

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 29, 2007

A. John Voelker
Acting 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. 2006AP1504-CR

Cir. Ct. No. 2004CF90

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GEORGE T. WEBER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waupaca County:
RAYMOND S. HUBER, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. George Weber appeals a judgment convicting him of a drug felony. He entered a plea to the charge after the trial court denied his motion to suppress the evidence used to charge him. The dispositive issue is whether police had probable cause to arrest Weber. We affirm.

¶2 Weber lived in Waupaca County with his six-year-old daughter, Jade. Her mother, Suzanne Shaff, had periodic placements. During one of those placements, Shaff brought Jade to Mt. Sinai Hospital in Milwaukee for an examination of alleged sexual abuse. The examining nurse did not find evidence of sexual abuse, but concluded instead that the redness and swelling Shaff observed around Jade's vagina was viral in origin. However, Jade also told the nurse that Weber had struck her, although the nurse found no evidence of physical abuse. The nurse subsequently called Waupaca County Sheriff Deputy Patrick McClone to report on her examination of Jade and the child's allegation of physical abuse.

¶3 The deputy also spoke with Shaff, who reported that Weber had a record of physically abusing children, and was currently on probation for child abuse. According to Shaff, the incident of physical abuse Jade described to the nurse had occurred within the last two months. The deputy confirmed that Weber was on probation from a 2003 child abuse conviction. He then spoke with Weber's probation agent who declined to place a hold on him unless Weber was taken into custody.

¶4 Based on the information described above, the deputy arrested Weber. That arrest led to discovery of the drug-related evidence used against Weber in this proceeding. The trial court refused to suppress the evidence after concluding that the deputy had probable cause to make the arrest.

¶5 Probable cause refers to that quantum of evidence that would lead a reasonable police officer to believe that a person probably committed a crime. *State v. Paszek*, 50 Wis. 2d 619, 624, 184 N.W.2d 836 (1971). It requires information indicating that the defendant's involvement in a crime is "more than a

possibility,” but it “need not reach the level of proof beyond a reasonable doubt or even that guilt is more likely than not.” *State v. Kutz*, 2003 WI App 205, ¶11, 267 Wis. 2d 531, 671 N.W.2d 660 (citation omitted). It “is a flexible, commonsense measure of the plausibility of particular conclusions about human behavior.” *Id.* Whether a given set of facts constitutes probable cause to arrest presents a question of law which this court reviews independently of the circuit court. *State v. Kasian*, 207 Wis. 2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996). In determining whether probable cause exists, this court is not bound by the officer’s subjective assessment or motivation. *Id.* If there are two reasonable competing inferences, one justifying arrest and the other not, the officer is entitled to rely on the reasonable inference justifying arrest. *Kutz*, 267 Wis. 2d 531, ¶12.

¶6 The deputy had probable cause to arrest Weber on information that he had physically abused his daughter. Much of the information was hearsay, but an arresting officer may rely on hearsay, at least in part. *Id.* An officer may also rely on knowledge of a prior conviction for the suspected activity. See *State v. Schaefer*, 2003 WI App 164, ¶22, 266 Wis. 2d 719, 668 N.W.2d 760. Taken together, the information gained from the victim, her mother, and the records check allowed the deputy to reasonably infer that Weber probably abused his daughter. He had done it before, and the deputy knew that Jade was now reporting that he had done it again.

¶7 Weber contends that while the information described above, standing alone, might have provided probable cause to arrest him, it did not when considered together with exculpatory information, such as the absence of any physical evidence of abuse. However, according to the deputy’s information, the most recent physical abuse had occurred as much as two months before Jade reported it, so the absence of physical evidence did not require an inference of no

abuse. Weber also considers exculpatory his probation agent's refusal to put a hold on him, but the agent's decision did not control the deputy's decision, nor determine its reasonableness. Even if the agent declined the hold because he doubted the reliability of the information, a reasonable police officer could infer otherwise.

¶8 Finally, Weber contends that a reasonable officer would have discounted Shaff's allegations of abuse because she had a motive to falsely accuse him. At the time of the arrest, however, the deputy could only speculate that Shaff had a motive to lie. To that, Weber responds that at the very least the deputy's knowledge should have prompted further investigation of Shaff's credibility before acting on her accusations. However, the deputy knew that it was not just Shaff reporting Jade's accusations, but the Mt. Sinai Hospital nurse as well. Weber does not suggest that the deputy should have doubted the report of a disinterested medical professional.

¶9 Our decision that the deputy lawfully arrested Weber makes it unnecessary to address Weber's contention that he did not consent to the search that occurred right after his arrest. There is no dispute that if the deputy lawfully arrested Weber, the subsequently discovered evidence was admissible as the product of a search incident to arrest.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

