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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT III

**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

Case No. 2019AP175-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SYNIKA ANTONIO KIRK,

Defendant-Appellant.

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ON APPEAL FROM A JUDGMENT OF CONVICITON AND  
AN ORDER DENYING A MOTION TO SUPPRESS  
EVIDENCE, BOTH ENTERED IN BROWN COUNTY  
CIRCUIT COURT, THE HONORABLE  
THOMAS J. WALSH, PRESIDING

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**RESPONSE BRIEF OF PLAINTIFF-RESPONDENT**

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## **ISSUE PRESENTED**

Did a state trooper lawfully search Defendant-Appellant Synika Kirk's car?

The circuit court answered "yes."

This Court should answer "yes."

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

The State requests neither oral argument nor publication because the briefs should adequately set forth the facts and applicable precedent, and because resolution of this appeal requires only the application of well-established precedent to the facts of the case.

## **INTRODUCTION**

Kirk was convicted of conspiracy to deliver THC. A Kansas state trooper found marijuana in Kirk's Jaguar car when it was being shipped to Wisconsin on a car-transport truck. Kirk appeals the circuit court's decision denying his motion to suppress the drug evidence.

This Court should affirm for three separate reasons. First, Kirk lacks standing to raise a Fourth Amendment claim because he had no reasonable expectation of privacy in his car while it was being shipped on a car-transport truck. Second, the driver of the car-transport truck consented to the search and had apparent authority to do so. Third, the trooper had probable cause to search Kirk's car.

## **STATEMENT OF THE CASE**

In October 2012, Trooper Christopher Nicholas of the Kansas Highway Patrol stopped a car-transport truck that was carrying several cars. (R. 92:5, 8–11.) Trooper Nicholas is a drug interdiction specialist. (R. 92:32.) The bills of lading for

a Jaguar car and a Chevrolet Impala roused his suspicion. (R. 92:15–17.)

The Jaguar's bill of lading listed only a first name, "Mario," for the sender and recipient. (R. 92:19–20.) Although the sender and recipient had different phone numbers, they had the same area code. (R. 92:19–20.) In his experience, Trooper Nicholas "[g]enerally" saw bills of lading with a "first name and a last name or two different names," and a bill of lading "will have at least two telephone numbers." (R. 92:19.) Further, the bill of lading listed the Jaguar as a 1999, but it was actually a 1989. (R. 92:20.)

The Impala's bill of lading was suspicious in similar ways. The Impala's bill of lading listed only a first name—the same name—for the sender and recipient. (R. 92:18–19.) The Impala's bill of lading, like the Jaguar's, listed different phone numbers for the sender and recipient but the same area code. (R. 92:19.) The trooper found it "pretty odd" that the same person who was both sending and receiving the Impala would have two different phone numbers. (R. 92:19.)

Trooper Nicholas also found it suspicious that someone would spend \$900 to ship the Jaguar from California to Wisconsin because he estimated the car's value to be low. (R. 92:20.)

The trooper also found the truck driver's log book suspicious. The driver's log book stated that he had slept almost 17 hours straight in Sacramento, California. (R. 92:13.) Further, his log book stated that he had spent two days in Reno, Nevada even though he already had cars loaded onto his truck. (R. 92:13–14.) The truck driver said that he waited in Reno while trying to find new tires for his truck, but the trooper thought that Reno was a large enough city to find tires in under two days. (R. 92:14–15.)

Trooper Nicholas searched the Impala with the truck driver's consent. (R. 92:24.) The trooper smelled raw marijuana right when he opened the back door. (R. 92:24.) He found large trash bags that smelled like marijuana in the car's trunk. (R. 92:25.)

Again with the truck driver's consent, Trooper Nicholas searched the Jaguar after searching the Impala. (R. 92:28; 94:4.) He searched the Jaguar because its bill of lading was suspicious in ways like the Impala's. (R. 92:27–28.) The key<sup>1</sup> would not open the Jaguar's trunk "for whatever reason," and there was no latch to open the trunk. (R. 92:27.) So, Trooper Nicholas used a knife to push in a rubber plug behind the bumper. (R. 92:27.) He then stuck a fiberoptic scope through the hole and looked into the trunk, where he saw black duffle bags. (R. 92:27.) He then smelled marijuana, so he suspected that his knife had "stabbed a bundle." (R. 92:27.)

