STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 4

Case No. 2017AP002243-CR
Grant County Circuit Court Case No. 2017CM000157

STATE OF WISCONSIN,
Plaintiff-Appellant,

v.

CHAD DAVID KNAUER,
Defendant-Respondent.

ON APPEAL FROM THE CIRCUIT COURT FOR GRANT COUNTY,
THE HONORABLE CRAIG R. DAY, PRESIDING

BRIEF OF THE PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

CASES CITED

STATEMENT OF THE ISSUE

Whether a law enforcement officer telling a suspect that if stolen property was at his aunt and uncle's place, they would be arrested for possession of stolen property, rendered the defendant's confession involuntary.

Trial Court's Decision - Yes.

STATEMENT ON ORAL ARGUMENT

The briefs of the parties can fully present and meet the issues on appeal.

STATEMENT ON PUBLICATION

Publication is not appropriate. While the facts are significantly different from that in published opinions, the factual situation is of the type that often occurs and the issue involves no more than an application of well settled rules to the types of facts that occurred in this case.

STATEMENT OF THE CASE

On 6/22/2017 the State filed a criminal complaint charging the defendant with misdemeanor theft. (R. 1, pp. 1-2; App. 1-2). On 9/20/2017 the defendant filed a Motion to Suppress the defendant's statement to police. (R. 11, pp. 1-3). On 10/02/2017, the Court conducted an

evidentiary hearing on the Motion to Suppress. (R. 32; App. 17-42). On 10/10/2017 the Trial Court rendered an oral ruling suppressing the statement. (R. 33, pp. 2-15; App. 43-56). The Trial Court subsequently issued a written order. (R. 27; App. 57). The State appeals.

STATEMENT OF THE FACTS

On or about 4/06/2017, a landscaping trailer was stolen from Reddy Ag in the Township of Liberty (Stitzer area)in Grant County, Wisconsin. (R. 1, p. 1-2; App. 1-2). Law enforcement officers in Lafayette County received tips that the defendant was involved in burglaries and thefts. (R.32, p. 9; App. 23). Law enforcement had also received information that some of the property was being stored at the defendant's aunt and uncle's place in Illinois. (R. 18, p. 34; App. 3). Law enforcement officers found property at the defendant's residence that they believed to be stolen. (R. 18, pp. 3-5).

On 5/23/2017 at about 11:00 p.m., Lafayette County Detective Sergeant Jerrod Cook and Shullsburg Chief of Police Joshua Jerry interviewed the defendant. (R.18; R. 32, pp. 3-13; App. 17-27). The defendant was removed from a jail cell and brought to an open area where law enforcement officers usually work on their reports. (R.32,

p. 5; App. 19). The officers interviewed the defendant for a little more than an hour. (R. 33, p. 8; App. 49). The officers administered the *Miranda* warnings and the defendant waived his right to remain silent. (R. 33, p. 9; App. 50). The officers did not apply any physical pressure upon the defendant. (R. 33, p. 9; App. 50). The officers, however, applied some psychological pressure. (R. 33, p. 9; App. 50).

The defendant is not a youngster. He was 32 years old at the time of the interview. (R. 33, p. 7; App. 48). The defendant is not an unintelligent fellow. (R. 33, p. 8; App. 49). The defendant went to eleventh grade in high school, obtained a GED and subsequently went to college for two years. (R. 32, p. 14; App. 28). He has no physical or psychological disabilities. (R. 33, p. 8; App. 49).

The defendant is a hardened criminal who specializes in thievery. (R. 19). He has been convicted of 14 crimes, including eight (8) crimes involving or relating to theft. (R. 19).

During the interview the defendant denied being involved in any thefts. (R. 18, pp. 2-3). At one point law enforcement advised the defendant that if a person is lying then the judges are through with that person. (R. 18, p. 12). The defendant made some admissions regarding the

stolen property at his residence. (R. 18, p. 12). The defendant, however, denied having stolen property at the property of his aunt and uncle in Illinois. (R. 18, pp. 30-31). Law enforcement then advised or threatened the defendant, under the understanding that the defendant did not have any stolen property at his aunt and uncle's place, that if stolen property was then found at his aunt and uncle's place they would be arrested for possessing stolen property. (R. 18, p. 31). Law enforcement encouraged the defendant not to lie and even indicated to the defendant it would be better to just say he didn't want to talk. (R. 18, p. 34; App. 3). After further discussion regarding stolen property, the defendant asked for a favor, to keep his aunt and uncle out of it because they were like his mom and dad. (R. 18, p. 34; App. 3). Law enforcement told the defendant that he was going to check on the property to make sure it wasn't stolen, but if it was stolen, then they would be in possession of stolen property. (R. 18, p. 34; App.3). The defendant then made admissions regarding the landscaping trailer stolen from Reddy Ag in Grant County, Wisconsin. (R. 18, p. 35; App.4).

