

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1604

Cir. Ct. No. 2015JV444

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE INTEREST OF A. C., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-APPELLANT,

v.

A. C.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
LAURA GRAMLING PEREZ, Judge. *Reversed and cause remanded.*

¶1 KESSLER, J.¹ The State of Wisconsin appeals an order of the circuit court dismissing a delinquency petition filed against A.C. The State

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

contends that the circuit court erred in dismissing the petition for a lack of probable cause. We agree. Accordingly, we reverse and remand for proceedings consistent with this opinion.

BACKGROUND

¶2 On May 28, 2015, the State filed a delinquency petition alleging that A.C. was delinquent for operating a motor vehicle without the owner's consent, as a party to the crime, contrary to WIS. STAT. §§ 943.23(2) and 939.05. According to the petition, on May 27, 2015, D.C. reported that her vehicle had been stolen from the parking lot of a Milwaukee-area high school, where she was a school counselor. D.C. told police that she went outside to the parking lot at approximately 2:00 p.m. and found her vehicle gone. D.C. also could not locate her keys, which she had kept in her office that day. A co-worker informed D.C. that she witnessed two females drive off of the school parking lot in D.C.'s car. Surveillance video showed two females entering D.C.'s car and driving away. D.C. recognized one of the females as A.C., a student who had been in D.C.'s office earlier that day.

¶3 The petition also states that Teresa Brown, one of D.C.'s co-workers, was driving in the 2300 block of North 8th Street, Milwaukee, when she noticed D.C.'s car parked on the street. Brown knew the car had been stolen earlier in the day, and recognized the car's make, model and unusual license plate. Brown observed A.C. approach the driver's side of D.C.'s car with the keys in A.C.'s hand. Brown saw A.C. unlock the car door and place her (A.C.'s) hand on the driver's side door. Brown confronted A.C., took the keys from A.C.'s hand and called 911. A.C. denied stealing the car and walked to the rear of her home, which was on the same block where the car was parked.

¶4 A.C. filed a motion to dismiss the petition, arguing that the petition contained insufficient facts to establish probable cause. The circuit court agreed that the petition lacked probable cause to allege that A.C. herself operated the motor vehicle or took the keys from D.C.’s office. This appeal follows.

DISCUSSION

Standard of Review.

¶5 The sufficiency of a pleading presents a question of law which we review without deference to the circuit court’s ruling. *See Sheboygan Cty. v. D.T.*, 167 Wis. 2d 276, 282-83, 481 N.W.2d 493 (Ct. App. 1992). The same principles which govern the sufficiency of criminal complaints apply to petitions in juvenile court proceedings. *See id.* at 283.

¶6 “A complaint establishes probable cause if it sets forth facts sufficient to permit an impartial judicial officer to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process.” *State v. Chinavare*, 185 Wis. 2d 528, 533, 518 N.W.2d 772, 774 (Ct. App. 1994) (citation and quotation marks omitted). Criminal complaints are not strictly construed; rather, a complaint is sufficient if the facts alleged “give rise to reasonable inferences which are sufficient to establish probable cause.” *State ex rel. Evanow v. Seraphim*, 40 Wis. 2d 223, 226, 161 N.W.2d 369 (1968) (footnote omitted). “The test of a complaint is of ‘minimal adequacy, not in a hypertechnical but in a common sense evaluation, in setting forth the essential facts establishing probable cause.’” *State v. Smaxwell*, 2000 WI App 112, ¶5, 235 Wis. 2d 230, 612 N.W.2d 756 (quoting *Seraphim*, 40 Wis. 2d at 226). Therefore, although a complaint must set forth “the ‘essential facts’ constituting the offense charged,” it need not contain

an “encyclopedic listing of all evidentiary facts upon which the state intends to rely.” See *Seraphim*, 40 Wis. 2d at 229; WIS. STAT. § 968.01(2).

The Petition Established Probable Cause.

¶7 The petition alleged that A.C. operated a motor vehicle without D.C.’s consent, *as a party to a crime*, contrary to WIS. STAT. §§ 943.23(2) and 939.05. WISCONSIN STAT. § 943.23(2) states: “Except as provided in sub. (3m), whoever intentionally takes and drives any vehicle without the consent of the owner is guilty of a Class H felony.” WISCONSIN STAT. § 939.05, the parties to a crime statute, as material to this case, provides:

(1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although the person did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(2) A person is concerned in the commission of the crime if the person:

(a) Directly commits the crime; or

(b) Intentionally aids and abets the commission of it[.]

¶8 The petition did not allege that A.C. was necessarily the driver when the car was stolen. However, the petition alleged facts which support probable cause for the charge of operating a vehicle without the owner’s consent as a party to the crime. The petition alleges:

- A.C. was identified on surveillance video at school entering D.C.’s car with another female.

- The car was immediately driven off of school grounds with both females still in the vehicle.
- D.C. did not give consent to anyone to take her car.
- When D.C. discovered her car was missing, she also discovered her car keys were missing.
- Earlier in the day, A.C. was in D.C.'s office, where D.C. kept her car keys.
- Later, Brown, a co-worker of D.C.'s, was driving and recognized D.C.'s car parked on the street.
- Brown also observed A.C. approaching D.C.'s car. A.C. had keys with which she unlocked the stolen vehicle.
- As A.C. was about to enter the driver's side of the stolen vehicle, Brown took the keys from A.C. and called 911.
- D.C.'s car was parked on the same block as A.C.'s home.

¶19 A.C. was charged as a party to the crime. Whether A.C. actually drove the motor vehicle is not essential to finding probable cause. Nor is it necessary at this stage to eliminate all possible innocent explanations for the conduct charged. *See State v. Higginbotham*, 162 Wis. 2d 978, 995, 471 N.W.2d 24 (1991). The petition establishes that: (1) A.C. had an opportunity to take D.C.'s keys; (2) A.C. was seen getting into D.C.'s car; (3) the car was driven away from where D.C. had left it; (4) A.C. was seen later with keys in her hand which unlocked the stolen car; and (5) A.C. was seen unlocking the car by a person who recognized the stolen car. All of the facts give rise to a reasonable inference of

probable cause to believe that A.C.—who had access to the keys before the theft, possession of the keys after the theft, and unlocked the stolen car as she approached the driver’s side while the stolen car was parked in the block where A.C. lived—was probably involved in the taking and operating of D.C.’s car. That is enough to establish probable cause, A.C.’s claim of innocence notwithstanding. *See Seraphim*, 40 Wis. 2d at 226.

¶10 For the foregoing reasons, the circuit court’s order dismissing the petition is reversed, and cause is remanded for further proceedings.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