The trooper had the car-transport truck go to a Kansas Department of Transportation warehouse, where police searched all the cars on the truck. (R. 92:26, 52.) The duffel bags in the Jaguar's trunk had about 25 pounds of marijuana. (R. 2:4.)

Subsequent police investigation showed that the Jaguar and marijuana in it belonged to Kirk. (R. 2:4–8.) Police searched Kirk's home in Green Bay with a warrant and found less than one gram of marijuana and a marijuana pipe. (R. 2:2.) The State of Wisconsin charged Kirk with possession of THC as a second or subsequent offense, possession of drug paraphernalia, and conspiracy to deliver THC (between 2,500 and 10,000 grams) as a second or sequent offense. (R. 2:1–2.)

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<sup>1</sup> The record apparently does not reveal how Trooper Nicholas got the key to the Jaguar, but the reasonable inference is that the truck driver gave it to him.

Kirk filed a motion to suppress the drug evidence found in his Jaguar car. (R. 33.) The circuit court denied the motion because it determined that Trooper Nicholas had probable cause to search the car for drugs. (R. 94:4–10.) The court declined to rely on two alternative grounds for upholding the search. Specifically, it concluded that Kirk “maintained an expectation of privacy in that vehicle” and that the truck driver lacked authority to consent to a search of Kirk’s car. (R. 94:3–4.)

Kirk filed a petition for leave to appeal the order denying suppression, appeal number 2017AP2048-CRLV. This Court denied the petition.

Kirk agreed to plead guilty to the conspiracy count and, in exchange, the State agreed to move to dismiss the other two counts and have them read in at sentencing. (R. 55:2.) The court accepted Kirk’s guilty plea and convicted him. (R. 97:5–6.) The court withheld sentence, placed Kirk on probation for three years, and imposed 12 months of jail time. (R. 97:17.)

Kirk appeals his judgment of conviction. (R. 73.)

## **STANDARD OF REVIEW**

When reviewing a decision on a motion to suppress evidence, this Court upholds the circuit court’s factual findings unless they are clearly erroneous, but it independently applies constitutional principles to the facts. *State v. Matalonis*, 2016 WI 7, ¶ 28, 366 Wis. 2d 443, 875 N.W.2d 567. As to standing, this Court owes no deference to the circuit court’s conclusion that Kirk had Fourth Amendment standing. This Court upholds a circuit court’s factual findings unless they are clearly erroneous, but it independently determines “whether those facts meet the legal standard for standing.” *State v. Neitzel*, 2008 WI App 143, ¶ 13, 314 Wis. 2d 209, 758 N.W.2d 159. And as to consent, this Court upholds a circuit court’s finding of consent to search

unless it was clearly erroneous. *State v. Garcia*, 195 Wis. 2d 68, 75, 535 N.W.2d 124 (Ct. App. 1995). This Court independently determines whether the facts show apparent authority to consent to a search. *State v. Kieffer*, 217 Wis. 2d 531, 548, 577 N.W.2d 352 (1998).

## ARGUMENT

**The circuit court correctly denied Kirk's suppression motion.**

**A. Kirk lacks standing to challenge the search of his car.**

The Fourth Amendment to the U.S. Constitution “generally requires police to secure a warrant before conducting a search.” *State v. Marquardt*, 2001 WI App 219, ¶ 30, 247 Wis. 2d 765, 635 N.W.2d 188 (citation omitted). “In order for the Fourth Amendment’s warrant requirement to apply, the defendant must first have a reasonable expectation of privacy in the property or location.” *State v. Guard*, 2012 WI App 8, ¶ 16, 338 Wis. 2d 385, 808 N.W.2d 718.

In other words, “[t]o have a claim under the Fourth Amendment, the person challenging the reasonableness of a search or seizure must have standing.” *State v. Fox*, 2008 WI App 136, ¶ 10, 314 Wis. 2d 84, 758 N.W.2d 790. “A person has standing under the Fourth Amendment when he or she ‘has a legitimate expectation of privacy in the invaded place.’” *Id.* (quoting *Minnesota v. Olson*, 495 U.S. 91, 95 (1990)). “A legitimate expectation of privacy is one which ‘society is prepared to recognize as reasonable.’” *Id.* (quoting *Olson*, 495 U.S. at 95–96).

