STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 4

Case No. 2017AP002243-CR
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

REPLY BRIEF OF THE PLAINTIFF-APPELLANT

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ARGUMENT

Because law enforcement had probable cause to arrest Mr. Knauer's aunt and uncle, the threat to arrest them was not an extreme form of psychological pressure that rendered his confession involuntary.

DEFENSE ARGUMENTS

The defendant-respondent, Mr. Knauer, requests this Court to affirm the Trial Court's suppression of Mr. Knauer's confession regarding the landscaping trailer stolen from Grant County. Mr. Knauer argues that his confession was involuntary because the officers threat to arrest his aunt and uncle was not supported by probable cause. Mr. Knauer argues that the officer did not have probable cause to arrest the aunt and uncle because the officer did not believe that he had probable cause, the trailer was not recently stolen and because a mere possession of recently stolen property raises no inference of guilt.

I. OFFICER'S PERSONAL OPINION

Mr. Knauer states,

> Finally, it is of great significance that the court found as a fact that the police did

> not believe that they in fact would have had probable cause to arrest the aunt and uncle based solely on their possession of the stolen property at issue here.(R. 33, pp. 6-7; App. 47-48; Defendant's Brief, p.14)

The State agrees that the trial court and the defense put significant weight on Detective Cook's personal opinion. The law, however, does not support the opinion of the trial court and of the defense.

In *State v. Sanders*, 2007 WI App 174, ¶11,304 Wis. 2d 159,168, the Court stated,

> There must be more than a possibility or suspicion that the defendant committed an offense, but the evidence need not reach the level of proof beyond a reasonable doubt or even that guilt is more likely than not. *State v. Secrist,* 224 Wis. 2d 201, 212, 589 N.W.2d 387(1999). This is an objective standard; the officer's subjective opinion is irrelevant. *Kiekhefer,* 212 Wis. 2d at 484.

The Court in *Sanders,* citing *Kiekhefer,* made clear that the officer's personal opinion is irrelevant. The law could not be otherwise. If the officer's personal opinion was relevant, then law enforcement, and not the courts, would be policing themselves.

In this case, if the stolen trailer was on the property of the aunt and uncle and if Mr. Knauer had nothing to do with the stolen trailer, then it would have been more than a mere possibility that the aunt and uncle were involved in stealing the trailer.

Furthermore, if the stolen trailer was located on the aunt and uncle's property, there would have been more than a mere possibility that they would have been committing a crime by possession of stolen property.

II. WAS THE TRAILER RECENTLY STOLEN?

The trial court found and the defense has argued that because the trailer was stolen a little less than two months prior to the confession, the trailer was not recently stolen.(R. 33, p.13; App.54;Defendant's Brief, p.13)

The State has argued that if recency was an issue in *State v. Woods,* 117 Wis. 2d 701 (1984), then 17 months was short enough to be considered recent. The defense has argued that in *Woods,* there were other factors which supported a finding of probable cause.

In *Maine v. James,* 312 A.2d 531(1973), the Court concluded that 33 days between the burglary and the possession of an antique firearm was a short enough period of time to qualify the possession as recent.

In *Cason v. Maryland,* 187 A.2d 103 (Ct. App. 1963), the Court concluded that 4 1/2 months between the theft and the possession of a transistor radio was a short enough period of time to qualify the possession as recent.

In *Hardage v. Texas,* 553 S.W.2d 837 (Ct. App. 1977), the Court concluded that seven months between the burglary and the possession of miscellaneous items including firearms was a short enough period of time to qualify the possession as recent.

In *Eldridge v. Alabama,* 415 So.2d 1190 (Ct. App. 1982), the Court concluded that 5 1/2 months between the theft and the possession of a firearm was a short enough period of time to qualify the possession as recent.

The *James, Cason, Hardage and Eldridge* cases support the State's position that the possession of the trailer in this case less than two months after the theft, was recent possession.

The case law makes clear that "recent" is a relative term and the nature of the property can have an effect on whether the possession is recent. A landscaping trailer is a big-ticket item. As such, it would arguably be harder to transfer than a small-ticket item like a transistor radio. Many more people can afford transistor radios or other small-ticket electronic items than can afford a landscaping trailer. Just about anybody can use a small electronic item, whereas not everyone can use or store a landscaping trailer. Furthermore, it might be harder to transfer a trailer because of the serial numbers. If the numbers are

ground off, some people might be reluctant to purchase the item. As the marketability of an item shrinks, the time frame as to what qualifies as "recent," should expand.

