high. An appellate court will sustain a verdict

that is supported by *any* credible evidence. *State v. Poellinger*, 153 Wis. 2d 493, 503-04, 451 N.W.2d 752 (1990). The court further stated:

> [In] reviewing the sufficiency of the evidence to support a conviction . . . an appellate court may not reverse a conviction unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.

Poellinger, 153 Wis. 2d at 501.

> The jury can thus, within the bounds of reason, reject evidence and testimony suggestive of innocence.
>
> Although the trier of fact must be convinced that the evidence presented at trial is sufficiently strong to exclude every reasonable hypothesis of the defendant's innocence in order to find guilt beyond a reasonable doubt, this court has stated that that rule is not the test on appeal.
>
> . . . .
>
> "The test is not whether this court or any of the members thereof are convinced [of the defendant's guilt] beyond reasonable doubt, but whether this court can conclude the trier of facts could, acting reasonably, be so convinced by evidence it had a right to believe and accept as true. . . . The credibility of the witnesses and the weight of the evidence is for the trier of fact. In reviewing the evidence to challenge a finding of fact, we view the evidence in the light most favorable to the finding. Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable inference can be drawn from the evidence, the inference which supports the finding is the one that must be adopted. . . ."

Poellinger, 153 Wis. 2d at 503-04 (citation omitted).

> It is the function of the trier of fact, and not of an appellate court, to . . . draw reasonable inferences from basic facts to ultimate facts.
>
> . . .
>
> In viewing evidence which could support contrary inferences, the trier of fact is free to choose among conflicting inferences of the evidence and may, *within the bounds of reason,* reject that inference which is consistent with the innocence of the accused. . . . Thus, when faced with a record of historical facts which supports more than one inference, an appellate court must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law. . . .
>
> . . . **If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.**

Poellinger, 153 Wis. 2d at 506-07 (citations omitted) (emphasis added).

Reviewing courts give deference to juries because they recognize that juries – which have the greatest advantage of being present at trial – are responsible for weighing and sifting conflicting testimony and giving weight to those nonverbal attributes of the witnesses which are often persuasive indicia of guilt or innocence. *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989). *See also Poellinger*, 153 Wis. 2d at 506 ("It is the function of the trier of fact, and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts"); *Johnson v. State*, 55 Wis. 2d 144, 147, 197 N.W.2d 760 (1972) ("'The credibility of the witnesses and the weight of the evidence is for the trier of

fact'" (citation omitted)); *State v. Perkins*, 2004 WI App 213, ¶ 15, 277 Wis. 2d 243, 689 N.W.2d 684 ("It is the jury's job to resolve any conflicts or inconsistencies in the evidence and to judge the credibility of the evidence"); *State v. Pankow*, 144 Wis. 2d 23, 30-31, 422 N.W.2d 913 (Ct. App. 1988) ("The function of the jury is to decide which evidence is credible and which is not, and how conflicts in the evidence are to be resolved").

B. The Law Requires Only That There Be More Than "Some Evidence," Whether That Evidence Is Direct Or Circumstantial, And Not That Every Hypothesis Of Innocence Be Rebutted Beyond A Reasonable Doubt.

In *State v. Hirsch,* 2002 WI App 8, 249 Wis. 2d 757, 640 N.W.2d 140, the court stated:

> Again, we emphasize our standard of review: when a criminal defendant argues on appeal that the evidence was insufficient to convict him or her, **we do not retry the case on the facts to determine if each member of this court is convinced of the defendant's guilt beyond a reasonable doubt.** *State v. Wilson*, 149 Wis. 2d 878, 893, 440 N.W.2d 534 (1989). Rather, we must affirm a conviction if we find that the jury, acting reasonably, could have found guilt beyond a reasonable doubt. *Id.* at 893-94.

Hirsch, 249 Wis. 2d 757, ¶ 32 (emphasis added).

