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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2022AP001927-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KELSY R. WOOLDRIDGE,

Defendant-Appellant.

Appeal from a Judgment of Conviction
Entered in the Barron County Circuit Court,
the Honorable Maureen D. Boyle, Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

The state failed to present sufficient evidence to prove that Ms. Wooldridge knowingly possessed methamphetamine on April 13, 2020.

As the state acknowledges, in order to obtain a conviction, it was required to prove that Ms. Wooldridge knew or believed that the bloody residue in the used syringe contained an immeasurable amount of methamphetamine. (Response 7). Based on the evidence presented at trial, no jury, acting reasonably, could have found Ms. Wooldridge guilty of knowingly possessing methamphetamine on April 13, 2020. Ms. Wooldridge's conviction, therefore, must be vacated.

The state asserts that "the jury properly inferred" that Ms. Wooldridge knew the bloody residue in the syringe was methamphetamine because it heard testimony that Ms. Wooldridge nodded when confronted with the syringe and admitted to using methamphetamine a week earlier. (Response 9-10, 13-14). It does not, however, explain how those facts alone support such an inference.

Whether Ms. Wooldridge knew the syringe was in her purse, and whether she was a methamphetamine user, says nothing about whether she would know that the trace amounts of bloody

residue in the used syringe contained methamphetamine. Even if the jury could infer that Ms. Wooldridge knew that the syringe once contained methamphetamine – a fact Ms. Wooldridge does not concede – that does not establish that she knew that it still contained the substance at the time of her arrest. On this point, Officer Prinsen and Analyst Kniskern’s testimony is telling.¹

Officer Prinsen testified that he located a syringe which “had a bloody substance inside the tube and on the point of the needle.” (47:86; App. 9). He later clarified that the plunger of the syringe had been pushed down and there was no clear liquid in the syringe, “[j]ust bloody residue,” which he was unable to identify by appearance alone. (47:97, 99-100; App. 20, 22-23).

The lab analyst, Ms. Kniskern, informed the jury that the syringe did not contain any liquid, only a “reddish residue.” (47:122, 125; App. 32, 35). She explained that she had to use a methanol rinse to test the residue and, though it tested positive for the presence of methamphetamine, she could not determine how much of the residue was actually methamphetamine. (47:122-123; App. 32-33). Nor was she able to identify the substance just by looking at the syringe. (47:125; App. 35).

¹ There is no dispute that the jury was entitled to believe Officer Prinsen, as well as Ms. Kniskern. Their testimony, however, was insufficient to support a finding of guilt.

These were the established facts and, contrary to the state's assertion, the jury's verdict was "so in conflict with these established facts as to make its determination of [Ms. Wooldridge's] guilt 'inherently incredible.'" (Response 10). Again, to sustain a conviction in this case, the state was required to present "sufficient facts to establish [Ms. Wooldridge's] knowledge of the character of the material in [] her possession." *State v. Chentis*, 2022 WI App 4, ¶11, 400 Wis. 2d 441, 969 N.W.2d 482.

Just as in *Kabat*, under the circumstances of this case, it cannot be said "that the presence of the narcotic was reflected in such a form as reasonably imputed knowledge to [Ms. Wooldridge] that it was [methamphetamine]." See *Kabat v. State*, 76 Wis. 2d 224, 228, 251 N.W.2d 38 (1977). An immeasurable amount of methamphetamine was found to be present in trace amounts of bloody residue located in a used syringe. While the bloody residue was certainly apparent – just as the ash in *Kabat* was – there was no evidence suggesting that Ms. Wooldridge knew it contained methamphetamine. Even the state's witnesses testified that they could not identify the residue as methamphetamine by looking at it.

The state claims that *Kabat* is distinguishable. (Response 11). In support, it points out that Kabat had testified that he hadn't used the pipe to smoke marijuana since the last time he cleaned it and he didn't know it contained marijuana; that there was a small amount of ash present; and that the chemist

could not identify the ash as marijuana based on appearance or smell. (Response 11).