ARGUMENT

If stolen property was found at the residence of the defendant's aunt and uncle, law enforcement would have had

probable cause to arrest the aunt and uncle and therefore the threat to arrest them did not render the defendant's confession involuntary.

Standard of Review

In *State v. Hindsley*, 2000 WI App. 130, ¶ 37, 237 Wis. 2d 358, 380, the Court stated,

> In determining whether a statement was voluntarily given, the inquiry is whether the statement was procured through coercive means or whether it was the product of improper pressures exercised by the police; and the totality of the circumstances surrounding the giving of the statement are examined. *See State v. Clappes*, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987). We accept the trial court's findings of historical facts surrounding the giving of the statement unless they are clearly erroneous, and review de novo whether the historical facts as found by the trial court meet the constitutional standard of voluntariness.

Factors Relevant to Voluntariness

In *McAdoo v. State*, 65 Wis. 2d 596, 606, 223 N.W.2d 521 (1974), the Court stated,

> The determination as to whether a confession is voluntary, rather than the result of coercion, must be made in light of the "totality of the circumstances." [*Citations*]. Whether a statement is voluntary under all the circumstances "... calls for a very careful balancing of the personal characteristics of the confessor with the pressures to which he was subjected in order to induce his statements." [*Citations*].
>
> "... Bearing on the personal characteristics of the confessor, consideration should be given to his age...; his education and intelligence...;

> his physical and emotional condition at the time of the interrogation...; and his prior experience with the police....
>
> "Those factors which, on the other hand, must be looked at to determine the amount of police pressure used to induce the confession include the length of interrogation... and delay in arraignment...; the general conditions under which the interrogation took place...; any extreme psychological or physical pressure...; possible inducements, methods and stratagems which were used by the police...; where the confessor was unlawfully arrested...; and, of course, whether the confessor was apprised of his right to counsel and his privilege against self-incrimination..." [*Citations*].

1. Based upon the defendants date of birth, the defendant was 32 years old at the time of the interrogation. (R. 18, p. 1).

2. The defendant went to high school to the eleventh grade, obtained a GED and had two years of college. (R. 32, p. 14; App. 28).

3. The defendant was not suffering from any cognitive disabilities and there was nothing extraordinary about his physical or emotional condition. (R. 33, p. 8; App. 49).

4. The defendant has a significant criminal history and therefore has had significant experience with the police. The defendant was convicted of eight (8) crimes involving a form of theft, two (2) crimes involving

burglary, one (1) crime involving trespassing and one (1) crime involving criminal damage to property. (R. 19).

5. The interrogation lasted a little more than an hour, but less than an hour and a half. (R.33, p. 8; App. 49).

6. The interrogation took place at the Lafayette County Sheriff's Department in a room where law enforcement officers routinely write their reports. (R. 32, p. 5; App. 19).

7. The psychological pressure and strategy used by law enforcement involved a law enforcement officer advising or threatening the defendant that if stolen property was found at his aunt and uncle's place in Illinois, they would be arrested for possessing stolen property. (R. 32, p. 9; App. 23).

8. The Trial Court concluded that the threat to arrest the defendant's aunt and uncle was a game changer because it was an improper threat given the Trial Court's conclusion that law enforcement did not have probable cause to arrest the aunt and uncle. (R. 33, pp. 9-11; App. 50-52).

9. The defendant was advised of his right to remain silent consistent with the *Miranda* warnings. (R. 18, p. 2).

Threat to Arrest

The Trial Court properly considered the "totality of the circumstances." The game changer, however, for the Court was law enforcement's threat to arrest the defendant's aunt and uncle.

The threat to arrest the defendant's aunt and uncle should not be viewed as extreme psychological pressure so as to render the defendant's confession involuntary. In *Nebraska v. Grimes*, 23 Neb.App. 304, 316, 870 N.W.2d 162, 170 (Neb. Ct. App. 2015), the Court stated, "It is widely accepted that a threat by law enforcement to arrest an accused family member is not coercive if there is probable cause to arrest the family member."

Probable Cause to Arrest

The next question therefore is whether law enforcement would have had probable cause to arrest the aunt and uncle for being in possession of the stolen property.

