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**STATE OF WISCONSIN**

**COURT OF APPEALS**

**DISTRICT II**

**Case No. 2022AP1587-CR**

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**STATE OF WISCONSIN,**

Plaintiff-Respondent,

vs.

**ASHLEY RAE BAKER,**

Defendant-Appellant.

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**On Appeal from an Order Denying a Motion to Suppress and  
Judgment of Conviction, Entered in the Sheboygan County Circuit  
Court, the Honorable Daniel J. Borowski, Presiding.  
Trial Court Case No. 2021CM78**

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**BRIEF OF PLAINTIFF-RESPONDENT**

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### **STATEMENT OF ISSUES**

- 1) Did the trial court properly deny Baker's motion to suppress on the basis that Officer Moore had probable cause to arrest her and therefore could search her purse without a warrant?

Brief answer: Yes

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

The State believes that neither oral argument nor publication are necessary. The issues raised on appeal will be fully developed in the briefs submitted to the Court. Furthermore, the issues involve no more than the application of well-settled law to the facts of this case.

### **STATEMENT OF THE CASE**

On December 31, 2020, Officer Michael Moore conducted a traffic stop in reference to a vehicle with no front plate and non-functioning registration lamps. (R.2:1). During the traffic stop, a K9 alerted after conducting an open air sniff of the vehicle. (R.2:1). After completing a search of the vehicle and the driver, Officer Moore conducted a probable cause search of Baker's purse where he located a Smith & Wesson SD 40VE handgun, for which Baker admitted she did not have a permit. (R.2:1). On February 12, 2021, the State of Wisconsin filed a complaint charging Baker with Carrying a Concealed Weapon. (R.2:1-2).

On May 3, 2021, Baker filed a Notice of Motion and Motion to Suppress Fruits of Illegal Search. (R.16:1-4). In her motion, Baker argued that the search of her purse was illegal as law enforcement did not have a search warrant nor did any exception to the warrant requirement apply. (R.16:2). As a result, any evidence obtained as a result of this warrantless search should be suppressed. (R.16:2).

On July 30, 2021, a motion hearing was held to vet Baker's claims in her motion to suppress. The State called Officer Moore to testify. (R.26:8). While employed as a police officer with the City of Sheboygan Police Department for just under three years, Officer Moore graduated from the recruit academy, obtained an associate's degree in criminal justice, and has met or exceeded any ongoing training requirements. (R.26:8-9). In testifying about the traffic stop at issue, Officer Moore stated that he initially observed the vehicle at the 1200 block of Huron Avenue, which is an area he often patrols because it is known for "active drug dealing." (R.26:9-10).

There were two homes in particular where drug activity, specifically trafficking, had been taking place. (R.26:10). Law enforcement received information almost weekly on one of the two residences. (R.26:12). Ongoing information was received by way of contact with other individuals or by way of traffic stops on vehicles coming from that location. (R.26:12). The occupants of those vehicles would have drugs and identified the residence

from which they came. (R.26:12). From a traffic stop he conducted in December just before the stop at issue here, Officer Moore specifically found paraphernalia pertaining to the use of methamphetamine on an individual who came from this residence. (R.26:12-13). The information law enforcement received about the other residence was a little more spread out, but was still fairly consistent. (R.26:14). The individual who lives there, but claims he does not, is actively involved in the distribution of marijuana and pills. (R.26:13).

On the date in question, Officer Moore saw people leave one of those two residences and get into the vehicle he ultimately pulled over. (R.26:10-11). Before this vehicle left the area, Officer Moore saw that it did not have a front license plate. (R.26:15). Minutes later, Officer Moore initiated a traffic stop on this vehicle for a non-functioning registration lamp and no front license plate. (R.26:25). After initiating a traffic stop, Officer Moore directed the vehicle into a parking lot for safety concerns. (R.26:15). Before making contact with the vehicle for a second time, Officer Moore requested one additional unit and a K9 unit. (R.26:15). Upon making contact with the vehicle, Officer Moore identified two occupants, the driver and the sole passenger, Baker. (R.26:16).

