

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2018

Sheila T. Reiff
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. 2017AP2243-CR

Cir. Ct. No. 2017CM157

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

CHAD DAVID KNAUER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Grant County:
CRAIG R. DAY, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ The State appeals an order of the circuit court suppressing statements made by Chad Knauer to police on the basis that those statements were not made voluntarily. The State's sole developed argument on

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise indicated.

appeal is that Knauer's statements should not have been suppressed because the police did not utilize an improper police tactic to procure Knauer's confession. For the reasons explained below, I affirm.

BACKGROUND

¶2 Sometime between March 26 and April 5, 2017, an ATV trailer was stolen from Reddy Ag in Stitzer, Wisconsin. Local law enforcement officers received information that Knauer was involved in burglaries and thefts, and that the trailer stolen from Reddy Ag was being stored at Knauer's aunt and uncle's residence in Illinois.

¶3 Knauer was interviewed at the Lafayette County jail around 11:00 p.m. on May 23, 2017, for approximately one hour. During the interview, Knauer was questioned about various thefts and whether specific property in his possession was stolen. After approximately three-quarters of an hour during the interview, Knauer was asked about whether he had any property stored at his aunt and uncle's residence. Knauer ultimately admitted that he had stolen the trailer from Reddy Ag and that he was storing the trailer at his aunt and uncle's residence. The following is an excerpt of that portion of the interview that is relevant to the present appeal:

[Detective Jerrett Cook]: Okay, so what[] [have] you got down at your aunt and uncle's 'cause you used to put shit down there.

[Knauer]: Just my wild cat.

....

[Detective Cook]: ... what else is there when we go down? I don't wanna be blindsided and stupid down there.

[Knauer]: I got a –

[Detective Cook]: So it's like dark and I'm gonna be walkin' around stumbling into crap.

[Knauer]: Should be nothin' else down there.

[Detective Cook]: So everything that's there even if it's stolen [is] your aunt and uncle's, correct?

[Knauer]: Ain't nothin' stolen there.

[Detective Cook]: Just askin' ya.

[Knauer]: Yeah[.]

[Detective Cook]: 'Cause if somethin' stolen's there I'm just gonna arrest them. That's the way it works, man. It's just easier this way. Anybody else store stuff there?

[Knauer]: Yeah. [M.H.], uh, [A.K.], [R.K.], uh, the whole barns full of shit, derby cars. Uh[], shit's everywhere. [The] Wild Cat should be up by the house there.

....

[Detective Cook]: Okay. Nothin' else is yours?

[Knauer]: No. Well I got a plow out there.

....

[Detective Cook]: Nothin' else?

[Knauer]: No[.]

[Detective Cook]: All right. You're willing to risk them on that?

[Knauer]: Who?

[Detective Cook]: Your aunt and uncle?

[Knauer]: Yeah[.]

....

[Knauer]: Can you do me one favor?

[Detective Cook]: What's that?

[Knauer]: Can you please keep my aunt and uncle out of this. They're like my mom and dad.

[Detective Cook]: I appreciate that but here's the problem, man. I know that there's stuff down there.

[Knauer]: What's down there?

[Detective Cook]: Well, we're not gonna discuss it. I'm just tellin' you that at least the information I got is that there's stuff stored down there that you have. And I'm gonna go down and make sure it's not stolen. If it's stolen unfortunately they're in possession of stolen property too. I'm just not gonna play around about it. That's why I'm askin' you straight up before I get my butt down there and start pounding on doors if there's anything there. It's just easier. So that's, it's just the way it is. I'm not tryin' to step on your toes, Chad but I literally need to take care of business. You're not the only individual involved in this thing. Everybody that lost something is involved, just like you. So at the end of the day I need you to make sure that it's there or not there and be done with it. No big deal, man.

[Knauer]: Hhhmmmm, Trailer up at the barn.

[Detective Cook]: What kind of trailer?

....

