

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 11, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-0165-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON T. HUTCHINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Jason T. Hutchins appeals from a judgment of conviction entered after a jury found him guilty of operating a vehicle without the owner's consent. See § 943.23(3), STATS. He also appeals from an order denying his motion for postconviction relief. Hutchins argues that the trial court erred in denying his motion for postconviction relief because: (1) the State allegedly

withheld exculpatory evidence; and (2) Hutchins allegedly received ineffective assistance of counsel.¹ We affirm.

BACKGROUND

At about 3:00 a.m. on November 18, 1996, City of Milwaukee Police Officers Eric Donaldson and Charles Grimm were sitting in their squad car, which was parked on North 46th Street, facing northbound, toward the intersection of North 46th Street and Townsend. The officers saw a car speed northbound out of an alley located to the east of North 46th Street. The car turned left onto Townsend, and stopped at a stop sign at the intersection where the squad car was parked. As the car was stopped, the officers noticed that the opera window on the driver's side of the car was broken. The car then turned left, passing next to the squad car, and headed southbound on North 46th Street. Both officers saw the driver of the car, Hutchins, as he drove past the squad car.

The officers suspected that the car was stolen; therefore, Officer Donaldson, made a U-turn to follow the car. As Officer Donaldson made the U-turn, the car accelerated, and there was a short chase. The officers caught-up with the car when it turned down a dead-end alley, just north of Concordia, between North 46th Street and North 47th Street. Hutchins and the two passengers of the car then got out of the car and ran in different directions. Officer Donaldson drove the squad car to the end of the alley and blocked Hutchins's

¹ Hutchins also makes a general assertion that his trial was unfair because the prosecutor, during closing argument, inaccurately implied that Hutchins was not carrying car keys at the time of his arrest. Hutchins fails to provide legal authority or analysis in support of this general claim, however. We therefore decline to address it. See *Barakat v. DHSS*, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (reviewing court need not address “amorphous and insufficiently developed” arguments).

path; Hutchins hopped over the front-end of the squad car, and ran westbound through the yards adjacent to the alley.

Officer Donaldson broadcast Hutchins's description over the police radio as Officer Grimm chased Hutchins through the yards. Officer Donaldson described Hutchins as a black male with a light complexion and a slight mustache who was wearing a black cap, a black sweatshirt, and black pants. Officer Grimm chased Hutchins westbound across North 47th Street and North 48th Street, but Hutchins outran Officer Grimm as Hutchins crossed North 49th Street. Officer Grimm broadcast that he had lost Hutchins as Hutchins ran westbound on North 49th Street.

Officer Lemuel Johnson received the broadcasts of Hutchins's description and the direction of the chase, and stopped near the intersection of North 50th Street and Concordia to attempt to intercept Hutchins. As Officer Johnson was looking through the yards in the area, he saw Hutchins jump over a wooden fence and into a yard. Officer Johnson ran around the fence and into the yard, and discovered Hutchins sitting on a window ledge behind some bushes at the front of the house. Officer Johnson then broadcast that he had caught Hutchins, and shortly thereafter Officer Donaldson arrived and confirmed that Hutchins was the object of the earlier chase. Minutes later, Officer Grimm also confirmed Hutchins's identity as the driver of the suspected stolen car. About two minutes elapsed between the moment that Officer Grimm lost Hutchins and when Officer Johnson found Hutchins. Officer Johnson found Hutchins within about one block of the spot where Officer Grimm had lost him.

The police contacted the owner of the car that Hutchins had been driving, and she said that she did not give Hutchins consent to drive her car. The

owner's daughter, who had been using the car just before Hutchins took it, also said that she did not give Hutchins consent to drive the car.

The State charged Hutchins with operating a vehicle without the owner's consent. At trial, Hutchins testified that, contrary to the officers' testimony, he was not the driver of the car they saw exit the alley. Hutchins testified that he was driving his own car through the neighborhood, and that he parked his car when he saw police in the area because his car did not have license plates and he did not have a drivers license. He further testified that he hid on the window ledge behind the bushes to avoid getting a ticket. Hutchins's mother testified that, a few days after Hutchins's arrest, she found his car parked in the neighborhood where he was apprehended. The jury rejected Hutchins's defense, and found him guilty. The trial court entered judgment accordingly.