In *State v. Johannes,* 229 Wis. 2d 215, 222, 598 N.W.2d 299 (Ct. App. 1999), the court stated: "Our review is the same whether the evidence is direct or circumstantial."

In *State v. Searcy,* 2006 WI App 8, 288 Wis. 2d 804, 709 N.W.2d 497, the court also dealt with circumstantial evidence and stated:

> Furthermore, although the evidence presented at trial may have been circumstantial, circumstantial evidence is often stronger and more satisfactory than direct evidence, and a finding of guilt may rest entirely on circumstantial evidence. The standard for reviewing the sufficiency of the evidence is the same in either a direct or a circumstantial evidence case. In short, Searcy bears a heavy burden in attempting to convince us to set aside the jury's verdict.

Searcy, 288 Wis. 2d 804, ¶ 22 (citations omitted).

In *State v. Hauk,* 2002 WI App 226, 257 Wis. 2d 579, 652 N.W.2d 393, the court stated:

> The parties agree that the standard for reviewing the sufficiency of a jury verdict was set forth in *State v. Poellinger*, 153 Wis. 2d 493, 451 N.W.2d 752 (1990). If, in viewing the evidence in the light most favorable to the conviction, no reasonable jury could have found guilt beyond a reasonable doubt, the conviction must be reversed. *Id.* at 501. We agree with Hauk that, under this standard, a conviction cannot be sustained on the sole basis that there is "some evidence" supporting a guilty verdict. Rather, there must be sufficient evidence to enable a reasonable jury to find guilt *beyond a reasonable doubt*. *Jackson v. Virginia*, 443 U.S. 307, 317-18 (1979).
>
> We disagree, however, that we must reverse the conviction if "any trier of fact" would be able to "reconcile the evidence upon any reasonable hypothesis consistent with the defendant's innocence." **Hauk has confused the standard for the *jury* to use in determining whether reasonable doubt exists and the standard of *appellate review*.** It is the role of the fact finder, not this court, to weigh the evidence and to draw reasonable inferences from basic facts to ultimate facts. *Poellinger*, 153 Wis. 2d at 506. Therefore, **although the jury is required to exclude *every* reasonable hypothesis of the defendant's innocence before returning a guilty verdict, we must affirm the jury's finding if there is *any* reasonable hypothesis that supports the**

> **conviction.** *State v. Blair*, 164 Wis. 2d 64, 68 n.1, 473 N.W.2d 566 (Ct. App. 1991).

Searcy, 288 Wis. 2d 804, ¶¶ 11-12 (bold emphasis added).

> Hauk is incorrect with respect to both of her contentions. First, there is nothing unusual about requiring the *jury* to make reasonable inferences in favor of the defendant. As we have noted above in ¶ 12, the jury is required in all criminal cases to exclude every reasonable hypothesis of the defendant's innocence before returning a guilty verdict. **But Hauk again confuses the standard for the jury and the standard of appellate review. The jury must draw all reasonable inferences in favor of the defendant, but we must make all reasonable inferences in favor of the jury's decision.** *See State v. Page*, 2000 WI App 267, ¶ 9, 240 Wis. 2d 276, 622 N.W.2d 285*, review dismissed*, 2001 WI 15, 241 Wis. 2d 213, 626 N.W.2d 809 (Feb. 14, 2001) (No. 99-2015-CR). We are aware of no Wisconsin case that has applied Hauk's proposed standard of review, and Hauk has not cited to any.

Searcy, 288 Wis. 2d 804, ¶ 29 (bold emphasis added).

A jury is not required to accept or reject all of a witness's testimony in its entirety. *State v. Kimberly B.,* 2005 WI App 115, ¶ 25, 283 Wis. 2d 731, 699 N.W.2d 641. The trier of fact has the right to accept one part of a witness's testimony and reject another. *State v. Saunders,* 196 Wis. 2d 45, 53-54, 538 N.W.2d 546 (Ct. App. 1995). The factfinder has a right to chose between contradictory or inconsistent statements. *State v. Curiel,* 227 Wis. 2d 389, 420-21, 597 N.W.2d 697 (1999). Only guilt, and not credibility of any particular witness, must be proven beyond a reasonable doubt. *State v. Owens,* 148 Wis. 2d 922, 934, 436 N.W.2d 869 (1989).