In *Gautreaux v. State*, 52 Wis. 2d 489, 495, 190 N.W.2d 542 (1971), the Court stated,

> In *State v. Johnson, supra*, we pointed out that while mere possession of stolen property raises no inference of guilt, the unexplained possession of recently stolen goods does raise an inference of greater or less weight depending upon the circumstances, that the possessor is guilty of theft and also burglary if the goods were stolen in a burglary.

In this case, the interview of the defendant was only about a month and a half after the theft of the trailer from the Stitzer area. Possession of property only a month and a half after it is taken should be viewed as *recent possession*.

It is also important to keep in mind that the *Gautreaux* ruling was a ruling relevant to a verdict and judgment of guilt. As the Alabama Court of Appeals stated in the *Baker v. State*, 461 So.2d 26, 28 (Ala. Ct. App. 1984), "Possession of recently stolen goods is a circumstance for the jury's consideration. It is for them to determine whether an accused explanation of possession of contraband is true."

The issue in this case, however, is probable cause, not guilt beyond a reasonable doubt. The Trial Court should not let the suspect determine whether an officer has probable cause to arrest. As the Court stated in *Reasonover v. Wellborn*, 195 F.Supp.2d 827, 831 (E.D. Texas, 2001), "A suspect cannot defeat the finding of probable cause to make an arrest by claiming not to know anything about the stolen property. If such were the case, why would any suspect ever be able to remember anything?"

The Court in *U.S. v. Funches*, 327 F.3d 582, 587 (7th Cir. 2003), stated, "Of course the mere existence of

innocent explanations does not necessarily negate probable cause."

Since the probable cause determination by an officer is not the same as a guilt determination by a jury, the law enforcement officer should not have to rule out innocent explanations before determining whether there is probable cause to arrest.

The defendant was denying any affiliation with any stolen property that might be located at the farm of his aunt and uncle in Illinois. If indeed there was stolen property at that location, it would have been reasonable for the officers to believe that the defendant's aunt and uncle were probably committing a crime by possessing recently stolen property.

In *State v. Woods*, 117 Wis.2d 701, 345 N.W.2d 457 (1984), the Court addressed the issue of probable cause to arrest when dealing with a person possessing stolen property. In *Woods*, the police received information that Mr. Woods tried to sell a chain saw to a nearby resident. The officers investigated and discovered that the saw had been stolen *17* months earlier. (Emphasis added). 117 Wis. 2d at 706-707. Mr. Woods cited the *Gautreaux* decision and argued that the officers did not have probable cause to take him into custody. *Woods*, 117 Wis. 2d at 709. The

Court in *Woods* defined the crimes of theft and receiving or concealing stolen property, noted that the officers learned that Mr. Woods tried to sell a chain saw, that the officers checked the serial number on the saw and determined that it matched the serial number of a chain saw stolen from a hardware store and stated,

> Based on these undisputed facts, we conclude that officers of "reasonable caution" could have believed that Woods committed the crime of theft, contrary to sec. 943.20(1)(a), or the crime of receiving stolen property, contrary to sec. 943.34. The officers therefore had probable cause to take Woods into custody.

The Court in *Woods* apparently recognized the difference between probable cause to arrest and the holding in *Gautreaux* which dealt with the burden at trial. If the recency of the possession of the stolen property was an issue, 17 months was not too long to be stale or not recent. Law enforcement officers in this case had received information that there was stolen property at the residence of the defendant's aunt and uncle in Illinois. The defendant denied that there was any stolen property at his aunt and uncle's place. After the defendant denied any knowledge of any stolen property at his aunt and uncle's place, law enforcement told the defendant that if there was stolen property there, that his aunt and uncle would be arrested for possessing stolen property. Based upon *Woods*,

law enforcement would have had, probable cause to have the defendant's aunt and uncle arrested by law enforcement in Illinois.

CONCLUSION

Because law enforcement did have probable cause to arrest the aunt and uncle, the threat to do so was not improper. Because the threat was not improper, it was not an extreme form of psychological pressure that rendered the defendant's confession involuntary. The State respectfully requests the Court of Appeals to reverse the Trial Court's order suppressing the defendant's confession regarding the trailer stolen from Grant County.

Dated this 3d day of January,2018.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains at a minimum (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 3d day of January, 2018.

Signed:

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § (Rule) 809.19(8)(b) and (c) for a brief produced with a monospaced font. The length of the brief is 12 pages.

Dated this 3d day of January, 2018.

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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 3d day of January, 2018.

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