To establish standing to raise a Fourth Amendment claim, “[t]he defendant must show two things: (1) that he or she had an actual, subjective expectation of privacy in the area searched and item seized and (2) that society is willing to recognize the defendant’s expectation of privacy as

reasonable.” *State v. Tentoni*, 2015 WI App 77, ¶ 7, 365 Wis. 2d 211, 871 N.W.2d 285. A defendant must establish both prongs by a preponderance of the evidence. *State v. Knight*, 2000 WI App 16, ¶ 9, 232 Wis. 2d 305, 606 N.W.2d 291 (Ct. App. 1999). “Whether an individual had a subjective expectation of privacy is a question of fact, while whether that expectation was objectively reasonable is a question of law.” *State v. Yakes*, 226 Wis. 2d 425, 430 n.3, 595 N.W.2d 108 (Ct. App. 1999).

Here, Kirk fails the second prong of the standing test. He has not shown that he had a reasonable expectation of privacy in his Jaguar when the trooper searched it. Courts have held that defendants lacked standing to challenge searches of cars while they were on car-transport trucks. *See, e.g., United States v. Covarrubias*, 847 F.3d 556, 558 (7th Cir.) (per curiam), *cert. denied*, 137 S. Ct. 2312 (2017); *United States v. Crowder*, 588 F.3d 929, 934–35 (7th Cir. 2009).

The court in *Crowder* held that “Crowder did not have a reasonable expectation of privacy in the [Ford] Mustang after he turned it over to the shipper.” *Crowder*, 588 F.3d at 934. The court reasoned that “[t]he doors were left unlocked, the driver of the car carrier was given the keys, and Crowder knew that the driver would enter the Mustang and drive it.” *Id.* at 934–35. The court “conclude[d] that no one could have a reasonable expectation of privacy in the contents of a vehicle under those circumstances,” even though “there [wa]s no evidence that Crowder directly authorized the driver to search the vehicle.” *Id.* at 935.

The Seventh Circuit in *Covarrubias* held that the defendant there did not have standing to challenge the search of a car. The court first reasoned that “Covarrubias did not have a legitimate expectation of privacy in the car because he did not own the car, had never been inside it, and did not control the car’s contents.” *Covarrubias*, 847 F.3d at 558. The court further reasoned that Covarrubias’s case “mirror[ed]

*Crowder* in legally relevant ways: the car hauler received keys to a car being shipped cross-country and permission to drive the car on and off the trailer.” *Id.* The court concluded that “[e]ven though the car’s doors were locked, Covarrubias lacked a reasonable expectation of privacy because the car hauler controlled and had access to the car.” *Id.*

Here, similarly, Kirk lacked a reasonable expectation of privacy in his Jaguar at the time of the search. Like in *Crowder* and *Covarrubias*, here the driver of the car-transport truck controlled and had access to Kirk’s car. Like in those two cases, the record here suggests that the driver had a key for the Jaguar and gave it to Trooper Nicholas. (*See* R. 92:27; *see also* 33:6.) Also like in those two cases, here the truck driver needed to drive the cars to get them onto the transport truck. (R. 92:50.) Under *Covarrubias*, it is immaterial that Kirk’s car was locked. Kirk “lacked a reasonable expectation of privacy because the car hauler controlled and had access to the car.” *Covarrubias*, 847 F.3d at 558.

In short, Kirk has not shown by a preponderance of the evidence that he had a reasonable expectation of privacy in the Jaguar when the trooper searched it. He thus is not entitled to suppression of the evidence the trooper found in the Jaguar.

**B. Regardless of standing, the trooper lawfully searched Kirk’s car because he had third-party consent to do so.**

Police may perform a warrantless search when they have consent. *State v. Rome*, 2000 WI App 243, ¶ 11, 239 Wis. 2d 491, 620 N.W.2d 225. Under certain circumstances, police may rely on consent from a third party, i.e. someone besides the subject of the search. *State v. Tomlinson*, 2002 WI 91, ¶ 22, 254 Wis. 2d 502, 648 N.W.2d 367. A third party with actual or apparent authority over premises may consent to their search. *Id.* ¶ 25. “[E]ven if a third party lacks the actual

authority to consent to a search, police may rely upon the third party's apparent common authority, if such reliance is reasonable." *Id.* "Consent to search does not have to be given verbally. Consent may be given in non-verbal form through gestures or conduct." *Id.* ¶ 37.