As Officer Moore completed his paperwork for the traffic stop, the K9 unit arrived, was deployed and positively indicated on the vehicle. (R.26:17). Officer Moore made contact with the driver who said there would

be about a half gram of marijuana inside of the vehicle. (R.26:17). Officer Moore then conducted a search of the vehicle to find the marijuana in the center console, a grinder near the gear shifter that wasn't mentioned, marijuana shake throughout the vehicle, and packaging material in the back seat, underneath the driver's seat and between the center console. (R.26:18-20). Officer Moore then searched the driver based off of "locating narcotics inside of the vehicle." (R.26:20). Inside one of the driver's front pockets Officer Moore discovered a marijuana blunt that weight approximately one gram. (R.26:20).

Following the search of the driver, Officer Moore made contact with Baker and asked her to place her purse on the vehicle. (R.26:22). Officer Moore did this for officer safety as when officers "make contact with individuals who have drugs, there is at times weapons involved." (R.26:22). Based on what Officer Moore located inside of the vehicle, "it was believed that there could potentially be something concealed inside of the purse or on her person as well." (R.26:22). Officer More believed paraphernalia, marijuana, or potentially other drugs may be in Baker's purse or on her person. (R.26:22-23). Officer Moore searched Baker's purse before Baker's person because he was waiting for a female officer to search Baker's person. (R.26:23). Inside of Baker's purse Officer Moore located a handgun. (R.26:23).

Officer Moore believed Baker was one of the people he saw leave the residences suspected in drug

trafficking because one individual entered the passenger side of the vehicle and the time between Officer Moore's initial observation and initiating the traffic stop, without any stops, was brief. (R.26:24).

Officer Moore testified that once the K9 indicated on the vehicle, he believed he had probable cause to at least search the vehicle and the driver. (R.26:26). Only after the K9 indicated on the vehicle did Officer Moore learn that Baker's purse was with her and not inside of the vehicle, which it should have been. (R.26:27).

It was based on the "totality of everything," that Officer Moore believed he had probable cause to search Baker's purse. (R.26:39). He specifically stated:

"...The fact that...I would have observed her coming from that house. The fact of what we found inside the vehicle and the potential for any concealment of other items....I guess to explain it, there is a possibility at any time that someone gives us a breadcrumb to hide the loaf of bread. For lack of better way of saying it. Give me a half gram of marijuana to deter me from searching your person, that might contain the ounce of marijuana for example. Not that, that was the case in this incidence but it's often a breadcrumb to deter finding the loaf of bread."

(R.26:39-40).

On February 24, 2022, the trial court ruled on Baker's motion to suppress. (R.77:3-4). The trial court's factual findings began by noting "I think it's important, although maybe not determinative, that the two drug houses were known and remained active drug houses....there had been recent drug activity leading up to this...traffic stop." (R.77:8-9). The trial court went on to



say that after initiating the traffic stop, Officer Moore testified that the K9 arrived and indicated on the vehicle as he was processing the traffic ticket. (R:77:11). “Once the K9 indicates on the vehicle, that sort of opens the door under Wisconsin law” to a search of the vehicle. (R:77:11). Before the K9 search began, “Ms. Baker gets out of the car with purse in tow. So it’s undisputed the purse is not in the vehicle when the K9 search occurs.” (R:77:11). After the K9 indicates, Officer Moore spoke with the driver who admitted to having marijuana in the vehicle. (R:77:11). The court also noted that in searching the car:

“...they find marijuana not only in the console area, but they find a grinder that was in the gear shifter area, which is between the passenger seat and driver’s seat. And then according to the officer’s testimony, there’s just marijuana shake throughout; loose pieces of marijuana throughout the car.” “They also find barbie bags or baggies in the backseat, which is consistent with delivery of drugs. Eventually, they find the shake, the marijuana, the baggies, and, again, the --- the drugs are in the center console area.” “And the driver takes the fall and says, “It’s all mine.” And certainly, at that point, he – the officer has probable cause to arrest the driver. He’s admitted to possession of marijuana, which is a crime.”