It was proper for the jury to take the pieces of the puzzle and "connect[] its dots," drawing reasonable inferences to fill in the gaps. "Both juries and judges may, of course, draw logical inferences from the evidence, connecting its dots into a coherent

pattern." *State v. Sarnowski,* 2005 WI App 48, ¶ 12, 280 Wis. 2d 243, 694 N.W.2d 498 (emphasis added) (citing to *De Keuster v. Green Bay & W. R.R. Co.*, 264 Wis. 476, 479, 59 N.W.2d 452 (1953)), which said:

> **"Of course, jurors are not restricted to a consideration of the facts directly proven, but may give effect to such inferences as reasonably may be drawn from them. Nor are they expected to lay aside matters of common knowledge or their own observation and experience of the affairs of life, but, on the contrary, to apply them to the evidence or facts in hand, to the end that their action may be intelligent and their conclusions correct."**

DeKeuster v. Green Bay & W. R.R. Co., 264 Wis. 476, 479, 59 N.W.2d 452 (1953) (citation omitted) (emphasis added).

Unlike historical facts, inferred facts cannot be observed but rather are believed to be "event[s] or condition[s] which exist[] as a consequence of other established facts." *State v. Dunn*, 117 Wis. 2d 487, 493, 345 N.W.2d 69 (Ct. App. 1984) (Gartzke, P.J., dissenting), *aff'd*, 121 Wis. 2d 389, 359 N.W.2d 151 (1984). When the record supports conflicting inferences, the fact-finder is presumed to have resolved any such conflicts in favor of the prosecution. *See Jackson v. Virginia*, 443 U.S. 307, 326 (1979).

The argument that every hypothesis of innocence must be rebutted beyond a reasonable doubt was emphatically rejected in *State v. Scott,* 2000 WI App 51, 234 Wis. 2d 129, 608 N.W.2d 753. Scott claimed that his fingerprint on a desk from which a computer was stolen was insufficient to convict him of burglary, because it did not exclude the possibility that the fingerprint was made before the desk was sold to the burglarized company, or the possibility that Scott entered the office without the intent to steal, and stole the computer as an afterthought. *Id.*, ¶ 13. In other words, Scott argued that the evidence was insufficient to exclude reasonable hypotheses of

innocence. *Id.*, ¶ 14. The court rejected the argument and stated:

> First, Scott builds his argument on a weak legal foundation. He contends that this court, in reviewing the trial court's denial of his motion to dismiss, must consider the evidence much as a jury would—*i.e.,* by examining whether the circumstantial evidence is "sufficiently strong to exclude every reasonable theory of innocence." *See State v. Shaw*, 58 Wis. 2d 25, 29, 205 N.W.2d 132 (1973). But that is not our standard. As the supreme court clarified:
>
> > In reviewing the sufficiency of circumstantial evidence to support a conviction, an appellate court need not concern itself in any way with evidence which might support other theories of the crime. An appellate court need only decide whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered.
>
> *State v. Poellinger*, 153 Wis. 2d 493, 507-08, 451 N.W.2d 752 (1990).
>
> Second, Scott bases his argument not on reason, but on specious speculation. Is it possible that Scott worked for the company that sold the computer dock? Is it possible that during the course of such employment he touched this particular computer dock, and that his fingerprint survived through delivery and use? Is it possible that Scott, for some unknown reason, harboring no intention to steal, walked into the Kubin-Nicholson building despite its lack of any retail or other public function? And is it possible that, after the Kubin-Nicholson employees departed, Scott happened upon the computer and only *then* decided to take it? Granted, these are all possibilities; none, however, is reasonable. *See Foseid v. State Bank of Cross Plains*, 197 Wis. 2d 772, 791, 541 N.W.2d 203 (Ct. App. 1995) (trier of fact must not base findings on conjecture or speculation).