The state, however, does not explain how these facts distinguish the two cases. In *Kabat*, there was a trace amount of ash present in the pipe. *Kabat*, 76 Wis. 2d 224, at 226. Here, there was a trace amount of bloody residue present in the used syringe. In *Kabat*, the chemist could not identify the presence of marijuana in the ash without chemical testing. *Id.* Here, neither the officer nor the lab analyst could identify the presence of methamphetamine in the residue without chemical testing. The only difference between these two cases is that *Kabat* testified in his defense, while Ms. Wooldridge did not.

The holding in *Kabat*, however, was not based on *Kabat*'s claim that he had cleaned the pipe. Rather, the court determined that, based on the amount and form of the substance, "a lay person could not be expected to know whether the burnt material in the pipe still contained ingredients of the controlled substance." *Id.*, at 229. This holding supports Ms. Wooldridge's argument. Just as a lay person could not be expected to know that a small amount of ash in a pipe used to smoke marijuana still contained marijuana, a lay person could not be expected to know that the trace amounts of bloody residue in a used syringe still contained methamphetamine.

In addition to its failed attempt to distinguish this case from *Kabat*, the state attempts to align the facts with those in *Poellinger* by arguing that the jury

could infer the requisite knowledge based on the inference that Ms. Wooldridge “had seen the bloody residue in the syringe in her purse and was aware that the syringe had been used to administer methamphetamine.” (Response 12-13). This argument also falls short.

The state first argues that it met its burden because the jury could reasonably infer that Ms. Wooldridge knew the syringe had contained methamphetamine in the past, then contradicts itself and asserts that a defendant’s knowledge, or lack of knowledge, of what the object contained in the past isn’t dispositive. (Response 13). In support, it points out that Kabat’s admission to using the pipe to smoke marijuana wasn’t enough for a reasonable jury to infer that he knew the leftover ash still contained marijuana. (Response 13). The state is correct; the defendant’s knowledge of what an object once held is not dispositive. It is, however, a factor the court considers when determining if the evidence was sufficient to establish knowing possession.

In *Poellinger*, the court held that, based on common knowledge, the jury could:

infer that the defendant looked at the vial when replacing its cap, saw the white powder residue on the threads holding the cap, and therefore, knew that there was cocaine residue on the vial at the time of her arrest....On the basis of this common knowledge, *together with the defendant’s admission that she knew that the vial contained cocaine at one time*, the jury could reasonably infer that the defendant knew that the vial contained

residual amounts of cocaine at the time of her arrest.

State v. Poellinger, 153 Wis. 2d 493, 509, 451 N.W.2d 752 (1990)(emphasis added). Thus, the court relied on both the fact that Poellinger knew the vial had contained cocaine, and the fact that the analyst was able to observe the cocaine, to conclude that the evidence was sufficient to prove that she knowingly possessed it. This case is easily distinguishable.

Unlike Poellinger, Ms. Wooldridge didn't testify or otherwise admit to ever using the syringe or knowing its contents. Moreover, unlike the cocaine in *Poellinger*, the methamphetamine in this case was not readily observable. While the bloody residue was visible, it was not obvious that the residue had some immeasurable amount of methamphetamine in it. Methamphetamine is not red, and the amount of bloody residue in the syringe was so small that it had to be collected using a methanol rinse. Simply put, the methamphetamine was not in such a form as to reasonably input knowledge of its presence to Ms. Wooldridge.

While a jury is free to reject inferences consistent with the defendant's innocence, it can only do so "within the bounds of reason." *Poellinger*, 153 Wis. 2d at 727-728. From the evidence presented, it was unreasonable to infer that Ms. Wooldridge knew or believed that the used syringe still contained methamphetamine. The state failed to meet its burden.

CONCLUSION

For these reasons, as well as those set forth in the initial brief, Ms. Wooldridge respectfully requests that this court reverse the judgment of conviction and remand to the circuit court with instructions that a judgment of acquittal be entered.

Dated this 26th day of April, 2023.

Respectfully submitted,

Electronically signed by

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 1,441 words.

Dated this 26th day of April, 2023.

Signed:

Electronically signed by

Kathilynne A. Grotelueschen

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