(R.77:12).

After establishing these facts, the trial court confirmed with Baker that her challenge was to the constitutionality of the search of her purse in that there was no probable cause to arrest, therefore no probable cause to search her purse. (R.77.13). According to the trial court, “...the officer can’t search the person unless he has

probable cause to believe that she has committed a crime and that there is evidence of crime in the purse.” (R.77:14). The location of the purse was a critical fact in that after it was “removed you need something more, I think, than just authorization to search the vehicle.” (R.77:15). “Absent, essentially, evidence of a crime, **which in this case would be the marijuana in the vehicle**, just the mere odor of marijuana was not going to get you the purse.” (R.77:15). The trial court explained where there is “no nexus between the passenger, the purse, and any crime in the vehicle,” the search of the purse is excluded. (R.77:15).

The trial court held that, “after having reviewed the evidence, reviewed the briefs of the parties, I’ve concluded that – that there was probable cause for the officer to believe that Ms. Baker had committed a crime, and that evidence of the crime would be in the purse. How do I get there?” (R.77:15-16).

The trial court considered **the totality of the circumstances**, which included the following:

“She’s one of two people who goes into an area known for drugs, it’s a short-term visit, and this is a short-term visit drug area. The officer sees him get in the car; he pulls the car over. She’s a passenger in the vehicle. The vehicle is – has a K9 indication, which justifies the search of the vehicle, and that search does occur. That search is productive; it is fruitful. And it reveals the presence of marijuana in the console, a marijuana grinder, baggies, and shake all through the vehicle.”

(R.77:16).

The court went on to find that “[a]t that point, there’s probable cause to believe a crime has been committed.” (R.77:16). While the driver “takes the fall” for the marijuana, the officer is not bound by that statement. (R.77:16). Baker was in the vehicle with her purse and with the marijuana. (R.77:16). The marijuana was, **at the very least**, to her left. (R.77:16).

The trial court then quotes Officer Moore’s testimony:

“it’s a very interesting line he has. It certainly isn’t the more legalistic line, but he said something about – that – yes, he said – he’s referring to concealment of items. He says, “There’s a possibility at any time that someone gives us a breadcrumb,” meaning I admit there’s dope in the car, it’s in the console, “to hide the loaf of bread.” Great line. Because I believe this officer had probable cause to believe that Ms. Baker may have had the loaf of bread, and the loaf of bread was in her purse.”

(R.77:16-17).

The trial court continued,

“I think that’s the answer to this case. I don’t whether we’re talking loaves of bread or breadcrumbs. And the reason she’s tied in is she’s in a vehicle with shake all over the place, THC proximally to her left arm, the purse is – there’s no question the purse is in the vehicle when the drugs are in the vehicle...It’s in the car. It may not have been there when the K9 indicated, but it doesn’t have to be.”

“The K9 indication gave the police the authorization to search the car without a warrant. That’s clear under the law. The – **the find of drugs in the car gave the officers authorization, I believe, to search the driver and the passenger for further presence of drugs.** And the indications of the totality of the circumstances are here, is that there were drugs found in the car, that a crime had been

committed, and that the officer had probable cause to believe the driver and/or Ms. Baker committed the crime. And one of the places that you would logically look for further evidence of the crime is the – is the purse because it – she’s – and we look at even 60/30 possession of controlled substances, the possession can be shared.”

(R.77:17-18).

That the driver admits to ownership of drugs doesn’t require Officer Moore to end his investigation. (R.77:18). “It doesn’t preclude or – or alleviate or eliminate the probable cause that Ms. Baker similarly possessed the marijuana.” (R.77:18). “Just because you have one doesn’t mean you can’t pursue the other and that you don’t have probable cause on the other for – based on the same evidence.” (R.77:18).