DISCUSSION

Hutchins claims that the State withheld exculpatory evidence because the State did not provide him with the police inventory of the property taken from him at the time of his arrest, which reflected that he was carrying car keys. He alleges that this evidence was exculpatory because it would have corroborated his testimony that he had driven his own car into the neighborhood where the police arrested him. Hutchins also claims that his counsel was ineffective in failing to obtain the inventory prior to trial, and in failing to request a continuance to obtain the inventory when the prosecutor argued during closing argument that the defense had failed to present evidence, such as a police inventory that would have disclosed whether or not Hutchins had been carrying car keys, to corroborate Hutchins's claim that he was driving his own car on the night of his arrest.

“[T]he suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or punishment.” *State v. Pettit*, 171 Wis.2d 627, 644, 492 N.W.2d 633, 641 (Ct. App. 1992). Evidence is material “only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.* (internal quotation marks omitted).

To prevail on a claim of ineffective assistance of counsel, a defendant bears the burden to establish both that counsel’s performance was deficient and that the deficient performance produced prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Sanchez*, 201 Wis.2d 219, 232–236, 548 N.W.2d 69, 74–76 (1996). To show prejudice, the defendant must demonstrate “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *See id.*, 466 U.S. at 694.

Thus, under either of Hutchins’s arguments, he is entitled to relief only if there is a reasonable probability that the admission of the police inventory would have affected the result of the trial. We conclude that there is no reasonable probability that the result of the trial would have been different if the jury had considered the police inventory. We therefore reject Hutchins’s arguments.²

² Moreover, Hutchins’s claim that the State withheld exculpatory evidence also fails because the information reflected in the police inventory was not within the exclusive possession of the State. *See State v. Armstrong*, 110 Wis.2d 555, 580, 328 N.W.2d 386, 398 (1983) (“[T]he [S]tate’s duty to disclose covers only evidence within the [S]tate’s exclusive possession.”). Hutchins knew that he had car keys in his possession at the time of his arrest; thus the State did not breach its duty to disclose exculpatory evidence to Hutchins. *See id.*

At trial, both Officer Donaldson and Officer Grimm identified Hutchins as the driver of the stolen car. Officer Donaldson said that he first saw Hutchins when Hutchins stopped the stolen car at the intersection where the officers had parked the squad car. Officer Donaldson said that he got a closer look at Hutchins when Hutchins turned left and drove alongside the squad car. Officer Grimm also testified that he saw Hutchins when he drove alongside the squad car. Both officers testified that they again saw Hutchins up close as he hopped over the front end of the police car in the dead-end alley.

Officer Grimm testified that he chased Hutchins westbound out of the alley for about two blocks, and lost sight of him at about 3314 North 49th Street. Officer Johnson testified that he found Hutchins about two minutes later, hiding in a yard at 3328 North 50th Street. Officer Johnson said Hutchins fit the description that Officer Donaldson had broadcast, that is, Hutchins was a black male with a light complexion and a slight mustache, who was wearing a black cap, a black sweatshirt, and black pants. Shortly after Hutchins was apprehended, both Officer Donaldson and Officer Grimm confirmed that Hutchins was the driver of the car, whom they had been chasing.

This evidence reveals that the police had nearly continuous sight of Hutchins from the time they first spotted the stolen car until Hutchins was apprehended. They closely observed the driver of the stolen car both while he was driving the car and as he ran from the car, they broadcast his description and the direction he was running, and within about two minutes of the time Officer Grimm lost sight of the driver, Officer Johnson found Hutchins hiding in a yard along the same path that the driver had been running to escape Officer Grimm. Officer Johnson found Hutchins within about a block from where Officer Grimm had last seen him, and Hutchins completely fit Officer Donaldson's description of the

driver. The fact that Hutchins was carrying car keys that night does not negate their testimony; he could have been the car thief *and* have been carrying the keys. There is no reasonable probability that the jury would have acquitted Hutchins if they had known that he was carrying car keys when he was apprehended.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