Facts that support apparent authority to consent include a person's right to be "alone" with the property in question, the person's "duration" of time controlling the property, and the person's possession of a key to the property. *State v. Torres*, 2018 WI App 23, ¶¶ 25–27, 381 Wis. 2d 268, 911 N.W.2d 388, *review denied*, 2018 WI 107, 384 Wis. 2d 773, 921 N.W.2d 506.

In one instructive case, *Crowder*, the Seventh Circuit held that police lawfully searched a car after receiving consent from the driver of a car-transport truck. *Crowder*, 588 F.3d at 935–36. The driver gave consent by conduct because police asked him about suspicious vehicles on the car-transport truck, he said that a Ford Mustang was suspicious, and he then drove it off the truck "to facilitate the police's search of the car." *Id.* The court further concluded that the truck driver had apparent authority to consent to a search of the car. *Id.* at 936. The court reasoned that the car "was left unlocked, the driver of the car carrier had the key, and the driver was required to drive the car to unload it from the carrier." *Id.* Based on those facts, the court determined that "[a] reasonable person would conclude, based on the amount of control over the Mustang that the driver of the carrier exercised, that the driver had authority to consent to the police search of the car." *Id.* The defendant's Fourth Amendment claim thus failed even if he "had standing to challenge the search." *Id.*

Here, similarly, Trooper Nicholas had lawful third-party consent to search Kirk's car. The circuit court found as fact that the truck driver gave Trooper Nicholas consent to search. (R. 94:4.) The finding of consent was not clearly

erroneous here. The record indicates that the truck driver gave a key for Kirk's car to the trooper. (*See* R. 92:27; *see also* 33:6.) That act provided non-verbal consent to search. No other reasonable inference can be drawn from the driver handing over the key to the trooper.

Further, the truck driver had apparent authority to give that consent to search. The truck driver's possession of a key to Kirk's car supports this conclusion. So too does the fact that the truck driver needed to drive the cars to get them onto the transport truck. (R. 92:50.) The duration of the driver's control over Kirk's car also supports his apparent authority: he was going to haul the car from California to Wisconsin. (R. 92:20.) The truck driver had apparent authority based on his exclusive control of Kirk's car on a cross-country trip, his need to drive the car, and his possession of a key for it. Under *Crowder*, the truck driver here consented to the search of Kirk's car and had apparent authority to do so.

The circuit court's contrary view on this issue is immaterial. The circuit court was "not satisfied" that the truck driver had "authority to authorize the search of any and all vehicles that were on that truck." (R. 94:4.) But it is irrelevant whether the truck driver had *actual* authority to consent. Again, "even if a third party lacks the actual authority to consent to a search, police may rely upon the third party's apparent common authority, if such reliance is reasonable." *Tomlinson*, 254 Wis. 2d 502, ¶ 25. The truck driver here had apparent authority to consent to a search of Kirk's car, even if he lacked actual authority.

In short, the truck driver had apparent authority to consent to a search of the Jaguar because he had a key for it, he had exclusive control over the Jaguar on a cross-country trek, and he had to drive the Jaguar to load it into the car-transport truck. The search of the Jaguar was constitutional because of the truck driver's apparent authority to consent.

**C. Even if Kirk has Fourth Amendment standing and consent was improper, he is not entitled to suppression because the trooper had probable cause to search his car.**

**1. Police may search a readily mobile car without a warrant if they have probable cause.**

“[T]he warrantless search of a vehicle does not offend the Fourth Amendment if (1) there is probable cause to search the vehicle; and (2) the vehicle is readily mobile.” *Marquardt*, 247 Wis. 2d 765, ¶ 31.

“Probable cause ‘is not a high bar.’” *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018) (citation omitted). Probable cause to search exists if there is “‘fair probability’ that contraband or evidence of a crime will be found in a particular place.” *State v. Tullberg*, 2014 WI 134, ¶ 33, 359 Wis. 2d 421, 857 N.W.2d 120 (citation omitted). Probable cause is lower than a “more likely than not” standard. *Id.*

A working vehicle is readily mobile even if the defendant had no access to it and even if the vehicle was immobilized at the time of the search. *See Marquardt*, 247 Wis. 2d 765, ¶¶ 40–43 (finding a car readily mobile even though it was searched after it was impounded and after the defendant was arrested); *see also California v. Carney*, 471 U.S. 386, 391 (1985) (“Even in cases where an automobile was not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justified application of the vehicular exception.”).