Scott, 234 Wis. 2d 129*,* ¶¶ 14-15).

C. The Evidence Was Sufficient To Convict Omot Of Being A Party To The Crimes.

The prosecution theory was that Omot's complicity as a party was demonstrated by the drugs and paraphernalia in his bedroom, his drawings depicting the shooting of informants and "snitches," and the photograph of Omot admiring a gun similar to, but probably not, the gun seized (49:311-14; A-Ap. 222-24). The drawings and picture demonstrated the attitude and mentality of someone in the drug trafficking business (*id*.). Pictures from both Omot's and roommate Schroedl's cell phones, and well as the fact that they moved to Gregerson's apartment together, suggest that they were close friends who knew one another's business (49:229-30, 314-15; A-Ap. 180-81, 224-25). And given the lack of evidence that either was employed, there was a strong inference that it was selling drugs that paid the rent 49:315; A-Ap. 225).

The trial evidence also showed that: **1)** at the time of the search Omot was found in the bedroom with the drugs (49:178; A-Ap. 146); **2)** the paraphernalia found in the bedroom suggested that larger quantities of marijuana than that found had been processed and packaged in the Omot/Schroedl bedroom (49:179; A-Ap. 147); **3)** Omot's drawings of killing "snitches" were in the **same** dresser as was the marijuana and paraphernalia (49:184; A-Ap. 152); **4)** the drawings were signed "Cham Omot (49:194; A-Ap. 162); **5)** the smell of marijuana emanated from the Omot/Schroedl bedroom (49:196; A-Ap. 164); and **6)** Gregerson knew Schroedl to be a drug dealer, and that he and Omot were close friends (49:249-50; A-Ap. 197-98).

The defense did not contest the basic facts upon which the prosecution based its argument, but rather argued that this did not constitute proof beyond a reasonable doubt (49:318-24; A-Ap. 228).

The theory of aiding and abetting that Omot advances in his brief is not an accurate statement of the law because it is far too narrow:

> A person intentionally aids and abets the commission of a crime when, acting with knowledge or belief that another person is committing or intends to commit a crime, (he) (she) knowingly either:
>
> - assists the person who commits the crime; or
>
> - is ready and willing to assist and the person who commits the crime knows of the willingness to assist.

Wis. JI-Criminal 407 at 1. Being a mere bystander who does nothing to assist is only a defense **if** there is no communication of a willingness to assist. *Id.*

The two party to the crime cases upon which Omot relies do not refute the State's argument. In *State v. Rundle,* 176 Wis. 2d 985, 500 N.W.2d 916 (1993), the court was dealing with one parent's failure to intervene to prevent physical abuse by the other parent. The court's analysis of aiding and abetting was focused on crimes involving physical harm, and the specific child abuse statute in question. In fact, the court quoted with approval a variation of the jury instruction relied upon by the State with the same language as to being "ready and willing to render aid," and communicating that willingness. *Id*. at 1000 n.18, quoting from Wis. JI-Crim. 400 (1962). The court, at least by implication, found that this provision did not apply because the defendant did not convey approval of the abuse. *Id*. at 994. Omot was not as uninvolved as the parent in *Rundle*, who likely would have been deemed aiding and abetting if he had strewn drawings of abusing children around the bedroom he shared with the abusing parent – more analogous to what Omot did.