It would be different if Officer Moore did not find drugs because there was no indication on the purse, “[b]ut there is that nexus between the defendant and the drugs in the car.” (R.77:19). Here, Officer Moore would “have probable cause to search based on the belief that there would be – that fruits of the search would be drugs, and there was probable cause to believe that she was in possession of drugs and one of the places she could possess it.” (R.77:19).

The trial court pointed to the State’s response brief, which said, “[s]he left the vehicle with a container commonly used to hold items that could easily have held a substance she obtained from the place she came from before entering the vehicle, or a substance that the driver obtained and gave to her, or a substance that was in the

car.” (R.77:20). Therefore, Officer Moore “had probable cause to believe that she was – that she committed a crime, was in possession of drugs or drug paraphernalia, which justified his search incident to arrest, even though he didn’t formally arrest her, but I think it follows that he was able to do so.” (R.77:20). While acknowledging that Fourth Amendment issues are sometimes not easy, the trial court denied Baker’s motion to suppress.

## **ARGUMENT**

### **I. Controlling law.**

“The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Wisconsin Constitution protects persons from unreasonable governmental searches and seizures.” *State v. Johnson*, 2007 WI 32, ¶ 20, 299 Wis.2d 675, 729 N.W.2d 182. “The Fourth Amendment requires probable cause to support every search or seizure in order to ‘safeguard the privacy and security of individuals against arbitrary invasions by government officials.’” *State v. Hughes*, 2000 WI 24 ¶ 19, 233 Wis.2d 280, 607 N.W.2d 621 (citing *State v. DeSmidt*, 155 Wis.2d 199, 454 N.W.2d 780 (1990)).

The lawfulness of searches and seizures present a “dilemma as old as the constitution itself: how best to balance the government’s interest in law enforcement with the individual’s right to be left alone.” *Id.* at ¶ 16. While generally the courts give deference to the rights of the individual, those rights must give way to the government’s duty to enforce the law. *Id.*

This analysis turns on the definition of probable cause, which “is a fluid concept, assuming different requirements depending upon its context.” *Id.* at ¶ 19. While probable cause to search and probable cause to arrest are sometimes treated interchangeably, they are different. *Id.* “The proper inquiry in an arrest challenge is whether probable cause exists to believe that a particular suspect has committed a crime.” *Id.* at ¶ 20. “The ‘quantum of evidence’ that would provide probable cause for a search will not provide probable cause for an arrest unless the evidence of crime can be linked to a specific person.” *State v. Secrist*, 224 Wis.2d 201, 212, 589 N.W.2d 387 (1999). When an incident involves both an arrest and a search incident to arrest, the primary focus must be on the lawfulness of the arrest. *Id.*

The evidence giving rise to probable cause to arrest does not need to “be sufficient to prove guilt beyond a reasonable doubt, nor must it be sufficient to prove that guilt is more probable than not.” *State v. Paszek*, 50 Wis.2d 619, 625, 184 N.W.2d 836 (1971). It is only necessary that the information lead a reasonable officer to believe that guilt is **more than a possibility**. *Id.* In a probable cause analysis deals in probabilities, which are “not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Id.* “Conversely, if an arrest is valid, a search incidental to that arrest is proper, and evidence obtained in that search may be received in evidence.” *Id.*

“Probable cause is a flexible, commonsense standard.” *State v. Nieves*, 2007 WI App 189, ¶14, 304 Wis.2d 182, 738 N.W.2d 125 (citing *State v. Tompkins*, 144 Wis.2d 116, 124, 423 N.W.2d 823 (1988)). Law enforcement officers are permitted to formulate certain commonsense conclusions about human behavior and to consider the evidence as understood by those versed in the field of law enforcement. *Id.* In such an analysis, officers are “not required to draw a reasonable inference that favors innocence when there also is a reasonable inference that favors probable cause.” *Id.*