[Chief Jerry]: Like a landscaping trailer?

[Knauer]: Yeah, yeah.

[Chief Jerry]: Where'd that come from?

[Knauer]: Stitzer[.]

[Detective Cook]: When'd you do that one?

[Knauer]: 2 months ago maybe, a month and a half ago.

¶4 Knauer was charged with misdemeanor theft of property, contrary to WIS. STAT. § 943.20(1)(a) & (3)(a). Knauer moved to suppress those statements he made during the May 23, 2017 interview at the Lafayette County jail, in part on the ground that those statements, including his admission to stealing the trailer from Reddy Ag, were involuntary. The circuit court granted Knauer's motion. The court determined that Detective Cook did not have, nor did Detective Cook

believe that he had, probable cause to arrest Knauer's aunt and uncle. The court stated that Detective Cook's "threat" against Knauer's aunt and uncle was a "misrepresentation designed to extract from [] Knauer a confession," and that the State had failed to show that Knauer's confession was voluntary under the totality of the circumstances. The State moved for leave to file an interlocutory appeal. We granted the State's motion.

DISCUSSION

¶5 The State appeals the circuit court's suppression of Knauer's confession on the ground that the confession was not voluntary.

¶6 "A defendant's confession must be voluntary[] [and] the State's use of an involuntary confession for purposes of prosecution violates the defendant's due process rights." *State v. Moore*, 2015 WI 54, ¶55, 363 Wis. 2d 376, 864 N.W.2d 827. "In determining whether a confession was voluntarily made, the essential inquiry is whether the confession was procured via coercive means or whether it was the product of improper pressures exercised by the police" to procure a confession. *State v. Clappes*, 136 Wis. 2d 222, 235-36, 401 N.W.2d 759 (1987); *see also Moore*, 363 Wis. 2d 376, ¶56. "The presence or absence of actual coercion or improper police practices is the focus of the inquiry because it is determinative on the issue of whether the inculpatory statement was the product of a 'free and unconstrained will, reflecting deliberateness of choice.'" *Clappes*, 136 Wis. 2d at 236 (quoted source omitted). The voluntariness of a defendant's confession is evaluated in light of the totality of the circumstances surrounding the interrogation, weighing the defendant's characteristics against the tactics used by the police in order to induce the defendant to respond to the questioning. *Moore*, 363 Wis. 2d 376, ¶56. The State bears the burden of establishing, by a

preponderance of the evidence, that a confession was voluntary. *Clappes*, 136 Wis. 2d at 235.

¶7 On review of a circuit court's determination that a defendant's confession was or was not voluntary, this court will accept the court's factual findings unless those findings are contrary to the great weight and clear preponderance of the evidence. *State v. Triggs*, 2003 WI App 91, ¶11, 264 Wis. 2d 861, 663 N.W.2d 396. However, we independently review the court's application of those facts to the legal standard of voluntariness. *See id.*, ¶¶ 11-12.

¶8 The sole argument developed by the State in its briefs on appeal is that Knauer's confession was voluntary because the police did not use deceit to procure Knauer's confession. More specifically, the State argues that Detective Cook's threat during the interrogation that Knauer's aunt and uncle would be arrested if stolen property was found on their property was not a misrepresentation, contrary to the circuit court's determination otherwise, because there was probable cause to act on that threat.

¶9 Knauer argues that because the State has limited its argument on appeal to the question of whether Detective Cook misrepresented whether Knauer's aunt and uncle could be arrested, the State has forfeited its right to any alternative arguments, including any argument that even if Detective Cook's threat to arrest Knauer's aunt and uncle was not unfounded because the arrest would be supported by probable cause, Knauer's confession was nevertheless voluntary under the totality of the circumstances. *See id.*, ¶15 (an interrogator's use of deceit, although relevant to the totality of the circumstances, does not by itself make an otherwise voluntary confession inadmissible).