III. MERE POSSESSION

The defense argues that probable cause to arrest cannot rest on mere possession of property and that no other facts support guilty knowledge. The defense cites *State v. Ingalls,* 48 Wis. 647(1880), *State v. Johnson,* 11 Wis.2d 130(1960), *State v. Davis,* 965 P.2d 525(Utah Ct. App.1998)and *United States v. Howard,* 214 F.3d 361 (2d Cir. 2000). In *State v. Ingalls*, 48 Wis. 647, 4 N.W. 785, 793(1880), the Court stated, "It is evident that mere possession of stolen goods aught not be in every case, if in any, sufficient evidence to justify a conviction."

In *State v. Johnson,* 11 Wis.2d 130(1960), the Court again addressed whether the evidence of possession of stolen property was sufficient at trial to support a conviction.

In *State v. Davis,* 965 P. 2d 525(Utah Ct. App. 1998), the Court concluded that the evidence surrounding the possession of a staple gun was sufficient to support a conviction, but that the evidence surrounding the

possession of a router was not sufficient to support a conviction.

In *United States v. Howard, 214 F. 3d 361 (2d Cir. 2000),* the Court again addressed the issue of whether the evidence of the defendant's knowledge was sufficient to convict.

All of the cases cited by the defense address the issue of whether the prosecution presented sufficient evidence to support a criminal conviction. The issue in this case, however, is not whether there would have been sufficient evidence to support a conviction of the aunt and uncle. The issue in this case surrounds probable cause, which means more than a mere possibility. Even if the landscaping trailer was not located on the aunt and uncle's property, it could still be possible that they were involved in the theft of that trailer. By having possession of the stolen property, that possession would make their involvement more than a mere possibility.

As the State pointed out in its brief, the Court in *U.S v. Funches,* 327 F.3d. 582, 587 (7th Cir. 2003), stated that the mere existence of an innocent explanation does not necessarily negate probable cause. Therefore, even if the aunt and uncle had given an innocent explanation as to why a stolen landscaping trailer was located on their property,

that innocent explanation would not necessarily negate probable cause.

IV. MORE THAN MERE POSSESSION

Before law enforcement threatened to arrest the aunt and uncle, the defendant had already confessed to stealing property and having it at his residence.(R.32, pp.2-4,12) Law enforcement had already learned that some of the stolen property was being stored at the aunt and uncle's residence.(R. 32, p.34 ; App.3)

The trial court found and the defense argues that Mr. Knauer being a "known thief" militates against a reasonable inference that the aunt and uncle had dirty hands. (R. 33, p.13; App. 54; Defendant's Brief, p. 14) But the opposite is equally reasonable. With Mr. Knauer being a "known thief," a reasonable inference can be drawn that the aunt and uncle would have known that Mr. Knauer was a thief and would therefore have a pretty good idea that the trailer was stolen. In other words, Mr. Knauer's reputation precedes him and it would be reasonable to infer that an aunt and uncle, who were like parents to Mr. Knauer, would have been aware of that reputation. It would be unreasonable to limit the inference of awareness of Mr.

Knauer's reputation to only law enforcement and to exclude from the inference the people closest to him.

Because reasonable inferences can be drawn that Mr. Knauer's aunt and uncle would have been aware that the trailer was stolen, the officers would have had probable cause to arrest the aunt and uncle.

V. SUMMARY

Because the officers had probable cause to arrest the aunt and uncle, the threat to arrest them was not improper and it was not an extreme form of psychological pressure that rendered involuntary the defendant's confession regarding the landscaping trailer.

The State respectfully requests the Court of Appeals to reverse the trial court's suppression of that portion of the confession regarding the landscaping trailer stolen from Grant County.

VI. FORFEITED ARGUMENTS?

The defense also argues at length that the State forfeited other arguments.

The trial court concluded that the game changer in this case was the threat to arrest Mr. Knauer's aunt and uncle. Therefore, the State tried to keep its focus on that issue.

Dated this 14th day of February,2018.

Respectfully submitted,

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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 8 pages.

Dated this 14th day of February,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 14th day of February,2018.

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