The Court of Appeals in *State v. Miller* held that “[p]robable cause to search Miller’s vehicle also included probable cause to search Miller’s purse.” *State v. Miller*, 2022 WI App 150, ¶ 15, 256 Wis.2d 80, 647 N.W.2d 348 (See *Wyoming v. Houghton*, 526 U.S. 295, 302, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999) (holding that officers may search packages and containers in a vehicle without individualized suspicion for each object when probable cause exists to search the vehicle)). *Id.* Specifically, once a dog sniff indicated the presence of a controlled substance, law enforcement “had probable cause to search both the car and the purse.” *Id.*

While an odor of marijuana creates an inference that marijuana was physically present in a vehicle, an officer must, however, “link the unmistakable odor of marijuana or some other controlled substance to a specific person or persons. The linkage must be reasonable and capable of articulation.” *Secrist*, 224 Wis.2d at 216-17. The

“linkage” requirement will normally provide probable cause to believe that **the driver and sole occupant of the vehicle is linked to the drug.** *Id.* at 218.

Two occupants inside of a vehicle “is not fatal to a finding of probable cause to arrest the defendant because probable cause does not mandate that it is more likely than not that the defendant committed the offense.” *State v. Mitchell*, 167 Wis.2d 672, 684, 482 N.W.2d 364 (1992).

In Wisconsin, the supreme court has declared a “bright-line rule that unarrested passengers cannot themselves be searched based solely on the arrest of the driver.” *State v. Denk*, 2008 WI 130, ¶62, 315 Wis.2d 5, 758 N.W.2d 775. To search the body of a passenger, the arresting officer must have individualized cause to justify the search.

## **II. Standard of review.**

“Review of an order granting or denying a motion to suppress evidence presents a question of constitutional fact, which we review under two different standards. We uphold a circuit court’s findings of fact unless they are clearly erroneous.” *Secrist*, 244 Wis.2d at 207,. “We then independently apply the law to those facts *de novo*.” *State v. Keikhefer*, 212 Wis.2d 460, 475, 569 N.W.2d 316 (Ct.App.1997).



### **III. Officer Moore had probable cause to search Baker's purse.**

In Baker's appeal, she does not dispute the evidence used by the trial court to establish the lawfulness of Baker's purse. But rather, her contention is that the weight of the evidence is insufficient to establish probable cause. The State disagrees. The totality of the circumstances Officer Moore testified to, arose to the level of probable cause to arrest Baker.

The following facts are not in dispute. After a short term visit, Baker was one of two people leaving a residence well known by law enforcement for drug trafficking. The vehicle Baker entered is the same vehicle Officer Moore pulled over approximately 10 minutes after leaving the residence known for drug trafficking. Officer Moore did not see this vehicle make any stops other than the two stops during the course of the traffic stop he initiated. Baker was in the front passenger seat during her time inside of the vehicle. During the traffic stop, a K9 indicated on the vehicle. Baker exited the vehicle with the purse she had while riding in the vehicle. The driver told Officer Moore that he may find a half gram of marijuana inside of the vehicle. Officer Moore then searched the vehicle. The search was fruitful and revealed a half gram of marijuana in the center console, a grinder in the center console, baggies, and marijuana shake throughout the vehicle. The driver claimed ownership of the items found in the vehicle. Officer Moore then searched the driver and located a marijuana blunt, weighing approximately one gram.

Officer Moore then searched Baker's purse and located a firearm.

Baker goes through many of these facts and argues they are inadequate to support a finding of probable cause to arrest. First, she argues that Officer Moore had nothing more than a hunch that the driver and Baker stopped at the residences known for drug trafficking. While Officer Moore acknowledged he didn't see who entered the vehicle, he saw people enter the vehicle he ultimately pulled over. As he followed this vehicle, Officer Moore did not witness the vehicle make any stops before he initiated the traffic stop. The logical conclusion is that the individuals who got into the vehicle at the residences where drug trafficking regularly took place were the same individuals Officer Moore made contact with when initiating the traffic stop. Those two individuals would be the driver and Baker.