¶10 The State does not dispute Knauer’s forfeiture argument in its reply brief, nor does the State develop any alternative arguments regarding why this court should reverse the circuit court’s order granting Knauer’s motion to suppress. An argument asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted. *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). Accordingly, I limit my review to the question of whether Detective Cook’s threat to arrest Knauer’s aunt and uncle was or was not unfounded because such an arrest would or would not have been supported by probable cause.

¶11 The supreme court has explained probable cause as follows:

Probable cause to arrest is the sum of evidence within the arresting officer’s knowledge at the time of the arrest which would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime. An arrest is legal when the officer making the arrest has reasonable grounds to believe that the person has committed or is committing a crime. *See* WIS. STAT. § 968.07(1)(d).

State v. Nieves, 2007 WI App 189, ¶11, 304 Wis. 2d 182, 738 N.W.2d 125 (internal citation omitted). “When the facts are not disputed, whether probable cause to arrest exists in a given case is a question of law that [an appellate] court determines independently of the circuit court ... but benefiting from [its] analys[is].” *State v. Lange*, 2009 WI 49, ¶20, 317 Wis. 2d 383, 766 N.W.2d 551. Probable cause is assessed on a case-by-case basis, looking at the totality of the circumstances. *Id.* In determining whether probable cause exists, an objective standard is applied, with the court considering the information available to the officer and the officer’s training and experience. *Id.*

¶12 The only fact that the State points to in support of probable cause to arrest Knauer's aunt and uncle if stolen property were found on their land is the fact that the stolen property would be on their land, which the State asserts puts the property "in [their] possession."

¶13 In *Gautreaux v. State*, 52 Wis. 2d 489, 495, 190 N.W.2d 542 (1971), the supreme court stated "that while mere possession of stolen property raises no inference of guilt, the unexplained possession of recently stolen goods does raise an inference ... that the possessor is guilty of theft and also of burglary if the goods were stolen in a burglary." The weight of that inference depends on the circumstances. *Id.* The State argues that the Reddy Ag trailer should be considered "recently stolen" because only one and one-half months had passed between the theft and Knauer's interview. Additionally, citing *State v. Woods*, 117 Wis. 2d 701, 345 N.W.2d 457, the State argues, as best I can tell, that having stolen property at the aunt and uncle's residence, alone, raises a sufficient inference that they are guilty of theft, burglary, or receiving stolen property such that a reasonable police officer could reasonably believe that the aunt and uncle probably committed a crime.

¶14 In *Woods*, the defendant, who was sixteen years old at the time, was arrested after he made an unsolicited attempt to sell a chain saw to a neighbor for a fraction of its value and it was discovered by police that the chain saw had been stolen seventeen months earlier. *Id.* at 706-07, 711. The supreme court in *Woods* concluded that under those facts, a reasonable police officer could believe that the defendant had committed theft or the crime of receiving stolen property. *Id.* at 711.

¶15 The State does not develop an argument explaining how the facts in *Woods* are analogous to those in the present case, and I conclude that they are not. The defendant in *Woods* had been in actual physical possession of the stolen property and made an unsolicited attempt to sell the stolen property at a fraction of the property's value. Here, the State does not point to any facts that the aunt and uncle were in actual physical possession of the stolen trailer, or any other stolen property, let alone that they were even aware that stolen property was being stored at their premises, particularly in light of the statements in the interrogation that the property belonging to other people besides Knauer was stored there.

¶16 The State does not present this court with any other arguments that would support a conclusion that a reasonable police officer would reasonably believe that Knauer's aunt and uncle were guilty of a crime based solely on the fact that there was stolen property at their residence, and I conclude that such a belief would not be reasonable under these facts. Accordingly, I agree with the circuit court that Detective Cook would not have had probable cause to arrest Knauer's aunt and uncle and that his threat to arrest the aunt and uncle was an improper police tactic. Because there are no other issues before this court on appeal, I affirm.

By the Court.—Order affirmed.

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