## **2. The trooper had probable cause to search Kirk's car.**

Here, Trooper Nicholas had probable cause to search Kirk's Jaguar car for five reasons.

First, Trooper Nicholas's training and experience support his decision to search the Jaguar. "An officer's knowledge, training, and experience are germane to the court's assessment of probable cause." *State v. Carroll*, 2010 WI 8, ¶ 28, 322 Wis. 2d 299, 778 N.W.2d 1. The reason why is that "training and experience enables law enforcement officers to perceive and articulate meaning that would not arouse suspicion to an untrained observer." *State v. Young*, 212 Wis. 2d 417, 429, 569 N.W.2d 84 (Ct. App. 1997). Trooper Nicholas is a drug interdiction specialist. (R. 92:32.) He "teach[es] advanced interdiction classes at the Kansas Highway Patrol Academy," "teach[es] commercial motor vehicle interdiction," and teaches for "a federal organization that does drug interdiction training." (R. 92:6–7.) Trooper Nicholas's expertise with drug interdiction is highly relevant to this Court's assessment of probable cause.

Second, the driver of the car-transport truck was suspicious. Trooper Nicholas testified that from a criminal interdiction standpoint, a driver's unexplained "down time in a semi is something we tend to look for because it gives them opportunity to do things." (R. 92:13.) The driver's log book stated that he had slept almost 17 hours straight in Sacramento, California. (R. 92:13.) Further, his log book stated that he had spent two days in Reno, Nevada even though he already had cars loaded onto his truck. (R. 92:13–14.) Trooper Nicholas testified that "stopping someplace in between where he's coming from and where he's going is not normal." (R. 92:14.) The driver did not provide a satisfactory explanation for his time in Reno. He told Trooper Nicholas that he had trouble finding new tires for his truck, but the trooper thought that Reno was a large enough city to find new

tires in fewer than two days. (R. 92:14–15.) Trooper Nicholas found this time in Reno suspicious. (R. 92:15.)

Third, Trooper Nicholas testified that the value of an old Jaguar did not justify the cost to ship it. The car was not worth very much money, but it cost \$900 to ship from California to Wisconsin. (R. 92:20.) Trooper Nicholas found it suspicious that someone would spend so much money to ship a car with little value. (R. 92:20.)

Fourth, the Jaguar's bill of lading was suspicious. It did not list a last name for the sender or recipient of the Jaguar. (R. 92:19–20.) It instead listed the same first name, "Mario," for both sender and recipient. (R. 92:19.) Although the sender and recipient had different phone numbers, they had the same area code. (R. 92:19–20.) Trooper Nicholas testified that, in his experience, he "[g]enerally" saw bills of lading with a "first name and a last name or two different names," and a bill of lading "will have at least two telephone numbers." (R. 92:19.) Further, the bill of lading listed the Jaguar as a 1999, but it was actually a 1989. (R. 92:20.)

Fifth, Trooper Nicholas found marijuana in another car, a Chevrolet Impala, which was on the car-transport truck with the Jaguar and had a bill of lading with suspicious features like the Jaguar's. (R. 92:24–25.) Trooper Nicholas found the marijuana in the Impala before he searched the Jaguar. (R. 92:28.) The marijuana in the Impala bolstered the trooper's belief that he would find contraband in the Jaguar because of similar characteristics in the two cars' bills of lading. Like the Jaguar, the Impala was suspicious because its bill of lading listed only a first name—the same name—for the sender and recipient. (R. 92:18–19.) Like the Jaguar, the Impala's bill of lading listed different phone numbers for the sender and recipient but the same area code. (R. 92:19.) The trooper found it "pretty odd" that the same person who was both sending and receiving the Impala would have two different phone numbers. (R. 92:19.)