Additionally, there is no contradiction in Officer Moore's testimony. He testified that the "individual who stays there would make the individual stay for up to 15 minutes so that there was no short term traffic." (26:R.12). He also testified that the vehicle he stopped was at the residences known for drug trafficking for less than 10 minutes. There is no contradiction when the vehicle he stopped was at the residence for less than 10 minutes and the resident directs individuals to stay for up to 15 minutes.

Next Baker argues that her presence at a residence with high drug crime traffic, standing alone, is insufficient to support probable cause to arrest. This argument tries to

single out Baker's presence at a residence with high drug crime traffic as an isolated fact. The legal authority Baker cites stands for the proposition that an individual's presence in an area with high drug crime traffic can be a factor in determining whether a subsequent search or arrest was justified. This is the case here. Baker's presence at a residence known for high drug crime traffic was merely one fact among many in determining whether Officer Moore had probable cause to arrest Baker.

Baker's next contention is that Officer Moore initiated a pretextual traffic stop. Baker assumes a fact that is nowhere to be found in the trial court record. She did not raise this argument in the trial court, therefore, such a claim cannot be made now. The facts accepted by Baker are that Officer Moore initiated a traffic stop because the vehicle did not have a front license plate and the registration lamp was non-functioning. (R.26:25).

Next Baker points out that Officer Moore did not observe any furtive movements after he initiated the traffic stop. There is no legal authority for the contention that law enforcement officers must observe furtive movements as a basis for establishing probable cause to arrest. If the suggestion is that because Officer Moore did not observe any furtive movements, therefore Baker cannot be said to have had anything to do with the marijuana and paraphernalia strewn throughout the vehicle, this contention fails to acknowledge that Officer Moore didn't initiate a traffic stop immediately after the vehicle left the residences with high drug crime traffic. The traffic stop

was initiated giving both parties plenty of time to have been involved in dispersing the illegal materials throughout the vehicle. As Officer Moore was not required to draw reasonable inferences that favor innocence when reasonable inferences also favor probable cause, he was not required to conclude that Baker didn't have anything to do with the drugs and paraphernalia throughout the vehicle if Officer Moore did not observe furtive movements.

Next Baker contends that because Officer Moore was only able to testify that marijuana shake was throughout the vehicle, therefore the presence of marijuana cannot be used as a fact to establish probable cause to arrest Baker. While unable to testify that marijuana shake was located on the passenger side floorboard where Baker was seated, the half gram of marijuana and the grinder were found in the center console area. This was in between the passenger seat and the driver's seat, meaning the items were just to Baker's left. That marijuana shake was not specifically located in the front passenger compartment is of no consequence when marijuana and a grinder were located just to Baker's left and marijuana shake was located all throughout the vehicle compartment. This sufficiently links Baker to the illegal contents inside of the vehicle.

Baker also contends that the lack of evidence connecting her to the vehicle diminishes any finding of probable cause. The only evidence connecting Baker to the vehicle is her presence inside of the vehicle. This does

not cut against any finding of probable cause to arrest. Baker presents no case law to support her position that merely being a passenger in a vehicle is of any consequence to an ultimate finding of probable cause to arrest. Marijuana and drug paraphernalia were clearly located throughout the vehicle. Therefore, it stands to reason that Baker was very much aware of what was inside of that vehicle at the time she was a passenger.

Next Baker addresses the driver's claim to ownership of the illegal items. Common sense tells us that those involved in criminal activity often lie about their involvement in the criminal activity. While the driver may have claimed ownership of the illegal items, Officer Moore was under no obligation to assume the driver was telling the truth. This is especially true when the driver withheld information from Officer Moore. The driver failed to disclose the existence of some drug paraphernalia found inside the vehicle as well as the marijuana blunt found on his person. This not only weakened any presumption that the driver was telling the truth, but also strengthened the building probable cause to believe that Baker was also involved in the criminal activity and evidence of the criminal activity on her person or inside of the purse that she carried away from the vehicle.