Piaskowski v. Bett, 256 F.3d 687 (7th Cir. 2001), wherein the Seventh Circuit affirmed the district court's grant of habeas corpus to the defendant, is wholly off

point. Piaskowski had been convicted as a co-conspirator in the murder of Thomas Monfils, who had been thrown into a paper mill pulp vat in retaliation for informing the police that a co-worker was stealing company property. The evidence against Piaskowski was essentially only that he had been present near the scene, had initially reported Monfils missing, and a hearsay statement that "everyone" present participated in the beating that preceded dumping Monfils into the vat. This is a far cry from evidence of Omot sharing a bedroom with a close friend drug dealer, that smelled of and contained marijuana, as well as paraphernalia suggesting significant distribution, and drawing scenes of "snitches" being murdered.

Further support for the State's argument is to be found from the doctrine of "legal intent" articulated in *State v. Grady,* 93 Wis. 2d 1, 7, 286 N.W.2d 607 (Ct. App. 1979), wherein the court stated that "legal intent can be inferred from conduct." Or as the supreme court put it in *State v. Stewart,* 143 Wis. 2d 28, 31, 420 N.W.2d 44 (1988):

> **Intent may be inferred from the defendant's conduct, including his words and gestures taken in the context of the circumstances.**

Stewart, 143 Wis. 2d at 35 (emphasis added).

When the law of aiding and abetting and legal intent are applied to the facts adduced at trial, along with the jury's right to draw inferences and "connect the dots," the inescapable conclusion is that a reasonable jury could conclude that Omot was well aware of Schroedl's drug dealing, and that Omot clearly communicated his willingness to assist – if in fact Omot was not himself a drug dealer or Schroedl's "lieutenant."

Specifically, a reasonable jury could well have believed that: **1)** Omot necessarily knew drugs were being used and distributed in the house when they, and the paraphernalia, were being stored in the dresser in his very own bedroom; **2)** Omot had to know if Gregerson was

smoking marijuana given to her my Omot's roommate; **3)** the pictures of Omot and the roommate together showed that they were friends who likely would share personal information – such as drug dealing – even if it was not obvious from sharing a bedroom; **4)** the picture of Omot proudly brandishing a gun – whether or not it was the gun found in the basement – conveyed a mentality making it more likely that Omot would have been ready and willing to assist his drug dealer roommate (49:3, 312-13; 53:Exh.1, 1A; A-Ap. 120, 222-23, 232); and **5)** Omot's drawings of someone – whether or not self-portraits – carrying guns and shooting people necessarily conveyed to the roommate Omot's willingness to assist, even if he was not already the official "enforcer" (53:Exh. 14-17; A-Ap. 243-46).

III. THE CIRCUIT COURT DID NOT ERRONEOUSLY EXERCISE IT'S DISCRETION IN ADMITTING THE PHOTO AND DRAWINGS.

A. The Standard Of Review Is For The Erroneous Exercise Of Discretion.

Trial courts have broad discretion in admitting evidence. *State v. Pharr,* 115 Wis. 2d 334, 340 N.W.2d 498 (1983). The standard of review is for the erroneous exercise of discretion:

> The admissibility of evidence is within the sound discretion of the trial court. *State v. Brewer,* 195 Wis. 2d 295, 305, 536 N.W.2d 406 (Ct. App. 1995). The decision of the trial court will not be reversed on appeal if there is a reasonable basis for the decision and it was made in accordance with accepted legal standards and with the facts of record. *Id.*

State v. Long, 2002 WI App 114, ¶ 17, 255 Wis. 2d 729, 647 N.W.2d 884.

In *State v. Manuel,* 2005 WI 75, ¶ 24, 281 Wis. 2d 554, 697 N.W.2d 811, the court stated:

> When reviewing an evidentiary decision, "the question on appeal is not whether this court, ruling initially on the admissibility of the evidence, would have permitted it to come in, but whether the trial court exercised its discretion in accordance with accepted legal standards and in accordance with the facts of record." *State v. Stinson*, 134 Wis. 2d 224, 232, 397 N.W.2d 136 (Ct. App. 1986).

The record must reflect that discretion was in fact exercised and that the basis therefore is set forth. *State v. Hutnik,* 39 Wis. 2d 754, 764, 159 N.W.2d 733 (1968).