The marijuana in the Impala is significant because it bolstered Trooper Nicholas's suspicions about the Jaguar. He reviewed the bills of lading for all the vehicles on the car-transport truck, but the only suspicious ones were those for the Jaguar and the Impala. (R. 92:21.) The bills of lading for all the other vehicles had full names. (R. 92:21.) So, the trooper's experience made him suspicious about the bills of lading for the Impala and Jaguar, and his finding marijuana in the Impala reinforced his belief that those bills of lading were suspicious. Because they were suspicious in similar ways, it was reasonable to think that the Jaguar would have drugs in it like the Impala did.

For these five reasons, Trooper Nicholas had probable cause to think that he would find contraband in the Jaguar.

**3. Kirk does not dispute that his car was readily mobile.**

Kirk's Jaguar was readily mobile. The driver of the car-transport truck drove all the cars onto the truck. (R. 92:50.) Because the Jaguar was a working car, it was readily mobile. Under *Marquardt*, it is irrelevant that Kirk had no access to the car at the time of the search or that the car was immobilized on a car-transport truck. *See Marquardt*, 247 Wis. 2d 765, ¶¶ 40–43. In fact, Kirk does not dispute that his car was readily mobile.<sup>2</sup>

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<sup>2</sup> Some case law suggests that probable cause alone justifies a warrantless search of a car, regardless of its mobility. *United States v. Matthews*, 32 F.3d 294, 299 (7th Cir. 1994) (concluding that “the mobility of the vehicle is not essential to the application of the automobile exception” to the warrant requirement); *see also Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (holding that the lower court's correct “finding [of probable cause] alone satisfies the automobile exception to the Fourth Amendment's warrant requirement”). Because Kirk's car was readily mobile, and because he does not dispute this point, the State does not address it further.

#### **4. Kirk's arguments against probable cause are not persuasive.**

Kirk raises three arguments against probable cause, but they are unavailing.

First, Kirk argues that the bills of lading for the Impala and Jaguar are not suspicious, noting possible innocent explanations for the things that Trooper Nicholas found suspicious about them. (Kirk's Br. 12.) Kirk's argument overlooks Trooper Nicholas's experience in drug interdiction. Kirk may not find those two bills of lading suspicious, but a drug interdiction specialist did.

Further, Kirk's reliance on possibly innocent explanations for the two bills of lading is unpersuasive because "[i]t is well settled that otherwise innocent conduct can supply the required link in the chain to establish probable cause that a crime has or is about to be committed." *State v. Schaefer*, 2003 WI App 164, ¶ 17, 266 Wis. 2d 719, 668 N.W.2d 760. And "an officer is not required to draw a reasonable inference that favors innocence when there also is a reasonable inference that favors probable cause." *State v. Nieves*, 2007 WI App 189, ¶ 14, 304 Wis. 2d 182, 738 N.W.2d 125. Because Trooper Nicholas found drugs in the Impala, and because he only found the bills of lading for the Impala and the Jaguar suspicious, it was reasonable for him to think that he would also find drugs in the Jaguar instead of assuming an innocent explanation for its unusual bill of lading.

Second, Kirk argues that the value of his Jaguar is irrelevant because "there was no evidence that Trooper Nicholas had any expertise in evaluating vintage British sports cars." (Kirk's Br. 12–13.) But Trooper Nicholas used to work on vehicles in a body shop before he entered law

enforcement. (R. 92:6.) So, it's reasonable to infer that he was capable of roughly estimating the value of Kirk's car. In any event, there was probable cause to search Kirk's car even without considering its estimated value.

Third, Kirk argues that "the state did not introduce any of the other bills of lading to establish that these were indeed unusual discrepancies. The other bills of lading may have also had only first names, or the same names for both the shipper and the receiver." (Kirk's Br. 13.) This argument ignores Trooper Nicholas's testimony. He testified that he reviewed the bills of lading for all the vehicles on the car-transport truck, and the bills of lading for the Impala and the Jaguar were the only two that he found suspicious. (R. 92:21.) He further testified, regarding the bills of lading for the other vehicles, "If I remember correctly, they all did have full names." (R. 92:21.)

In short, Trooper Nicholas had probable cause to search Kirk's readily mobile car, so the search was lawful. The circuit court correctly denied Kirk's suppression motion.

## CONCLUSION

This Court should affirm Kirk's judgment of conviction and the order denying his suppression motion.

Dated this 13th day of September 2019.

Respectfully submitted,

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## **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 4445 words.

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## **CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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. § 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 13th day of September 2019.

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