Baker next argues that Officer Moore admitted he did not observe Baker engage in any distinct actions that suggested there was anything illegal or concerning for officer safety inside of her purse before he opened it. This misstates Officer Moore's testimony. During the motion

hearing, Officer Moore engaged in the following dialogue with the State:

Question: **Just in seeing or picking up the purse** was there anything **just in that activity or motion** that suggested there was something potentially illegal or concerning for officer safety inside of it before you actually opened it and looked inside?

Answer: I would say, not directly based off of any distinct actions. However, typically when we do have individuals exit the vehicle, we do ask that they leave any belongings inside based off of officer safety because of that. At the point that she stood out – stepped out of the vehicle, I don't believe I was the individual who was on that. So, she had removed her purse. I didn't notice it until the fact that I was done searching the vehicle.

(R.26:24).

Officer Moore's testimony was in response to the direct question about the specific action of **picking up the purse**. Not her actions in general. Therefore, it can only be said that Officer Moore testified that the specific action of picking up the purse did not suggest to him that there was something potentially illegal or concerning for officer safety inside. The act of removing the purse, however, suggests a certain amount of consciousness of guilt. As previously stated, those involved in criminal activity generally conceal their involvement in that activity. Baker removing the purse from the vehicle could be seen as her attempt to conceal her involvement in criminal activity by concealing the container within which evidence of the criminal activity was contained.

Although Baker cites *United States v. Di Re* as analogous to this case, the significant factual distinctions render this case inapplicable here. First, Baker points to

the court's rejection of the contention that position in the passenger's seat was sufficient to arrest for a direct or indirect role in the criminal conspiracy. The reasoned that one could not have known that ration coupons were being passed hand to hand, even if watching the passing of papers. Knowing what papers were being passed is not the same as knowing what is on the papers being passed. This is distinguishable from the evidence of criminal conduct in Baker's case as the contents of paper can easily be concealed. The same is not true for marijuana or drug paraphernalia. Those items cannot easily be mistaken for anything other than what they are.

That case also involved a government informant who singled out one guilty person. A government informer either supplies information on criminal activity to law enforcement or participates in a criminal act on behalf of law enforcement for investigative purposes. In Baker's case, the driver was not a government informant. He was simply a participant in criminal activity. Therefore, his motivation lied in protecting himself from exposure to criminal liability. He also did not single anyone out as the only guilty party. The driver only acknowledged that some marijuana and some paraphernalia would be located inside of the vehicle. When Officer Moore searched the vehicle and the driver it was clear that the information the driver provided was only partially true. Furthermore, the more Officer Moore searched, he found larger quantities of marijuana. This lends itself to the suggestion that the

driver only offered breadcrumbs when a loaf of bread was hiding elsewhere.

A structure made of one brick is not strong enough to withstand a hurricane. It is, however, when you stack multiple bricks on top of each other that each brick becomes stronger and the bricks in totality can withstand a hurricane. This same logic applies here. Baker argues that each piece of evidence used to establish probable cause alone was insufficient. This argument fails to acknowledge that Officer Moore did not view each piece of evidence in isolation. The evidence built as Officer Moore's interaction with Baker and the driver continued. Not only did Officer Moore compile multiple piece of evidence along the way, but piece strengthened the other to reach the conclusion that Baker had probably committed a crime. Therefore, when looking at all pieces of evidence in totality, Officer Moore had probable cause to believe that Baker probably committed a crime and the search of her purse was justified.

### **CONCLUSION**

The trial court correctly denied Baker's motion to suppress. Based on the totality of the circumstances, Officer Moore had reason to believe that Baker committed a crime and evidence of such crime would be located inside of her purse. For these reason, the State respectfully asks the Court of Appeals to affirm the rulings of the trial court.



Respectfully submitted, this 8<sup>th</sup> day of May, 202.

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**CERTIFICATION AS TO FORM/LENGTH**

I certify that this brief conforms to the rules contained in Wis. Stats., § 809.19(8)(b), (bm), and (c). The length of this brief is 5,326 words.

Dated this 8<sup>th</sup> day of May, 2023

Signed:

*Electronically signed by Sarra Clarkson*

Sarra Clarkson

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