B. The Substantive Legal Standard.

Wisconsin Stat. § 904.01 specifies that relevance is the tendency to make any fact of consequence to determination of the action more or less probable. This tendency is the "probative value' of the evidence. *State v. Payano,* 2009 WI 86, ¶ 68, 320 Wis. 2d 348, 768 N.W.2d 832 (2009). The proponent bears the burden of proving relevance by a preponderance of the evidence. *State v. Hunt,* 2003 WI 81, ¶ 53, 263 Wis. 2d 1, 666 N.W.2d 771. Even relevant evidence may be excluded if its probative value is substantially outweighed by, *inter alia*, unfair prejudice. Wis. Stat. § 904.03.

C. The Circuit Court Properly Exercised Its Discretion In Admitting The Drawings Of People Being Shot And The Picture Of A Brick Of Marijuana.

At the hearing prior to the jury trial, the court ruled that the drawings were relevant as circumstantial evidence of elements of the crimes, especially because of depicting gun violence to "snitches" or informants, making it more likely that Omot was involved in drug dealing or possessed a firearm (49:16-17; A-Ap. 132-33). The probative value was not countervailed by unfair prejudice, in part because the drawings were simply recovered as part of the search (49:18; A-Ap. 134). The court held that the prosecutor's opening statement did not assert that the gun Omot was holding in a picture was the gun found in the basement of the apartment (49:213).

While in his brief Omot argues that there was insufficient proof he made the drawings, during the hearing on his motion *in limine* Omot's authorship was admitted (49:12; A-Ap. 128). Moreover, the drawings are signed "Cham Omot" (53:Exh 14-17; A-Ap. 243-46).

A hearing was held on Omot's postconviction motion on March 2, 2010, wherein it was argued that: **1)** the evidence was insufficient to convict; **2)** a mistrial should have been granted when the prosecution implied that the gun Omot was holding in the picture was the gun found in the apartment; and **3)** that the drawings of "snitches" being killed, and the picture of a "brick" of marijuana from Schroedl's cell phone were erroneously admitted into evidence (52:1-5). On March 16, 2010, the circuit court issued a written decision denying the motion on the same grounds that such objections were overruled at trial (40:1-2; A-Ap. 111-12).

The circuit court was correct. The drawings were clearly relevant to show Omot's mental state and attitude,

and that he was "ready and willing" to render assistance, if not that he already held the position as Schroedl's "enforcer." They were not unfairly prejudicial at all – their prejudice to Omot's case came from their probative value. They were all the more probative because they were found in the same dresser as the drugs and paraphernalia. Moreover, there is no serious argument that they were not drawn by Omot himself, and therefore stand as pictorial admissions – just as admissible as verbal admissions would have been.

The picture of the brick of marijuana was similarly probative of the fact that the apartment was a drug house, and that the possession of the marijuana was with an intent to distribute it. The picture was consistent with the paraphernalia including various larger empty vacuum bags. Even if admission of the picture had been improper, it would have been harmless given its triviality in comparison to all of the other evidence presented at trial. *See, e.g.*, *State v. Fischer,* 2003 WI App 5, ¶¶ 11, 37, 40, 259 Wis. 2d 799, 656 N.W.2d 503.

CONCLUSION

Based upon the foregoing arguments the State asks this court to affirm Omot's conviction, and the circuit court's denial of his postconviction motion.

Dated this 19th day of August, 2010.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General

MICHAEL J. LOSSE
Assistant Attorney General
State Bar #1015216

Attorneys for Plaintiff-Respondent
State of Wisconsin

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,395 words.

Dated this 19th day of August, 2010.

_____

Michael J. Losse
Assistant Attorney General

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-7063
(608) 266-9594 (Fax)
lossemj@doj.state.wi.us

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 19th day of August, 2010.

_____
Michael J. Losse
Assistant Attorney General